

Because of this illegal and atrocious course, it was determined to bring the matter before Judge Zane. To secure, if possible, an order that would restrict to within its proper bounds this wholesale exercise of assumed authority by the registrars. Bishop Wm. B. Preston was one of those charged on the grounds of polygamy and non-residence. In this case an application was made before Judge Zane for a writ of prohibition, restraining Registrar J. R. Morris from further arbitrary action. The application was in substance as follows:

W. B. Preston, being first duly sworn, on his oath does say:

That he is a native born citizen of the United States.

That he is now and has been for more than five years last past a *bona fide* resident of Salt Lake City, in Salt Lake County, in Utah Territory, in precinct number 3 of said city.

That in December he was duly registered, and is a legally qualified voter, and entitled to vote at all municipal elections in Salt Lake City.

That on Jan. 28, Mr. Preston received a notice from J. R. Morris of the challenge, based on the grounds that he is a polygamist and a non-resident of the city.

Mr. Preston states that the charges are absolutely untrue and false, and that he was not at the time he registered a polygamist, and that he was and is a *bona fide* resident of Salt Lake.

The affiant further says that the registrar has no jurisdiction to hear and determine said complaint, and is acting without authority of law; and further that he intends to deprive the affiant of his right to vote.

Having no other adequate remedy at law, the affiant asks that the registrar be commanded by the court to refrain from further proceedings in the case.

The arguments were made by Le Grand Young for the affiant and P. L. Williams and W. H. Dickson for the registrar.

The position Mr. Young took was that the registrars were not judicial officers in the capacity of registrars, and could not act in that office and also the office of justice of the peace, which officer the law says shall hear and determine challenges; also, that the registrars are not supreme in their actions, but are subject to the direction of the courts.

The position of Messrs. Williams and Dickson was that the registrars acted both in a ministerial and judicial capacity, and the Utah Commission could properly authorize them to so act; that they could add names to or strike names from the registry list, and that there was no appeal from their action; that they could strike any number of names from the list up to the day of election, and the voter had no redress. As Mr. Dickson declared, "There is no appeal from their action, at least not until after election, and then it is no good."

Judge Zane, in passing upon the question, said that the application of Mr. Preston alleged the challenging of the ap-

plicant, Wm. B. Preston, by one D. Webb, on the ground of his being a polygamist and that he is not a *bona fide* resident, and said notice of said challenge was issued by J. R. Morris. The application further claims that Morris is not authorized to so act, and asks that a writ of prohibition issue, restraining the said Morris from hearing and determining the questions raised. The law providing for the registration placed on the assessor certain duties regarding the registering of voters. This registration list is filed with the county court.

The section to be construed is as follows:

"It shall also be the duty of the clerk of the county court to give notice on the lists so posted, that the senior justices of the peace for said precinct will hear objections to the right to vote of any person registered, until sunset of the fifth day preceding the day of election. Said objections shall be made by a qualified voter in writing and delivered to the said justice, who shall issue a written notice to the person objected to, stating the place, day and hour when the objection will be heard. The person making the objection shall serve, or cause to be served, said notice upon the person objected to, and shall also make returns of such service to the justice before whom the objection shall be heard. Upon the hearing of the case, if said justice shall find that the person objected to is not a qualified voter, he shall, within three days prior to the election, transmit a certified list of the names of all such unqualified persons to the judges of election, and said judges shall strike such names from the registry list before the opening of the polls."

Counsel for both parties concede that a justice of the peace was competent before the passage of the Edmunds law to hear these objections, and could act as stated in the section read. In other words, the justice had the authority to determine whether the objections were well taken, and to decide whether the person objected to was a qualified voter. Does section 9 of the Edmunds Act confer this authority upon such persons as shall be appointed by the Utah Commission? The section reads:

"SEC. 9. That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same, and issuing of certificates or other evidence of election in said Territory, shall, until other provision be made by the Legislative Assembly of said Territory, as is hereinafter by this section provided, be performed under the existing laws of the United States and of said Territory by proper persons, who shall be appointed to execute such offices and perform such duties by a board of five persons."

The question is, is the senior justice of the peace referred to in the section read to perform any duty in relation to the registration of voters? It would seem that any officer authorized to take part in making or perfecting the registry list performed a duty in relation to registration. The officer who puts a name on, and the one who strikes it off, performs a duty regarding the registration of voters. The Utah Commission was authorized to appoint persons in the place of those appointed by the Territorial law. The duties of making and perfecting the list are to be performed by those persons designated by the Utah Commission. Thus the registrars have the power to hear these cases, but they should

proceed in good faith. If they act viciously, and from improper motives, or from malice, they are responsible, and act at their peril. If they act reasonably, they have a right to strike a name off where there is probable cause. Where an officer exercises judicial discretion, the court cannot prohibit that exercise. It may direct him to exercise it, but cannot prescribe the way in which the officer shall use his discretion. The registrar has the power to hear these objections, and the writ of prohibition is denied.

An appeal from this decision will be taken, but the Supreme Court does not meet until March 1st, and the registrars are thus given absolute power to strike names from the list for any purpose they please. And how they will exercise this power can be judged by their past course and present attitude.

One of the first cases before Registrar McCallum January 31st, was John Miller, of the Fifth Ward, who has been in this city for close to forty years. The challenge against him was made by a new figure-head, R. O. G. Showell. It asserted that Mr. Miller was "under twenty-one years of age." When the challenged voter appeared the registrar looked a little surprised, and inquired, "How old are you?"

Mr. Miller—Forty-three.

Registrar—The challenge is denied. You are old enough.

Wm. R. Jones testified that he was a polygamist 22 years ago, but had not been since. His case was "taken under advisement." Of course the result has already been announced in the "decisions" of Registrar Winters.

Default was entered in the case of Nephi Huskisson. The return showed that he had not been served, but the marshal reported that he had made service on "a suitable person." Whether this person had ever been seen or heard of by N. Huskisson is unknown.

Default was also entered in the cases of the following persons, who did not answer to their names:

Wm. Hobson, 403 S. Second West Street.

John Morgan, 163 S. First West Street.

J. M. Moody, 545 W. Second South Street.

Hans Mortensen, 27 W. First South Street.

S. J. Stookey, 149 W. Sixth South Street.

Andrew Berg, 167 West Seventh South Street.

Chas. W. Brown, 744 W. Second South Street.

Jas. W. Cole, 733 W. South Temple Street.

Before Registrar Winters a number were taken under advisement, and the following failed to appear: Edwin L. Parker, Frank E. Thirkill, Chas. B. Taylor and W. W. Morsley. Mr. Morsley was given till next Wednesday. Default was entered in the other cases.

Before Registrar Morris the proceedings were somewhat of the usual order, except that the registrar was more expeditious.

George C. Rieer was called and