ANDERSON REVERSED.

The Utah Commission Were Usurpers of Authority,

REGARDING THE BOND ELECTION.

It Should Have been Held Under the Auspices of the School Board.

The Territorial Supreme Court, this morning, rendered its opinion in the case of the People *ex rel* the Board of Education of Salt Lake City (plaintiffs and appellants) vs. G. L. Godfrey, J. A. McClurand, A. S. H. Williams, Alvin Saunders, and R. S. Robertson, a Board of Commissioners (defendants and respondents). It was delivered by Judge Zane in the following terms:

This was an application based on an affidavit of Richard W. Young, a member of the Board of Education of Salt Lake City, for a writ of prohibition against the defendants, prohibiting them from publishing a notice of election to decide upon the issuing and sale of bonds to raise money to purchase school-house sites and for buying and building school-houses, and from appointing judges to hold such election, and from receiving the returns thereof.

The District Court held that upon the facts stated in the affidavit the law did not authorize the issuance of the writ, and the plaintiff appealed to this court.

The fifteenth article of an act of the Legislature providing for a free school system of free schools throughout the Territory, in force March 16th, 1890, makes the school trustees of each city of the first and second class, together with the mayor thereof, a body corporate, and invests them with the powers deemed necessary to establish and maintain common schools in the districts embraced in such cities. The City of Salt Lake belongs to the first class. This Board is in terms authorized to call elections at which to determine whether bonds shall be issued, to give the notices prescribed, to appoint judges to hold such elections, and to receive and canvass the returns thereof.

Notwithstanding the provisions of the law referred to, the defendants issued the notice of the election mentioned in the application, appointed judges to hold the same, and required the returns thereof to be made to them as such board. Had that body the power to do so? To answer this question it becomes necessary to interpret section 1 of an Act of Congress approved March 22nd, 1882, known as the Edmunds law. That section is as follows: "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 return of the same, and the 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 provided *by this section provided*, be performed under the *existing laws* of the United States and said Territory by proper persons who shall be appointed to execute *such offices and to perform such duties* by a board of five persons to be appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall be members of one political party; and a majority of whom shall be a quorum. The members of said board so appointed by the President shall each receive a salary at the rate of $5,000 per annum, and *shall continue in office until the* Legislative Assembly of said Territory *shall make provision for filling said offices in a form conformable.* The Secretary of the Territory shall be secretary of said Board, and keep a journal of its proceedings, attest the action of said board under this section. The canvass and return of all votes at elections in said Territory for members of the Legislative Assembly thereof shall also be returned to said board, which shall canvass all such returns and issue certificates of election to those persons who, being eligible for such election, shall appear to have been lawfully elected, which certificates shall be the only evidence of the right of such persons to sit in said assembly: *Provided*, that the said board of five persons shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of the person casting it on the subject of bigamy or polygamy; but each house of such assembly after its organization shall have power to decide upon the elections and qualifications of its members. *And at or after the first session of such Legislative Assembly whose members shall have been elected and returned according to the provisions of this act*, said Legislative Assembly may *make such laws, conformable to the organic act* of said Territory and not inconsistent with other laws of the United States, *as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act.*"

The connection of the provisions of this section bearing upon the question under consideration will be more apparent if other portions of it are omitted. Without such parts the section would read: "All registration and election offices * * * are declared vacant and * * * every duty relating to registration * * * the conduct of elections, the receiving of votes, their canvass and return, and the issuing of * * * evidence of election shall, until * * * provision * * * made by the Legislature as by this section provided, be performed under existing laws * * * by persons appointed by * * * a board of five persons * * * who shall continue in office until the Legislature * * * shall make provisions for filling said offices in terms specified. * * * Said Legislature * * * shall make provisions concerning the filling of the offices declared * * * vacant by this act." This section declared all the election offices in the Territory vacant and provided that the duties belonging to them should be discharged by persons appointed by the board until legislators chosen at an election held by such persons should enact laws by which they could be filled. The board was authorized to appoint persons to execute the offices made vacant by the first clause of the section and none other than to call the elections, appoint the judges, canvass the returns, and make certificates, etc., are very specific; they provide alone for elections to vote on propositions to issue and sell bonds.

They evince greater care in their preparation and more deliberation than the sections first referred to, as far as they relate to the issuance and sale of bonds. To hold that the latter governs elections to vote on the issue and sale of bonds does not invalidate sections 102 and 103 so far as they provide for elections other than to vote on the proposition for the issue and sale of bonds.

The intention of the Legislature is clear when all the provisions of the act relating to such elections are considered together. It is that these sections were intended to provide for holding all other elections mentioned in them except those relating to bonds. As to the provisions relating to all other elections there is no conflict.

And the provisions relating to other elections do not depend on those relating to elections for the issuance and sale of bonds.

The latter may fail and the former stand.

The provisions of sections 102 and 103 may stand so far as they are not in conflict with those more special provisions of sections 122, 123, 124 and 125. The provisions of the two first sections, so far as they relate to elections to vote on the issuing and sale of bonds, and no further, are repealed by the latter sections.

Sutherland on Statutory Construction, sec. 181.

Redlich on the Interpretation of Statutes, sec. 216.

The Court holds that the election to decide upon the issuance and sale of the bonds in question should be called and conducted according to the provisions of section 122, 123, 124 and 125 above referred to. And we further hold that the qualification of voters must be determined by the laws of the United States when any conflict arises between them and the laws enacted by the Territorial Legislature.

We are of the opinion that the judgment appealed from is erroneous.

Judgment reversed.

We concur,

Miner, J.

Blackburn, J.

Attorney Baldwin said that as none of the members of the Utah Commission were now present, and he himself did not know what action they would wish to take in this matter, he would ask the court to grant a stay of the Supreme Court of the United States.

Judge Judd—I shall oppose any such application. We do not think this is an appealable case under the rule of Congress, and before the court passes on that question I should like to be heard.

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NOTICE OF SALE OF REAL ESTATE

NOTICE IS HEREBY GIVEN, THAT IN the Probate Court of Salt Lake, Territory of Utah, on the 6th day of April, A. D. 1891, an order of the Probate Court of said County of Salt Lake, Territory of Utah, made and entered on the 6th day of April, A. D. 1891, in the matter of the estate of Harry Harrison, deceased, ordering and directing the undersigned, administrator of said estate, to sell the interest of said estate in the following described real estate, to wit: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,