

Second Precinct would be illegal. The Republican Judge then appointed and swore two Democratic bystanders as Judges, and another Democrat as Ballot Clerk, under the authority provided in section 45, of Article 33, of the Code of Public General Laws, and proceeded at 12.30 o'clock, P. M., to hold the election. (See testimony of Benjamin Parran, Return Judge), and (testimony of Broome.)

Section 45, of Article 33, provides as follows: "At any election, Federal, State or county, if any one or two Judges so appointed shall fail to attend at the place of election at the time prescribed by law * * * the County Commissioners shall appoint three Judges. "And in case the said County Commissioners, or a majority of them, cannot be convened, or do not fill such vacancy before the hour for opening the election, the remaining Judges or Judge who shall so attend, shall appoint a Judge or Judges in the place of the Judge or Judges failing to attend," &c. Did the regularly appointed Judges attend said election as contemplated by this section? If they did not, the authority to appoint others in their place is ample in section 45.

I think they clearly did not.

The word "attend," in this section, means something more than "to be present."

Its derivation will aid in determining its true and full meaning.

It is derived from the two Latin words "*ad*" and "*tendere*," meaning to stretch toward, and Webster thus defines it. "Attend," "to apply the mind or pay attention with a view to perceive," "to accompany, or be present or near at hand in pursuance of duty," showing clearly that when it is used in connection with an official duty, it means something more than mere corporal presence, something more than being present in the flesh. It contemplates in this section an active presence, a presence for a purpose, namely, the performance of a duty for which the presence of the officer is required, and if he does not perform that duty, if he does not fulfil the purpose of his presence, he may not be "absent," yet he does not