

officer to do any act by this or any of the preceding sections made a crime, or to omit to do any duty the omission of which is by this or any of such sections made a crime, or attempts to do so, shall be punished as prescribed in section 5511."

The Court, with two dissents, held that Congress had power to pass the law under which the conviction was had.

That statute clearly dealt with the manner of holding an election for Representatives.

It is important that that old statute passed practically contemporaneously with the ratification of the 15th amendment shows that Congress construed the word "elections" in the constitutional provision (art. 1, sec. 4, cl. 1) to mean the actual casting of votes, and the return and certification thereof. An election is "the act of choosing a person to fill an office or position by vote."

"Election" means the act of casting and receiving the ballots from voters, counting ballots, and making returns thereof *Kilgore v. Jackson* (118 S.W. 819, 822). To the same effect is *Lowery v. Briggs* (73 S.W. 1062); *State v. Nelson* (169 N.W. 788, 789, 141 Minn. 499), and many other cases.

While *In re Coy* (127 U.S. 731), is not cited in the *Gradwell* case, reference should be made to it, for at page 752 the extent of the power of Congress over the election of its members under this provision of the Constitution is stated.

Said Justice Miller speaking for all of the Court except Justice Field:

"But the power, under the Constitution of the United States, of Congress to make such provisions as are necessary to secure the fair and honest conduct of an election at which a Member of Congress is elected, as well as the preservation, proper return, and counting of the votes cast thereat, and, in fact, whatever is necessary to an honest and fair certification of such election, cannot be questioned."

In *Ex parte Yarbrough* (110 U.S. 651), an indictment charging that the defendants conspired to intimidate a Negro in the exercise of his right to vote for a Member of Congress of the United States was held valid.

The Court stated that article I, section 4 of the Constitution "adopts the State qualification as the Federal qualification for the voter; but his right to vote is based upon the Constitution, and Congress has the constitutional power to pass laws for the free, pure and safe exercise of this right" (p. 652).

One of the statutes under which Yarbrough was indicted (Rev. Stat. sec. 5520) penalized the intimidation of any citizen from giving his support or advocacy toward or in favor of the election of electors and Members of Congress, using the same word (election) as is used in the constitutional provision. (That "election" does not embrace registration is somewhat demonstrated by *Scott v. United States* (3 Wall. 642), written by Justice Miller, and cited by him at page 660 of the Yarbrough case.)

The congressional interpretation of the word "elections" in article I, section 4 is shown by the statutes alluded to by Justice Miller at page 661. An act of 1872 required all the "elections" for such Members to be held on the Tuesday after the first Monday in November 1876, and on the same day of every second year thereafter. In like manner, he pointed out, Congress has fixed a day, which is the same in all States, when the electors for President and Vice President shall be appointed.

After alluding to those laws, the Court by a query very graphically illustrates the extent of the congressional power under this constitutional provision: "Will it be denied that it is in the power of that body to provide laws for the proper conduct of those elections?" (op. cit. p. 661).

At page 663 the "election"—the actual election—is defined as "the voting for those Members."

The act of 1872 appeared in the United States Code as title 2, section 7, until amended in 1934 to conform to the new date for the opening of Congress as fixed by amendment No. 20. But, the statute then enacted provided for the establishment of a day certain "as the day for the election, in each of the States and territories of the United States, of Representatives" (United States Code, title 2, sec. 7, "Time of election").

When, in 1913, the 17th amendment was adopted providing for the election of Senators by the people, Congress enacted the act of June 4, 1914 (38 Stat. 384), providing:

"At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a