LOCAL AND OTHER MATTERS.

FROM SATURDAY'S, DAILY AUG. 22.

The Tooele Election Affair.—This morning at ten o'clock the alternative mandamus case of Lawrence A. Brown, claiming to be Probate Judge elect for Tooele County, *vs.* Thomas Atkin, Treasurer of that county, required to show cause why he refused to file Mr. Brown's bonds, was heard by Judge James B. McKean in chambers.

Messrs. Sutherland and Snow appeared for the defendant, and Mr. Hagan for the applicant.

An affidavit made by Lawrence A. Brown was read by Mr. Hagan, which set forth that he had been elected to the office of Probate Judge of Tooele county, on the 3rd day of August last, and that he had received a certificate of election from the County Clerk of Tooele; that he had, on a stated day, offered to file his bonds with Thomas Atkin, County Treasurer of Tooele, but that the latter had refused to accept or file said bonds.

In consequence of this refusal on the part of the treasurer he had applied for and obtained from the Third District Court, a writ of alternative mandamus, which had been duly served upon Mr. Atkins. Mr. Brown's counsel applied for a peremptory mandamus.

The defendant moved to quash the writ on the following grounds—

1st. That the writ of alternative mandamus was issued without any order therefor.

2nd. That it is returnable at chambers, and at too short notice.

3rd. That the order in the case was made at chambers and is to show cause.

4th. That no sufficient cause for mandamus is shown.

Judge Sutherland then delivered a somewhat lengthy and very able argument in support of the motion to quash. He quoted a large number of legal authorities, showing the correctness of his position, but a synopsis of his argument could not give an adequate idea of it.

He read sec 3, of a legislative act providing for the election of Probate Judges, as follows—

"SEC. 3. The Probate Judge shall give a bond for the faithful performance of his official duties in the penal sum of five thousand dollars, which amount may be increased by the selectmen of the county to any sum not exceeding twenty thousand dollars, with at least two sufficient sureties, who are residents of the county, and worth the sum for which they become liable, over and above all their debts and libabilities in property not exempt from execution, which said bond shall be approved by and filed with the County Treasurer; and shall take and subscribe an oath to the effect that he will honestly and faithfully perform the duties of the office on which he is about to enter, which oath shall be attached to and filed with said bond: *Provided*, That so much of Section 23 of an act in relation to the Judiciary, approved January 19th, 1855, as conflicts with this act, is hereby repealed."

The counsel contended that this act gave the treasurer discretionary power, and a *writ of mandamus* could only be issued to compel him to move, or exercise that discretion, and not to curtail or restrain it.

The bonds must be good and must bear evidence of their sufficiency, and the defendant had the power to exercise his discretion as to the evidence. The gentleman quoted authorities involving similar cases and questions of law, showing that the courts could not issue a mandamus to control the discretionary powers of officers, whether those officers be judicial, quasi-judicial, or otherwise. The language of the authorities was most plain and unambiguous on the point in question, making it very clear that in cases like that before the court writs of mandamus could only be issued to set the discretionary power of public officers in motion, but could not control that power of discretion. Wherever a duty was required of a public officer, and he refused to perform his duty a mandamus could only apply to compel him to perform it, but could not control him in the exercise of his judgment. Mr. Sutherland also read the statute which states plainly that writs of the character served upon the defendant shall not be made returnable under ten days from the time of service, which had not been done in this case.

Mr. Hagan argued for the applicant. After taking up some of the points advanced by the defense, when he came to the proposition raised by Mr. Sutherland that the Court could not control the discretion or judgment of a public officer, he asked the court to defer that proposition until the final argument.

Mr. Sutherland said if the proposition was well taken he would like it disposed of then.

The Court said the arguments of counsel could proceed, whether the decisions were given at present or not.

The counsel endeavored to show that mandamus was the only remedy in the premises for the applicant to take, and that if the opposite counsel were correct an officer elect might be kept out of office until his term had expired. He read to show that it was difficult to conceive of an act of any ministerial officer that did involve the exercise of discretionary power; also when an officer had an act to perform the court could compel him to do so. His argument was somewhat elaborate and was intended to show that the only discretionary power held by the defendant was regarding the sufficiency of the bonds, about which no question, he said, had been raised.

Mr. Sutherland resumed his argument, stating that counsel for the applicant, Mr. Brown, had not given a single authority to show that the court would be justified in issuing a mandamus to compel the defendant to approve the bond in question. The approval of the bonds had been given by law to the treasurer, and the court could not coerce or constrain him in the exercise of his judgment.

Decision deferred till four o'clock.

FROM MONDAY'S DAILY, AUG. 24.

Tabernacle Meeting.—Elder Geo. Q. Cannon and President Geo. A. Smith preached yesterday afternoon.

Returned From Cache.—On Saturday Presidents Brigham Young and Geo. A. Smith and other gentlemen returned from a short visit to Cache Valley.

A Good Meeting.—There was an excellent meeting at Kaysville yesterday. Bishops John W. Hess, Farmington, John Stoker, Bountiful, and W. R. Smith, Centerville, and Elder Nobles were there.

Suspended.—The Utah *Mining Gazette* of Saturday announces its suspension. The same number also closes its first volume. The *Gazette* failed for lack of the vital force—cash which has proved disastrous to so many other business enterprises the last year.

A Pleasant Time.—Yesterday the Bishop and Counsel, the choir and a number of other residents of the First Ward, visited Neff's District, Big Cottonwood, on invitation, where they held meeting, "sang the songs of Zion," and had a most agreeable time.

A Bad Case.—The daughter of Brother Mark Lindsey, who was bitten in the leg by a dog belonging to a man named Hughes, three weeks ago, is still in a very precarious condition, being unable to walk, and some of the wounds inflicted by the teeth of the brute are still open, without indications of healing.

Doing Well.—The young man McLeod, who met with a severe accident, at Livingstone's lumber mill, a short time since, is doing well. It has not been necessary, as was feared, to amputate one arm and the other hand, the only amputated members being the three fingers and a portion of the palm of one hand.

Returned.—A sporting and recreating party, composed of representatives of law, physic, and railroads, which left this city for the north a short time since, have got back. They visited Weber, Logan and Blackfoot Canyons, and Soda Springs. They were so successful at fishing and hunting, and fed so unlimitedly on the result of their manipulations of the rod and gun, that the mere mention of prairie chicken or trout turns them bilious.

Perilous Situation. — A young lady was placed in a perilous situation yesterday. While riding on First South St., on horseback, a passing herd of cows started her animal, causing her to entirely lose control of it. It dashed eastward at a terrific gallop, the frightened lady clinging to its back, her hair streaming loosely in the breeze. She screamed with terror and called loudly to bystanders for help. Several gentlemen ran out in front of the animal and tried to stop it, but without effect. Fortunately it rushed into a livery stable and the rider managed to cling on till it stopped.

The Way To Make Good Adobies.—Good adobies make excellent and substantial buildings, being more durable than some other materials. Of late years they have declined in quality. The reason for this does not altogether lie with the quality of the clay, but in the manner of treating it. It has been demonstrated by makers of sun-dried brick, that when the moulding is done soon after the clay is mixed the adobies are of inferior quality, but when it is allowed to stand a day or so after mixing the adobies are firmer, more solid, have greater resistance to moisture and are better in every particular.

Variety.—The grubs which are found in the fruit appear to think that variety is the spice of worm as well as human life; therefore people should be careful where they put the fruit in which they ensconse themselves, as they come out of their juicy hiding places and go through clothing, papers and the like, eating their way through different kinds of material with as much energy and persistency, and regardlessness of right, as a carpet-bagger endeavors to surreptitiovsly worm his way into offices in the gift of the people without the latter's consent.

Releases and Appointments.—Elder W. N. Fife is released from the Presidency of the Glasgow Conference, to return home with the September company.

Elder David McKenzie is appointed to succeed Elder Fife in the Presidency of the Glasgow Conference.

Elder Peter Sinclair is appointed to labor in the Glasgow Conference, and on the Orkney Islands, under the direction of Elder McKenzie.

Elder L. John Nuttall is appointed to labor in the Newcastle and Durham Conference, under the direction of Elder A. McFarland.

Elder John Henry Smith is appointed to labor in the Birmingham Conference, under the direction of Elder R. V. Morris.—*Millennial Star, Aug* 11.

Tooele Election Case.—On the reassembling of the Third District Court at four o'clock, on Saturday afternoon, Judge McKean overruled defendant's motion to quash the writ of *mandamus* served upon Thomas Atkin, Jr., requiring him to show cause why he refused to file the bonds presented by L. A. Brown. The four grounds of the motion were given in the NEWS of Saturday.

After the decision of Judge McKean was rendered, Mr. J. G. Sutherland, attorney for defendant, filed the following answer—

Lawrence A. Brown, *vs* Thomas Atkin, jun., *Treasurer of Tooele County.*	At Chambers before Hon. James B. McKean, *Judge of the Third District Court*, Territory of Utah.

The answer of said Defendant to the alternative writ of mandamus sued out against him by said Plaintiff.

I. This defendant admits that on the 17th day of August, 1874, he was Treasurer of the County of Tooele, in the Territory of Utah.

II. On information and belief, this Defendant denies that said Plaintiff was legally elected to the office of Probate Judge of said County of Tooele, at the election in said county on said 3rd day of August, 1874. He denies that said Plaintiff was eligible to said office; that the majority of legal votes was given for said Plaintiff at said election; that said Plaintiff received any certificate of election; that Defendant is advised and believes that the Governor of the Territory of Utah has no authority to issue a commission to any person elected Judge of Probate, and that any commission issued to said Plaintiff is invalid.

III. This Defendant alleges that John Rowberry is an incumbent and in possession of said office of Probate Judge of said Tooele County, and has been ever since and before said election, and claims to hold the said office of right.

IV. This defendant admits that on the 17th day of August, 1874, Plaintiff presented to the Deendant, Treasurer as aforesaid, for approval and to file in his office, bonds in the penalty of five thousand dollars, purporting to be executed by said Plaintiff as principal, and Horace Bliss and E. M. Jones, as trustees, conditioned for the faithful performance of the duties of the office of Probate Judge of said Tooele County, by said Plaintiff, and that this defendant declined to approve and file the same; that deponent refused to approve and file said bond because he was not then satisfied of the sufficiency of the sureties; that he has since made inquiry and he deems them insufficient, and claims the exclusive power to decide upon that question; that he was not then informed officially of the election of said plaintiff to said office; that the Selectmen of said County had not acted as authorized by law in respect to increasing and fixing the penalty of the official bond of Probate Judge.

This defendant further alleges and shows that, at a meeting of the Selectmen of said County, held on the 21st day of Aug. 1874, the penalty of the official bond to be given by Probate Judge of said County was fixed at fifteen thousand dollars.

After arguments on both sides on the propositions advanced in the foregoing, Court adjourned till this, (Monday) afternoon.

This afternoon, after the presentation of an amended affidavit of L. A. Brown, and some arguments of counsel on both sides, the Court made the following order—

"It is therefore hereby ordered that on the 26th day of August, 1874, at two o'clock in the afternoon, at the Federal Court Room in Salt Lake City, in Salt Lake County, in said Territory, before the undersigned judge of the Third District Court in and for said Territory, the following questions to be tried, to wit—

"*First.*—What evidence was presented to and what facts were known by the defendant touching the plaintiff's election and right to the office of Probate Judge of the County of Tooele?

"*Second.*—How much are Horace Bliss and E. W. Jones, sureties of the bond referred to in this case, worth over and above all their debts and liabilities, in property and exempt from execution.

"*Third*—What damages, if any, will the plaintiff have sustained herein.

"Dated August 24th, 1874, Jas. B. McKean, Judge."

U. S. COMMISSIONER'S COURT.

This morning, before U. S. Commissioner Toohy, Mayor Wells was arraigned for a preliminary investigation of the charge preferred against him by U. S. deputy marshal, J. M. Orr, for resisting said Orr in the "discharge of his duty" at the polls, at the City Hall, on the 3rd instant, and also with an attempt to commit an assault upon him.

Messrs. Carey and McBride appeared for the prosecution; Messrs. Sutherland and Snow for the defence.

The prosecution called J. M. Orr to the stand, who testified that on election day his ingress to the polling room at the City Hall was obstructed by Mayor Wells, and that when he declared he was there as a U. S. officer, and had a right to be there, and insisted upon entering the polling room, the Mayor raised his hand, in which was a walking cane, as if to strike him, Orr, and that he, Orr, believed that was his intent. He then seized the Mayor's arm, exclaiming—"Don't strike me," and then said, "I arrest you." He and others then attempted to arrest the Mayor, which caused a great rush, and in the rush they lost their hold of the person of the Mayor, but he was subsequently brought before the U. S. Commissioner and held over to appear for examination on this charge.

The defence called the following witnesses: Daniel W. Jones, E. T. Williams, Andrew Burt, David Leaker, and S. W. Taylor, who all testified, in substance, that Orr was under the influence of liquor on election day while at the City Hall, that he was very officious, and helped to break instead of to preserve the peace, and that this was the reason the mayor refused him admission into the polling room; that the altercation between Orr and the Mayor caused considerable excitement; that when Orr and others seized the Mayor part of his clothing was torn from his person, that there were cries of "G—d d—m him," "Kill him," "bring him out," &c., and that when the Mayor lifted up his hands, in which, as was customary, he had a walking cane, it was only to draw attention, and to command the peace; and that all the force he used was in striving to extricate himself from the clutch of Orr and others who were seeking to do him personal violence.

The prosecution called Mr. Bostwick by way of rebuttal, who testified that there was but little excitement at the time of the altercation above referred to; that he assisted Orr to arrest the Mayor; that the latter did raise his cane in a menacing and threatening manner; that the crowd as a general thing, and the U. S. D. P. M's especially, were sober, and that the latter acted like gentlemen, their sole aim being to preserve the peace and to guard the purity of the election.

Very brief arguments were made, by Judge Sutherland for the defence, and by Mr. Carey for the prosecution, when the court made the following

RULING:

The evidence in this case, though not very extensive, is somewhat conflicting. I am to assume that Mr. Wells stood in the door of the polling room, as described by most of the witnesses; Mr. Orr came up and was asked by Mr. Wells if he was Milton Orr, and that Mr. Orr replied in the affirmative; that Mr. Wells then told him to go away, which Orr refused to do, saying he was a deputy United States marshal, and that he had a right to enter there. That is about the substance of the difficulty. It appears then that Mr. Orr makes an attempt to enter the hall, and Mr. Wells resists; Mr. Wells has his cane, which is raised, some say menacingly, other say that it was not, and so far as the cane part of the business is concerned, I am under the impression that there was no actual menace, and that the resistance occurred in another way.

The complaint charges, directly, that Daniel H. Wells, Mayor of said city, (Salt Lake City) by threats, menaces, etc., resisted an officer, Mr. Orr, in the performance of his duty under an act of Congress; and further that the said Daniel H. Wells did assault affiant with a cane. I am satisfied that that part of the assault has not been sufficiently proven for me to consider. Hence it remains for me to determine what guilt there is in this charge against Mr. Wells, who is charged as Mayor of Salt Lake City, and I recognize him as being present at the City Hall, at the time this difficulty occurred, in that capacity. Whether it be good law or not, I am willing to give my opinion that it is. Mr. Wells, as Mayor of the city, had an official right to be at the City Hall; every citizen has a private right to be there on the day of election, and I think it was a fit place for the Mayor to be at officially on that day.

I am also under the impression that the Mayor had been misinformed as to the facts surrounding the polls on that day; but that would be no excuse for an infraction of the law afterwards. I am satisfied that he went to the City Hall believing that there was a disturbance there, or that there was likely to be one; and that, acting under this impression, he took his place in the door of the polling room. It happened that the first objectionable person who came along was Mr. Orr, and the colloquy which has been detailed by several witnesses took place. Mr. Wells asked Mr. Orr who he was, and he replied, and then Mr. Wells objected to his entering the polling room.

I am told that immediately before this there was perfect peace and tranquility, both in and out of that room; and as you permit me to go to the evidence presented in a former case, I find that there were several deputy marshals inside, enough to protect the peace, and to preserve the purity of the ballot box. There were two or more deputies inside at that moment, and I do not see what necessity there was for Mr. Orr to go in there. I do not deny his right to enter, nor question his motives, and let it be well understood that I do not approve of the resistance of the men; but I conclude that the Mayor, acting