THE

REPORTS OF THE COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES

MADE DURING THE

FIRST SESSION OF THE FORTY-FIRST CONGRESS.

1869.

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TO

REPORTS OF COMMITTEES

OF

THE HOUSE OF REPRESENTATIVES,

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JOSEPH ANDERSON.

March 24, 1869.—Ordered to be printed and recommitted.

Mr. Stokes, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom were referred the petition and proof of Joseph Anderson, a loyal citizen of Nashville, Tennessee, for compensation for lumber taken from him by the government for army purposes during the late rebellion, make the following report:

At the time of the occupation of Nashville, Tennessee, by the Union army, in February, 1862, Joseph Anderson was a citizen and resident of that place, a lumber dealer, and the owner of a large quantity of lumber stored in an enclosed yard, on the corner of Broad and High streets, in that city.

Shortly after that event Captain J. St. Clair Morton, chief of engineers, took possession of Mr. Anderson's yard, placed a guard over it, and removed all the lumber, which was used in constructing fortifications, bridges, pontoons, quarters for workmen, &c.

After the yard was emptied it was taken possession of by the quartermasters' department, and used as a wagon yard and for stables during the rest of the war.

While the lumber was being removed, as above described, Captain Morton, after satisfying himself that Mr. Anderson was, and had been, loyal to the United States, assured him that when he had taken what he required he would pay him "for every foot of it," and gave him this assurance repeatedly.

About the time the lumber yard was emptied Captain Morton left Nashville, informing Mr. Anderson that he would settle with him on his return. He never returned, however, was placed on duty elsewhere, and was finally killed in action. He never gave Mr. Anderson any receipt, expecting to pay him when the transaction was completed, and never paid him for any portion of the lumber.

After vainly attempting to get pay from Lieutenant Burroughs, Captain Morton's successor, and through the various military commanders who succeeded one another at Nashville, Mr. Anderson finally presented his claim to the War Department. That department, after a thorough investigation of the claim, extending over 18 months, was satisfied of its justice, but declared itself unable to pay it, for want of authority under any existing law, the lumber not having been reported by Captain Morton, and the act of July 4, 1864, only applying to stores taken by the quartermaster and subsistence departments, and they referred the claimant to Congress as the only tribunal that could give redress.

The facts as above set forth are fully substantiated by the testimony of the following persons:

1. The claimant.

2. James M. Hughes, an old citizen of Nashville, an architect by profession, and employed by Captain Morton as an assistant during the period in question.

3. W. H. Northern and E. W. Adams, citizens of Nashville, and by trade carpenters, who testify as to the taking of the lumber, the quantity, and price.

4. A. S. Ramsey, Captain Morton's wagon-master.

5. James L. Hull, lieutenant colonel 37th Indiana volunteers, on duty at Nashville at the time.

6. James Clarkson, lieutenant 69th Ohio volunteer infantry, on duty, under Captain Morton, in the construction of fortifications.

7. James T. Elliott, Captain Morton's chief clerk.

8. Alexander A. Monroe, lieutenant 21st Ohio volunteers, who commanded the guard over the lumber yard.

The last two are the most important witnesses, and their testimony is conclusive as to the taking of the lumber by Captain Morton, and its use for the purposes above mentioned.

As to the loyalty of Anderson the evidence is as follows:

1. Letter from President Johnson to the Quartermaster General, introducing claimant as deserving of favorable consideration, and based on his personal knowledge of Anderson while he (President Johnson) was military governor of Tennessee.

2. Claimant's affidavit and oath of allegiance.

3. Affidavits of J. M. Hughes, W. H. Northern, and H. L. Nowell, loyal citizens of Nashville, as to loyalty of claimant.

4. Certificates of Senator Fowler, and of three late volunteer officers, to the same effect.

5. Certificate of provost marshal that Anderson took oath of allegiance.

6. General Von Schrader, an officer of the staff of Major General George H. Thomas, commanding department of the Tennessee, to whom the claim had been referred for investigation, says in his report:

According to all the information I could gain, there is no doubt as to the loyalty of Joseph Anderson to the United States government

As Captain Morton seems to have kept no accurate account of the lumber, we have to depend upon other testimony in order to arrive at the quantity taken.

As to this point we have the following evidence:

1. Claimant's bill, supported by his affidavit, and which is as follows:

Item	Rate	Price	Amount
4,631 pieces of cedar lumber, containing 279,205 feet	at (per 1,000 feet)	$35	$9,772 17
17,971 pieces of scantling, containing 424,659 feet,	at (per 1,000 feet)	20	8,493 18
68,127 feet of white pine lumber	at (per 1,000 feet)	35	2,384 44
55,021 feet of pine flooring	at (per 1,000 feet)	25	1,375 52
41,211 feet of yellow pine	at (per 1,000 feet)	30	1,236 33
57 doors		3 50	199 00
3,700 lights	at (per 100)	8 00	296 00
74 pair of blinds		4 13	305 62
14,950 feet of mouldings	at (per 100 feet)	3 75	560 62
Total value			24,622 88

Claimant swears that just before the occupation of the city by the Union army, he took an exact inventory of his stock. This inventory was taken in a book, which claimant produces, and has every appearance of being genuine. The above bill was made from the inventory and agrees with it.

Claimant says in his deposition that he was assisted in taking the above inventory by Robert Gilson, his bookkeeper, and one Wormack, his yard-master; that Robert Gilson died in 1863, and Wormack went

off with the rebels and was killed, as deponent heard from one of his companions.

After taking the inventory claimant states that he locked up his yard, and, there being no demand for lumber at that time by private individuals, sold none till Captain Morton took possession of the yard.

Claimant further says that his yard was the largest in Nashville, and that he had frequently had on hand stocks of lumber twice as large as at the time in question.

2. Jas. M. Hughes, architect of Nashville, deposes that he had known Anderson intimately for 25 years; had had many dealings with him in the course of his business as architect and builder, was familiar with his lumber yard, knew about the stock he had on hand at the time Captain Morton took possession, and is satisfied, both from his knowledge of Mr. Anderson's character and business habits, and from his own personal observation, that Anderson's account is correct. Being an assistant of Captain Morton's at the time, he was cognizant of the whole transaction, and knew that Captain Morton took an immense quantity of lumber from Anderson.

3. W. H. Northern, a carpenter and citizen of Nashville, also deposes that he believes, from his knowledge of Mr. Anderson's business, and observation of his lumber yard at the time, that Mr. Anderson's account is correct.

4. Lieutenant Clarkson, an assistant of Captain Morton, having at the request of General Von Schrader examined Mr. Anderson's account, believes it to have been correct, except as to doors, sash, blinds, and moulding, for which the engineer department had no use at the time. (Other evidence, of parties who were in a position to have positive knowledge, shows that these articles *were* taken and were used in the construction of quarters for men, hospital and other buildings. Lieutenant Clarkson was not detailed for duty with Captain Morton till about September 1, 1862, and these articles were taken long before.)

5. Jas. T. Elliott, who was Captain Morton's chief clerk at the time, testifies "that the amount taken was very large, probably four or five hundred thousand feet cannot say positively how much, because no account of it was left in their office."

6. Lieutenant Monroe, who commanded the guard over the yard, deposes as follows:

That in the latter part of May, 1862, he was, by Captain Morton's order, placed in charge of the large lumber yard owned by Joseph Anderson, and situated at the corner of Broad and High streets, in Nashville, and had command of 57 men at the lumber yard, the United States government having taken possession thereof. Affiant had positive written instructions to allow no lumber, timber, manufactured articles, or anything in said yard, to be taken away except upon the written order of Captain Morton, who was then in charge of the United States engineer corps, at Nashville, and engaged in constructing Fort Negley, on St. Cloud Hill, and other fortifications, bridges, &c., about there. That when affiant took command at the lumber yard and charge thereof there was an immense amount of lumber, such as dressed cedar flooring, window and door frames, sign-boards, and planks dressed and undressed, from thin stuff up to three inches in thickness, cedar and other scantling, sash, blinds, shades, doors, mouldings, heavy timber both sawed and hewed, and, in short, all kinds of lumber and timber which would go to make up a complete stock for a first-class lumber yard.

* * * * * * * *

Affiant further states that all of said stock of lumber, timber, doors, flooring, &c., was taken and appropriated, by order of Captain Morton, for the use of the government of the United States, in furnishing the hospital on College Hill, erecting barracks, kitchens, hospital buildings, cots, &c., for the sick and wounded, pontoon bridges, the railroad bridge, and every conceivable thing of the kind which the government required for the comfort and convenience of the troops and service. A very large amount thereof was used in constructing Fort Negley, for look-outs, tops of tents, &c. That all of said lumber, &c., was taken and used by the government, and none of it by any other person or corporation; that

t was taken, and, by affiant and those under his immediate command, delivered, under irequisitions from Captain Morton.

This witness is endorsed as reliable and trustworthy by Hon. W. Mungen, now a member of this house, and late colonel — Ohio volunteers and brigadier general.

7. Lieutenant Colonel Hull, 37th Indiana volunteers, on duty in Nashville at the time, also certifies to the large quantity of lumber Mr. Anderson had on hand.

From all of which testimony the committee are constrained to believe that the account of Mr. Anderson, as to the quantity of lumber, &c., taken from him by the United States military authorities, is correct, and that the lumber, &c., was actually used in the military service for legitimate purposes, and was of great value to the United States.

AS TO THE PRICE.

As before stated, claimant swears that he made an inventory of his lumber before our troops occupied Nashville. He also swears that, as was his custom in taking inventories, he set down opposite the respective quantities their cost to him, laid down in his yard. And these prices appear in the book before alluded to. He swears that these prices represent the actual cost and carriage of the respective articles. He further states that in ordinary times his net profits were about 25 per cent., but these were extraordinary times; that a year after these events the price of lumber rose enormously, and that if he had been permitted to retain his yard and lumber, he could have realized from the latter $50,000.

Elliott (before mentioned) says, Captain Morton paid afterwards on an average six cents a foot for such lumber.

Lieutenant Monroe says:

Affiant, having been a mechanic and a worker in wood before he entered the military service of the United States, had the means of knowing something of the value of such a stock, and from the actual knowledge of the facts, and after reflecting and figuring over the subject for nearly a whole day, he cannot place a lower estimate on the above-mentioned articles belonging to Mr. Anderson than from $25,000 to $35,000 at prime cost; and he says further that at retail prices it would undoubtedly have brought $50,000.

W. H. Northern and E. W. Adams, carpenters of Nashville, being interrogated by General Von Schrader as to the prices of lumber in Nashville at the time, give prices which, on most of the articles, largely exceed those set down by Anderson.

Upon the whole the committee are satisfied that claimant's statement as to prices is correct, viz., that the prices in his account represent the cost to him of the lumber laid down in Nashville.

As to the liability of the United States the committee have no doubt. If these same stores had been taken by the quartermaster instead of the engineer department they would have been paid for, long since, under the act of July 4, 1864.

Since, technically, that law does not apply to stores taken by the engineer department, the War Department, while acknowledging the justice of the claim, had no authority to pay it, but the same rule does not apply to Congress. No good reason is perceived why articles which form part of the legitimate supplies of the army, and which, in this case, were "taken by a proper officer for the use of, and used by, the army of the United States," (payment for which was promised and would have been made but for the accident of the officer being ordered elsewhere,) should not be paid for, as well if taken by an officer of engineers as by a quartermaster.

The committee have therefore come to the conclusion that Congress ought to at least reimburse the claimant for the actual value of his lumber at the time. This value they fix at $31,000, or about 25 per cent. advance on the cost price of the lumber laid down at Nashville, and for that purpose they recommend the passage of a bill for the sum of $31,000.

In fixing this amount they believe that but scanty justice is done to the claimant, from the following considerations:

1. The evidence shows that claimant, if left in possession of his property, could have realized a much larger sum, and realized it five years ago.

2. That this lumber was taken nearly seven years ago, and no allowance is made for interest. At simple interest, in six and a half years the *cost price*, $24,622 88, would have amounted to upwards of $34,000.

3. That the United States continued in possession of his yard until the latter part of June, 1865, thereby preventing him from carrying on his business, if he had been able to do so; and for this use the quartermaster department paid him $340 a year, while he was paying, under a long lease, $1,200 a year, so that in addition to the loss of his lumber he actually had to pay $860 a year for three years for a wagon-yard and stables for the use of the government.

4. It appears that this lumber was nearly his whole stock in trade, and that beyond a small quantity of real estate he had little besides. The act of the government then in taking his lumber and not paying for it not only deprived him of that much capital and the opportunity of using it to great advantage, as his more fortunate neighbors did during the prosperous years that followed, but has prevented him from doing any business of consequence up to the present time; and for more than two years he has been in Washington trying to recover this money, so as to have the means of again resuming business. He is now an old man, upwards of 70 years of age; it is the more important, therefore, that such reparation as Congress can give him should be given without further delay.

To the honorable the Senate and House of Representatives in Congress assembled:

The petition of Joseph Anderson respectfully showeth:

That he is a citizen of the United States, 72 years of age; that he is and always has been loyal to the government of the United States, and has never given aid, comfort, or encouragement to any rebellion against the same; that he is, and for 50 years has been, a resident of Nashville, Tennessee.

That in the year 1862 he was a lumber dealer in said city of Nashville and was the owner of a large quantity of lumber, stored in a yard on the corner of Broad and High streets, in said city; that in the summer of said year, and shortly after the occupation by the Union troops of the city of Nashville, the whole of said lumber was taken possession of by Captain James St. Clair Morton, United States engineers, for the use of the United States, and under his direction was used for military purposes.

That said Morton repeatedly promised that as soon as he had completed the removal of said lumber he would see that your petitioner was paid for it; that a few days after the completion of said removal,

and before he could carry out said promise, Captain Morton was relieved from duty at Nashville; that his successor declined to pay for said lumber; that petitioner afterwards endeavored to get his claim paid through the military commanders at Nashville, but without success.

That he subsequently presented his claim to the War Department, by which department it was rejected on the ground that the lumber having been taken by the Bureau of Engineers, to which the act of July 4, 1864, does not apply, there was no law under which the War Department could pay the claim; and, therefore, your petitioner has no tribunal before which he can, under existing laws, seek relief, except your honorable body.

Your petitioner further avers that shortly before said lumber was taken possession of by the United States he had taken a full inventory of the same, which inventory is now on file in the War Department; that the invoice price or cost of said lumber, laid down in Nashville, amounted to the sum of $24,622 88; that in ordinary times he would have realized a net profit of 25 per cent., or about $31,000, from the sale of said lumber, but these were not ordinary times, and your petitioner, judging from the prices ruling in Nashville after that time, believes that the lumber taken by the United States would have brought him at least $50,000, if he had been permitted to sell it in the usual way.

Your petitioner further states that this lumber constituted the whole of his available capital, and all of his property, except a small amount of unavailable real estate; and therefore, by reason of the act of the government, he has been unable to go on with his business, and been deprived of the profits of six years.

Wherefore your petitioner respectfully asks of your honorable body such relief as to you may seem just in the premises; and in substantiation of the statements herein made he refers to the proofs in his case now on file in the War Department, and asks that the papers be sent for and made part hereof.

And your petitioner will ever pray, &c.

JOSEPH ANDERSON.

Witness:

A. W. SPATES.

WAR DEPARTMENT, WASHINGTON CITY,
January 25, 1869.

SIR: Referring to a request from the House Claims Committee, dated the 15th ult., for information regarding the amount and merit of the claim of Joseph Anderson, of Nashville, Tennessee, for lumber taken by the United States during the late war, I have the honor to forward herewith copies of papers in the case.

These, including the brief of the evidence, and the endorsement of the Judge Advocate General thereupon, set forth all the information as to the amount and merits of the claim on the files of the department.

Very respectfully, your obedient servant,

J. M. SCHOFIELD.
Secretary of War.

Hon. SCHUYLER COLFAX,
Speaker of House of Representatives.

QUARTERMASTER GENERAL'S OFFICE,
Washington, D. C., August 14, 1866.

GENERAL: I have the honor to transmit a claim presented to this office by Mr. Joseph Anderson, of Nashville, for lumber.

It appears from evidence submitted that the lumber was not taken by any officer of this department as quartermaster stores, but taken by Captain Morton, corps of engineers, for use in fortifications of Nashville; and it is asserted that he promised to pay for it, and that his sudden departure from Nashville on duty prevented his attending to it.

His reports and returns in the office of the Chief Engineer should give information as to the seizure, and the account, if proved, appears to be one chargeable to the appropriations of the engineer department, and not of the quartermaster department.

I am, very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster General, Brevet Major General.

Brevet Maj. Gen. A. A. HUMPHREYS,
Chief Engineer United States Army.

ENGINEER DEPARTMENT,
Washington, August 17, 1866.

SIR: I have the honor to report for your consideration and decision the claim of Joseph Anderson, of Nashville, Tennessee, for $24,622 88, for lumber, doors, lights, blinds, and mouldings alleged to have been taken from him during the summer of 1862 for fortifications.

Mr. Anderson deposes that this property was taken from his lumber yard by order of Captain St. Clair Morton, United States engineers, in July, August, and September, 1862, for the defences of Nashville; that he had a stock on hand amounting to about $25,000; that he had previously taken an inventory of the articles and had made no sales after that and before the taking of these things by Captain Morton; that he received the verbal assurance of Captain Morton that he would be paid for all the property taken, and that an inventory of the same was being made. Subsequently Captain Morton told him he had been obliged to dismiss the person who had been directed to make this inventory, and that he had no amount of it, but would adopt, as his basis, the account kept by Mr. Anderson, the claimant; that he was obliged to leave Nashville for a short time, and on his return he would settle with and pay him for all the lumber taken; that Captain Morton left Nashville, and that he never met him again, and has received no payment in part or for the whole of the same.

James M. Hughes, an architect of Nashville, where he has always resided, deposes that in the summer of 1862 he was employed by Captain Morton, United States engineers, in making drawings for fortifications at that place; that he knows of the taking of a large quantity of lumber by Captain Morton's order, for use in the fortifications, from the yard of Joseph Anderson; that from personal observation and his knowledge of Mr. Anderson's business character, and from personal observation of the lumber in the yard before Captain Morton commenced taking it, he has no doubt of the correctness of Mr. Anderson's account; that Captain Morton told him that he intended to pay Mr. Anderson, and that, to the knowledge of deponent, Mr. Anderson is and always has been loyal to the United States.

James M. Hughes and William N. Northern depose they are carpenters and builders, and from personal observation of the yard of Joseph Anderson, the quantity and value of the articles charged for as having been taken therefrom by Captain Morton are correct, as presented in the account of said Anderson, and that they have made an estimate of the same.

From the character and kinds of articles charged, viz., for doors, lights, blinds, and mouldings, it would seem that these things must have been taken for *barracks, and quarters rather than for fortifications*, and if so they would be chargeable against the quartermaster rather than the engineer department.

Captain Morton (since dead) has made no returns to this office of the property charged for, and it therefore comes under the head of a claim rather than of a contract, and for which there is no authority empowering this department to pay.

The opinion of the chief of the Bureau of Military Justice, circular No. 51, Adjutant General's office November 27, 1865, is to the effect that not only must the claimant be a loyal citizen, but the claim itself must originate in a loyal State, in order that the same may be covered by past legislation.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,
Chief of Engineers, Brig. and Bvt. Maj. General.

Hon. EDWIN M. STANTON,
Secretary of War.

In the matter of the claim of Joseph Anderson for compensation for lumber, &c., alleged to have been taken by the United States military authorities from his lumber yard at Nashville, Tennessee, in 1862.

This is a claim for $24,622 88, first presented to the Quartermaster General August 13, 1866, and next day transmitted by him to the engineer department, with the remark that "from the evidence submitted it appears that the lumber was taken by Captain Morton's corps of engineers for use in fortifications of Nashville," and the account, if proved, appeared to be chargeable to the appropriations of the engineer department.

August 17, 1866, the Chief Engineer submitted the claim to the Secretary of War, with the report that the amount claimed was for lumber, doors, lights, blinds, and mouldings alleged to have been taken during the summer of 1862 for fortifications. From the character and kind of articles charged for, viz., doors, lights, blinds, and mouldings, it would seem these things must have been taken for barracks and quarters rather than fortifications, and would be chargeable against the quartermaster rather than the engineer department. That Captain Morton (since dead) had made no return to that office of the property charged for.

August 22, 1866, the claim was referred to the claim commission, but was withdrawn at the request of the claimant before action was taken.

The following evidence was part furnished by claimant and in part elicited by the War Department.

Claimant in his first affidavit filed with claim deposes that three months after the occupation of Nashville by the federal troops in 1862, he had about $25,000 worth of lumber of various kinds in his lumber

yard; that he took an exact inventory about that time and sold nothing to private parties in the week intervening between the time he took the inventory and the time government commenced taking his lumber. That about the 10th of July troops commenced drawing away his lumber by order of Captain Morton; that he immediately went to see Captain Morton, who told him to give himself no uneasiness about the matter, as he, Captain Morton, was having an inventory kept of the lumber taken, and claimant should be paid for every foot of it. That some time after claimant called on Captain Morton, who told him the man directed to keep an account of the lumber had been dismissed, but that he would take claimant's inventory as a basis for settlement; that he was under orders to leave Nashville at once, and on his return would settle with claimant. That claimant never saw Captain Morton afterwards, and never received any payment or receipt for the lumber.

James M. Hughes, architect of Nashville, deposes: In the summer of 1862 was employed by Captain Morton in making drawings for fortifications at that place; knew of the taking of a large quantity of lumber from the yard of claimant by Captain Morton's order for use in fortifications; from his knowledge of claimant's business and character, and personal observation, has no doubt of the correctness of Anderson's account; Captain Morton told deponent that he intended to pay Mr. Anderson.

James M. Hughes and Wm. Northern, carpenters and builders, depose that from personal observation of the lumber yard, the quantity and value of the articles charged for are correct, as presented in the account of claimant, and that they have made an estimate of same.

On the 17th December, 1866, the papers were referred to the commanding general department of the Tennessee, for information as to the purpose for which lumber, &c., was taken and the ruling prices at the time.

January 14, 1867, returned by General Thomas, with reference to report of General Von Schrader enclosed.

General Von Schrader encloses the following statement of claimant, marked A: That a part of the sash, moulding, flooring, lights, blinds, &c., was taken to Murfreesboro; thinks part of the sash, blinds, and doors was used in quarters and shops of engineer headquarters; supposes lumber was used in fortifications; that the lumber was taken by Captain Morton in the months of April, May, June, July, and August, 1862, and that the person who took the material was in the employ of Captain Morton previous to D. C. Stewart; thinks Mr. Stewart relieved him; is confident that all the material was taken by Captain Morton's order previous to 1st of September, 1862; after conversing with A. S. Ramsey, thinks he recognizes him as the person who took the material.

Affidavit of A. S. Ramsey, marked B: Deposes that he was employed as wagon-master by the late Captain Morton on or about the 1st of September, 1862, and that he, by Captain Morton's order, took for the use of the engineer department 25,000 feet of flooring, 30,000 to 40,000 feet of 2-inch plank, and about 200 lights of glass from a lumber yard, corner of Cherry street and Broadway, but that he knows nothing of any mouldings, doors, or blinds; that Mr. Hibbard, of Newport or Covington, Kentucky, was the wagon-master before deponent.

Statement of Charles Clarkson, marked C: That on September 6th, 1862, he was detailed in charge of tools, &c., used in constructing fortifications at Nashville; that he has examined claimant's bill and thinks the lumber claimed to have been taken by Captain Morton's order is probably correct, as nearly all the material used for government purposes at that time was taken wherever found, but as regards sash, blinds,

doors, and mouldings, the engineer department had no use for them in those days, and he feels confident they were never taken or used by Captain Morton's order.

Statement of W. H. Northern and E. W. Adams, marked D: That the lumber was taken from claimant's yard between April and September, 1862, and that there was square lumber, scantling, and planks; do not know of any doors, blinds, sash, or moulding being taken, that the price of lumber at that time was: cedar lumber, per 1,000 feet, $30; scantling, per 1,000 feet, $25; flooring, per 1,000 feet, $40, and white pine plank, per 1,000 feet, $100. Mr. Northern, on reflection, thinks the material was taken in the month of August, 1862.

General Von Schrader remarks upon the foregoing that none of the witnesses could give satisfactory evidence as to amount of lumber taken. It did not seem probable that the late Captain Morton should have taken any of the articles between April and the latter part of August, 1862, as the construction and building of permanent and other fortifications were not begun until the latter part of August or beginning of September, 1862. That there seemed to be no doubt that some property was taken from the claimant for the use of the government, but in making up his claim it appears he charges for all the material he had at his lumber yard, (in the fall of 1861,) and which was missing at the time he turned over the ground to the government for use, in November or December, 1862. It is believed the only persons able to give conclusive testimony as to the amount of material taken are A. Pelham, late lieutenant 11th Michigan volunteer infantry, late acting assistant quartermaster at Nashville, (adjutant general is unable to furnish his address,) Josh. T. Elliott, formerly clerk in engineer department at Nashville, (see his affidavit below,) D. C. Stewart, (principal witness,) late assistant engineer to the late Captain Morton, (present post office address believed to be "care of Edward Madden, corner of Graham street and Myrtle avenue, Brooklyn, New York, or Myrtle avenue, near Franklin, Brooklyn."

Captain Burroughs, United States engineers and Mr. James Cochnower, late lieutenant and acting assistant quartermaster, engineer department at Nashville, stated to General Von Schrader that to the best of their knowledge none of the material was taken to Murfreesboro.

December 20, 1866, attorneys for the claimant forwarded additional affidavits of the claimant and James M. Hughes.

In this affidavit claimant deposes his lumber yard is on the corner of High and Broad streets; in the fall of 1861 he was satisfied that when the Union forces made a forward movement the rebels would be compelled to vacate Nashville, having heard it threatened that if the confederates were compelled to leave Nashville they would burn his lumber, he acted under the advice of a friend, and with the assistance of his bookkeeper and yard clerk, took a careful inventory of all lumber, &c., he had on hand, with the view, should the above threat be carried out, to have the necessary data to establish a claim against the State; that he then locked up his yard and sold no more lumber; that the evacuation by the rebels and occupation by the Union army followed almost immediately, the rebel threats were not carried out and his lumber remained undisturbed; that besides the lumber locked up in his yard he had a large quantity of heavy lumber and timber piled upon a vacant and unenclosed lot adjoining his yard; that one day, shortly after the occupation of Nashville by the federals, on going to his yard as usual (to see everything all right) he found 15 or 20 wagons, under charge of a sergeant, loading with heavy timber from the vacant lot, under orders

from Captain Morton; that he immediately went to see Captain Morton, &c., &c., to the effect in his former affidavit; that his bookkeeper went off with the rebels when they evacuated Nashville, and was killed, and his yard clerk is since dead.

James M. Hughes deposes to the effect in his former affidavit, and that he became intimately acquainted with Captain Morton's public business; that Captain Morton commenced taking the lumber in question shortly after the occupation of Nashville by the Union army, and continued taking it until it was all exhausted; that it was used in fortifications and quarters for mechanics; that Captain Morton told deponent Mr. Anderson should be paid for every foot of it, but the reason why he preferred not to settle at that time was "that he (Morton) had become seriously involved in his public accounts by an imprudent contract with one Julius Wishaski, and that until this matter was satisfactorily settled with the government, he would not embarrass himself by paying money or giving vouchers to Mr. Anderson, but he would certainly do so when the above mentioned difficulty was settled;" that deponent believes the quantities charged to be correct; that from his own knowledge the doors, blinds, sash, and such articles, were used in constructing quarters for mechanics employed upon fortifications, of whom there was a large number.

March 29, 1867. Alexander A. Monroe (endorsed by Hon. W. Mungen, M. C.,) deposes that he was second lieutenant, company F, 21st Ohio, from September, 1861, to January, 1863. Some time in March, 1862, was ordered to duty under Captain Morton. In the latter part of May was ordered by Captain Morton in charge of Anderson's lumber yard, and had command of 57 men there. He had positive written instructions not to allow anything in said yard to be taken, except upon written order of Captain Morton. That there was an immense amount of all kinds of timber and lumber, sash, blinds, shades, doors, and mouldings, &c. Having been a mechanic, and worker in wood, knows something of the value of such stock, and estimates it from $25,000 to $35,000. That all said stock was taken and appropriated by Captain Morton, and used in finishing the hospital on College Hill, erecting barracks, kitchens, hospital buildings, &c., cots for sick and wounded, pontoon bridges, the railroad bridge, and everything for comfort and convenience to the troops and service. A large amount was used in the construction of Fort Negley, and for look-outs, tops of tents, &c. That it was all taken and delivered by affiant, and those under his command, under requisitions from Captain Morton. Some time in July, 1862, just as soon as said lumber yard was empty, and cleaned of its entire stock, affiant was ordered, with his command, to Fort Negley, to assist in finishing the fort.

June 10, 1867. Quartermaster General, in answer to request, states that the lumber in question was never transferred to the quartermaster's department, the fortifications in which it was expended being held, used and finally disposed of by engineer department.

August 10, 1867. James T. Elliott, clerk in Freedmen's Bureau, deposes: During month of August, 1862, and until November 15, 1863, was chief clerk to Captain Morton; during the month of August there was taken from claimant a quantity of mixed lumber—number of feet not precisely known; claimant never received pay from Captain Morton; deponent undertook inquiries and found claimant was sole owner of said lumber; that said lumber for the most part was of very fine quality and worth, in accordance with price paid by engineer department, six cents per foot; that the amount taken was very large, probably 400,000 to 500,000 feet; also, a lot of miscellaneous articles were taken, such as

sashes, doors and blinds, for which deponent believes claimant never received pay; deponent never took said property upon Captain Morton's returns, for the reason that he was not sure of the amount of property taken; the reason the amount could not be given correctly was, that all Captain M.'s assistants were taking lumber from whomsoever might have it and there never was any measurement taken.

June 18, 1867. Claimant in an affidavit, at the foot of the inventory in question, swears that the inventory shows the amount of stock on hand in his yard on the 1st January, 1862, and that it was taken on that day by actual count and measurement.

AS TO LOYALTY.

August 13, 1866. Letter from President Johnson to Quartermaster General introducing claimant as deserving of favorable attention and consideration.

May 23, 1866. Original affidavit of claimant, and oath of allegiance; affidavits of James M. Hughes, and W. H. Northern, and H. L. Newell.

November 29, 1866. Affidavit of claimant.

December 8, 1866. Certificates of Senator Fowler and three late volunteer officers as to loyalty of claimant.

December 10, 1866. Answers to printed interrogatories and affidavit of claimant that he took the oath of allegiance on the issue of Governor Johnson's proclamation in the spring of 1863; certificate of provost marshal attached.

January 11, 1867. General Von Schrader says, in conclusion to his report: "According to all the information I could gain there is no doubt as to the loyalty of Joseph Anderson to the United States government."

WAR DEPARTMENT,
December 18, 1867.

Respectfully referred to the Judge Advocate General for remark as to the liability of the United States under the circumstances set forth.

By order of the Secretary of War *ad interim*.

JAMES A. HARDIE,
Inspector General.

BUREAU OF MILITARY JUSTICE,
January 3, 1868.

Respectfully returned, and the opinion expressed that the payment of this claim is expressly forbidden by the act of February 19, 1867, chapter 57.

The lumber in question was seized on the capture of Nashville, upon the theatre of the war, and in the direct prosecution of it. Its owner, whatever may have been his personal feelings towards the government, was a public enemy under the decision of the Supreme Court, because residing within the limits of the State and constituting a part of a population making war upon the United States. For an appropriation of such property under such circumstances the government is under no legal liability to make payment. It is true that under the liberal provisions of the act referred to the executive department would have been justified in allowing compensation for this lumber had it been either a quartermaster or commissary store; but it was neither under the circumstances of its seizure and appropriation. It was taken by Captain Morton, of the engineer department, and used in connection with the fortifications of Nashville. The statement of the Quartermaster General

is positive that this lumber was not in any way transferred to his department, in the fortifications, if it was expended, having been held, used, and finally disposed of by the engineer department.

J. HOLT,
Judge Advocate General.

The SECRETARY OF WAR *ad interim.*

CITY OF WASHINGTON, *District of Columbia:*

Personally appeared before me, a notary public in and for the District aforesaid, James M. Hughes, who, being duly sworn, deposes:

That he is, and has been all his life, a resident of Nashville, Tennessee, and is by profession an architect; that he was in Nashville during the summer of 1862; that he was employed during that summer and fall by Captain Morton, chief engineer at Nashville, in making drawings for fortifications at that place; that he knew of the taking of a large quantity of lumber by Captain Morton's orders, for use in the fortifications, from the yard of Mr. Joseph Anderson; that from his knowledge of Mr. Anderson's business and character, and from his personal observation of the lumber in the yard before Captain Morton commenced taking it, he has no doubt the account of Mr. Anderson is correct; that he several times conversed with Captain Morton about the matter; told him that Mr. Anderson was a good and loyal man, and ought to be paid for his umber, and that Captain Morton said he intended to pay him for it; that Mr. Anderson is and always has been, to deponent's knowledge, loyal to the United States.

Further deponent saith not.

J. M. HUGHES.

Sworn and subscribed before me this 9th day of August, A. D. 1866.

N. CALLAN, *Notary Public.*

CITY OF WASHINGTON, *District of Columbia:*

Personally appeared before me, a notary public in and for the district aforesaid, Joseph Anderson, who, being duly sworn, states as follows:

That he is and has been for the last 50 years a citizen of Nashville, Tennessee; that the lumber and other articles charged in the above claim as having been taken from deponent by Captain Morton, were taken under the following circumstances:

About three months after the occupation of Nashville by the federal army, in 1862, I had in my lumber yard, at Nashville, about $25,000 worth of lumber of various kinds; doors made up, blinds, mouldings, and glass for windows. I know the amount, for I took an exact inventory about that time, and kept an account of it in a book which I have now.

After taking this inventory, which was about a week before the government commenced taking my lumber, I did not sell anything whatever to private parties. About the 10th of July, 1862, a sergeant came with wagons, and commenced taking my lumber. I asked him by what authority he took it; he replied, by order of Captain Jas. St. Clair Morton, of the engineer department, to whom he referred me for pay. I went to see Captain Morton immediately; he told me that I need give myself no uneasiness about the matter; that he was having an inventory taken of the lumber, &c., that was being taken by him, and that I

should be paid for every dollar of it when he had got what was required for his purposes. He said the lumber, &c., was being used for fortification and stockades in the defences of Nashville. Some time after this I called on Captain Morton again. He then told me that the man whom he had directed to keep an account of the lumber had turned out badly and had been dismissed from his service, and that he had got no account from him. He called in several other men to ascertain if they knew the amount of lumber that had been taken. They said they had kept no account; that the man who had been dismissed had kept the account. Captain Morton then said that he would take my inventory as a basis for settlement. He remarked, "Mr. Anderson, I have orders calling me away from Nashville; I have to leave to-morrow or next day; I haven't time to attend to this matter now, but when I return to Nashville I will settle with you and you shall be paid for every dollar's worth of lumber that has been taken from you."

Captain Morton, as I understood, never came back on duty at Nashville. I understood he was there for a few days in the summer of 1863, but I did not know it at the time, and have never seen him since.

I spoke to General Negley, who commanded at Nashville, about the lumber. He told me he had no doubt Captain Morton would do as he said he would do.

When Lieutenant Burroughs came to Nashville to succeed Captain Morton, I asked him about pay for my lumber. He told me that he had nothing to do with Morton's business, and that Captain Morton would have to settle for the lumber himself.

As Captain Morton never returned I have never been able to do anything about the matter, and, as stated in my affidavit embodying the claim, I have never received any payment or receipt whatever for the lumber.

Further deponent saith not.

JOSEPH ANDERSON.

Sworn and subscribed before me this 9th day of August, 1866.

N. CALLAN, *Notary Public.*

HEADQUARTERS DEPARTMENT OF THE TENNESSEE,
Louisville, Kentucky, January 11, 1867.

COLONEL: In obedience to Special Orders No. 101, par. 2, from these headquarters, series of 1866, I proceeded to Nashville, Tennessee, to inquire into the correctness of certain claims for lumber, &c., made by one Joseph Anderson, at that place, against the United States government, and have the honor to report as follows:

None of the witnesses who gave testimony relating to Joseph Anderson's claim could give satisfactory evidence as to the actual amount of lumber, &c., supposed to have been taken from him (Anderson) by the United States engineer department.

Joseph Anderson, on his own statement made before me, which is herewith enclosed, (marked A,) states that the articles for which he claims damages were taken from his lumber yard at Nashville, Tennessee, during the time from April to the latter part of August, 1862.

It does not seem probable that the late Captain Morton, United States engineers, then in charge of the engineer department at Nashville, Tennessee, should have taken any of the articles at that time, when the construction and building of permanent and other fortifications were not

begun before the latter part of August, or beginning of September, 1862.

In order to further substantiate his claim, Joseph Anderson states that the person who took the material for which he (Anderson) brings claim against the United States government was in the employ of the late Captain Morton, United States engineers.

Anderson recognizes A. S. Ramsey, of Nashville, Tennessee, late wagon-master United States engineer department at that place, as the person who took the lumber, &c., from his yard.

A. S. Ramsey, in his affidavit, which is herewith enclosed, (marked B,) states that he was employed as wagon-master by the late Captain Morton, United States engineers, on or about the 1st of September, 1862, and that he, by order of Captain Morton, took for the use of the engineering department the following materials, to wit, 25,000 feet of flooring, from 30 to 40,000 feet of pine plank, about 200 lights of glass, from a lumber yard at the corner of Cherry street and Broadway, in the city of Nashville, Tennessee. Ramsey says that he knows nothing of any mouldings, doors, or blinds, claimed by Anderson to have been taken from him by order of the late Captain Morton, United States engineers, for the United States government.

Joseph Anderson has no vouchers or memorandum receipts for the property he claims to have been taken from him by the orders of Captain Morton, United States engineers, but refers to a verbal promise of the latter that his (Anderson's) claims should be properly settled, the correctness of which statement has been corroborated by Mr. James M. Hughes, architect, in his affidavit annexed to the original papers enclosed herewith.

Mr. Hughes, in that same affidavit, speaks only of a certain amount of lumber, the property of Mr. Joseph Anderson, as having been taken for the use of the United States government, but he does not relate to any other property, such as mouldings, doors, blinds, window sashes, &c. As to the latter material I would most respectfully refer to the herewith annexed statement of Mr. James Clarkson, (marked C.)

Neither Captain Burroughs, United States engineers, brevet major United States army, nor Mr. James Cochnower, late lieutenant 74th regiment Ohio volunteer infantry, and acting assistant quartermaster United States engineer department at Nashville, Tennessee, at the time when the late Captain Morton and Captain Burroughs were in charge, were able to give me any further information, but to the best of their knowledge that none of the material had been taken to Murfreesboro, Tennessee, as it had been supposed by Joseph Anderson. (See enclosed A.)

There seems to be no doubt that some property has been taken from Joseph Anderson for the use of the United States government, but in making up his claim for damages it appears that he (Anderson) did make claim for damages for all material he had at his lumber yard at Nashville, Tennessee, when the United States forces took possession of that place in the beginning of 1862, and which was missing at the time when he turned over the ground to the United States government for use in November or December of the same year.

Joseph Anderson seems to have paid very little attention to the matter before he learned that the United States engineer department had sent for some of the material for use of the United States government.

The only persons who, as I am informed, are able to give conclusive testimony as to the amount of material taken are the following:

1st A. Pelham, late lieutenant 11th Michigan volunteer infantry, late acting assistant quarmaster at Nashville, Tennessee.

2d. James T. Elliot, late private 11th regiment Michigan volunteer infantry, formerly clerk United States engineer department at Nashville, Tennessee.

3d. D. C. Stewart, the principal witness, late assistant engineer to the late Captain Morton, United States engineers at Nashville, Tennessee.

Post office address, care of Edward Madden, corner of Graham street and Myrtle avenue.

I am informed that D. C. Stewart is now in the employ of the government at the United States navy yard, Brooklyn, New York.

As to the prices for the material claimed by Anderson, I would most respectfully refer to the statement of Messrs. N. Notburn and E. W. Adams, which is enclosed marked D.

In conclusion, I would most respectfully state that according to all the information I could gain there is no doubt as to the loyalty of Joseph Anderson to the United States government.

Very respectfully, your obedient servant,

A. VON SCHRADER,
Maj. and A. A. A. G. U. S. V., Bv't Brig. Gen'l, A. A. I. G. Dep't Tenn.

Bv't Lieut. Col. A. D. HOUGH, U. S. A.,
Act'g Ass't Adj't Gen'l, Dept. of the Tennessee.

NASHVILLE, TENNESSEE, *December* 27, 1866.

GENERAL: I have the honor to inform you that in the month of September, (about the 1st,) 1862, I was employed under the direction of Captain Jas. St. C. Morton, United States engineers, at this post as wagon master.

By order of Captain Morton I took from the corner of Cherry and Broad streets, say, 25,000 feet of flooring, also some 30,000 to 40,000 feet of two-inch pine plank, and about 200 lights of glass.

I know of no mouldings, doors, or blinds being taken, as we had no use for such articles, and I am positive there was no more glass taken than I have stated.

Captain Morton had no assistant previous to D. C. Stewart. Mr. Stewart is now employed at the Brooklyn navy yard, New York. Mr. Rodocker, an assistant to Mr. Stewart, was employed by Captain Morton about the last of September, 1862, and is now in Newport, Kentucky. Lieutenant Pelham, of some Michigan regiment of infantry, was Captain Morton's quartermaster at first, and was succeeded by Sergeant Thomas Palmer, of the 89th Ohio volunteer infantry, as acting assistant quartermaster. Lieutenant Jas. N. Cochoroner, of the 74th Ohio volunteer infantry, afterwards relieved Sergeant Palmer as acting assistant quartermaster.

Mr. Hibbard was a wagon master before I was employed with Captain Morton; he now resides in Newport or Covington, Kentucky.

A. S. RAMSEY.

Sworn to and subscribed this 27th day of December, 1866, before me.

A. VON SCHRADER,
Maj. and A. A. G. U. S. V., Bv't. Brig. Gen'l, A. A. I. G. Dept. Ten.

NASHVILLE, TENN., *December* 27, 1866.

GENERAL: Agreeable to your request, I have the honor to state that on September 5, 1862, I was detailed from my regiment (the 69th Ohio volunteer infantry) for duty under Captain James St. C. Morton, chief engineer army of the Cumberland, and was put in charge of the tools, &c., used in constructing fortifications at this post. I continued with him in the same position until he was relieved by Lieutenant Burroughs, United States engineers. Lieutenant Pelham, —— Michigan infantry, was Captain Morton's first acting assistant quartermaster. He was relieved by Sergeant Thomas Palmer, 69th Ohio volunteer infantry, and he in turn was relieved by Lieutenant James N. Cochoroner, 7th Ohio volunteer infantry, as acting assistant quartermaster.

I have examined the bill presented by Mr. Joseph Anderson, and think it probable that the lumber he claims to have been taken by Captain Morton's order to be correct, as nearly all the material used for government purposes at that time was taken wherever found. But as regards the sash, blinds, doors, and moulding, the engineer department had no use for them in those days, and I feel confident that they were never used or taken by Captain Morton's order.

James T. Elliott, a private of the 11th Michigan infantry, was Captain Morton's clerk in 1862, but I cannot say where he could now be found. Mr. D. C. Stewart, of Brooklyn, New York, was Captain Morton's chief assistant, and Robert Rodocker, of Newport, Kentucky, was an assistant to Mr. Stewart. I believe that Mr. Stewart is now employed at the Brooklyn navy yard, New York; as to Mr. Rodocker, I cannot say where he now resides. He (Rodocker) was not in Captain Morton's employ until late in September, 1862.

I am, general, very respectfully, your obedient servant,

JAS. CLARKSON.

Bvt. Brig. Gen. A. H. VON SCHRADER.

NASHVILLE, TENNESSEE,
December 27, 1866.

Question. When was the lumber taken from Mr. Anderson's lumber yard?

Answer. Between April and September; there was square lumber, scantling, and planks. Do not know of any doors or blinds being taken, nor sash or mouldings.

Q. What was the price of cedar lumber at that time per 1,000 feet?

A. $30; scantling, per 1,000 feet, $25; flooring, per 1,000 feet, $40; white pine plank, per 1,000 feet, $100.

The above statement is correct.

W. N. NORTHERN.
E. W. ADAMS.

Mr. Northern, on reflection, thinks this material was taken in the month of August, 1862.

COMMANDANT'S OFFICE,
Navy Yard, New York, January 24, 1867.

SIR: In reply to your letter of the 21st instant, I enclose all that is known at this yard about the whereabout of D. C. Stewart.

I am, respectfully,

CHARLES H. BELL,
Rear-Admiral, Commanding Navy Yard, New York.

Colonel DEWITT CLINTON, *Washington.*

SIR: D. C. Stewart was discharged from the house carpenters, civil engineers department, in September, 1865. I have no doubt that he is the person sought. I am informed that he was in government employ at Nashville, Tennessee, and that he now resides in Myrtle avenue, near Franklin, Brooklyn.

Yours, &c.,

GEO. M. LEE, *Clerk of the Yard.*

Rear-Admiral C. H. BELL,

STATE OF TENNESSEE, *Davidson County:*

I, W. A. Glenn, sole presiding judge of the county court of said county, certify that P. L. Nichol, whose genuine signature appears signed by his regularly authorized deputy, William C. Nichol, to the within certificate, is and was at the time the same was signed clerk of said court, duly commissioned and qualified to take the acknowledgment of all deeds and other instruments of writing executed before him in said State, and that said attestation is in due form of law.

Given under my hand and the official seal of said court at office in Nashville, this 23d day of May, 1866.

[SEAL.] W. A. GLENN, *County Judge.*

WAR DEPARTMENT, OFFICE OF THE CLAIMS COMMISSION,
December 17, 1866.

Respectfully referred to the commanding general's department of the Tennessee, with the request for information as to the purpose for which this lumber was taken, and the ruling prices at the time it was taken.

DE WITT CLINTON,
Brevet Lieutenant Colonel, Recorder.

ADJUTANT GENERAL'S OFFICE,
August 22, 1866.

Respectfully referred to Major General E. R. S. Canby, president Claims Commission.

E. D. TOWNSEND,
Assistant Adjutant General.

WAR DEPARTMENT, OFFICE OF THE CLAIMS COMMISSION,
Washington, D. C., January 21, 1867.

SIR: Referring the claim of Joseph Anderson, No. 64, the commission respectfully request to be informed of the present residence, if known, of

A. Pelham, late lieutenant 11th regiment Michigan volunteer infantry.

I am, very respectfully, your obedient servant,

DE WITT CLINTON,
Brevet Lieutenant Colonel, Recorder.

The ADJUTANT GENERAL,
United States Army, Washington, D. C.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
January 23, 1867.

Respectfully returned to Brevet Lieutenant Colonel De Witt Clinton, recorder Claims Commission. The present residence of A. Pelham, late lieutenant Michigan volunteer infantry, is not known at this office.

E. D. TOWNSEND,
Assistant Adjutant General.

WAR DEPARTMENT, OFFICE OF THE CLAIMS COMMISSION,
Washington, D. C., May 17, 1867.

Respectfully referred to the Quartermaster General United States army, with the request to be informed whether there was any transfer of this property to the quartermaster's department.

DE WITT CLINTON,
Brevet Lieutenant Colonel, Recorder.

On this 26th day of July, 1867, personally appeared before me, a notary public in and for the county of Washington, District of Columbia, Joseph Anderson, a resident of Nashville, State of Tennessee, and made oath that he was engaged in the lumber business in the aforesaid city of Nashville from the year 1851 to September 1, 1866, having no partner or other person engaged in said business with him. On the latter date he formed a co-partnership with one James Moore, since which time the business has been conducted under the firm of Anderson & Moore. In the year 1860 the affiants purchased a bill of lumber from Fack & Dice, and that said lumber was not paid for until the 9th day of March, 1867. When paid for on that day a receipt was taken in the following words: "Received of Anderson & Moore four hundred and two dollars in full of above lot lumber;" said receipt was appended to the bill as entered in a book and filed in the office of the claims commission in the city of Washington. Said receipt was written by the affiant on the 9th of March, 1867, and was dated 9th March, 1860, for the reason that the bill was due and payable in 1860; being in co-partnership with James Moore at that time the name of the firm was used. He is positive that Moore had no interest with him prior to the 1st day of September, 1866.

JOSEPH ANDERSON.

Sworn and subscribed before me this 26th day of July, 1867.

N. CALLAN,
Notary Public.

Also, on this 26th day of July, A. D. 1867, personally appeared James M. Hughes, of Nashville, in the State of Tennessee, who being duly sworn, says that for and during the period of about 25 years last past he has been personally and intimately acquainted with James Anderson, of Nashville, Tennessee; that said Anderson, about the year 1851, went into the lumber business at said last-named place, and carried the said business on upon his own responsibility and without any partner being connected with him, until about the first of last September, when he

entered into a partnership with one James Moore in the said lumber business. Affiant has had a great deal of business transactions with said Anderson, and bought large amounts of lumber from him, and knows that he had no partner nor any one interested with him in business prior to about September, 1866. That the lumber taken by the government officers for the use of the United States, as set up in the claim of said Anderson, was the property of Joseph Anderson, and his alone; and that affiant has no interest in collecting the claim of said Anderson pecuniarily.

J. M. HUGHES.

Sworn and subscribed before me this 26th day of July, 1867.

N. CALLAN,
Notary Public.

THE DISTRICT OF COLUMBIA, *County of Washington, ss :*

Before me, John F. Callan, a notary public within and for said county, personally appeared Alexander A. Monroe, of Findlay, in the county of Hancock and State of Ohio, who, being first duly sworn according to law, deposeth and saith that he was second lieutenant of company F, 21st regiment of Ohio volunteer infantry, from the 26th day of September, A. D. 1861, until some time in the month of January, 1863, as the rolls on file in the War Department will show. That said regiment reached Nashville, Tennessee, about the 1st of March, 1862; remained there a short time and was ordered to Murfreesboro, Tennessee, and afterwards to Huntsville, Alabama, &c. That on the day on which this regiment left Nashville, (it being some time in March, '62, as affiant now remembers,) affiant was by order of General Negley, through Colonel Neibling, then commanding the 21st regiment, detailed and ordered to duty under Captain (afterward General) J. St. Clair Morton, then in charge of the United States engineer corps at the last named place. That affiant was put in charge of the convalescent camp and remained in that position until some time in the latter part of May, the exact date of which is not now remembered by affiant, when he was by Captain Morton's order placed in charge of the large lumber yard owned by Joseph Anderson and situate at the corner of Broad and High streets in Nashville, and had command of 57 men at the lumber yard, the United States government having taken possession thereof. Affiant had positive written instructions to allow no lumber, timber, manufactured articles, or anything in said yard to be taken away except upon the written order of Captain Morton, who was then in charge of the United States engineer corps at Nashville, as aforesaid, and engaged in constructing Fort Negley on St. Cloud hill, and other fortifications, bridges, &c., about there. That when affiant took command at the lumber yard and charge thereof, there was an immense amount of lumber, such as dressed cedar flooring, window and door frames, sign-boards and planks, dressed and undressed, from thin stuff up to three inches in thickness, cedar and other scantling, sash, blinds, shades, doors, mouldings, heavy timber, both sawed and hewed, and in short all kinds of timber and lumber which would go to make up a complete stock for a first-class lumber yard. Affiant having been a mechanic and a worker in wood before he entered the military service of the United States, had the means of knowing something of the value of such a stock, and from the actual knowledge of the facts and after reflecting and figuring over the subject for nearly a whole day, he cannot place a lower estimate on the above mentioned articles belonging to Mr. Anderson than from $25,000 to $30,000 at prime cost; and he says further that at retail prices it would undoubtedly have brought $50,000.

Affiant further states that all of said stock of lumber, timber, doors, flooring, &c., was taken and appropriated by order of Captain Morton for the use of the government of the United States in finishing the hospital on College hill, erecting barracks, kitchens, hospital buildings, cots, &c., for the sick and wounded, pontoon bridges, the railroad bridge, and every conceivable thing of the kind which the government required for the comfort and convenience of the troops and service; a very large amount thereof was used in the constructing Fort Negley for lookouts, tops of tents, &c., &c. That all of said lumber, &c., was taken and used by the government and none of it by any other person or corporation. That it was taken, and by affiant, and those under his immediate command, delivered, under requisitions from Captain Morton above named.

That some time in July, 1862, and just as soon as the said lumber yard was empty and cleared of its entire stock, affiant was ordered with his command to Fort Negley, and they were put to work on said fort and assisted in finishing the same; and that he has no interest in the claim of said Joseph Anderson, whom affiant takes pleasure in stating and knowing to be a loyal man.

ALEXANDER A. MONROE.

Sworn to and subscribed before me and in my presence this 29th day of March, 1867.

JOHN F. CALLAN,
Notary Public.

FORTIETH CONGRESS UNITED STATES,
Washington, D. C., March 29, 1867.

SIR: It gives me pleasure to state that I have been personally and intimately acquainted with Major Alexander A. Monroe since the year 1856, and know him to be a gentleman of honor and integrity, whose statements, whether made under oath or otherwise, are entitled to full faith and credit. He has given testimony in the case of Joseph Anderson's claims for lumber said to have been taken by government, &c. I further state that I have no interest, direct or indirect, in the matter.

I have the honor to be your obedient servant,

W. MUNGEN,
M. C., 5th District, and late Colonel 57th Ohio Volunteers.

Major General CANBY.

QUARTERMASTER GENERAL'S OFFICE,
Washington, D. C., May 20, 1867.

GENERAL: The enclosed claim of J. Anderson for lumber, stated at $24,622,88, alleged to have been taken by an officer of the engineer corps, and used for fortifications at Nashville, Tennessee, is respectfully referred to you, to ascertain if possible whether the property was ever transferred to the quartemasters' department. Early report is desired.

By order Quartermaster General.

Very respectfully, &c.,

J. J. DANA,
Major and Quartermaster, Brevet Brigadier General U. S. A.

Brevet Major General THOMAS SWORDS,
Assistant Quartermaster General,
A. Q. M., &c., Louisville, Kentucky.

QUARTERMASTER GENERAL'S OFFICE,
Louisville, Ky., May 24, 1867.

Respectfully referred to Brevet Lieutenant Colonel T. Moore, quartermaster United States army, Nashville, Tennessee, who will, if possible, obtain the information called for by Quartermaster General in within letter. These papers to be returned with report at an early date.

T. SWORDS,
Assistant Quartermaster General.

QUARTERMASTER'S OFFICE,
Nashville, Tenn., May 29, 1867.

Respectfully returned, with the information that from the best evidence I can obtain, the lumber mentioned in the within claim of Joseph Anderson, of Davidson county, Tennessee, was never transferred to the quartermasters' department; the fortifications in which said lumber was expended being held, used, and finally disposed of by the engineer department.

T. MOORE,
Major, Quartermaster, Bvt. Lieut. Col., U. S. Army.

ASSISTANT QUARTERMASTER GENERAL'S OFFICE,
Louisville, June 1, 1867.

Respectfully returned to the Quartermaster General. Attention invited to foregoing endorsement.

T. SWORDS.
Assistant Quartermaster General.

QUARTERMASTER GENERAL'S OFFICE,
Washington, D. C., June 10, 1867.

COLONEL: I respectfully return herewith all the papers connected with the claim of Joseph Anderson, of Nashville, Tennessee, for lumber, ($24,622 88,) referred by the commission, with the request "to be informed whether there was any transfer of this property to the quartermasters' department," and respectfully invite attention to the endorsement of Brevet Lieutenant Colonel T. Moore, major and quartermaster United States army, from which it appears that the lumber mentioned in the within claim of Joseph Anderson was never transferred to the quartermasters' department; the fortifications in which said lumber was expended being held, used, and finally disposed of by the engineer department.

Very respectfully, your obedient servant,

D. W. RUCKER,
Acting Q. M. Gen., Brevet Maj. Gen. U. S. A.

Brevet Colonel DE WITT CLINTON,
Recorder Claims Commission, Washington, D. C.

I, James T. Elliott, of the city of Washington, and District of Columbia, upon oath, doth make the following statement:

That during the month of August, 1862, and from that time till the 15th day of November, 1863, I was chief clerk for J. St. Clair Morton, brigadier general and chief engineer department of the Cumberland; and

that there was during the month of August, 1862, taken from Mr. Joseph Anderson, of the city of Nashville and State of Tennessee, a certain quantity of mixed lumber, the number of feet not precisely known; and that said Joseph Anderson did never receive pay for the same from said J. St. Clair Morton, chief engineer department Cumberland; and furthermore, I do state that at the time said lumber was taken Mr. Joseph Anderson was the sole owner of said lumber, from the fact that I undertook inquiries with said matter and found him, the said Joseph Anderson, the owner of said lumber taken, he at that time having no partner.

I do further swear that the lumber, for the most part, was of a very fine quality; and, on an average, was worth, in accordance with prices paid by said engineer department, at least six cents per foot. The amount taken was very large, probably about four to five hundred thousand feet. The lumber was mixed, being composed of clear pine, cedar, black walnut, ash, oak; and also a lot of miscellaneous articles were taken, such as sashes, doors, and blinds; and for which I believe said Joseph Anderson never received pay.

And I do further swear that said Joseph Anderson called upon me several times for a settlement for said property taken; and that I never took said property upon the said J. St. Clair Morton's returns, for the reason that I was not sure of the certain amount of lumber taken.

And I do further swear that no person whatever besides said Joseph Anderson ever claimed pay through me of said J. St. Clair Morton for said lumber taken.

The reason the amount of lumber could not be given correctly was from the fact that all of the assistants under General J. St. Clair Morton were taking lumber from whomsoever might have it; and there was never any measurement taken of the same.

At that time General Buell's army was in retreat, and everything in the shape of lumber was taken by the engineer department to obstruct the progress of the enemy.

And that during the years 1864 and 1865 I was regimental quartermaster 9th United States colored artillery, heavy, and stationed at Nashville, Tennessee; and during said time I was called upon several times by Mr. Joseph Anderson in relation to this claim, for which I believe he has received no pay, and which I believe is honestly due him. And further, that I am at present clerk in the disbursing office of the Freedmen's Bureau, in the city of Washington, District of Columbia.

JAMES T. ELLIOTT.

Subscribed and sworn to before me this 10th day of August, 1867.

[SEAL.] WILLIAM MARTIN, JR.

The discrepancy in the date when the partnership of Anderson & Moore commenced between James Moore's statement and mine requires some explanation. In the latter part of July, 1865, the United States notified me that they had no further use for my lumber yard, and for me to take possession of it. In a day or two after, James Moore called at the yard and inquired if I was going to open the yard again. I told him yes, provided I could make the proper arrangement; that I had no money until the United States would pay me for the lumber they had taken from me; and that it would take me some time to have the necessary repairs made. He observed that he had been doing nothing since he sold out, and when I had the repairs done he would like to go into

partnership with me; that he had, perhaps, as much money as would do us until I got the money I mentioned above. We made a verbal agreement to go into partnership. I then told him he would have to let me have some money to pay for the repairs. He handed me a $1,000 greenback, and I purchased a book and placed it to his credit. This was about the 1st of August, 1865. I employed a negro carpenter. He done all the repairs himself, and as he worked very slow it took him a long time to do it, and as the prospect for selling lumber was very bad I did not hurry him. The United States had a very large amount of lumber left, which they had been selling at auction. We done hardly anything for the first year; indeed, it took nearly the whole year to get the yard safe for lumber to be put into it. The first lumber of any large amount I bought was in Louisville about the 1st of September, 1866, and this was the time I considered the partnership commenced, so that the only difference is this: he considered it to have commenced when he paid me the money, and I did not until we commenced to sell lumber.

JOSEPH ANDERSON.

Sworn and subscribed before me this 10th day of August, 1867.

N. CALLAN,
Notary Public.

WASHINGTON, D. C., *December* 20, 1866.

SIR: We have the honor to enclose additional evidence in case of Jos. Anderson, No. 64, being affidavits of claimant and James Hughes, a witness, giving more fully the facts in the case than their affidavits previously submitted.

Your obedient servants,

OWEN & WILSON.

Colonel DE WITT CLINTON,
Recorder Claims Commission.

CITY OF WASHINGTON, *District of Columbia:*

Before me, a notary public in and for the city and district aforesaid, personally came Joseph Anderson, who, being duly sworn according to law, deposeth as follows: I am and have been for 49 years a citizen of Nashville, Tennessee, and am 72 years old. For the last 15 years I have been a lumber dealer in the city of Nashville, Tennessee, and have a lumber yard on the corner of High and Broad streets in that city. In the fall of 1861, when the federal and rebel armies were encamped near Bowling Green, Kentucky, I was satisfied that when the Union forces made a forward movement the rebels would be compelled to evacuate Nashville. I had on hand at the time a large stock of lumber. Having heard it threatened that if the confederates were compelled to leave Nashville they would burn it, acting under the advice of a friend, I, with the assistance of my book-keeper, Robert Gibson, and my yard clerk, M. Wornack, took a careful inventory of all the lumber, &c., I had on hand, with a view, should the above-mentioned threats be carried out and my lumber destroyed, to save the necessary data to substantiate a claim against the State for the value of it. This inventory was made in a blank book. At the same time I placed opposite the articles therein named,

as was my custom when taking an account of stock, the cost of the articles in the yard, that is, the prime cost and carriage. After this I locked up my yard and sold no more lumber. Indeed, business of every description was at this time almost entirely suspended. As I had anticipated, the evacuation of Nashville by the rebels and its occupation by the Union army followed almost immediately. The threats above spoken of were not carried out, and my lumber remained undisturbed.

Besides the lumber in my yard, which, as before mentioned, was locked up, I had a large quantity of heavy lumber and timber piled upon a vacant and unenclosed lot adjoining my yard. I went to the yard two or three times daily to see that everything was all right. One day, shortly after the occupation by the federals, on going to my yard as usual, I found some 15 or 20 army wagons, under charge of a sergeant, loading with the heavy timber from the vacant lot. I asked the sergeant in charge by what authority he took my lumber. He replied, "by instructions from Captain James St. Clair Morton, chief engineer." I immediately went to Captain Morton's headquarters, saw and asked him why he was taking my lumber. He informed me that he had been ordered by the post commander to take what lumber he needed wherever he could find it, and that he had been informed that I had the only lumber suitable for his purpose. He also told me that he should require all the lumber I had, and ordered me not to dispose of any of it till he had got all he wanted. I thereupon requested him to keep an account of what he took, and he said he would; furthermore, that when he had gotten all he wanted I should be paid for it, and not to give myself any uneasiness about the matter. During the time my lumber was thus being taken, I frequently saw Captain Morton, and he repeatedly told me to rest satisfied, that I "should be paid for every foot of it." When his wagons had gotten the last load I went to Captain Morton and informed him of the fact. He told me to call next day; that he would meantime get the account from the officer or person whom he had instructed to keep it. I accordingly called the next day, when Captain Morton informed me that the man whom he had especially charged to keep account of my lumber had been discharged, and that the person who had succeeded him had gone to Louisville; that he would telegraph him, and that I was to call next day. I did so, but Captain Morton stated that he had received no reply. At that interview he asked me if I had no account of the lumber that was in my yard. I then related to him the circumstances of my having taken an inventory as above detailed. He requested me to bring up my book; I did so; he read over the inventory, and made a memorandum of the amount in his note book. He then said that if he did not get an account from the person he had charged to keep it, he would take my inventory as a basis of settlement, and requested me to wait a few days. I do not think I saw him again till after the battle of Murfreesboro. After that he was so much engaged in erecting fortifications that it was a considerable time before I again saw him. When I did he said he had never been able to get an account from his own men of the lumber taken from me, but would adopt my account. He said, however, he could not settle with me then, as he must first settle some difficulty he had about his accounts, but assured me I should be paid, and not to give myself any uneasiness about the matter. I saw Captain Morton but once after this. He appeared to be in a hurry and excited about something, and gave me the same answer as before. After this he left Nashville and I never saw him more. He was succeeded as engineer by Lieutenant Burroughs. I called the attention of Lieutenant Burroughs to the facts with regard to the taking and use of my lumber. He said that he had nothing to

do with Captain Morton's transactions and accounts, and that he could do nothing for me.

I afterwards spoke to General Negley, the commanding officer, about the matter. He told me that Captain Morton was an honorable man, and would doubtless some time settle my account or put me in a way to get it settled. Captain Morton was afterwards killed in front of Petersburg, as I am informed.

Of the two men who helped me take the inventory above mentioned, Robert Gibson died in 1863; the other, Wornack, went off with the rebels when they left Nashville, and has never since returned. I have heard from one of his companions that he was killed.

I should have stated above that the prices charged in the claim are the same as those in the inventory before mentioned and which were set down at the time the inventory was made.

My lumber yard and business was much the largest in Nashville. I often had stocks on hand worth double the amount charged in my claim, estimated at cost and carriage.

I have stated all I remember bearing upon the matter in question.

JOSEPH ANDERSON.

Sworn and subscribed to before me this 18th day of December, 1866.

THOMAS L. MYRR,
Notary Public.

City of Washington, *District of Columbia:*

Before me, a notary public in and for the city and district aforesaid, personally appeared James M. Hughes, who, being duly sworn according to law, deposeth as follows:

That he is and has been for the last 48 years a citizen of Nashville, Tennessee; that in the spring of 1862, shortly after the occupation of Nashville by the federal army, deponent was introduced by Andrew Johnson, then governor of Tennessee, to Captain St. Clair Morton, United States army, chief engineer at Nashville; that Captain Morton was introduced by deponent to deponent's family, and afterwards became intimate with them and was an almost daily visitor; that Captain Morton, learning that deponent was an architect by profession, employed him to assist as draughtsman, &c., in the engineering work in which Morton was engaged, and that in the performance of this duty he became intimately acquainted with Captain Morton's public business; that deponent was well acquainted with the fact that Captain Morton, shortly after the occupation of Nashville by the Union army, commenced taking the lumber, timber, &c., in the lumber yard of Joseph Anderson, on the corner of High and Broad streets, Nashville, and continued to take and haul away said lumber until it was all exhausted, and that the lumber, &c., was used in the construction of the fortifications about Nashville, and of quarters for the mechanics employed by Captain Morton. The deponent knows these facts from daily personal observation and from being so informed by Captain Morton; that deponent, being a friend and neighbor of Mr. Anderson, asked Captain Morton what he was going to do about said Anderson's lumber, and that Captain Morton told him that Mr. Anderson should be paid for every foot of his lumber; that he, Morton, was well aware that Mr. Anderson was a thoroughly loyal man, but that his lumber was absolutely necessary for the public service, there being no other lumber suitable for the purpose in Nash-

ville; that as soon as he had taken what he wanted he would pay Mr. Anderson for it, and that he, Anderson, need give himself no uneasiness about the matter.

Deponent further says that after all the lumber had been taken said Anderson came to Captain Morton and asked to be paid therefor, and that Captain Morton told Anderson that he could not settle the account just then, but would soon. That Captain Morton informed deponent that the reason why he preferred not to settle with Mr. Anderson at that time was that he, Morton, had become seriously involved in his public accounts, by an imprudent contract with one Julius Wiskoski, and that, until this matter was satisfactorily settled with the government, he would not embarrass himself by paying money or giving vouchers to Mr. Anderson, but that he would certainly do so when the above-mentioned difficulty was settled.

Deponent further says that he has been acquainted with said Joseph Anderson for 30 years; that during that time he has had frequent business transactions with said Anderson, and in the course of his (deponent's) occupation as an architect, that he has purchased large quantities of lumber from said Anderson, and was well acquainted with the nature and extent of his business. That said Anderson's lumber yard, on the corner of High and Broad streets, the same from which Captain Morton took the lumber in question, comprises one fourth of a square, and is 180 feet square, surrounded by a high fence. On two sides are large sheds for the purpose of storing dressed and fine lumber; on another side a large building for holding doors, sash, blinds, &c., (ready made;) the adjoining fourth of the square is vacant—that is, not built upon this; by permission of the owners, Mr. Anderson was in the habit of storing heavy timber such as cedar, poplar, and oak joist, scantling, &c. At the time the Union army took possession of Nashville, he had this vacant lot stored full of the above kinds of lumber. His own yard was also well filled. From long experience in the lumber business, deponent can estimate very closely the amount and value of lumber in a given space; and his attention having been particularly called to the lumber in question by the circumstances above detailed, he believes that he can approximate very nearly to the amount that was in Mr. Anderson's yard before Captain Morton commenced to take it. He has seen and examined the inventory made by Mr. Anderson about the time of the aforesaid occupation of Nashville, which inventory is written in a book; he has also seen the account of Mr. Anderson presented, with his claim against the United States, and he believes the quantities therein charged as having been taken by Captain Morton to be correct. He derives this benefit from his experience in judging lumber, and having carefully examined this particular lumber, and from his knowledge of the quantities required and used in the construction of the fortifications and quarters aforesaid. His belief is also strengthened by his faith in the honesty and truthfulness of Mr. Anderson, which, during his acquaintance with him for 30 years, and in their numerous mutual business transactions, he has found to be beyond reproach. Deponent has also examined the prices charged by Mr. Anderson in his said claim, and knows them to have been very much below the ruling price of lumber at the time. He believes that if Mr. Anderson could have kept his lumber he could, within six months, have sold it for double the prices charged; and he derives this belief from his knowledge of the prices at which lumber was selling at the time.

Deponent further says, from his own knowledge, that the doors, blinds, sash, and such articles charged in said account, were used in construct-

ing quarters for mechanics employed upon the fortifications, of whom there was a large number.

Deponent further says he has no pecuniary interest, direct or indirect, in this claim.

JAMES M. HUGHES.

Sworn to and subscribed to before me this 18th day of December, 1866, the words "major and chief engineer at Nashville" being first introduced.

THOS. J. MYRR,
Notary Public.

I, James Moore, of the city of Nashville, county of Davidson, and State of Tennessee, do solemnly swear that I became the partner of Joseph Anderson on the 1st day of August, 1865, never having been interested with said Anderson as a partner or otherwise before said 1st day of August, 1865; that the copartnership was verbal, and was never reduced to writing; and I furthermore swear that I have no interest, direct or indirect, remote, immediate, or contingent, or any other kind or character, in a claim now being prosecuted by said Joseph Anderson against the government of the United States, or in any claim he has against said government, and never had any interest in the same. That previous to said 1st day of August, 1865, this affiant was engaged in a wholly different business from said Anderson, and the two were not connected in any way or manner whatever in any business, property, or money or claim of any character whatever, until after the formation of said copartnership on the 1st day of August, 1865; and when formed said copartnership did not relate back, but commenced on said 1st day of August, 1865.

JAMES MOORE.

Before me, P. P. Peck, a commissioner of the circuit court of the United States for the middle district of Tennessee, personally appeared James Moore, who being by me duly sworn, made oath that the statement above is just and true to the best of his knowledge.

Witness my official seal and signature at Nashville, this 2d day of August, 1867.

[SEAL.] P. P. PECK,
U. S. Circuit Court Comm'r for the Middle Dist. of Tennessee.

I, P. P. Peck, a commissioner of the United States circuit court for the district of Middle Tennessee, do hereby certify that I am personally acquainted with James Moore, the same who made the above deposition, and that he has always been and is still a loyal citizen to the United States government; and also that I am acquainted with Jesse Warren and Joseph A. Moore, parties who make the following certification; that they have been and are loyal citizens of the United States.

Witness my official seal and signature, Nashville, August 2, 1867.

[SEAL.] P. P. PECK,
U. S. Circuit Court Comm'r for Middle Dist. of Tennessee.

We, the undersigned, loyal citizens of Davidson county, Tennessee, certify on honor that we have known James Moore for the last 20 years, and know that he is now loyal to the United States government; we further certify that he has ever maintained true faith and allegiance to the same.

JESSE WARREN.
JOSEPH A. MOORE.

NASHVILLE, TENN., *December* 27, 1866.

Mr. Joseph Anderson states that the lumber was taken by order of Captain Morton in the months of April, May, June, July, and August. 1862; he further says that the sash, moulding, flooring, lights, blinds, &c., was taken at the same time; a part of which was taken to Murfreesboro, Tennessee. A part of the sash he thinks was used in constructing quarters and shops at engineer headquarters; the blinds and doors he thinks were used for the same purpose; the lumber he supposes was used in constructing fortifications.

He further states that the person who took this material was in the employ of Captain Morton previous to Mr. D. C. Stewart being Captain Morton's assistant, and thinks Mr. Stewart relieved him. He is confident that all of the material as certified was taken by Captain Morton's order before September 1, 1862. All this material was hauled off before the yard was used by the government as wagon yard and stables. In the charge for white pine plank I only charged the actual cost of same. He does not recognize Mr. Ramsey as being the person who took the lumber by Captain Morton's order; since conversing with Mr. Ramsey he thinks that he does recognize him.

I have carefully read the above, and find it correct.

JOSEPH ANDERSON.

NASHVILLE, *January* 2, 1867.

GENTLEMEN: I have the honor to state in behalf of Joseph Anderson, who has some claims against the United States government, of lumber taken while this city was occupied by the federal troops during the fall of 1862, under General Negley, I was at the time commanding the 37th Indiana volunteer infantry and under General Negley. I know that for the purpose of building forts in the vicinity of Nashville, all the lumber in shops and yards was taken. My own observation was directed to the facts by having charge of a factory and yard belonging to Mr. Hughes, in which there was a large lot of fine lumber, and was taken by military orders; and at the same time I observed army wagons hauling lumber from the yard of Mr. Anderson, on Broad street, near Dickey's Mills. I know that Mr. Anderson had at the time mentioned a large lot of lumber.

Respectfully yours,

JAS. L. HULL,
Lieutenant Colonel 37th Indiana.

Messrs. OWEN & WILSON.

WASHINGTON, D. C., *January* 10, 1867.

Respectfully referred to the claims commission of the War Department, with request for consideration in connection with the claim of Joseph Anderson for lumber, No. 64.

OWEN & WILSON,
Attorneys for Anderson.

WASHINGTON, D. C., *December* 8, 1866.

SIR: We have the honor to submit herewith additional evidence in the case of Joseph Anderson, (No. 64,) viz: 1. Answer to printed interrogatories; 2. Additional affidavit of claimant; 3. Certificate of late officers of the army and of members of Congress, as to loyalty of Mr. Anderson.

These papers will be presented by claimant personally, and we respectfully ask that he be examined orally, if permissible by the commission; also that the commission take the oral testimony of James Hughes, superintending architect of custom-house at Nashville, who is now in the city and who is familiar with the facts in this case.

Your obedient servants,

OWEN & WILSON,
Attorneys for Claimant.

Colonel DE WITT CLINTON,
Recorder Claims Commission, War Department.

CITY OF WASHINGTON, *District of Columbia :*

Before me, a justice of the peace in and for the city and county aforesaid, personally came Joseph Anderson, who being by me duly sworn according to law, says:

That he is a citizen of Nashville, Tennessee; that on the 1st of January, 1861, he became the lessee, for a period of 10 years from the last-mentioned date, of the large lumber yard, with the buildings and appurtenances thereon, situated in the city of Nashville, and occupying the whole square included between Broad and McGavock and High and Vine streets, at a yearly rent of $1,200; that about half of said square is enclosed with a substantial 10-feet high close plank fence; that within said enclosure, and fronting on Broad and High streets, there is a large store-room, an office, a building used as a dwelling-house, and a large building 100 feet long by 20 feet deep, and two stories in height, also used as a store-room or warehouse; that the whole was used by deponent in connection with his business as a lumber dealer, and was much the largest and most complete lumber yard in Nashville; that deponent is still the lessee of said yard, and has paid the rent on the same according to his lease, continuously since the beginning of the same; that in the spring of 1861, in the month of April, or May, the United States military authorities took possession of said property and continued in possession of the same till the 27th June, 1865; that from the 1st of December, 1862, to the 27th June, 1865, the quartermasters' department paid deponent as rent for the same the sum of $1,018 25, being an average of $32 84 per month; that during this period of occupation by the United States, as during the whole of his lease up to the present time, deponent paid to the owner of the property, under said lease, $100 per month; that from and after about the first part of the year 1863, business was extraordinarily active in Nashville, business houses and situations in great demand, and rents high; that deponent could have readily sub-let said yard and buildings for from $3,000 to $4,000 per year, and was offered by one man $2,000 for the use of the enclosed portion, for a livery stable; that deponent remonstrated with General Donaldson, chief quartermaster, at the price paid him by the government, which was $67 less per month than he was paying the owner, but without avail; and that owing to his necessities he was compelled to accept what was paid him, rather than get nothing.

That deponent has never received for said use and occupation by the government of said property, any other or further sum than that above stated, viz., $1,018 25.

JOSEPH ANDERSON.

Sworn and subscribed before me this 29th day of January, A. D. 1869.

[SEAL.] DAVID R. SMITH,
Justice of the Peace.

CLAIMANT'S APPLICATION AND OATH OF ALLEGIANCE.

Claim for payment of quartermasters' stores.

STATE OF TENNESSEE, *County of Davidson, ss:*

I, (1) Joseph Anderson, aged 65 years, on my oath state that I am a citizen and actual resident of the (2) city of Nashville, in the State of Tennessee; that I was at the date the claim hereinafter set forth originated, and have been ever since, loyal to the United States; that during the (3) months of (3) July, August, and September, in the year one thousand eight hundred and (3) sixty-two, at or near the (4) city of ( ) Nashville, in the county of (5) Davidson, in the State of (5) Tennessee, the following quartermaster's stores were taken from me by (6) Captain James St. Clair Morton, whose rank or position was that of (7) captain of engineers United States army, to wit: (8)

	Rate.	Value.
4,631 pieces cedar lumber, containing 279,205 feet at (per 1,000 feet)	$35 00	$9,772 17
17,971 pieces scantling, containing 424,659 feet, at (per 1,000 feet)	20 00	8,493 18
68,127 feet white pine lumber, at (per 1,000 feet)	35 00	2,384 44
55,021 feet pine flooring, at (per 1,000 feet)	25 00	1,375 52
41,211 feet yellow pine, at (per 1,000 feet)	30 00	1,236 33
57 doors	3 50	199 00
3,700 lights, (per 100)	8 00	296 00
74 pairs blinds	4 13	305 62
14,950 feet mouldings	3 75	560 62
Total value	....	24,622 88

Which account of $24,622 80 is correct and just; and for which no receipt, voucher, or other official paper has been given in settlement, nor money in lieu thereof paid or received. That the stores herein before named were actually taken by said officer, ( ) Captain James St. Clair Morton, for the use of and used by the army of the United States; that no payment has been made or compensation received in any way or from any source whatever, for the whole or any part of said claim; that it has not been transferred to any person or persons whomsoever, and that the rates or prices charged are reasonable and just, and do not exceed the market rate or price of the articles at the time and place of purchase stated.

Furthermore, ( ) I, Joseph Anderson, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and government of the United States, and the union of the States thereunder against all enemies, whether domestic or foreign; that I will bear true faith, allegiance, and loyalty to said Constitution and government; that I will faithfully support and abide by all acts of Congress passed, and all proclamations of the President made during the existing rebellion with reference to slaves, so long and so far as not modified or held void by Congress or by decision of the Supreme Court of the United States; that I will faithfully perform all the duties which may be required of me by law; and further, that I do this with a full determination, pledge, and promise, without any mental reservation or evasion whatsoever: so help me God.

And I do hereby constitute and appoint, with full power of substitution and revocation, William Henry Owen, of Washington city, District

of Columbia, my true and lawful attorney to prosecute this claim for me, and in my name to receive and receipt for the money or certificate that may be issued in payment thereof. My post office address is at Nashville, in the county of Davidson, in the State of Tennessee. That my domicile or place of abode is (9) corner of High and Broad streets, city of Nashville, county of Davidson, State of Tennessee. { Internal Revenue Stamp. }

JOSEPH ANDERSON, [L. S.]
Applicant.

Signed, sealed and delivered, in presence of
HENRY STONE,
BERNARD WIEHELMANN.

NOTE.—Two persons who can write their names must sign here. The officer administering the oath should not be one of the attesting parties.

The figures in this blank refer for the proper mode of filling up, to corresponding figures under the head of instructions, on 4th page.

Under the internal revenue law the claimant's power of attorney must have affixed to it a 50-cent internal revenue stamp, and each jurat and certificate a 5-cent internal revenue stamp, each of which must be cancelled by the party affixing it by writing across thereof his initials and the date. Places for the stamps indicated by designs.

STATE OF TENNESSEE, *County of Davidson, ss:*

This day personally appeared before the undersigned, (10) Josiah Ferriss, a (11) notary public, within and for the county and State aforesaid, (1) Joseph Anderson, the applicant, who is a resident citizen of the (2) city of Nashville, in the State of Tennessee, and subscribed and made oath to the foregoing affidavit and *oath of allegiance*, and also acknowledgment of the power of attorney therein contained, this 23d day of May, in the year 1866. And I hereby certify that the affiant is a credible person, and loyal to the Constitution, government and laws of the United States, and has always been so reputed. Also, that he is a person of veracity, and entitled to be believed. I further certify that the foregoing affidavit, *oath of allegiance*, power of attorney, &c., were read over, fully explained to, and understood by the said affiant before the signing and execution thereof. That I have no interest in this matter whatsoever. { Internal Revenue Stamp. }

JOSIAH FERRISS,
Notary Public within and for said County and State.

Affidavit of witnesses.

We, James W. Hughes and Wm. H. Northern, each of lawful age, and resident citizens of the (2) city of Nashville, in the State of Tennessee, upon our oaths declare, that during the (3) months of (3) July, August and September, in the year one thousand eight hundred and (3) sixty-two, at or near the (4) city of (5) Nashville, in the county of (5) Davidson, in the State of (5) Tennessee, we saw the quartermaster's stores described and charged for in the foregoing claim of (1) Joseph Anderson, consisting of the following articles, to wit: (8) 279,205 feet of cedar lumber; 424,659 feet of scantling; 68,127 feet of white pine lumber; 55,021 feet pine flooring; 41,211 feet yellow pine lumber; 57 doors; 3,700 lights; 74 pairs blinds; 14,950 feet of mouldings.

The above articles estimated by us, as to quantity, from our observation and experience as carpenters and builders, and from personal examination of the yard of the aforesaid Joseph Anderson just prior to and during the time they were removed, were actually taken from the said (1) Joseph Anderson, by (6) Captain James St. Clair Morton, whose rank or position was that of (7) captain of engineers, United States army, which articles or stores were for the use of the army of the United States, and were so used by said army; that the quantity charged is correct, and that the prices charged are reasonable and just, and do not exceed the market rate or price of the articles at the time and place stated.

We furthermore state that (1) Joseph Anderson was at the date his claim originated, and has been ever since, loyal to the United States; that we have never heard the fact of his loyalty questioned; also, that he is of good reputation for veracity, and entitled to be believed.

We likewise, upon our oaths, declare that we have never been engaged in or aided or abetted the rebellion in the United States, either directly or indirectly, but that we always have borne and do now bear true faith and allegiance to the Constitution, government and laws of the United States: so help us God. That we have no interest whatsoever in this matter.

J. W. HUGHES.
W. H. NORTHERN.

Attest:
HENRY STONE,
BERNARD WIELEMANN.

Subscribed and sworn to before me, by James M. Hughes and Wm. H. Northern, this 23d day of May, in the year 1866, and I hereby certify that said affiants are credible persons and of good reputation for veracity; also that they are loyal citizens to the Constitution, government, and laws of the United States, and have always been so reputed, and reside as stated in this forgoing affidavit. I further certify that said affidavit was read over, fully explained to, and understood by said affiants before the signing and execution thereof. That I have no interest in this matter whatsoever.

JOSIAH FERRISS,
Notary Public within and for said County and State.

STATE OF TENNESSEE, *Davidson County*:

I, P. L. Nichol, clerk of the county court of said county, hereby certify that Josiah Ferriss, whose genuine signature appears to the attached affidavits, is now, and was, at the time of signing the same, notary public in and for said county, duly elected, commissioned, and qualified as such, and his official acts are, therefore, entitled to due faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in Nashville, this 23d day of May, 1866.

P. L. NICHOL, *Clerk*,
Per WM. C. NICHOL, *D. C.*

Certificate of civil or military officer of the United States.

[This certificate can only be made by United States officers, (civil or military,) in the actual service or employ of the government at the time of signing, such as the postmaster of the place where claimant resides, or a member of Congress, or a United States commissioner, or a commissioned officer of the army; in fact, any officer, civil or military, of the United States.]

To all whom it may concern:

I, H. L. Norvell, do hereby certify that I am (12) collector of internal revenue for the second district of Tennessee, and that I am well acquainted with Joseph Anderson, the claimant in this case, and know that he was, at the date his claim originated, and has been ever since, loyal to the United States, and that he is of good reputation for veracity, and is entitled to be believed. And I do further certify that I am well acquainted with (13) James M. Hughes and (13) William H. Northern, the witnesses who have made and subscribed the foregoing affidavit, and know that they are loyal to the United States, and are also of good reputation for veracity, and are entitled to be believed. That I have no interest in this matter.

H. L. NORVELL,
Collector 2d District of Tennessee.

Given at Nashville, Dated May 23, 1866.

Clerk's certificate.

STATE OF TENNESSEE, *County of Davidson, ss:*

I, P. L. Nichol, clerk of the county court within and for the county and State aforesaid, do hereby certify that (10) Josiah Ferriss, esq, before whom the foregoing affidavits were made, and who has thereunto signed his name, was, at the time of so doing, a (11) notary public in and for the county and State above named, duly commissioned, qualified, and sworn; that all his official acts as such are entitled to full faith and credit, and that his said signatures, as they severally appear, are genuine. I also certify that the claimant (1) Joseph Anderson is a citizen of the (2) city of Nashville, in the State of Tennessee aforesaid.

Given under my hand and seal of county court, at office in Nashville, this — day of May, A. D. 1866.

——— ———, *Clerk Court.*

NOTE.—The regulations and general orders of the Quartermaster General's office require the above certificate to be made by the clerk himself; therefore a deputy will not answer.

Quartermasters' stores embrace—

1. *Fuel.*—Wood, measured in cords, per cubic feet; Coal—anthracite, in pounds; bituminous, in bushels; and fence rails turned over and used as wood, at 128 cubic feet per cord.
2. *Forage.*—Corn, oats, and barley, or in lieu thereof, wheat, rye, or other cereals used in the actual feed of stock; also potatoes, turnips, carrots, or other vegetable matter used for feed of stock, in lieu of regulation articles, with irrefragable proof of the fact thereof; to be estimated in bushels and pounds. Also hay and fodder, to be estimated in tons, hundredweight, or pounds.
3. *Straw.*—Used for bedding for men or animals, or in default thereof, hay; to be estimated by the hundred-weight or pounds.
4. *Stationery.*—Writing papers—foolscap, letter and foliopost, estimated in reams and quires. Envelopes, number. Blank books, number and quires. Ink, number of bottles and quantity contained. Ink powders, number of papers and weight. Sealing wax and wafers, by the pound and ounce. Steel pens, by the gross and number. Quills, by the gross. Lead pencils, by the gross and number. Office tape, by the number of pieces. Inkstands, wafer-stamps, erasers, paper-folders, sand-boxes and wafer-boxes, per number.
5. *Furniture.*—Barrack, hospital, and office; such as writing desks, tables, chairs, stoves and pipes, bedsteads, bunks, cots, &c.; inventoried and estimated per number and kind.
6. *Means of transportation*, including harness, &c., work-horses, cavalry horses, artillery horses, mules, work-oxen, boats, sleighs, locomotives, cars, wagons, wagon covers, mule lead and mule wheel harness, horse lead and horse wheel harness, halters, chains, whips, wagon saddles, riding saddles (excepting saddles for cavalry or artillery armament, which belong to the ordnance department,) bridles, head halters, neck straps, &c., estimated per number and piece.
7. *Building materials*, all kinds, rated per kind.
8. *Veterinary tools and horse medicines.*
9. *Blacksmiths' tools.*

10. *Carpenters' tools.*
11. *Wheelwrights' tools.*
12. *Masons' and bricklayers' tools.*
13. *Miscellaneous tools*, for fatigue and garrison purposes.
14. *Articles of expenditure.*—Iron. steel, horse and mule shoes, nails, rope, twine, leather for harness and other purposes, coal, tar, &c.
15. *Camp, clothing, and garrison equipage.*—Regulation clothing of all kinds; camp-kettles, iron pots, axes, helves, hatchets, picks, spades, shovels, &c.

Regulation standard of measurement.

Wood.—Cord 8 feet long, 4 feet wide, 4 feet high, cubic measure	128 ft.
Fence rails to be estimated in cordwood when used for fuel.	
Coal.—Anthracite, to the bushel	54 lbs.
Bituminous, to the bushel	76 lbs.
Charcoal, by the bushel, dry measure	
Corn.—In the cob, to the bushel	70 lbs.
Shelled	56 lbs.
Oats.—To the bushel	32 lbs.
Barley.—To the bushel	48 lbs.
Wheat.—To the bushel	60 lbs.
Rye.—To the bushel	56 lbs.
Potatoes, turnips, and carrots.—Each, to the bushel	60 lbs.
Hay and fodder.—Each, to the ton	2,000 lbs.
Straw.—To the ton	2,000 lbs.

Instructions.

1. Name in full of the claimant.
2. City, town, corporation, village, or county, as the case may be.
3. Date the stores were taken.
4. City, town, or village, as the case may be.
5. Place where the stores were taken from the claimant.
6. Name of the officer by whom the stores were taken.
7. Here state the rank and attachment of the officer.
8. Here give a full description of the articles taken, as to quantity, kind, and value.
9. House No. ——, on —— street, between —— and —— streets, in the city of ——, in the county and State aforesaid; or if, on the other hand, the applicant resides in the country instead of the city, in place of the foregoing say, on wagon (or rail) road, leading from —— to ——, about —— miles from ——, the county seat, —— county, State above named.
10. Name of the civil officer taking the testimony.
11. Justice of the peace, or notary public, as the case may be.
12. Here state rank, and attachment or style of office of the officer, civil or military, as the case may be.
13. Names of the witnesses.

Quartermasters' stores.—Application for payment.—Act of July 4, 1864.

Claim of —— ——.

[Extract.—Act July 4, 1864.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the army or navy, or any part of the army or navy, engaged in the suppression of the rebellion from the commencement to the close thereof.

SEC. 2. *And be it further enacted*, That all claims of loyal citizens in States not in rebellion, for quartermasters' stores actually furnished to the army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster General of the United States, accompanied with such proof as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster General to cause such claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of and used by said army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.

—— ——, *Attorney.*

EXECUTIVE MANSION,
Washington, D. C., August 13, 1866.

SIR: This will be handed you by Mr. Joseph Anderson, of Tennessee, whom I recommend as deserving of your favorable attention and consideration.

With great respect,

ANDREW JOHNSON.

The QUARTERMASTER GENERAL *United States Army.*

Interrogatories to be answered under oath by claimants, citizens of the United States.

1. Where were you, and where was your home, on the 19th of April, 1861, and where have you since resided?—Nashville, Tennessee.

2. If your home or residence was in insurrectionary States or Territories, have you at any time resided within the national lines of occupation prior to the surrender of the insurgent forces in the State or Territory of your residence or domicile? If so, when, where, and for what period?—Answered above.

3. Have you ever passed out from under the protection of the flag of the United States and entered the rebel lines? If so, when, where, and for what purpose?—No.

4. If a citizen or resident of any of the insurgent States or Territories "yielding and acknowledging allegiance to the Confederate States," under the laws of the rebel Congress, have you returned to your allegiance under the President's proclamation of July 25, 1862? If so, file the original or a sworn copy of your oath of allegiance with this answer; if this cannot be done, state when, where, and before whom the oath was taken.—Did not come within the purview of the above proclamation; took oath of allegiance as required by proclamation of Governor Johnson, of Tennessee, April, 1863; also gave bond and security to keep the oath as required by said proclamation.

5. Have you taken the oath of amnesty under the President's proclamation of December 8, 1863? If so, file the original or a sworn copy of the oath with this answer; or if this cannot be done, state when, where, and before whom it was taken; and if taken subsequent to the President's proclamation of March 26, 1864, state the conditions under which it was taken.—No. It was unnecessary, because I did not come within the provision of said proclamation.

6. Have you taken the amnesty oath under the President's proclamation of May 29, 1865? If so, file the original or a sworn copy of the oath with this answer; or if that cannot be done, state when, where, and before whom it was taken.—No; for reasons given in answer to last question.

7. Have you been specially pardoned by the President? If so, give the date and conditions of the pardon, and the date of your acceptance.—No; never asked or required it.

8. Have you ever been, directly or indirectly, in any manner connected with the civil service of the Confederate States? If so, state how and in what capacity you were so employed, at what times and places, and for what periods.—No; never had anything to do with them in any shape or form.

9. Have you ever held any office or place of trust, honor, or profit

under the confederate government, or of any of the States or Territories subordinate thereto? If so, state the nature and character of such office, the place at which and the period for which it was exercised.—No.

10. Have you ever held any judicial station under the government of the United States? If yes, what was it, and when did you last hold it?—No.

11. Have you ever been in any capacity in the military or naval service of the Confederate States, or in any State or Territory subordinate thereto? If yes, state your rank, command, and vessel or corps, and when your service terminated.—No.

12. Were you ever engaged in operations against the commerce of the United States on the high seas, either in vessels of the confederate navy or privateers? And if yes, give the name of your vessel and of your commander.—No.

13. Were you ever engaged in making raids into the United States from Canada, or engaged in destroying the commerce of the United States in the lakes or rivers that separate the British provinces from the United States?—No.

14. Have you ever been engaged in holding in custody, directly or indirectly, any prisoners taken by the rebel government as prisoners of war? If so, when, where, and under what circumstances? In what capacity were you engaged, and what was the name, rank, and command of your principal?—No.

15. Have you ever been a member of any society or association for the imprisonment, expulsion, execution, or other persecution of any persons on account of their loyalty to the United States?—No.

16. Have you been absent from the United States between the 19th of April, 1861, and the 29th of May, 1865? And if yes, when and where, and for what purpose?—No.

17. Were you ever a paroled prisoner of the United States? If so, when, where, and by whom were you paroled?—No.

18. Have you been released from said parole? If yes, how and by whom?

19. Have you ever been a senator or representative in the Congress of the United States? If yes, at what time did you cease to be so?—No.

20. Have you ever held any office in the army or navy of the United States? If yes, when did you cease to hold the same?—No.

21. Were you educated by the United States at the Military Academy at West Point, or at the United States Naval Academy?—No.

22. Have you ever held, during the rebellion, the office of governor of any State or Territory in rebellion to the United States?—If yes, of what State or Territory, and for what period?—No.

23. Were you, at the time of taking the oath of allegiance under the President's proclamation of July 25, 1862, or the oath of amnesty under the proclamations of December 8, 1863, and May 29, 1865, (except for the purpose of applying for a special pardon,) in military, naval, or civil confinement or custody, or under bonds by the civil, military, or naval authorities or agents of the United States, as prisoner of war, or prisoner detained for any offence of any kind, either before or after conviction? (See answers to 4th, 5th, and 6th questions.)

24. Was the application for pardon, with a view to which the oath of amnesty was taken, granted?

25. If a resident of any loyal State, have you ever given aid and comfort to the rebellion?—No; in no shape or form, whether by material or moral means. I voted twice against secession, and used my utmost efforts against it.

26. Give the estimated yearly value of your taxable property for the

last five years.—My only taxable real estate is worth about $5,000, and so assessed; no personal property except household furniture. Have done no business during the war, and income not above $600.

27. Have you, since taking the oath of allegiance under the President's proclamation of July 25, 1862, or the amnesty oath under the proclamation of December 8, 1863, aided the rebel cause, its civil officers or agents, its military or naval officers, its soldiers or its adherents, or by engaging in trade with, furnishing supplies or information to, supporting the credit of the rebel government or any State in rebellion, or in any other manner giving aid and comfort to the rebellion?—No; I have never aided rebels or the rebellion directly or indirectly, but have always opposed them by every means in my power.

CITY AND COUNTY OF WASHINGTON, *District of Columbia:*

Before me, a notary public in and for the city and District aforesaid, personally appeared Joseph Anderson, to me personally known, who, being duly sworn according to law, states that the written answers to the printed interrogatories on this sheet are his answers to said interrogatories, and that they are true. He further states, in reply to the 26th interrogatory, that he owns real estate in Nashville, besides that before mentioned, valued at about $20,000, which is not subject to taxation, being land donated by the State of North Carolina to the State of Tennessee (then part of North Carolina) for a college, and not to be taxed for a hundred years, and afterwards sold to deponent's grantors by the college. Deponent further says that having always considered himself a loyal citizen of the United States, and never having given his allegiance to the so-called Confederate States, or any aid, comfort, or assistance to any rebellion against the United States, he did not feel called upon to take any oath prescribed by the President of the United States. When Governor Johnson, of Tennessee, in the spring of 1863, issued a proclamation requiring all citizens of Tennessee, above 18 years of age, to take an oath of allegiance to the United States, and give bonds for its faithful observance, deponent, on the 30th of April, 1863, took said oath and gave said bonds, on proof of which the certificate of the provost marshal is hereto attached. Further deponent saith not.

JOSEPH ANDERSON.

Sworn and subscribed to before me this 10th day of December, A. D. 1866.

THOS. J. MYERS, *Notary Public.*

STATE OF TENNESSEE, *County of Davidson:*

The undersigned, officers of the United States government in the several capacities mentioned below, hereby certify that we are well acquainted with Joseph Anderson, of the city of Nashville, Tennessee; that we know, of our own knowledge, or by reliable and satisfactory information, that he has been at all times loyal to the government of the United States; that he has never rendered himself liable to any of the penalties mentioned in the proclamation of the President of the United States, issued the 25th day of July, A. D. 1862; and that we have no interest in any claim of Mr. Anderson against the United States.

JAMES S. HULL,
Late Col. 37th Ind. Vols.
THEO. TRAUERNICHT,
Late Lieut. Col. 13th United States Infantry.
JAMES S. NEGLEY,
Late Major General United States Army.

WASHINGTON, D. C., *December* 8, 1866.

The undersigned, member of Congress from Tennessee, is well acquainted with Mr. Joseph Anderson, mentioned within, and knows him to be, and always to have been, a truly loyal citizen of the United States.

JOS. S. FOWLER, *U. S. S.*

PROVOST MARSHAL'S OFFICE,
Nashville, Tennessee, April 30, 1863.

J. Anderson, of Davidson county, State of Tennessee, has taken the oath of allegiance to the United States government, and filed bond for the faithful observance of the same at this office.

JOHN A. MARTIN,
Colonel and Provost Marshal.

STATE OF TENNESSEE, *County of Davidson:*

I, Joseph Anderson, of the city of Nashville, county of Davidson, State of Tennessee, having first been duly sworn according to law, depose and say that I am 72 years of age; that I have never in any way aided, countenanced, or abetted the recent rebellion against the government of the United States; that I have never in any way rendered myself liable to any of the penalties mentioned in the proclamation of the President of the United States, issued on the 25th day of July, 1862, and that at the earliest opportunity I took the oath of allegiance to the United States government.

JOSEPH ANDERSON.

Sworn and subscribed to before me, a justice of the peace, this 29th day of November, A. D. 1866.

W. A. MATHEWS, *J. P.*

STATE OF TENNESSEE, *Davidson County:*

I, P. L. Nichol, clerk of the county court of said county, do hereby certify that W. A. Mathews, whose genuine signature appears to the attached affidavit, is now, and was at the time of signing the same, an acting justice of the peace in and for said county, duly elected, commissioned, and qualified as such, and his official acts are therefore entitled to due faith and credit.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office, in Nashville, this 30th day of November, 1866.

P. L. NICHOL, *Clerk.*

FOSTER vs. COVODE.

MARCH 26, 1869.—Laid on the table and ordered to be printed.

Mr. CESSNA, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom were referred "so much of the proclamation of the governor of Pennsylvania, dated November 17, 1868, *as to the election of representatives in the* 21*st district of said State, and the letter of said governor, dated February* 23, 1869, *relative thereto, together with the papers referred to in said letter, with instructions to report to the House what person, according to said proclamation, letter and papers, is entitled, prima facie, to represent said* 21*st district in the* 41*st Congress, pending any contest that may arise concerning the right to such representation," submit the following report:*

It appears, from the proclamation of the governor, referred by the resolution, that when the governor of said State issued his general proclamation, on the 17th of November, 1868, declaring who had been elected to represent the several districts of the State in the 41st Congress, he declined to declare any one elected in the 21st district, stating:

That no such returns of the election have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to proclaim the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district.

The general proclamation of the governor being a blank, so far as the 21st district is concerned, the committee next turned their attention to the letter of the governor of Pennsylvania, which is as follows:

PENNSYLVANIA EXECUTIVE CHAMBER,
Harrisburg, Pennsylvania, February 23, 1869.

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the 21st congressional district of this State.

These affidavits were taken before officers properly authorized to administer oaths, and indicate the election of Hon. John Covode.

Most respectfully, your obedient servant,

JOHN W. GEARY,
Governor of Pennsylvania.

Hon. EDWARD MCPHERSON,
Clerk of the House of Representatives, Washington, D. C.

The signature of the governor to this document was duly certified by the secretary of the Commonwealth and the seal of the State attached.

It is claimed, by Mr. Covode, that this letter gives him a *prima facie* right to the seat—it being a supplemental proclamation, as he alleges, and intended to be the decision of the governor, that he, Covode, was elected in the 21st district.

By the general election law of Pennsylvania, Purdon's Digest, 8th edition, section 63, it is provided, where two or more counties compose a district for the choice of a member of the House of Representatives,

that after an election has been held, the judges of election in each county having met, the clerks shall make out a fair statement of all the votes which shall have been given at such election, within the county, for every person voted for as such member, which shall be signed by said judges and attested by the clerks; and one of the said judges is to take charge of said certificates of votes, and produce the same at a meeting of one judge from each county, at such place in such district as is, or may be, provided by law for that purpose. The judges of the several counties having met, are required (section 64) to cast up the several county returns and make duplicate returns of all the votes given for such office of representative in Congress in said district, and of the name of the person elected, and to deposit one of said returns for said office of representative in the office of the prothonotary of the court of common pleas of the county in which they shall meet, and to place the other return in the nearest post office, sealed and directed to the secretary of the Commonwealth.

The said return judges are also required (section 65) to transmit to the person elected to serve in Congress, a certificate of his election within five days after the day of making said return.

On the receipt of the return of the election of members of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, the governor is required (section 113) to declare by proclamation the names of the persons so returned as elected in the respective districts, and also to transmit as soon as conveniently may be thereafter the returns so made to the House of Representatives of the United States.

The papers referred to the committee not embracing any of the certificates required by law to be given by the return judges of the counties and district, the investigations of the committee were necessarily confined to the letter of the governor and the accompanying papers.

If it was intended by the governor to decide in this letter that John Covode was duly elected from the 21st district of Pennsylvania, and if he did intend his paper or letter of February 23, 1869, as supplemental to his general proclamation, or as his only proclamation in regard to the election of representative in said district, then a majority of the committee are of opinion that he had a right to so decide under precedents heretofore furnished by the House. (*Vide* Butler *vs.* Lehman, Contested Election Cases in Congress, p. 353.) In the case cited, William F. Packer, governor of Pennsylvania, set aside all returns upon the ground of fraud, and decided upon *ex parte* evidence who was elected. The House sustained the action of the governor by allowing Mr. Lehman to hold the seat during the contest.

As there is no prescribed form in the law of Pennsylvania for the proclamation, nor any time fixed at which it shall be issued, nor any specified mode of publication required to be made, it is difficult to see that anything is required by the proclamation named in the law more than a decision as to who is duly elected in the respective districts of the State, and notice of such decision given to the parties elected and to the House of Representatives.

A majority believe that the committee have but little discretion in the premises. The language of the resolution under which we are acting requires us to report to the House what person is entitled, *prima facie*, to represent the 21st district of Pennsylvania in the 41st Congress, according to the papers referred to us. It would seem from this resolution of reference that the House was satisfied that some one had a *prima facie* right to the seat on these papers, and that the only inquiry for us was as to the person so entitled.

The committee are further sustained in this view from the fact that at the time these papers were referred, an effort was made in the House to refer other papers seeming to be connected with the case, and this effort was unsuccessful. This effort was subsequently repeated with a like result.

It is conceded that an election was held in this district, and that some person was duly elected, and the inquiry that we are to make seems to be, Who is that person? It is not pretended, neither is there any evidence before the committee showing that there were any candidates for Congress in that district except John Covode and Henry D. Foster, and the committee are not required to decide who was legally elected, but simply to determine what person appears to have the better right, and is entitled *prima facie* to represent said district pending any contest that may arise. From this standpoint, a majority of the committee have found no difficulty in coming to the conclusion that John Covode is that person.

The proclamation of the governor of Pennsylvania, his letter, and the affidavits, constitute the evidence submitted by the House to the committee, and from these the committee are required to determine the question submitted to them. The first of these, viz., the proclamation, disposes entirely of the claim of Henry D. Foster; he nowhere appears again except in the unfavorable light presented by the affidavits. The second, viz., the governor's letter, seems to show the election of Mr. Covode, and having been made evidence together with the accompanying affidavits, for the purposes of this inquiry, by the resolution of the House, establishes his *prima facie* right to the seat.

The affidavits referred by the same resolution of the House to the committee would seem to warrant the decision reached by the governor in the premises. They show very many irregularities and several gross frauds perpetrated at election precincts in that district.

These frauds were of a character so glaring that they cannot be defended by any one having a regard for the purity of elections, or any respect for the doctrine that the will of the majority, as expressed by the people at the ballot-box, shall be the law of the land.

It is not believed by the committee to be their duty, nor is it regarded under the resolution of the House as at all necessary, to examine into the reasons which influenced the governor of Pennsylvania, nor to review his action in the premises. Were this required we might recite the case already cited, Butler *vs.* Lehman, in which the governor of Pennsylvania went behind all returns and certificates in order to prevent the success of a gross fraud.

The frauds in this case, as shown by the affidavits, were but little, if any, less flagrant than they were in that.

No fraud attempted upon the people of a district should ever be sanctioned. When fraud appears it should defeat all who seek to take advantage of it, or attempt to shelter themselves behind it. In the eye of the law fraud spoils everything it touches; even the broad seal of a Commonwealth is crumbled into dust, as against the interest designed to be defrauded. It is not protected by record, judgment, or decree, but whenever and wherever it is detected its disguises fall from around it, and it stands exposed to the rebuke and condemnation of the law.

In the case of Morton *vs.* Daily, Contested Election Cases, page 403, the governor had given a certificate to Mr. Morton; he afterwards discovered a fraud and revoked it, and gave a second certificate to Mr. Daily; the House sustained the governor. In the present case it is not claimed that the governor of Pennsylvania gave a certificate to any one for the 21st district, prior to the 23d of February, 1869. His action of

that date was, therefore, not so much a departure from the usual practice as was the action of the governor of Nebraska, in the case of Morton *vs.* Daily, which received the sanction of the House. But, as has already been remarked, it is not the province of this committee to consider or decide this question. We are instructed to report from *particular evidence* sent to us by the House, and the conduct of the governor is not for our consideration. We are to determine what person, from the evidence submitted, is *prima facie* entitled to this seat. All questions as to the legality of this election, and the whole merits of this controversy, are to be the subjects of future inquiry.

There are two parties claiming this seat; both cannot be contestants; one or the other should be admitted before the contest begins; the district should not remain unrepresented.

If the committee have erred in their conclusions, the sooner the contest begins the sooner the legal right will be established.

The committee, therefore, recommend the adoption of the following resolutions:

Resolved, That John Covode, upon the letter of the governor and papers relating to the election in the 21st congressional district of the State of Pennsylvania, referred by the House to this committee, has the *prima facie* right to the vacant seat from that district, and is entitled to take the oath of office and occupy a seat in this house as the representative in Congress from said district without prejudice to the right of Henry D. Foster, claiming to have been duly elected thereto, to contest his right to said seat upon the merits.

Resolved, That Henry D. Foster, desiring to contest the right of Hon. John Covode to a seat in this house as a representative from the 21st district of the State of Pennsylvania, be, and he is hereby, required to serve upon the said Covode, within twenty days after the passage of this resolution, a particular statement of the grounds of said contest; and that the said Covode be, and he is hereby, required to serve upon the said Foster his answer thereto within twenty days thereafter; and that both parties be allowed sixty days next, after the service of said answer, to take testimony in support of their several allegations and denials; notice of intention to examine witnesses to be given to the opposite party at least five days before their examination, but neither party to give notice of taking testimony within less than five days between the close of taking at one place and its commencement at another, but in all other respects in the manner prescribed in the act of February 19, 1851.

MINORITY REPORT.

The undersigned, a minority of the Committee of Elections, with the permission of the House, submit the following statement in the contested election case from the 21st congressional district of Pennsylvania:

The House referred to the committee, 1st, a certified transcript of the governor's proclamation; 2d, a letter of the governor; and 3d, certain papers mentioned in said letter; and instructed the committee "to report to the House what person, according to said proclamation, letter, and papers, is entitled *prima facie* to represent said 21st district in the 41st Congress, pending any contest that may arise concerning the right to such representation."

Two questions arise: 1st. Are the papers, or any of them, legal evidence? 2d. If accepted as legal evidence, what do they prove in the absence of rebutting evidence?

The first document is, as to all the districts of Pennsylvania except the 21st, clearly competent evidence; for it is the duly authenticated transcript of a proclamation made by the governor in strict accordance with the statute of Pennsylvania. The following is the language of the statute:

It shall be the duty of the governor, on the receipt of the returns of the election of mem bers of the House of Representatives of the United States, as aforesaid, by the secretary of the Commonwealth, to declare by proclamation the names of the persons so returned as elected in the respective districts; and he shall also, as soon as conveniently may be thereafter, transmit the returns, so made, to the House of Representatives of the United States.

And the proclamation contains the following language:

[GREAT SEAL.]

In the name and by the authority of the Commonwealth of Pennsylvania, John W. Geary, governor of the said Commonwealth.

Whereas, in and by an act of the general assembly of this Commonwealth, approved the 2d day of July, A. D. 1839, entitled "An act relating to the elections of this Commonwealth," it is made the duty of the governor, on the receipt of the returns of the election of members of the House of Representatives of the United States by the secretary of the Commonwealth, to declare by proclamation the names of the persons returned as elected in the respective districts;

And whereas the returns of the several elections held on Tuesday, the thirteenth day of October last, in and for the several districts for representatives of the people of this State in the House of Representatives of the Congress of the United States for the term of two years from and after the 4th day of March next, have been received in the office of the secretary of the Commonwealth, agreeably to the provisions of the above recited act, whereby it appears that in the 1st district, composed of the 2d, 3d, 4th, 5th, 6th, and 11th wards, in the city of Philadelphia, Samnel J. Randall has been duly elected; * * * * in the 21st district, composed of the counties of Indiana, Westmoreland, and Fayette, no such returns of the election have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to proclaim the name of any person as having been returned duly elected a member of the House of Representatives of the United States for that district: * * * * * *

Now, therefore, I, John W. Geary, governor as aforesaid, have issued this, my proclamation, hereby publishing and declaring that Samuel J. Randall, * * (containing no name for the 21st district) * * have been returned as duly elected in the several districts beforementioned as representatives of the people of this State in the House of Representatives of the Congress of the United States for the term of two years, to commence from and after the 4th day of March next.

Given under my hand and the great seal of the State, at Harrisburg, this seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Commonwealth the ninety-third.

JOHN W. GEARY.

By the governor:
F. JORDAN,
Secretary of the Commonwealth.

This proclamation was therefore an official act, and the transcript referred to the committee is legal evidence so far as it goes. But it proves nothing in favor of either of the claimants to the seat for this particular district.

The letter which is dated February 23, 1869, more than three months after the date of the proclamation, is not authorized or made an official act or document by any statute of the State of Pennsylvania. In it the governor does not declare, as required by law to do in his proclamation, that John Covode has been returned as elected in the 21st district, but that certain affidavits "indicate the election of Hon. John Covode." The following is the entire letter:

PENNSYLVANIA EXECUTIVE CHAMBER,
Harrisburg, Pennsylvania, February 23, 1869.

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the 21st congressional district of this State.

These affidavits were taken before officers properly authorized to administer oaths, and indicate the election of Hon. John Cov de.

Most respectfully, your obedient servant,

JNO. W. GEARY,
Governor of Pennsylvania.

Hon. EDWARD MCPHERSON,
Clerk House of Representatives, Washington, D. C.

STATE OF PENNSYLVANIA,
OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, Pennsylvania, February 23, 1869.

I hereby certify that the signature of John W. Geary, governor of this Commonwealth, to the attached letter, is his genuine signature; and that the accompanying affidavits and papers are the originals filed in this office from time to time, since the election held on the 13th of October last.

In testimony whereof, I have hereunto set my hand, and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.]

F. JORDAN,
Secretary of the Commonwealth.

This letter, being unauthorized by law, has no official character. It is not the act of the governor, but of the individual. It is no more legal evidence than would be the unsworn statement of any other citizen of Pennsylvania. Furthermore, it is not under the great seal of the State. It is correctly characterized in the authenticating certificate of the secretary of the Commonwealth, and in the resolution of the House, as a "*letter.*" It does not, like a solemn proclamation, begin "In the name of the Commonwealth of Pennsylvania," and end with the words "Given under my hand and the great seal of the State," but, like an ordinary epistle, it begins with "Sir," and ends with "Most respectfully, your obedient servant." It is true that it is subscribed "Jno. W. Geary, governor of Pennsylvania." But a letter addressed by the governor, as this is, to the Clerk of the House, recommending an applicant for a position in his department, might have been, and probably would have been, subscribed in the same way, and if so subscribed, would have had the same official character which this letter has. And an authenticating certificate of the secretary of the Commonwealth would contribute as much of official char-

acter to such a recommendation as the secretary's certificate in this case does to the letter. Inasmuch as this letter is not legal evidence, it is not material to inquire whether if it really were competent evidence, it would amount to *prima facie* proof that either claimant is entitled to the seat.

The affidavits, which are *ex parte*, were not authorized by any statute, and are not evidence in this case. If they were evidence, they would not, apart from the letter, show a *prima facie* right to the seat in either of the claimants.

The only ground upon which it can be alleged that either the letter or the affidavits are legal evidence is that the resolution of the House, instructing the committee to report "what person, according to said proclamation, letter, and papers, is entitled, *prima facie*, to represent" the district, imparts the character of legal evidence to these papers. But, if such a resolution of the House would make the letter and affidavits of Mr. Geary legal evidence, it would also make the letter and affidavits of Mr. Doe or Mr. Blank legal evidence; and might enable parties to give such letters and affidavits, whether signed or not, any desired form, to establish any desired *prima facie* case; for not one paper in one hundred, of those referred to the Committee of Elections by the House, is ever read or seen by ten members of the House before it reaches the committee. But, the truth is, the reference of a paper is not decisive in one way or the other of its competence as evidence. That question is always to be decided by the committee and by the House.

The undersigned recommend the adoption of the following resolution:

Resolved, That the proclamation, letter, and papers, referred to the Committee of Elections, do not show what person is entitled *prima facie* to represent the 21st district of Pennsylvania in the 41st Congress, pending any contest that may arise concerning the right to such representation.

H. E. PAINE.
JOHN C. CHURCHILL.
ALBERT G. BURR.
SAM. J. RANDALL.

ADDITIONAL MINORITY REPORT.

In the matter relating to the representation from the 21st district of Pennsylvania, the undersigned, concurring in the report presented by the minority, ask to present for consideration the following, as a separate additional minority report:

The House resolution of March 5th contains instructions to the committee, and is as follows;

Resolved, That so much of the proclamation of the governor of Pennsylvania, dated November 17, 1868, as relates to the election of representative in the 21st district of said State, and the letter of said governor, dated February 23, 1869, relative thereto, together with the papers referred to in said letter, be referred to the Committee of Elections, when appointed, with instructions to report to the House what person, according to said proclamation, letter, and paper, is entitled *prima facie* to represent said 21st district in the 41st Congress, pending any contest that may arise concerning the right to such representation.

Most singular in its framework is this resolution of instructions—most skilfully drawn and guarded in its requirements. In the light of the several papers referred to in that resolution, and excluding all others, the committee are charged to report to the House what person, "according to said proclamation, letter, and paper, is entitled *prima facie* to represent said 21st district in the 41st Congress, pending any contest that may arise concerning the right so such representation."

The laws of Pennsylvania regulating elections provide for returns to be made by the election officers of a voting district or precinct, to those of a county, and by them to the return officers of a congressional district, and by them, in turn, to the secretary of the Commonwealth—after which the duty of the governor is specified as follows:

It shall be the duty of the governor, on the receipt of the returns of the election of members of the House of Representatives of the United States as aforesaid by the secretary of the Commonwealth, to declare by proclamation the names of the persons so returned as elected in the respective districts, and he shall also, as soon as conveniently may be thereafter, transmit the returns so made, to the House of Representatives of the United States.—Purdon's Digest, page 383, par. 114.

By this law the governor is required only to "declare by proclamation" the result certified to him by the return judges, and to transmit the returns made by said judges to the House of Representatives. In this the governor acts simply as a ministerial officer; he is invested with no judicial functions whatever; he is not required to examine and determine any controverted point, but only to declare to the public by proclamation such result as has been previously determined and certified to his hand by officers specially charged by law with that duty.

On Tuesday, October 13, 1868, an election was held in the various congressional districts of Pennsylvania for representatives in the 41st Congress. Returns were made according to law from subordinate officers, and finally returns were certified from each congressional district to the secretary of the Commonwealth. On the 17th day of November following, the governor (John W. Geary) issued his proclamation, declaring the "names of persons returned as elected in the several districts," except in the 21st district, composed of the counties of Indiana, Westmoreland and Fayette, concerning which he declares that "no such returns of the election have been received by the secretary of the Commonwealth as would, under the election laws of the State, authorize me to declare the name of any person as having been returned duly elected

a member of the House of Representatives of the United States for that district." As above stated, this proclamation was issued November 17. On December 3 the governor, in obedience to law, transmitted to the Speaker of the House of Representatives the following letter:

PENNSYLVANIA EXECUTIVE CHAMBER,
Harrisburg, Pa., December 3, 1868.

SIR: In compliance with the provisions of an act of the general assembly of this Commonwealth, approved 2d July, 1839, I have the honor to forward you the returns of the late election in this State for members of Congress; and I also send certified copies of proclamations of election of said members.

I am, sir, very respectfully, your obedient servant,

JNO. W. GEARY.

Hon. S. COLFAX, *Speaker House of Representatives.*

At the same time he accompanied said returns with certified copies of his proclamation declaring the result. In all the districts, save the 21st, he had done all the law required in declaring the names of persons elected and transmitting the returns to this house; and in the district in question he had given a reason for not so declaring, which reason must have been satisfactory to himself at least. Up to the 3d day of December following, his excellency found "no such returns" in the office of the secretary as would authorize him to proclaim the name of any person as having been elected in that district, or justify any declaration of title in favor of any one to a seat here pending investigation; and on that same day (December 3) he parted with all the documents and records which by law could furnish the foundation of such declaration as to any district by transmitting all the returns to the Speaker of this house. In the judgment of the undersigned the duty of the governor ends with the transmission of the returns to this house, and from that moment his authority is concluded in the premises. Where is any evidence, so far, of title to a seat from that district? By whom has it been proclaimed or declared? In whose favor has the proclamation been issued and the declaration made?

But it is said that by a subsequent document the governor supplied the omission in his proclamation of December 3 relating to the 21st district by declaring Hon. John Covode elected. But as the "returns" on which alone a proclamation could be legally based had passed from his possession on the 3d of December, at which time no case was made out which would in his judgment authorize him to declare any one elected in that district, what additional official information could he have on which to base a proclamation or declare a result at a later period?

That subsequent document is as follows:

PENNSYLVANIA EXECUTIVE CHAMBER,
Harrisburg, Pa., February 23, 1869.

SIR: I have the honor to transmit herewith additional affidavits and evidences of fraud submitted to me in regard to the election of member of Congress in the 21st congressional district of this State.

These affidavits were taken before officers properly authorized to administer oaths, and indicate the election of Hon. John Covode.

Most respectfully, your obedient servant,

JNO. W. GEARY,
Governor of Pennsylvania.

Hon. EDWARD MCPHERSON,
Clerk House of Representatives, Washington, D. C.

STATE OF PENNSYLVANIA,
OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, Pa., February 23, 1869.

I hereby certify that the signature of John W. Geary, governor of this Commonwealth, to the attached letter, is his genuine signature; and that the accompanying affidavits and papers

are the originals filed in this office from time to time, since the election held on the 13th of October last.

In testimony whereof, I have hereunto set my hand, and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.] F. JORDAN,
Secretary of Commonwealth.

By virtue of what law of Pennsylvania were affidavits of any character submitted to the governor for his consideration? By the sanction of what law did he transmit them to the Clerk of this house? By what legal right did he base any act of his on such affidavits, or on *any* affidavits connected with an election? He had already done all that in his judgment he had any authority to do; and had parted with all the records which gave him an original right to do anything whatever in the case. If he had before that time done all his duty, the duty was ended. If he had omitted any duty, in not having officially declared a result in the 21st district, the time for the discharge of that duty passed and the power to discharge it ceased when the returns left his possession; and any later act of his in the premises was without sanction of law, of none effect, and entitled to no consideration here or elsewhere.

But it is said the governor was not bound by law to accept such returns as conclusive, but might go behind them, and on evidence of fraud at the polls set aside the returns in whole or in part, and declare a different result than the one made apparent by such returns. When, however, we seek authority for such judicial power in the executive, we are pointed, not to the statutes, but to a case arising in that State in 1860, reported in Bartlett's Contested Elections in Congress, page 353, and relied on to justify Governor Geary and give validity to his act in going behind the returns in the case under consideration. It is the case of Butler *vs.* Lehman, in which Governor Packer declared Lehman duly elected, notwithstanding certain papers purporting to be returns showed Butler to have received a majority of the votes. But what were the facts connected with the action of Governor Packer? Briefly as follows: The Butler *vs.* Lehman case grew out of an election in the first Pennsylvania district, on October 9, 1860; on the 12th the board of return judges certified that Butler had received 8,581 votes, Lehman 8,383 votes, and one Edward King 2,057. On this state of facts it would seem that the governor was bound to declare Butler elected in that district, whereas he did on the 8th day of November declare Lehman elected instead of Butler. Why? Because some one charged fraudulent voting? because illegal votes were received? or legal votes rejected? No; the existence of any of these supposed facts would have been ground for a contest on the merits, but could not affect the *prima facie* right to the seat, nor justify the governor in modifying the returns by accepting the votes wrongfully rejected, or throwing out those wrongfully received. It would be his duty to declare the result apparent on the face of the returns, and let the contest be determined by the House of Representatives, which alone could judge of the "election returns and qualifications of its members." But in the case cited was another element of which Governor Packer was bound to take official notice. Among the papers considered by the return judges in making up the result, was one purporting to be a return of votes from the 4th ward, in the city of Philadelphia. On the 12th of October the return judges accepted that paper without challenge and found the result, as stated, in favor of Butler. But during the same month, and before the governor issued any proclamation declaring the result, the paper purporting to be the proper return from the 4th ward was proven in court to be a forgery committed by one William Byerly, who was arraigned, tried, convicted

and sentenced in a court of competent jurisdiction for the crime of making and issuing said paper as a return, when in fact it was not a return, but a forgery perpetrated by himself. The trial, conviction and sentence of Byerly all occurred in October, and on November 8, when the governor came to inspect the returns in order to "declare who was elected," the records of a court of which the highest officer, as well as the most humble citizen, is bound to take notice, gave him the information that a certain paper was not a return but a forgery, and forbade giving it any credit or consideration in declaring the result. He did not receive affidavits to impeach the returns; he did not sit in judgment on the officers of election, and review their work; he did not even decide what should be accredited and what should be rejected; a competent judicial tribunal had performed that duty, and when the forged paper came under notice (if at all) the court by its records said to him: "that is a forgery, and in no respect a return or other record—you shall not consider it;" and Governor Packer, as an honest executive, obeyed the mandate of the court, and, omitting that paper, declared the election of Lehman. In all this he merely obeyed the law requiring him to "declare, by proclamation, the name of the person returned as elected." He did not issue a proclamation declaring a given state of facts, and at a later period announce by supplemental proclamation, or even by letter, a different and contradictory state. By one final proclamation he declared the result and ended his action. But it is said he "went behind the returns" to declare such result. Not so—he followed the returns and merely announced the result made apparent on their face—the Byerly paper having been judicially determined to be no return.

Now can this case be made a precedent to justify Governor Geary in suppressing returns? or in refusing to "declare" the result shown on the returns in the proper office, and which he is by law required to declare? Because Governor Packer was restrained by a judicial decision from regarding a forged paper as of legal value, is Governor Geary to suspend for further canvass the returns actually received, invite private and perhaps irresponsible parties to send in *ex parte* affidavits during a period of over four months, and finally, long after the issuance of his proclamation under the statute, certify that these affidavits, taken without notice and in derogation of all law, "indicate the election of Hon. John Covode?"

But conceding, for the moment, the right of the governor to issue a supplemental proclamation, is the document of date February 23 such an instrument as is contemplated by the law of Pennsylvania? A "proclamation" is an official notice to the public, a public declaration made by competent authority. By Webster a proclamation is defined as "publication by authority, official notice given to the public," "the paper containing an official notice to a people." But the document in question is a mere private communication sent by Governor Geary to the Clerk of this house. It has none of the elements of a proclamation, is not issued by competent authority, for it lacks authority of law; and an unauthorized act by an official has no more legal force than the same act by a private citizen. It is not addressed or directed to the public, nor is it intended for their consideration. It does not declare a result, but merely ventures an opinion, and that only incidentally, for the object alone of the document was to transmit papers called "affidavits and evidences of fraud" to the Clerk. The Clerk himself does not consider it in any sense an official document, else he surely would have acted upon it and placed on the rolls the name of Hon. John Covode as the member from the district in ques-

tion. Further, the paper under consideration has no "great seal of the Commonwealth," as has the proclamation of November 17th; and if it be said that the certificate of the secretary of the Commonwealth shows this paper to have been issued by John W. Geary, as governor, it will be seen that, by the same certificate, the secretary designates the paper in question, not as a proclamation or official document, but as a "letter" only. So far as this is a private communication we have nothing to do with it; but in so far as we are required to consider it, in deciding a *prima facie* right to the vacant seat, the preceding comments are considered justifiable. In the view of the undersigned, for the reason aforesaid, neither the letter of February 23, nor the affidavits accompanying, have any legal value in determining the question submitted. So far as the affidavits are concerned, suppose all were considered as true and in all respects competent as testimony, what do they show? At most, that some votes were wrongfully received, and some erroneously rejected, at the election in question. They do not, nor do any papers before the committee, show how many votes were cast for any one, as a candidate, in that district. The only manner in which the "affidavits" could "indicate" a result would be to furnish information whereby we might add to or subtract from the aggregate vote previously ascertained to have been cast for the respective parties; but the only ascertained result is embodied (if anywhere) in the "returns," which have been carefully excluded from consideration here, and which had been sent from the governor months before he ascertained what the affidavits in question "indicated."

There is no statement anywhere in the papers submitted of the numbers of votes received by any one; nor any declaration—or even statement—that any designated individual had received a majority of the votes cast; nor was elected; nor is in any respect, or by any rule of law, entitled to the seat.

Inasmuch, therefore, as no *prima facie* case is made in favor of any one by the papers before the committee, and inasmuch as the House has limited this preliminary investigation to the papers indicated, the undersigned, presenting the foregoing views, as called for under all the circumstances, concur in the resolution reported by the minority of the committee.

ALBERT G. BURR,
SAML. J. RANDALL.

41st Congress, 1st Session. | HOUSE OF REPRESENTATIVES. | Report No. 3.

HOGE vs. REED.

March 30, 1869.—Laid on the table and ordered to be printed.

Mr. Paine, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the case of S. L. Hoge vs. J. P. Reed, from the 3d congressional district of the State of South Carolina, in obedience to the following resolution of the House of Representatives, adopted March 22, 1869—

Resolved, That in all contested election cases referred to the Committee of Elections, in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist, the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of Representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress—

submit the following report:

It was alleged in writing before the committee by said S. L. Hoge, that said J. P. Reed could not take the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862. The committee thereupon, in obedience to said resolution, inquired into the said charge; and, upon the written admission of said Reed contained in his answer to the notice of contest in this case, have found and do report to the House, that J. P. Reed, claiming the right to represent the 3d congressional district of the State of South Carolina in this house, is unable to take the oath of office prescribed in the said act of July 2, 1862.

HUNT VS. SHELDON.

MARCH 31, 1869.—Laid on the table and ordered to be printed.

Mr. STEVENSON, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom were referred the credentials of persons claiming seats in this house as representatives from the State of Louisiana, with the letter of the governor, and the report of the committee of investigation of the legislature of that State, with instructions to ascertain the right of such peasons, and to inquire into the validity of the election for members of the 41st Congress, in the several congressional districts of said State on the 3d day of November, A. D. 1868, and also to inquire whether the persons claiming to have been elected in such districts are qualified under the Constitution and laws to take seats as members of this house, submit the following report upon the claim of Lionel Allen Sheldon to a seat as representative from the 2d congressional district of Louisiana:

In accordance with the laws of Louisiana, on the 3d day of November, A. D. 1868, in the 2d congressional district of that State, an election was held for a representative of the district in the 41st Congress. The only candidates for that office were Lionel Allen Sheldon and Caleb S. Hunt. On the 25th day of November, A. D. 1868, the governor of Louisiana issued the following certificate:

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, November 25, 1868.

To all to whom these presents may come:

Know ye that, in accordance with the laws of the State of Louisiana, an election was held by the qualified electors of this State, on the 3d day of November, A. D. 1868, for five members of Congress, to represent the 1st, 2d, 3d, 4th, and 5th congressional districts of the State of Louisiana in the 41st Congress of the United States, and for one member of Congress from the 2d congressional district to the 40th Congress, to fill the vacancy occasioned by the death of the Hon. James Mann.

And whereas the returns of said election, made to the secretary of state, as required by law, have been carefully examined, compared, and attested by the proper officers whose duty it was to examine the same;

And whereas it has been ascertained from said returns that Lionel Allen Sheldon received 5,108 votes, and Caleb S. Hunt 2,833 votes cast at said election:

Now, therefore, I, Henry C. Warmoth, governor of the State of Louisiana, do hereby certify that Lionel Allen Sheldon received a majority of the votes cast for representatives to the 41st Congress from the 2d congressional district of the State of Louisiana.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed this 5th day of November, in the year of our Lord 1868, and of the independence of the United States the ninety-third.

[SEAL.]

H. C. WARMOTH,
Governor of the State of Louisiana.

GEO. E. BOVEE,
Secretary of State.

The provision of law under which the governor acted in issuing the above certificate is section 30 of "An act relative to elections in the

State of Louisiana, and to enforce article 103 of the constitution of the State," passed October 19, 1868, which section is as follows:

SEC. 30. *And be it further enacted, etc.*, That, as soon as possible after the expiration of the time of making the returns of election for representatives in Congress, the governor, jointly with the secretary of state and a judge of one of the district courts of the State, shall proceed to ascertain from the said returns the person duly elected, a certificate of which shall be entered on record by the secretary of state, and signed by the governor, and a copy thereof, subscribed as aforesaid, shall be delivered to the person so elected, and another copy transmitted to the House of Representatives of the Congress of the United States, directed to the Speaker thereof.

It will be seen that the law requires the governor, secretary of state, and a judge to ascertain from the returns the person *duly elected*, a certificate *of which* is to be signed by the governor. This provision is a re-enactment of the old law of the State on the subject, under which it was the practice of the governor, in the certificate, to state that the person to whom it was given had been "*duly elected*."

See the following precedent:

STATE OF NEW ORLEANS, EXECUTIVE DEPARTMENT,
New Orleans, November 18, 1865.

To all to whom these presents shall come:

Know ye, that whereas an election was held on the 6th day of November, 1865, according to law, for five representatives to the 39th Congress: and whereas the returns of said election have been duly made to the office of secretary of state, as required by law, and have been carefully examined, compared, and attested by the proper officers whose duty it was to examine the same; and whereas I have ascertained from said returns that John Ray has received a majority of the votes cast at said election in the 5th congressional district:

Now, therefore, I, J. Madison Wells, governor of the State of Louisiana, do hereby certify that John Ray was duly elected a member of the 39th Congress from the 5th congressional district of the State of Louisiana, and to serve until the end of the term of said Congress.

In testimony whereof I have hereunto set my hand and affixed the seal of the State, on this the eighteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, and in the year of the independence of the United States the ninetieth

J. MADISON WELLS.
Governor of Louisiana.

By the governor:
[SEAL.] S. WROTNOWSKI,
Secretary of State.

If the case rested upon the certificate alone, the right of the holder to a seat might be questioned; but upon this point, which is involved in other cases not yet considered, the committee do not deem it necessary now to pass. By the official returns, as examined and certified according to law, it appears that Lionel Allen Sheldon received 5,108 votes, and Caleb S. Hunt 2,833 votes, as shown by the following official statement:

The following is a true statement by parishes of the number of votes cast for member of Congress in the 2d congressional district, held November 3, 1868, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons thereof:

	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Lafourche	1,799	1,613	1,613	1,799
St. Charles	264	1,335	1,335	264
St. James	770	2,160	2,160	770
	2,833	5,108	5,108	2,833

The returns from the following parishes were rejected:

	Fortieth Congress.		Forty-first Congress.	
	Caleb S. Hunt.	J. W. Menard.	L. A. Sheldon.	Caleb S. Hunt.
Orleans	11,535	93	125	11,535
Terrebonne	1,297	1,541	1,541	1,297
St. John the Baptist	452	1,274	1,278	452
Jefferson	2,224	662	662	2,224
	15,508	3,570	3,606	15,508

PARISH OF ORLEANS.

The returns from that part of the parish of Orleans forming a part of the 2d congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled "An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State," approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

JEFFERSON.

The returns from Jefferson parish were thrown out for the reason that two separate returns were received, one signed by S. S. Henry as chairman board of supervisors at Carrolton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairman, and J. H. A. Roberts, it being impossible to tell which, if either, was the correct return.

TERREBONNE.

The returns from this parish were made up and forwarded to the secretary of state by the commissioners of election appointed for the various polls, the only thing in shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

ST. JOHN THE BAPTIST.

The returns from this parish being signed only by one of the members of the board of registration, and there being no witnesses' names signed thereto, was considered a violation of the 25th section of act No. 164, approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25 makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Menard were opposing candidates to fill the unexpired term of Mr. Mann, (40th Congress.) Mr. Hunt and Mr. Sheldon were opposing candidates for the 41st Congress. The vote for Mr. Hunt was the same for both terms.

H. C. WARMOTH, *Governor of Louisiana.*

A true copy:
[SEAL.] GEO. E. BOVEE, *Secretary of State.*

Whatever might be the result of a contest involving the validity o these returns, and the sufficiency of the reasons assigned for rejecting the parishes which were rejected, the returns are to be received as *prima facie* evidence of the result of the election, and upon them Mr. Sheldon is entitled to take the seat, subject to any contest which may be lawfully made, unless he is disqualified or the election was void. It is not claimed, and there is nothing to show, that Mr. Sheldon is for any reason disqualified; but, on the contrary, it is admitted that he is a loyal man, and can, without mental reservation or evasion, take the oath prescribed by law. But the committee are instructed to inquire into the validity of the election.

The second congressional district of Louisiana is comprised of the 1st, 2d, 3d, 10th, and 11th wards of the parish of Orleans, and the parishes of Jefferson, St. Charles, St. John Baptist, St. James, Terrebonne, and

Lafourche. From the official documents referred to the committee it does not appear that there was any serious disturbance of the peace at or about the time of this election in any parishes of this district excepting Orleans and Jefferson. In the city of New Orleans, and in Jefferson parish, which adjoins, and is practically part of the city, there was for about one week prior to and at the date of the election a reign of terror unsurpassed in the history of this country. The disloyal inhabitants, stimulated by the hope of reviving rebellion and regaining the lost cause, organized and armed, overcame the feeble resistance of the civil authorities, overawed the military commanders, and ran riot through the city, shooting down on sight and murdering in cold blood loyal citizens, white and colored, without offence or provocation, save those of loyalty and color.

By the official reports of the committee of the legislature of Louisiana, appointed to investigate the facts, it appears that in these two parishes 232 republicans were killed, shot, or otherwise maltreated—69 in Jefferson and 173 in Orleans.

This violence prevented nearly one-half the registered electors from voting. The registered vote in that part of the parish of Orleans included within the 2d district was 20,314; the vote cast was only 11,660—8,654 electors not voting. The registered vote in Jefferson parish was 5,969; the vote cast was only 2,886—3,083 electors not voting. The number of electors in the two parishes who did not vote was 11,737.

The following table shows the registry in the second district:

Orleans, ward 1	3,130	Jefferson	5,969
Orleans, ward 2	4,104	St. Charles	1,648
Orleans, ward 3, front	2,568	St. John Baptist	1,911
Orleans, ward 3, rear	4,449	St. James	3,081
Orleans, ward 10	3,278	Terrebonne	3,279
Orleans, ward 11	2,785	Lafourche	3,570
	20,314	Total	39,772

It is fair to presume that nearly all of these electors thus prevented from voting would have voted had there been a free and peaceable election, and that they would have voted against that disloyal party, which, by violence and intimidation, deprived them of their right, and in favor of the party of union and peace. And if they had so voted the republican ticket would have received in the entire district, of all the votes cast, a majority of about 1,500 votes.

It is evident, from the testimony referred to the committee, that in the parishes of Orleans and Jefferson there was no valid election, and the question arises whether this should invalidate the election in the other parishes of the district, and set aside the entire returns.

In all the other parishes the election was quiet, and the vote was as full as that usually cast in loyal States; and it would seem unreasonable and unjust that the peaceable electors of the district should be denied the right of representation because their violent neighbors attempted and failed to deprive them of that right.

The better rule would seem to be that indicated by the ligislature of Louisiana, in the resolution referred to the committee, to exclude the disorderly and count the peaceable parishes; thereby defeating the violent and protecting the peaceable and law-abiding citizens in the right of representation.

If the vote of the lawless parishes alone be excluded, the result reached upon the official returns will not be substantially changed, except by increasing the majority for the candidate returned as elected.

The vote would then stand thus:

Sheldon	7,927
Hunt	4,582
Sheldon's majority	3,345

Your committee therefore recommend the adoption of the following resolution:

Resolved, That Lionel Allen Sheldon, claiming the right to represent the second congressional district of the State of Louisiana in the House of Representatives of the United States, be admitted to a seat in this house without prejudice to the right of any person to contest such seat according to law.

Mr. Burr, on behalf of the undersigned members of the Committee of Elections, presented the following

VIEWS OF THE MINORITY.

The undersigned, being utterly unable to concur in the report of the majority of the Committee of Elections, in the case of Caleb S. Hunt *vs.* L. A. Sheldon, from the 2d congressional district of Louisiana, respectfully submit the following reasons therefor:

The vote legally returned.

The 2d congressional district comprised the 1st, 2d, 3d, and 10th representative districts of the parish of Orleans, on the left bank of Mississippi river, (being the 1st, 2d, 3d, 10th, and 11th wards of the city of New Orleans,) and the parishes of Jefferson, St. Charles, St. John the Baptist, St. James, Lafourche, and Terrebonne.

At the election, Caleb S. Hunt and L. A. Sheldon were opposing candidates, and according to the returns made to the secretary of state, and on file in his office, the whole number of votes cast at said election in said 2d congressional district was 27,055, of which said candidates received respectively as follows, viz:

In parish of Orleans, Hunt, 11,535; Sheldon, 125.
In parish of Jefferson, Hunt, 2,224; Sheldon, 662.
In parish of St. Charles, Hunt, 264; Sheldon, 1,335.
In parish of St. John the Baptist, Hunt, 452; Sheldon, 1,278.
In parish of St. James, Hunt, 770; Sheldon, 2,160.
In parish of Lafourche, Hunt, 1,799; Sheldon, 1,613.
In parish of Terrebonne, Hunt, 1,297; Sheldon, 1,541.
Total for Hunt, 18,341; total for Sheldon, 8,714.

On or about the 25th day of November, 1868, the governor of the State, the secretary of state, and a judge of one of the district courts of the State, (constituting a board of State canvassers,) proceeded to ascertain, from the returns of the election filed in the office of the secretary of state, the person duly elected representative from the said 2d district in the 41st Congress; and the said board rejected from computation the returns from four of the seven parishes embraced within the said 2d district, viz: Parishes of Orleans, Jefferson, St. John the Baptist, and Terrebonne.

The rejection from computation of the votes returned from the said

parishes reduced the number of votes in said 2d district from 27,055 to 7,941, making 2,833 for Hunt and 5,108 for Sheldon, and resulting in an apparent majority of 2,275 votes for Sheldon; and thereupon, in manifest fraud of the electors of the 2d congressional district and Mr. Hunt, the board of State canvassers declared that Lionel A. Sheldon had received a majority of the votes cast for representative in the 41st Congress. A certificate of election was issued to him by the governor, under which he seeks to be admitted to take the seat he claims. This certificate is in substantially the usual form of such papers.

The certificate of facts to Mr. Hunt.

At or about the time the certificate of election was issued to Mr. Sheldon, the governor and secretary of state also issued and delivered to Mr. Hunt a certificate of the *facts*, with reference to the *law* and *construction* of law, on which the first certificate was based. That important paper, by order of the House, is before the committee, and reads as follows:

The following is a true statement by parishes of the number of votes cast for member of Congress in the 2d congressional district, held November 3, one thousand eight hundred and sixty-eight, as shown by the returns on file in the office of the secretary of state, together with the parishes rejected and reasons thereof:

	L. A. Sheldon.	Caleb S. Hunt.
Lafourche	1,613	1,799
St. Charles	1,335	264
St. James	2,160	770
	5,108	2,833

The returns from the following parishes were rejected:

	L. A. Sheldon.	Caleb S. Hunt.
Orleans	125	11,535
Terrebonne	1,541	1,297
St. John the Baptist	1,278	452
Jefferson	662	2,224
	3,606	15,508

PARISH OF NEW ORLEANS.

The returns from that part of the parish of Orleans forming a part of the second congressional district were rejected for the reason that the returns were made by the boards of supervisors of registration appointed by authority of an act (No. 92) entitled "An act to facilitate the registry of voters under an act to create a board of registration to superintend the registration of the qualified voters of the State," approved September 7, 1868, said boards having no authority to perform any duties except that of registration, for which they were especially appointed.

JEFFERSON.

The returns from Jefferson parish were thrown out for the reason that two separate returns were received, one signed by S. S. Henry as chairman board of supervisors at Carrolton, and the other by J. A. Wagner, H. P. Philips, John Payn, chairman, and J. H. A. Roberts, it being imposible to tell which, if either, was the correct return.

TERREBONNE.

The returns from this parish were made up and forwarded to the secretary of state by the

commissioners of election appointed for the various polls, the only thing in shape of a compilation being a statement showing the number of republican and democratic votes cast, signed by the supervisors.

ST. JOHN THE BAPTIST.

The returns from this parish being signed by only one of the members of the board of registration, and there being no witnesses' names signed thereto, was considered a violation of the 25th section of act No. 164, approved October 19, 1868, which requires the supervisors of election to repair to the court-house, and, in the presence of at least two witnesses, to compile the return sent in by commissioners. Section 25 makes it the duty of the supervisors to forward triplicate returns to the secretary of state, and no one supervisor has the right.

Mr. Hunt and Mr. Sheldon were opposing candidates for the 41st Congress.

H. C. WARMOTH, *Governor of Louisiana.*

A true copy:
[SEAL.] GEO. E. BOVEE, *Secretary of State.*

This paper springs from the same fountain; is based upon and authorized by the same law; is executed by the same officers; relates to the same subject-matter; and declares certain facts in reference thereto, from which arise, by inevitable and logical implication, different legal results and conclusions from those promulgated in the certificate to Mr. Sheldon.

In all matters pertaining to the settlement or adjudication of contested elections, the House acts *judicially*, and not otherwise. Whenever any legal or official papers, executed in connection with such contests, and properly brought to the knowledge of the House, are based upon, or refer to, any general laws, State or federal, for the regulation of elections, it is the imperative duty of the House to take notice of all such laws. It is the conclusive presumption of law that the House is acquainted with them. If any action in connection with an election is based upon provisions or constructions of law, and not upon facts, the law needs not to be set out in the official paper based upon it, but the House must take judicial notice of it, and must be its own exclusive judge as to its interpretation. These rules are elementary and important, and apply with great propriety and force to this case.

WHY WAS THE VOTE IN THE PARISH OF ORLEANS REJECTED?

The reason assigned in the certified statement for the rejection of the vote of that parish, "that the returns were made by the board of supervisors of registration," shows either a total misapprehension or wilful disregard of the express language of the law of the State on this subject. By the provisions of section 25, of act No. 164, laws of Louisiana, 1868, page 223, it is expressly made the duty of the supervisors of registration in each parish to make out and forward said returns to the secretary of state. The section reads as follows:

SEC. 25. That it shall be the duty of said supervisors of registration in each parish to make out triplicate returns, to forward one of them immediately by mail to the secretary of state, and another to the secretary of state by the next most speedy mode of conveyance, and to deposit the third in the office of the clerk of the district court, and in the city of New Orleans in the office of the clerk of the 1st district court; and for their wilful failure or neglect herein, such supervisors shall, upon conviction before any court of competent jurisdiction, be fined in a sum not exceeding $500, at the discretion of the court.

Since the election, the State officers took the opinion of the attorney general of the State on this subject, and we will cite only the conclusion of it, which is entirely conclusive on this point, to wit:

I am, therefore, of the opinion, that the boards of supervisors of registration and election, as constituted under the laws, throughout the State, as well in New Orleans as other parishes of the State, are the proper returning officers.

I am yours, very respectfully,

SIMEON BELDEN, *Attorney General.*

We assume, therefore, that the election returns from the parish of Orleans were in all respects legally returned and ought not to have been rejected.

But we submit, further, that every precinct that was rejected by the board of canvassers was rejected without authority of law; contrary to law; contrary to all the precedents that have governed cases of this kind in the past history of Congress. It is an established principle of law in cases of contested elections, not only in Congress, but in the States of this Union, that wherever there has been a neglect on the part of the returning officers or the canvassing officers to comply literally with the merely directory provisions of the statute, such neglect shall not work injury to anybody; that the votes shall be received and counted; that the parties shall have the benefit of them for whomsoever they are cast. In every case of contested elections the one great question to be determined, the one point of supreme importance to be ascertained by the house, sitting as judges, is, who has received the majority of votes of the legal electors of the district; whom do the people want to represent them; for whom have the majority of voters legally cast their votes? The fact that some officers may have made an artificial or somewhat informal return should not affect the substantial interests of the parties to that election.

In uniform harmony with these views there is a long and unbroken course of decisions both by this house and in all the courts of last resort in our country.

The effect of these numerous decisions is, to establish as the law of such cases that election statutes are to be tested like other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish; and, except where they specifically provide that a thing shall be done in the very manner indicated, and not otherwise, their provisions designed merely for the information and guidance of the officers must be regarded as directory only, and the election will not be defeated or affected by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared, or permitted disqualified voters to vote, and that the irregularity itself was not occasioned by the agency of a party seeking to derive a benefit from it. We refer on this general subject to some authorities in point: People *vs.* Higgins, 3 Mich., 233; People *vs.* Cicotte, 16 Mich., 283; People *vs.* Cook, 14 Barb., 259; Clifton *vs.* Cook, 7 Ala., 114; Dishon *vs.* Smith, 10 Iowa, 212; 4 Wis., 420; 19 Ind., 356; 2 Cal., 135; 34 Barb., 620; 43 Penn. St., 384.

The application of these settled principles to the conduct of the State officers in this case, in the rejection of certain returns, (and this application is perfectly admissible and legitimate in connection with any inquiry into the value of alleged *prima facie* title,) clearly demonstrates that every rejection so made, for the reasons stated, was made improperly and without authority of law.

WHO, THEN, HAS THE BEST PRIMA FACIE TITLE?

It is claimed by the majority that, upon the certificates, and the laws upon which they are based, Mr. Sheldon has the highest and clearest *prima facie* right to the seat. A brief examination will show the fallacy of this conclusion or assumption.

A *prima facie* right must be founded upon and established by *prima facie* evidence, and *prima facie* evidence is that evidence which is sufficient to

establish the fact, unless rebutted. Now apply this definition to the case under consideration. Unless rebutted, the certificate which Mr. Sheldon holds is *prima facie* evidence: 1st, That an election was held at the time, place, and for the purpose therein expressed; and, 2d, That he received the highest number of votes cast at the election, which necessarily constitutes his election, and thereby establishes *prima facie* his right, or, in other phase, his *prima facie* right to be admitted to the seat. But his certificate or *prima facie* evidence *is* rebutted by a like official and authenticated statement of equal force, and showing also, 1st, That an election was held at the time, place, and for the purpose therein expressed; and, 2d, That Mr. Hunt received the highest number of votes cast at the election, and which necessarily constitutes his election, and thereby establishes *prima facie* his right to be admitted to the seat. Now what becomes of Mr. Sheldon's *prima facie* right? It falls, of course, unsustained by *prima facie* evidence; and thus his claim is of no higher validity than Mr. Hunt's in a *prima facie* sense, and upon the form of the papers, and in substantial merits, as made manifest on the face of the certificates, it becomes utterly worthless and proves nothing to the advantage of Mr. Sheldon. The papers, taken together, establish the vital fact that *Sheldon is not elected*, and *that Hunt is elected by a triumphant majority of* 9,627 *votes.* Or, rejecting the parishes of Terrebonne, St. John the Baptiste, and Jefferson, he is then elected by a majority of 9,135. This conclusive result is shown by the papers and the law alone, without any resort whatever to other evidence or sources of information. How is this result sought to be overcome? So far as this is attempted upon the face of the papers, it rests solely upon a legal quibble, an unsubstantial technicality, neither demanded nor justified by any principle of law. Its adoption by the House would do great injustice to Mr. Hunt, to the constituency in question, and would enable Mr. Sheldon to accomplish a manifest fraud and outrage, and violate the sacred right of representation in the person of the people's choice.

ALLEGED VIOLENCE IN THE PARISH OF ORLEANS.

The parties to this contest do not allege invalidity in the election by reason of the existence of violence, intimidation, terror, or anarchy. They specifically and emphatically *deny* all such charges. But the majority of the committee *assume* the existence of such a state of disorder as should invalidate the election in this parish. The certificates afford no support or countenance to this assumption. There is no *legal evidence* before the committee to establish it. But the majority seem to have borrowed their faith on this subject from a report made to the legislature of Louisiana by a committee of that body. That report is not properly or legally before the committee; and if it were, it does not contain legal evidence to be used in this contest, and in every respect it is intrinsically and notoriously unfit to be received; it is wholly *ex parte* and transparently and meanly partisan; and, judged by itself, it is unworthy of respect or belief.

But the majority, by a singular disregard of the appropriate limits of an inquiry into alleged *prima facie* titles, attempt, by a process of argument and comparison of party votes and strength at a preceding election, to deduce the legal conclusion that if all the legal votes in the parish of Orleans that were not cast had been cast at the congressional election in question, they would, *in fact*, have been cast for Mr. Sheldon; and that, therefore, he would have been elected, and ought now to be allowed to be sworn in as a member. They appear to have no doubt but that every

man who did not vote wanted to vote for Mr. Sheldon; and that the House should now declare the result to be the same as if they had, in fact, all voted for Mr. Sheldon.

This sort of logic, or law, when indulged in by a committee charged with the delicate and important duty of deciding a great question of the right to representation, cannot be fitly characterized without appearing to violate the rules of parliamentary courtesy. In our judgment, it deserves to be signally rebuked by the House.

The undersigned, therefore, move to amend the resolution offered by the majority, by substituting in it the name of Caleb S. Hunt for that of Lionel A. Sheldon, to the end that Mr. Hunt, the elected choice of an overwhelming majority of the legal voters of the district, may be allowed to occupy the seat to which he is elected, and that the contest may then proceed in order.

Respectfully submitted:

A. S. BURR.
S. J. RANDALL.

41st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 5.

WALLACE vs. SIMPSON.

April 1, 1869—Laid on the table and ordered to be printed.

Mr. Paine, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the case of A. S. Wallace vs. W. D. Simpson, from the 4th congressional district of the State of South Carolina, in obedience to the following resolution of the House of Representatives, adopted March 22, 1869—

Resolved, That in all contested election cases referred to the Committee of Elections, in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist, the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress—

submit the following report:

It was alleged in writing before the committee by said A. S. Wallace, that said W. D. Simpson could not take the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862. The committee thereupon, in obedience to said resolution, inquired into the said charge; and, upon the written admission of said Simpson contained in his answer to the notice of contest in this case, have found and do report to the House, that W. D. Simpson, claiming the right to represent the 4th congressional district of the State of South Carolina in this house, is unable to take the oath of office prescribed in the said act of July 2, 1862.

41st CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
1st Session. } { No. 6[illegible]

HOGE vs. REED.

April 2, 18[illegible].—Laid on the table and ordered to be printed.

Mr. CESSNA, from the Committee of Elections, submitted the following

REPORT.

In the matter of the claim of S. L. Hoge, claimant for a seat in the 41st Congress from the 3d district of South Carolina. Mr. Cessna, from the Committee of Elections, submitted the following report and resolution:

The 3d congressional district of South Carolina is composed of the counties of Orangeburg, Richland, Edgefield, Lexington, Newberry, Abbeville, and Anderson. The election for members of Congress was held on the 3d day of November, 1868. The candidates for Congress were S. L. Hoge and J. P. Reed, and both presented their claims to the House, and are the claimants from the said 3d district of said State, mentioned in the following resolution, referring the whole subject to this committee, viz: "*Resolved*, That the cases of the claimants to seats in the House of Representatives of the 41st Congress of the United States, from the 3d and 4th congressional districts of the State of South Carolina, with the papers relating to the same, be referred to the Committee of Elections, when appointed, with instructions to report, as soon as practicable, which of the claimants, if either, is entitled to seats."

The committee first [illegible] their attention to an allegation filed by S. L. Hoge, one of the claimants, that J. P. Reed, the other claimant, was ineligible, not being able to take the oath prescribed by the act of July 2, 1862. The committee found the allegation to be true, and so reported to the House. This disposed of Mr. Reed's claim, under the resolution of the House of March 22, 1869.

The resolution of reference being silent on the subject, the committee determined to inquire who before us has the right to the seat, leaving the [illegible] open to such process as might decide [illegible].

They found, among the papers referred, two certificates purporting to be certificates of election to Congress from the 3d district of South Carolina, which will be found in Appendix, marked A and B.

One of these certificates was signed by three persons stating [illegible] [illegible] for said State, and certifies that J. P. Reed was duly elected by a majority of votes, [illegible]

[illegible]

HOGE vs. REED.

APRIL 2, 1869.—Laid on the table and ordered to be printed.

Mr. CESSNA, from the Committee of Elections, submitted the following

REPORT.

In the matter of the claim of S. L. Hoge, claimant for a seat in the 41st Congress from the 3d district of South Carolina, Mr. Cessna, from the Committee of Elections, submitted the following report and resolution:

The 3d congressional district of South Carolina is composed of the counties of Orangeburg, Richland, Edgeville, Lexington, Newbury, Abbeville, and Anderson. The election for members of Congress was held on the 3d day of November, 1868. The candidates for Congress were S. L. Hoge and J. P. Reed, and both presented their claims to the House, and are the claimants from the said 3d district of said State, mentioned in the following resolution, referring the whole subject to this committee, viz: "*Resolved* That the case of the claimants to seats in the House of Representatives of the 41st Congress of the United States, from the 3d and 4th congressional districts of the State of South Carolina, with the papers relating to the same, be referred to the Committee of Elections, when appointed, with instructions to report, as soon as practicable, which of the claimants, if either, are entitled to seats."

The committee first turned their attention to an allegation filed by S. L. Hoge, one of the claimants, that J. P. Reed, the other claimant, was inelligible, not being able to take the oath prescribed by the act of July 2. 1862. The committee found this allegation to be true, and so reported to the House. This disposed of Mr. Reed's claim, under the resolution of the House of March 22, 1869.

The resolution of reference being silent on the subject, the committee determined to inquire who had a *prima facie* right to the seat, leaving the merits open to such person as might desire to contest.

They found. among the papers referred, two certificates purporting to be certificates of election to Congress from the 3d district of South Carolina, which will be found in Appendix, marked A and B.

One of these certificates was signed by three persons styling themselves canvassers for said State, and certifies that J. P. Reed was duly elected by a majority of votes in said 3d district.

The other certificate was signed by four persons styling themselves canvassers for the State, (three of the persons signing this being the same who signed the first-named certificate,) and certifies that S. L. Hoge was duly elected by a majority of the *legal* votes in said 3d district.

The phraseology of these certificates is somewhat different. In the certificate given to Reed, it is certified that he is duly elected by a majority of votes, while in the other it is certified that S. L. Hoge is duly elected by a majority of the *legal* votes of said district. It is evi-

dent, as will presently appear, that it was the intention of the canvassers to supercede, by the certificate given to Hoge, the one they had already given to Reed, and this accounts, no doubt, for the difference in the language used.

It appears, also, that one of the canvassers (J. L. Neagel) who signed the certificate of Reed, withdrew his signature to said certificate in the following language: "I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force of a certificate of the election of Hon. S. L. Hoge in full force and effect.

J. L. NEAGEL,
Comptroller General, South Carolina.

This withdrawal leaves but two signatures to the certificate of Reed. This, according to the Statutes at Large of the State of South Carolina, (*vide* section 35,) invalidates the certificate, three canvassers being required to make a valid certificate. The question then arises, can the canvassers, after having given one certificate, withdraw their action and give another to a different party? This question was decided in the case of Morton *vs.* Daily, Bartlet's Contested Election Cases, p. 403.

We think, also, that this decision can be sustained upon principle. The question is entirely within the control of the State canvassers of the governor of the State (as the case may be under the law) until the roll of the House is made up by the clerk. Their is no vested right, under a certificate, that would prevent the canvassers from rectifying any error or mistake that may have occurred in their deliberations or action, until the holder of the same has been awarded his seat by the clerk of the House.

This principle is illustrated in the case of an attorney in fact; in which case, it is not doubted, the principal can withdraw or annul the power granted at any time before its purpose is executed.

Conceding, as a majority of the committee do, the right of these canvassers to reverse their first action in the premises and give a second certificate to Mr. S. L. Hoge, we do not think it necessary to examine the mass of testimony which seems to have been taken, upon due notice to the opposite party, but we append to this report the reasons given by the State canvassers for their action in this case. *Vide* Appendix, marked C.

The committee therefore recommend the following resolution:

Resolved, That, upon the papers referred to, the committee of elections in the contested case of S. L. Hoge *vs.* J. P. Reed from the 3d congressional district of South Carolina, S. L. Hoge is *prima facie* entitled to a seat in the House as the representative of said district, subject to the future action of the House as to the merits of the case.

APPENDIX A.

THE STATE OF SOUTH CAROLINA.

BY THE BOARD OF STATE CANVASSERS.

To Hon. S. L. HOGE:

Whereas, in pursuance of an act entitled "An act providing for the next general election and the manner of conducting the same," passed on the 26th day of September, A. D. 1868, an election has been held for

a member of the 41st Congress of the United States from the 3d congressional district of South Carolina, and upon examination of the returns which have been received, it appears that you, the said S. L. Hoge, have received a majority of legal votes: we do, therefore, by virtue of the powers in us vested, certify that you, the said S. L. Hoge, have been duly elected to represent the people of this State as a member of the 41st Congress of the United States from the 3d congressional district of South Carolina, by a majority of all the legal votes cast at said election, held on the 3d day of November, A. D. 1868.

Given under our hands and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

F. L. CARDOZO, *Secretary of State.*
NILES G. PARKER, *Treasurer.*
J. L. NEAGLE, *Comptroller General.*
DAN'L H. CHAMERLAIN, *Att'y Gen.*,
Board of State Canvassers.

[SEAL.] ROBERT K. SCOTT,
Governor of South Carolina.

APPENDIX B.

THE STATE OF SOUTH CAROLINA.

BY HIS EXCELLENCY ROBERT K. SCOTT, GOVERNOR AND COMMANDER-IN-CHIEF IN AND OVER THE STATE AFORESAID.

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, A. D. 1868, an election has been held for representatives in the 41st Congress of the United States for the 3d congressional district, and upon examination of the returns which have been received it appears that you, the said J. P. Reed, have been duly elected by a majority of votes. I do, therefore, by virtue of the powers in me vested, commission you, the said J. P. Reed, to represent the people of this State as a member of the House of Representatives of the 41st Congress of the United States; this commission to continue in force from the 4th March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

[SEAL.] ROBERT K. SCOTT.

By the Governor:
H. L. CARDOZO,
Secretary of State.

THE STATE OF SOUTH CAROLINA.

BY THE BOARD OF STATE CANVASSLRS.

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord one thousand eight hundred and sixty-eight, an election has been held for a represen-

tative in the 41st Congress of the United States for the 3d congressional district of the State of South Carolina, and upon examination of the returns which have been received, it appears that you, the said J. P. Reed, have been duly elected by a majority of votes: we do, therefore, by virtue of the powers in us vested, certify that you the said J. P. Reed have been duly elected to represent the people of this State as a member of the House of Representatives in the 41st Congress of the United States.

Given under our hands and the seal of the State, in Columbia, this 2d day of December, A. D. 1868, and in the ninety-third year of the independence of the United States of America.

[SEAL.] F. L. CARDOZO, *Secretary of State*,
NILES G. PARKER, *Treasurer, S. C.*,
J. L. NEAGLE, *Comptroller General*,
Board of State Canvassers.

APPENDIX C.

The board of State canvassers find, upon the evidence presented to them, that the election at which the said Reed appears to have been elected was accompanied by such grave and wide-spread disorder and outrages, on the part of the political friends of the said Reed, as in their judgment to make the apparent result different from the result which a free and orderly election would have secured.

In support of this opinion, the board of State canvassers call attention to the following facts, as gathered from evidence submitted to them in behalf of those who dispute the legality of the election of the said Reed:

It is known to the board of State canvassers that the party to whom the said Reed belongs, by the newspapers in their interest, by the voice of their public speakers, and by all the ordinary public agencies employed by political parties, did inaugurate and deliberately keep up a wholesale system of proscription, terrorism, and assassination, prior to the election of the 3d of November, which prevented any considerable canvass of the 3d congressional district, which overawed vast numbers of republican voters, and prevented anything like a free expression of political opinion throughout the said district.

To establish these statements the board of State canvassers call attention to the affidavit of James H. Henderson, a member of the present house of representatives from Newberry county.

Mr. Henderson states that he is well acquainted with the people of Newberry county, and that he was personally cognizant of the circumstances attending the late election in this State; that he knows of his own knowledge that there was a systematic plan on the part of the democratic party to keep the colored voters from the polls; that violence was resorted to in order to keep them from the polls, or to drive them away if they came; that this condition of things extended over the entire county, and that this violence resulted in the death of many of the colored people in the county; that the democrats were thus enabled to prevent from voting at least 1,500 colored republican voters of this county alone, who would have voted for S. L. Hoge for Congress had they been allowed to do so; that during the campaign which preceded the election four colored men, citizens of Newberry county, were killed in cold blood, and two more shot and badly wounded, and some 20

or more severely whipped, some of them being so disabled as to be now almost helpless.

All of these acts, he avers, were committed by the democratic party for the sole purpose of intimidating and preventing from voting the colored republican voters of the county; that the democrats shot and killed Lee Nance, late a member of the constitutional convention and a prominent member of the republican party, who had just been appointed one of the commissioners of elections for Newberry county, and that the death of Mr. Nance gave the democrats entire control of the board of commissioners of election of Newberry county, and as a consequence no republican manager of election was appointed in that county.

The board of State canvassers would also call attention to the affidavit of Henry Kennedy, a citizen of Anderson county and an officer of the general assembly of the State, who makes oath that during the late election armed bodies of white men patrolled Anderson county throughout, threatening violence to all who intended to vote for the republican candidate to Congress, and actually inflicting violence on many; that at least 1,000 republican voters in Anderson county were kept from the polls by violence, all of whom would have voted for S. L. Hoge for Congress; that at Greenwood, a precinct of Anderson county, the man who carried the republican tickets was shot at, driven away from the polls, by white democrats, before he could distribute the tickets, by reason of which no republican tickets could be obtained for use in that precinct.

The affidavit of J. B. Hyde, a citizen of Lexington county, also states that threats and intimidations were used to such an extent as to deter a majority of the republican party from casting their votes at the late election, and that the entire republican vote would have been cast for S. L. Hoge had there been a fair election; that prior to the election threats of discharge from employment and shooting into the houses of colored people were continuously practiced, and that on the day of the election armed men were stationed at the polls with the avowed intention of shooting all prominent leaders of the republican party; and that in some instances republicans were fired upon by unknown parties; that nearly 1,000 voters were, in the manner before stated, prevented from voting, a large majority of whom were republican voters, and would have voted for S. L. Hoge for representative in Congress.

The board of State canvassers especially call attention to the affidavit of Hutson J. Lomax, a citizen of Abbeville county, a member of the present general assembly of the State, and one of the commissioners of election for the county of Abbeville, who, upon oath, says that the total registered voters in Abbeville county are 1,800 whites and 4,200 colored voters, of which last number of colored voters only about 800 voted; at least 3,200 of these colored voters who did not vote would have voted for the republican candidate but from intimidation and violence practiced upon many of them by bodies of armed white men, who prevented many from going to the polls, and drove many from the polls with threats of death if they voted for the republican candidates, to the number of about 3,200.

At Moseley precinct, in aforesaid county, where at the original registration only about 83 voters were registered, and only a few voters' names were added at the revision of the registration, the democratic majority returned to the board of county canvassers was 500. At this same precinct (Moseley) a company of mounted men from Edgefield, armed to the teeth, came to the polling place, drove off all colored voters, and themselves all voted, to the number of about 150. This conduct continued all day; bodies of mounted men, non-residents of the county,

continually arriving and voting, and using all manner of threats and violence against colored voters, members of the republican party, to prevent their voting the republican ticket, and did prevent them from so doing.

At Whitehall precinct, in aforesaid county, bands of armed white men, members of the democratic party, drove from the polls all colored voters, allowing no man to vote unless he voted the democratic ticket, threatening that republican voters would be shot down at the box where the votes were deposited, and actually killed one colored man, mortally wounded another, and shot six more colored persons, wounding them, all members of the republican party.

At Calhoun Mills precinct, in said county, colored men were driven away from the polls by armed white men, one colored man, a member of the republican party, being shot in the shoulder. Similar intimidations and violence were practiced at the various other precincts in the county. Many colored voters were made, through intimidation and fears of violence, to vote the democratic ticket. Not a single colored voter, nor a single member of the republican party, was appointed manager of election in said county, and upon deponent's advising, in his capacity of commissioner of election, the appointment of some colored persons as managers of elections, the other commissioners refused to appoint any colored men, and said to him that if it was known that he, the deponent, had advised it, he would be shot down in the street by white democrats. I believe, and am informed, that if a fair election had been held in said county, at least 3,200 republican voters would have voted, and voted for S. L. Hoge for Congress, who were actually deterred from voting by violence.

All of the foregoing facts testified to occurred at the election held for presidential electors, and for member of Congress, in Abbeville county, on the 3d day of November, A. D. 1868; and a systematic attempt to overawe and intimidate voters had been practiced in said county for two months preceeding the said 3d of November, 1868.

It will be perceived that the foregoing evidence discloses a wide-spread and organized system of terrorism and violence of all kinds, extending even to murder and assassination, with the obvious design on the part of the democratic party of preventing the republican voters, and more especially the colored republican voters, from expressing their political preferences at the polls.

The evidence also establishes the very important fact that more than voters enough to have elected S. L. Hoge, the republican candidate for representative in Congress for the 3d congressional district, were deterred from voting by this series of outrages, this constant intimidation and personal violence.

If, now, there be added to all this the facts, which are known to the board of State canvassers, that no election could be had in the county of Edgefield, which forms a part of the 3d congressional district, and that on the day of the election probably not less than 1,500 or 2,000 white men, democrats, crossed over into the adjoining counties in the 3d congressional district, and there, regardless of all law or order, deposited their votes for the democratic candidate, we have a case which, upon its real and substantial merits, warrants the board of State canvassers in saying deliberately and unhesitatingly that, in their judgment, J. P. Reed is not justly entitled to his seat in the Congress of the United States; but the returns of the election, when sifted and scrutinized by any body having jurisdiction of the whole matter, will lead to the conclusion that S. L. Hoge is the properly elected representative of the 3d congressional district, and ought to be so recognized.

Abundant and conclusive evidence of the facts and views above stated will be in due time presented to the Congress of the United States, but the board of State canvassers having felt compelled, for want of jurisdiction, to issue a certificate of election to J. P. Reed, desired that no undue force should be attached to that certificate, but that their views of the whole case should be fully stated and explained.

In their official capacity as canvassers, in their private capacities as citizens and voters, as friends of order, and public morality and decency, they solemnly avow their belief that the election of J. P. Reed was a monstrous outrage, a ghastly triumph, whose price was treachery, violence, assassination, and murder.

The board of State canvassers, in view of the present condition of the State, of the personal danger attendant upon any investigation, or the production of evidence in this case, respectfully urge and recommend that some special measures be adopted by the House of Representatives to conduct a thorough investigation of this case, and that the aid of the military forces of the United States be allowed to aid and assist in this investigation.

F. L. CARDOZO, *Secretary of State,*
NILES G. PARKER, *Treasurer,*
D. H. CHAMBERLAIN, *Attorney General,*
Board of State Canvassers of South Carolina.

I, J. L. Neagle, comptroller general of the State of South Carolina and *ex officio* member of the board of State canvassers, do fully endorse the facts set forth in the above statement; and desire to say further, that I did sign my name to the certificate of election in the case of J. P. Reed under protest, believing and knowing that every vote cast for the said J. P. Reed was illegal, and at the time being overruled by the counsel of others in my own conviction that the board of State canvassers were both judges of the legality of the votes cast, as well as the mere number thereof; that J. P. Reed was the candidate of a revolutionary party, who went into the canvass with rifle in hand to win his election by the murder and assassination of peaceable and unoffending citizens; that in Abbeville county, during said canvass, within said 3d congressional district, honorables J. M. Martin and B. F. Randolph, and many colored men of said county, were most foully and brutally murdered by those same rebel ruffians who were opposing the election of Hon. S. L. Hoge, and pressing with their bloody hands the claims of the said J. P. Reed.

I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force of a certificate of the election of Hon. S. L. Hoge, in full form and effect.

J. L. NEAGLE,
Comptroller General, South Carolina.

HOGE vs. REED.

April 3, 1869.—Ordered to be printed.

Mr. Burr, in behalf of himself and Mr. Randall, from the Committee of Elections, presented the following

VIEWS OF THE MINORITY.

The undersigned, constituting a minority of the Committee of Elections, being unable to agree with the majority in their conclusions concerning the right to a seat from the 3d district of South Carolina, ask leave to present the following reasons for their dissent:

The election was held on the 3d of November, 1868. The only candidates appearing to have been voted for were J. P. Reed and S. L. Hoge, each of whom claims the seat, and each presents record evidence in support of his claim.

Whilst the cases were so before the committee, but as yet not investigated, the House by resolution instructed the committee to institute an investigation in all such upon a preliminary question in cases where the question might be put in issue before the committee. That resolution is as follows:

House resolution adopted March 22, 1869.

Resolved, That in all contested election cases referred to the Committee of Elections, in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress.

Under that resolution the eligibility of one of the claimants, J. P. Reed, was put in issue, and the committee unanimously reported to the House that, by the statements of the party himself and his express admissions, he was, under the 3d section of article 14, ineligible to the seat. That report was accompanied by a joint resolution, sanctioned by a minority of the committee, proposing to remove the disabilities; and thus the claim of J. P. Reed to the seat is, for the time being, suspended by direction of the House. Yet, although we may not consider his papers in support of his own claim, until he shall have been relieved of disabilities, we may and must consider his papers, in order to determine whether the papers relied upon by his competitor show upon the face superior title to the seat in dispute. But, as a standard by which to judge the legal sufficiency of given papers, the following points are presented, as embodied in the general election laws of South Carolina, passed September 26, 1868.

After providing for certifying the returns from precincts to counties

and from counties to the governor, secretary of state, and comptroller general, the law provides as follows:

SEC. 35. The secretary of state, comptroller general, attorney general, and treasurer shall constitute the State canvassers, three of whom shall be a sufficient number to form a board.

The next section provides for filling any vacancy that may exist in the board where a majority may fail to appear; and the succeeding sections define the duties of the canvassers and of the secretary of state as follows:

XXXVII. The board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

XXXVIII. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them.

XXXIX. They shall make and subscribe, on the proper statement, a certificate of such determination, and shall deliver the same to the secretary of state.

XL. The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

XLI. The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of state canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

XLII. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

XLIII. He shall cause a copy of such certified statements and determinations to be printed in one or more of the public newspapers in each county if any shall be published therein.

XLIV. He shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

With these provisions of law before us, let us recur to the papers presented by the parties claiming the *prima facie* right. And first in order of execution, the "certificate" of the determination reached by the board as to "what persons have been, by the greatest number of votes, duly elected to such offices." That certificate as published by the secretary of state, in obedience to section 43—it being the only certificate published or even issued under the law—is as follows so far as relates to this particular district:

THE STATE OF SOUTH CAROLINA:

By the board of State canvassers:

Whereas (here follows a recitation of statutes aforesaid, as also of the holding of an election for various officers and the returns received,) and upon examination of the returns received it appears that (here follow names of parties elected to offices, including representatives from the first and second districts, and therein) Hon. J. P. Reed, representative of the 3d congressional district, (here follow names of parties elected in other districts,) have been duly elected, by a majority of votes, representatives to the 41st Congress of the United States.

* * * * * * *

The concluding portion of this certificate is as follows:

We do, therefore, by virtue of the powers in us vested, certify and declare that the above-named parties have been duly elected to fill the various offices referred to.

Given under our hands and the seal of the State, in the city of Columbia, this 1st day of December, in the year of our Lord 1868, and in the 93d year of the independence of the United States.

F. L. CARDOZO, *Secretary of State*,
NILES G. PARKER, *Treasurer South Carolina*,
J. L. NEAGLE, *Comptroller General*,
DAN'L H. CHAMBERLAIN, *Attorney General*,
Board of State Canvassers.

This certificate appears in the Daily Phenix, published at Columbia, South Carolina, Saturday morning, December 5, 1868; and in the same paper, now in the hands of the committee by reference from the House, is the statement from the board required by section 37:

A statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statement to be correct, and subscribe the same with their proper names.

That statement is as follows:

The following is the official vote by counties, with the exception of Edgefield, where there was no election:

Third congressional district.	J. P. Reed.	S. L. Hoge.
Orangeburgh	1,976	3,085
Lexington	1,568	830
Richland	1,384	2,452
Newberry	1,986	931
Abbeville	2,753	830
Anderson	2,107	638
Total	11,774	8,766

We certify the above statement to be correct.

F. L. CARDOZO, *Secretary of State*,
NILES G. PARKER, *Treasurer South Carolina*,
J. L. NEAGLE, *Comptroller General*,
DAN'L H. CHAMBERLAIN, *Attorney General*,
Board of State Canvassers.

This last statement was published also in the Phenix of December 5—of the same date as the preceding documents—indeed they were but separate parts of the same publication bearing date December 1, 1868. On December 2 the board of State canvassers executed their certificate as required by section 38, and the secretary of state on the same day executed to each of the parties named in the several districts the certified copy of such statement required by section 42, which certified copy for the third district is, in its commencement, as follows:

BY THE BOARD OF STATE CANVASSERS.

[SEAL.] TO J. P. REED.

After then reciting the laws and the election it declares, or certifies J. P. Reed to "have been duly elected by a majority of votes," which document is officially signed by all the board of State canvassers except the attorney general.

Based upon this declaration of the State canvassers is a commission in the following form:

THE STATE OF SOUTH CAROLINA.

[SEAL.]

By his excellency Robert K. Scott, governor and commander-in-chief in and over the State aforesaid:

To J. P. REED:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord 1868, an election has been held for representative in the 41st Congress of the United States for the third congressional district and upon the examination of the returns which have been received it appears that you, the said J. P. Reed, have been duly elected by a majority of votes; I do therefore, by virtue of the powers in me vested, commission you, the said J. P. Reed, to represent the people of this State as a member of the House of Repre-

sentatives of the 41st Congress of the United States. This commission to continue in force from the 4th of March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State in Columbia, this 2d day of December, in the year of our Lord 1868, and in the 93d year of the independence of the United States of America.

By the governor: ROBERT K. SCOTT.
F. L. CARDOZO,
Secretary of State.

These are the papers primarily relied on by Mr. Reed; now for the exhibits in favor of Mr. Hoge. The only papers in support of his *prima facie* claim are, first, a certificate by the board of State canvassers, purporting to have been executed on the same day as that held by Mr. Reed; and, second, a separate "statement of the board of State canvassers of South Carolina in the case of the election of J. P. Reed." Let us consider the certificate first. It differs from that held by Mr. Reed only in three particulars, and need not therefore be set out here, except so far as the difference is to be considered. Reed's certificate declares him to "have been duly elected by a majority of votes." Hoge's declares him to "have received a majority of legal votes." The next point of difference is that Hoge's paper bears the signature of Daniel H. Chamberlain, attorney general, in addition to the names of State canvassers signing Reed's; and last, the paper presented by Hoge bears to the left of the official signatures of the canvassers the words, "Robert K. Scott, governor of South Carolina."

Before considering the "statement," let us refer to each of these points of difference in the certificates. The requirement of the law of South Carolina (sec. 38) upon the canvassers is, "shall determine and declare what persons have been, by the greatest number of votes, duly elected." Reed's paper says, "have been duly elected by a majority of votes." Hoge's says, "have received a majority of legal votes." In view of the requirements of this section, Reed's paper is a strict compliance with the statute; Hoge's a departure from the text, and lack of compliance with its terms. As to the next point of difference in the fact that the attorney general signs Hoge's paper and not Reed's, either paper is in that regard a compliance with the law, (sec. 35,) for by it any three of the canvassers constitute a board. And last, as to the name of Governor Scott appearing on the left of Hoge's paper, as no section of the law requires him to execute or attest such a paper, it is of none effect on the one, nor is its lack in any degree significant in the other. These are all the differences on the faces of the papers so far. Hoge presents no commission by the governor, which Reed does. Hoge shows no published certificate of the result in his favor, as required by section 43, whilst Reed shows strict compliance with that section.

Let us now determine as to the priority of certificates and the reason prompting the canvassers to execute two: Each certificate is on its face dated December 2, 1868, but there is conclusive evidence on the face of the papers before us, showing that Hoge's certificate, purporting to have been executed December 2, was, in point of fact, executed at a period many days subsequent to that time. The newspaper before the committee, containing the publication made by the board, is dated December 5, and in it they state that Reed was elected, which, though the statement is itself dated December 1, they would hardly have permitted if they had, before the 5th, reviewed their first act, and determined a different result. But still stronger evidence to show the fact that Hoge's certificate was not made on the day it bears date, is the testimony of his notice of contest served upon Reed. It is dated December 28, in 1868,

and was served on Reed, January 2, 1869, just one month later than his certificate purports to have been executed. Does any one suppose he would have commenced a contest and served papers on January 2, if he held then a certificate of his election honestly made and delivered one month before that time? But still stranger evidence if possible, is found by a comparison of several papers together as they are furnished by Hoge himself. Great stress is laid on the statement of the board of State canvassers of South Carolina by the majority of the committee. What is the subject of that statement? In its caption they say it is made "in the case of the election of J. P. Reed." They say nothing of the assured election of Hoge in the caption. The first sentence in that statement is an admission that at the date of its execution Reed was considered as elected, and Hoge not in possession of any evidence of title to a seat, except such as every contestant may make for himself in a notice. That sentence is as follows:

To the House of Representatives of the Congress of the United States:

The board of State canvassers, in the discharge of the duties imposed on them by law, have felt compelled to declare, upon *prima facie* evidence, that J. P. Reed has been elected to the 41st Congress of the United States as the representative of the 3d congressional district of the State of South Carolina.

If that admission be not sufficient proof that they considered Reed as the only party entitled *prima facie* to the seat, what could be? They admit that they had accredited him as the party elected, and at the time of signing that "statement" had made no other certificate. Now, what is the date of that paper? No where on its face does a date appear! Strange omission! A document paraded as a state paper and relied upon to settle rights, both public and private, without any date, when the question of date is so material as in this case? By technical rules this defect would be regarded as an admission of the party producing the paper, and would authorize the conclusion that its date would, if given, damage the interest it was intended to subserve. But no such implied admission is needed to fix the date as being subsequent to December 2, for in this "statement" the parties signing it professedly as a "board" use this language:

The board of State canvassers call attention to the affidavit of James H. Henderson, a member of the present house of representatives from Newberry county.

Now, of course, this "statement" was executed at a period of time later than the affidavit to which it refers, and the jurat to that affidavit is "sworn to before me this 8th day of December, A. D. 1868."

So the published certificate in the paper, the notice of contest, the statement by the canvassers and the affidavit referred to by them, all unite in declaring that Hoge's certificate of election was made long subsequent to the day appearing on its face as its true date, and thus the "presumption of regularity" relied on by the majority is destroyed, and the only evidence of title shown by Hoge is impeached before the House.

But can a board of canvassers undo their official act, and perform another at a later date inconsistent with the first? Inasmuch as this same question is involved in modified forms in various other cases before the committee, it will only be considered here so far as is necessary to the correct decision of this case. Let it be remembered that by the law of South Carolina the canvassers are not only required to "make a statement of the whole number of votes given at such election for the various officers," and "certify such statements to be correct, and subscribe the same with their proper names," but shall, "*upon such statements*," proceed to "determine and declare what persons have been by the greatest number of votes duly elected," and

"shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state." Here are several successive official acts required, each in turn deriving its authenticity from the due performance of the act preceding in the series. First of all is the making of a "statement" of the number of votes, and parties receiving them for various officers, which must be certified and subscribed by their proper names. This foundation was laid in the paper dated December 1, 1868. All other later acts are based on that. Upon that is based the determination and declaration "what persons have been by the greatest number of votes duly elected." That was done in Reed's paper of December 2, corresponding with the preceding statement of December 1, while the paper of Hoge is a departure from the preceding official acts, and therefore could have no legal value, even if of honest date.

But, in addition, even if a public officer or a board of officers may annul an official act, and, by subsequent determination, move in a different direction, there must of course be a period of time, or a point in the series of acts dependent upon each other, beyond which no such discretionary power could be exercised. As to time, let it be remembered they commenced their work as a board as early as December 1, for that is the date of their first official paper. How long, then, may they continue to act, or, in other words, what is their official term? Section 40 says:

The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

Then, measured by time, all their official acts must be performed within the term of five days. But as to power, regardless of time, we deem the true rule to be that when an official act is in itself completed, and other subsequent official acts of the same or other officer has been based upon such completed act, it may not be retracted.

The majority are understood to hold that the statement, without date, by Cardoza, Parker, and Chamberlain amounts to an official recantation of their official act of December 1, upon which act have since been based—

First. A public statement.

Second. A certificate to the party.

Third. A commission by the governor.

We submit that, both by lapse of time and force of subsequent official action, these men were barred from recantation even if on any showing they might exercise it. This view, if correct, disposes of the argument that Nagle might retract, for if three together may not, of course one cannot.

But it is assumed that these "canvassers" were intimidated and under duress when they first acted. Where is the proof? The opening statement heretofore quoted, that they "have felt compelled to declare!" Compelled by what? Intimidation? Violence? Threats? This is mere pettifogging. Could not the same force that "compelled" the first act prevent the publication of this "statement?" That sentence merely says that a strict discharge of official duties under the law compels certain action on their parts, which is a declaration that Reed and not Hoge has *prima facie* right to the seat; and they then say why they think will be found to be the relative rights of the parties on final hearing of the case on its merits. So far as this paper is a "protest," or that of Nagle a "dissent," the law of South Carolina provides for its reception by the secretary of state, in whose office it shall be recorded in a book kept for the purpose, but in no section is found authority for an act of revocation, or a paper annulling a preceding official deed.

But this statement of the canvassers not only does not assert *prima facie* right in Hoge, but expressly states that he received a minority of votes, for in it they base Hoge's ultimate right on Reed's ineligibility. They do not reverse the final decision as to the *prima facie* case, but admit and affirm it, declaring, however, their view of final rights or merits as follows:

The board of State canvassers, while not deeming themselves competent to give final judgment upon the question herein involved, do submit that if such disqualification in fact exists, then the election of the said Reed is wholly illegal and void; and that in consequence thereof, S. L. Hoge, who received the next highest number of votes, is lawfully entitled to the seat as representative of the third congressional district aforesaid.

S. L. Hoge they say "received the next highest number of votes." Next to whom? J. P. Reed; and "if Reed is disqualified, then his election is illegal and void;" and, in their judgment, as a result "in consequence thereof, S. L. Hoge, who received the next highest number of votes," ought to be admitted. Suppose Reed were not disqualified? Then his election would not be illegal and void, and Hoge would have no claim, *prima facie* or otherwise, to a seat here. Now, if the House is ready to adopt this theory, that the disqualification of Reed elects Hoge by a majority vote, so let it be. In so doing it will reverse its own decision in the preceding Congresses, admit its error in the case of Brown and ———, from Kentucky, in the last Congress, place majorities in control of minorities, and in advance sanction party intrigue and official misconduct in suppressing the popular will.

For reasons imperfectly given above we dissent from the majority, and offer as a substitute for their resolution the following:

Resolved, That J. P. Reed is not entitled, under resolution of March, 1869, to a seat from the 3d district of South Carolina, by reason of ineligibility, and that S. P. Hoge is not entitled to such seat, because he was not "by the greatest number of votes duly elected" by the people of that district.

ALBERT G. BURR,
SAMUEL J. RANDALL.

HOUSE OF REPRESENTATIVES.

1st Session.

WALLACE vs. SIMPSON.

Mr. ..., from the Committee of Elections, made the following

REPORT.

[illegible]

41ST CONGRESS, 1st Session. | HOUSE OF REPRESENTATIVES. | REPORT No. 7.

WALLACE vs. SIMPSON.

APRIL 5, 1869.—Laid on the table and ordered to be printed.

Mr. BURDETT, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom were referred, by the resolution of the House of March 9, 1869, the case of the claimants to seats in the House of Representatives of the 41st Congress of the United States from the 3d and 4th congressional districts of the State of South Carolina, with the papers relating to the same, and with instructions to report as soon as practicable which of the claimants, if either, are entitled to seats, submit the following report:

The claimants to a seat in the 41st Congress from the 4th congressional district of South Carolina were, at the date of the said House resolution of the 9th of March, A. S. Wallace and William D. Simpson. By the operation of House resolution adopted March 22, 1869, the committee are relieved from any affirmative consideration of the claims of said Simpson, since it is ascertained that said Simpson is unable to take the oath prescribed in the act approved July 2, 1862 entitled "An act to prescribe an oath of office and for other purposes;" but whilst a majority of the committee are of opinion that in such cases votes cast for candidates so ineligible ought not to be counted or regarded as votes, and that sound policy and especially the interests of loyalty, law, and order would be subserved by adopting a rule that votes cast for an opposing candidate or candidates who were qualified in the sense of eligibility, should be counted as the only votes legally polled, yet understanding that an opposite theory has been actually adopted and acted upon by the House in cases heretofore acted upon, involving this identical question, they feel bound to consider the question now in hearing under that rule, and try the claims of Mr. Wallace in exactly the same manner as though there stood in the place of William D. Simpson a claimant of unquestioned eligibility.

By the laws of the State of South Carolina it is provided that, (Statutes at Large, page 140, sec. 34,)

The secretary of state shall appoint a meeting of the State canvassers to be held at his office, or some convenient place, on or before the 15th day of December next after such (each) general election, for the purpose of canvassing the votes of all officers voted for at such election. * * * * * * *

SEC. 35. The secretary of state, comptroller general, attorney general and treasurer, shall constitute the State canvassers, three of whom shall be a sufficient number to form a board.

* * * * * *

SEC. 37. The board, when thus formed, shall, upon the certified copies of the statements made by the board of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the various counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

SEC. 38. Upon such statements, they shall then proceed to determine and declare what persons have been by the greatest number of votes duly elected to such offices or either of them.

SEC. 39. They shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state.

SEC. 42. He shall, without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

And by section 44 of the same act it is required of the secretary that—

He shall prepare a general certificate under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

From the official papers and evidence referred by the House, it sufficiently appears that the said board of State canvassers, provided for in section No. 35, above quoted, met at the time and place prescribed by law and performed the duties devolved on them by sections 37, 38, and 39 of said act; and that the secretary of state thereupon performed the duties prescribed for him by section 42 of the said act, viz, that he transmitted a copy, under the seal of his office, of the certified determination of the board of canvassers to each person thereby declared to have been elected, and a like copy to the governor; but it does not appear that he ever prepared or forwarded to the House of Representatives the general certificate provided for by section 44 of that act. This *general certificate* so provided for was evidently intended by the law-making power of that State to be the primal evidence of right to a seat in this House, furnished by the authorities of that State to her elected citizens; and in the settlement of *prima facie* rights would (if unimpeached) be the highest evidence.

Why this certificate, so clearly provided for, has been withheld does not appear. Its presence might, and probably would, have saved any question or cavil on the question of the *prima facie* right to the seat now under discussion as well as in another case of a similar character arising in that State; but since that general certificate is, in fact, but a transcript of the "*certified determination*" of the board of canvassers, provided for in section 42, and since that paper, duly executed and authenticated, is produced, the committee are of opinion that the absence of the general certificate should not prejudice the claims of the district to representation, since a contrary view might result in blotting out a whole constituency for a congressional term for the mere neglect of a State official.

Having thus sketched the general situation of the question, the committee are brought to a particular statement and decision of the facts and questions devolved upon them by the resolution of the House.

As before recited, the board of State canvassers did make and certify a "determination" as to the result of the election in the 4th congressional district of South Carolina, and a copy duly certified was transmitted, not, however, to a single person, but such certified determination was transmitted and actually delivered, and is held both by A. S. Wallace and by William D. Simpson, each dated on the same day, (December 2, 1869,) each signed in due form by a quorum of the board, substantially, and even technically, conforming to the requirements of the law in their recitals, and only differing from each other in important verbal modifications, so that each standing alone would be amply sufficient for the purposes of its issue. There is no claim or pretense of want of genuineness in either; there is neither forgery nor mistake alleged or supposable. The reasons for this unusual state of facts are to be found in the explanations of the officers so doubly certifying, and are found among the papers referred to the committee, and are thus stated:

Statement of the board of State canvassers of South Carolina, in the case of the election of William D. Simpson.

To the House of Representatives of the United States:

The board of State canvassers, in the discharge of the duties imposed upon them by law, have felt compelled to declare, upon the return of the commissioners of election, that William D. Simpson has been *prima facie* elected to the 41st Congress of the United States as the representative of the 4th congressional district of the State of South Carolina. They do not, however, feel that their whole duty will be discharged without a full statement of the views which they entertain of the actual and substantial merits of the claims of the said Simpson to his seat. They therefore, in the discharge of what they deem their imperative duty, make the following statement of facts connected with the case, with a view of conducing to a proper decision of the case when submitted to your honorable body, which is to render final judgment in the case.

This board do find, upon the evidence before them, that the said William D. Simpson was, in the year 1858, duly elected to the legislature of the State of South Carolina for the term of two years, and did take his seat and serve as a member of the said legislature, taking an oath, as such member, to support the Constitution of the United States, as appears from the legislative journals. That subsequently, in the year 1860, the said William D. Simpson was duly elected and served as a member of the legislature that called the convention to frame the ordinance of secession for the said State of South Carolina, and did vote for the calling of such convention. That subsequently, in the year 1861, the said Simpson voluntarily entered the army of the so-called Confederate States of America as a commissioned officer in the same, and that subsequently, in the year 1863, he was duly elected and qualified as a member of the congress of the so-called Confederate States of America. These facts, the board of State canvassers cannot doubt, disqualify the said Simpson from holding the office of a representative in the House of Representatives of the Congress of the United States, under the Constitution of the United States.

The board of State canvassers, while not deeming themselves legally competent to give final judgment upon the question therein involved, do submit that if such disqualification in fact exists, then the election of the said Simpson is wholly illegal and void, and that in consequence thereof A. S. Wallace, who received the next highest number of votes, is lawfully entitled to the seat as representative in the 4th congressional district aforesaid. The board of State canvassers further find, upon the evidence presented to them, that the election at which the said Simpson appears to have been elected was accompanied by such grave and widespread disorder and outrages on the part of the political friends of the said Simpson as in their judgment to make the apparent result different from the result which a free and orderly election would have secured.

In support of this opinion the board of State canvassers call attention to the following facts, as gathered from evidence submitted to them in behalf of those who dispute the legality of the election of the said Simpson: It is known to the board of State canvassers that the party to whom the said Simpson belongs, by the newspapers in their interest, and by the voice of their public speakers, did inaugurate and deliberately keep up a wholesale system of proscription, terrorism, and assassination prior to the election on the 3d day of November last, which prevented any considerable canvass of the 4th congressional district, which overawed vast numbers of republican voters and prevented anything like a free expression of political opinion throughout the said district.

Abundant and conclusive evidence of the facts and views above stated will be, in due time, presented to the Congress of the United States; but the board of State canvassers having felt compelled to issue a certificate of election to William D. Simpson, they desire that no undue force shall be attached to that certificate, but their views of the whole case shall be fully stated and explained. In their official capacity as canvassers, in their private capacities as citizens and voters, as friends of order and public morality and decency, they solemnly avow their belief that the election of William D. Simpson was a monstrous outrage, a ghastly triumph, whose price was treachery, violence, assassination, and murder.

The board of State canvassers, in view of the present condition of the State, of the personal danger attendant upon any investigation or the production of evidence in this case, respectfully urge and recommend that some special measure be adopted by the House of Representatives to conduct a thorough investigation of this case, and that the aid of the military forces of the United States be allowed to assist in this investigation.

F. L CARDOZO,
Secretary of State, Chairman Board of State Canvassers.
NILES G. PARKER,
Member Board of State Canvassers.
D. H. CHAMBERLAIN,
Attorney General S. C., Member Board of State Canvassers.

I, J. L Neagle, comptroller general of the State of South Carolina and ex officio member of the board of State canvassers, do fully endorse the facts set forth in the above statements, and desire to say further that I did sign my name to the certificate of election in the case of

William D. Simpson under protest, believing and knowing that every vote cast for the said William D. Simpson was illegal; that I was induced to sign the said certificate by counsel of others, although fully convinced that the board of State canvassers were both judges of the legality of the votes cast as well as the mere number thereof, and that the said certificate was based on the fact that the said Simpson received the highest number of votes cast, without referring to the question of legality.

That W. D. Simpson was the candidate of a revolutionary party, who went into the canvass with rifle in hand, to win the election by the murder and assassination of peaceable and unoffending citizens; that in the 4th congressional district many republican voters were brutally assaulted, and some were actually murdered, by those same rebel ruffians who were opposing the election of Hon. A. S. Wallace, and pressing with their bloody hands the election of the said William D. Simpson.

I therefore desire that the aforesaid certificate be considered as though my name was not attached, and this same certificate to have all the force and effect of a certificate of the election of the Hon. Alex. S. Wallace in full form and effect.

J. L. NEAGLE,
Comptroller General of South Carolina.

This statement, it will be observed, is joined in by every member of the board, and is not a mere unauthorized statement claiming attention and respect simply because made by persons holding high official station, but is itself in fact an official declaration and protest, authorized and provided for by the same law which constitutes the persons signing it a board of canvassers, and is of equal official character with their action in executing and delivering the official certificate in the case. (See section 41, page 141, Statutes at Large, S. C.)

The resulting conclusions from this state of facts are that whilst it is true that William D. Simpson is the holder of a certificate of election executed in due form by three of the board, that being the number necessary to give it formal as well as actual validity, it is accompanied and supplemented by the solemn declaration of all whose names are appended to it that it is but the shadow of legal form, wrung from them by a seeming necessity of legal routine, hateful to them as an act, false in so far as by its recitals it might seem to represent any right deserved to be enjoyed under it or vested by it; a shadow whose real substance was a "ghastly triumph, whose price was treachery, violence, assassination, and murder," and thus, whilst all join in repudiating the natural result of the act done, one of the three expressly declares that, as to him, his name, his act, is wholly withdrawn from the Simpson certificate. If such a withdrawal is lawful, was done; was by the act of protest accomplished, it is submitted that Simpson's certificate is wholly void, is as though it had never been, (the concurrence of three of the board being requisite to give validity,) and leaves the certificate of Wallace, which stands unquestioned, as alone outstanding, and entitles him *prima facie* to a seat. Was that withdrawal accomplished? So far as any intended intelligent volition or assent on the part of Comptroller General Neagle (of which the mere writing of his name was but a witness) is concerned, it unquestionably was, he so declares and puts himself on record.

What valid reason can be adduced against his right or power so to do? It is surely competent, either in the discharge of public or private duties, to correct mistakes, to reverse a decision when found to be erroneous. The only contrary view that can be urged is in a case where vested rights of innocent persons may in the mean time have intervened, but this is in no sense such a case.

The possession of a certificate of election does not give, create, or add to the right of representing a constituency. It is merely *evidence* of a fact, it does not make the fact. If, in fact, false in its recitals, as one and all of its signers declare the Simpson certificate to be, it cannot create by such a false recital a state of case which exists only in recitals.

The anticipated objections, that the board of canvassers, exercising ministerial functions only, could have no right to do any act save to count the returns laid before them and certify that count without question, is sufficiently answered by the case of Butler *vs.* Lehman, (Contested Cases in Congress, p. 353,) and in the case of Morton *vs.* Daily, p. 403, in both of which cases the certifying officer did go behind the returns furnished him and declared a different result from that appearing on the face of the returns, and in both cases the House sustained the action of the officer. The last-cited case is also clearly decisive of the question of the right of certifying officers to reverse their action even after the fact accomplished. In that case the governor of Nebraska had issued his certificate to Morton, and, after the lapse of considerable time, on the discovery of apparent fraud, revoked it and gave a second to Daily, and the House sustained his action by seating Daily.

Nor is such action to be looked on as exceptional, or dependent on the particular circumstances of cited cases. On the contrary, the principle on which this action is based is in itself most wise, necessary, and salutary, and the reason is well expressed in the views of the committee in the case of Vallandigham *vs.* Campbell, (Contested Election Cases, page 230,) in the following language:

> Neither the committee nor the House is bound by these rules (the usual rules and principles of evidence) in their letter and strictness, but should proceed upon more liberal principles in the investigation of truth.—*Et seq., and cases cited to page* 231.

The objection that justice, clearly demanded by every possible consideration of fair dealing, shall not be done, or shall be delayed, because of the omission, or technical error, or hasty and mistaken action of some intermediate official personage, or because the just end to be reached leads across the line of "*nisi prius*" practice, or precedent, cannot stand. That equity might be done, and done in spite of the strict rules of law, courts of chancery were established, that through them righteous conclusions might be reached for the conclusions' sake. By the Constitution, in all matters pertaining to the election, returns, and qualifications of its members, the House is made "a law unto itself," and has no other rule forced upon it for the determination of these questions than the sanction of the oath of its members, and that due regard for the rights of constituencies which the representatives of constituencies, from the very nature of their own duties and relations, must have and feel. Not that the technical rules of the law applicable to evidence and weight of evidence, the duties of officers, &c., may not be called in to aid in the proper investigation of a case, but that when called in they shall not be regarded as greater than the rights to be affected by their application.

It is not deemed requisite, in determining the question of *prima facie* right, that the reasons given and testimony relied on by the board of canvassers, in defence of their action, be weighed or largely considered, since, by the resolution which the committee offer, a full and complete investigation may be had of the whole case; nor does the position of contestant and contestee assumed by the parties in any manner alter or change the status of either claimant in such an investigation. With or without such attempted contest, they stand for every purpose of *prima facie* right just where the official action of the legally appointed canvassing board places them. The constituency are the real parties in interest the claimants can neither add to nor impair the rights of the people; by any admissions or omissions of their own.

As this case is but one of a large number of such cases already before the committee, arising out of a state of facts and society new and unusual, but which there is every reason to fear will continue to arise and

confront the House and the country with their most fearful and unparalleled accompaniments of oppressions of the poor and butchery of the unoffending, unless decisive action be at once taken, and such action, too, as shall testify for this House that its floor shall not be *conquered* by such means, but that excesses of such a character, wherever found to have existed, shall be held by this House, for the purposes of its action, to be, as beyond question they are, the confession that, by means of the duress, the slaughter of a majority, have a minority, gained the form of success—the committee are constrained to so embrace in their report this distinct element of the case, that the House may, by its action, thus remove the premium on crime, which any seeming acceptance of the results of such a contest, or even its silence, would seem to offer, and thus directly make the self-interest of the vicious as largely as possible neutralize their predisposition to violence, and thus incidentally, and, as the committee conceive, in the only manner within reach of the House, give its protection to that class of voters who, by the exercise of a political privilege intrusted to them by the action of Congress itself, are the objects and victims of the most brutal malevolence. From the protest hereinbefore quoted, it appears that such an existing state of facts was one of the main considerations which led the board to revoke its first action in favor of Simpson; and the evidence submitted to the committee clearly justifies the conclusion of fact on which their action is based.

From these views the committee conclude that the only evidence of *prima facie* right is held by A. S. Wallace, and that he is entitled to take his seat in the 41st Congress as the representative for the 4th congressional district of South Carolina. They, therefore, recommend the adoption of the following:

Resolved, That upon the papers referred to the Committee of Elections in the contested case of A. S. Wallace *vs.* W. D. Simpson, from the 4th congressional district of South Carolina, A. S. Wallace is *prima facie* entitled to a seat in the House as their representative of said district, subject to the future action of the House or to the merits of the case.

WALLACE vs. SIMPSON.

APRIL 7, 1869.—Ordered to be printed.

Mr. RANDALL, in behalf of himself and Mr. BURR, from the Committee of Elections, presented the following

VIEWS OF THE MINORITY.

The undersigned, constituting a minority of the Committee of Elections, being unable to agree with the majority in their conclusions concerning the right to a seat from the 4th district of South Carolina, ask leave to present the following reasons for their dissent:

The election was held on the 3d of November, 1868. The only candidates appearing to have been voted for were A. S. Wallace and W. D. Simpson, each of whom claims the seat, and each presents record evidence in support of his claim.

Whilst the cases were so before the committee, but as yet not investigated, the House by resolution instructed the committee to institute an investigation in all such upon a preliminary question in cases where the question might be put in issue before the committee. That resolution is as follows:

House resolution adopted March 22, 1869.

Resolved, That in all contested election cases referred to the Committee of Elections in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress.

Under that resolution the eligibility of one of the claimants, W. D. Simpson, was put in issue, and the committee unanimously reported to the House that, by the statements of the party himself and his express admissions, he was, under the 3d section of article 14, ineligible to the seat. That report was accompanied by a joint resolution, sanctioned by a minority of the committee, proposing to remove the disabilities; and thus the claim of W. D. Simpson to the seat is, for the time being, suspended by direction of the House. Yet, although we may not consider his papers in support of his own claim, until he shall have been relieved of disabilities, we may and must consider his papers, in order to determine whether the papers relied upon by his competitor show upon the face superior title to the seat in dispute. But, as a standard by which to judge the legal sufficiency of given papers, the following points are presented, as embodied in the general election laws of South Carolina, passed September 26, 1868.

After providing for certifying the returns from precincts to counties and from counties to the governor, secretary of state, and comptroller general, the law provides as follows:

SEC. 35. The secretary of state, comptroller general, attorney general, and treasurer shall constitute the State canvassers, three of whom shall be a sufficient number to form a board.

The next section provides for filling any vacancy that may exist in the board where a majority may fail to appear; and the succeeding sections define the duties of the canvassers and of the secretary of state as follows:

XXXVII. The board when thus formed shall, upon the certified copies of the statements made by the boards of county canvassers, proceed to make a statement of the whole number of votes given at such election for the various offices, and each of them voted for, distinguishing the several counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names.

XXXVIII. Upon such statements they shall then proceed to determine and declare what persons have been, by the greatest number of votes, duly elected to such offices, or either of them.

XXXIX. They shall make and subscribe, on the proper statement, a certificate of such determination, and shall deliver the same to the secretary of state.

XL. The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

XLI. The secretary of state shall record in his office in a book to be kept by him for that purpose, each certified statement and determination which shall be delivered to him by the board of State canvassers, and every dissent or protest that shall have been delivered to him by a canvasser.

XLII. He shall without delay, transmit a copy, under the seal of his office, of such certified determination to each person thereby declared to be elected, and a like copy to the governor.

XLIII. He shall cause a copy of such certified statements and determinations to be printed in one or more of the public newspapers in each county if any shall be published therein.

XLIV. He shall prepare a general certificate, under the seal of the State, and attested by him as secretary thereof, addressed to the House of Representatives of the United States in that Congress for which any person shall have been chosen, of the due election of the persons so chosen at such election as representatives of this State in Congress, and shall transmit the same to the said House of Representatives at their first meeting.

With these provisions of law before us, let us recur to the papers presented by the parties claiming the *prima facie* right. And first in order of execution, the "certificate" of the determination reached by the board as to "what persons have been, by the greatest number of votes, duly elected to such offices." That certificate, as published by the secretary of state, in obedience to section 43—it being the only certificate published or even issued under the law—is as follows so far as relates to this particular district:

THE STATE OF SOUTH CAROLINA:

By the board of State canvassers:

Whereas (here follows a recitation of statutes aforesaid, as also of the holding of an election for various officers and the returns received,) and upon examination of the returns received it appears that (here follow names of parties elected to offices, including representatives from the first and second districts,) Hon. W. D. Simpson, representative of the 4th congressional district, (here follow names of parties elected in other districts,) have been duly elected, by a majority of votes, representatives to the 41st Congress of the United States.

* * * * * * *

The concluding portion of this certificate is as follows:

We do, therefore, by virtue of the powers in us vested, certify and declare that the above-named parties have been duly elected to fill the various offices referred to.

Given under our hands and the seal of the State, in the city of Columbia, this 1st day of December, in the year of our Lord 1868, and in the 93d year of the independence of the United States.

F. L. CARDOZO, *Secretary of State*,
NILES G. PARKER, *Treasurer South Carolina*,
J. L. NEAGLE, *Comptroller General*,
DAN'L H. CHAMBERLAIN, *Attorney General*,
Board of State Canvassers.

Next is the following:

Votes of the State of South Carolina for representatives to the 41st Congress.

Fourth congressional district.	W. D. Simpson.	A. S. Wallace.	James H. Goss.
Oconee	1,064	291	
Pickens	1,105	369	
Greenville	1,578	1,531	
Laurens	1,895	1,181	
Spartanburg	2,074	376	
Union	1,756	866	89
York	2,039	1,537	
Chester	1,405	1,662	
Fairfield	1,182	1,994	
Total	14,098	9,807	89

We certify the above statement to be correct.

F. L. CARDOZO, *Secretary of State,*
N. G. PARKER, *Treasurer of South Carolina,*
J. L. NEAGLE, *Comptroller General,*
Board of State Canvassers.

This last statement was published also in the Phenix of December 5—of the same date as the preceding documents—indeed they were but separate parts of the same publication bearing date December 1, 1868. On December 2 the board of State canvassers executed their certificate as required by section 38, and the secretary of state on the same day executed to each of the parties named in the several districts the certified copy of such statement required by section 42, which certified copy for the third district is, in its commencement, as follows: "By the board of State canvassers. [Seal.] To W. D. Simpson."

After then reciting the laws and the election it declares, or certifies W. D. Simpson to "have been duly elected by a majority of votes," which document is officially signed by all the board of State canvassers except the attorney general.

Based upon this declaration of the State canvassers is a commission in the following form:

THE STATE OF SOUTH CAROLINA.

[SEAL.]

By his excellency Robert K. Scott, governor and commander-in-chief in and over the State aforesaid:

To W. D. SIMPSON:

Whereas, in pursuance of an act entitled "An act providing for the next general election, and the manner of conducting the same," passed on the 26th day of September, in the year of our Lord 1868, an election has been held for representative in the 41st Congress of the United States for the third congressional district, and upon the examination of the returns which have been received it appears that you, the said W. D. Simpson, have been duly elected by a majority of votes; I do therefore, by virtue of the powers in me vested, commission you, the said W. D. Simpson, to represent the people of this State as a member of the House of Representatives of the 41st Congress of the United States. This commission to continue in force from the 4th of March, 1869, to 4th March, 1871.

Given under my hand and the seal of the State in Columbia, this 2d day of December, in the year of our Lord 1868, and in the 93d year of the independence of the United States of America.

ROBERT K. SCOTT.

By the governor:
F. L. CARDOZO, *Secretary of State.*

These are the papers primarily relied on by Mr. Simpson. Now for the exhibits in favor of Mr. Wallace: The only papers in support of his *prima facie* claim are, first, a certificate by the board of State canvassers, purporting to have been executed on the same day as that held by Mr. Simpson; and, second, a separate "statement of the board of State canvassers of South Carolina in the case of the election of William D. Simpson." Let us consider the certificate first. It differs from that held by Mr. Simpson only in three particulars, and need not therefore be set out here, except so far as the difference is to be considered. Simpson's certificate declares him to "have been duly elected by a majority of votes." Wallace declares him to "have received a majority of legal votes." The next point of difference is that Wallace's paper bears the signature of Daniel H. Chamberlain, attorney general, in addition to the names of State canvassers signing Simpson's; and last, the paper presented by Wallace bears to the left of the official signature of the canvassers the words, "Robert K. Scott, governor of South Carolina."

Before considering the "statement," let us refer to each of these points of difference in the certificates. The requirement of the law of South Carolina (sec. 38) upon the canvassers is, "shall determine and declare what persons have been, by the greatest number of votes, duly elected." Simpson's paper says, "have been duly elected by a majority of votes." Wallace's says, "have received a majority of legal votes." In view of the requirements of this section, Simpson's paper is a strict compliance with the statute; Wallace's a departure from the text, and lack of compliance with its terms. As to the next point of difference in the fact that the attorney general signs Wallace's paper and not Simpson's, either paper is in that regard a compliance with the law, (sec. 35,) for by it any three of the canvassers constitute a board. And last, as to the name of Governor Scott appearing on the left of Wallace's paper, as no section of the law requires him to execute or attest such a paper, it is of none effect on the one, nor is its lack in any degree significant in the other. These are all the differences on the faces of the papers so far. Wallace's presents no commission by the governor, which Simpson does. Wallace shows no published certificate of the result in his favor, as required by section 43, whilst Simpson shows strict compliance with that section.

Let us now determine as to the priority of certificates and the reason prompting the canvassers to execute two: Each certificate is on its face dated December 2, 1868, but there is conclusive evidence on the face of the papers before us, showing that Wallace's certificate, purporting to have been executed December 2, was, in point of fact, executed at a period many days subsequent to that time. The newspaper before the committee, containing the publication made by the board, is dated December 5, and in it they state that Simpson was elected, which, though the statement is itself dated December 1, they would hardly have permitted if they had, before the 5th, reviewed their first act and determined a different result. But still stronger evidence to show the fact that Wallace's certificate was not made on the day it bears date, is the testimony of his notice of contest served upon Simpson. It is dated December 30, in 1868, and was served on Simpson, January 2, 1869, just one month later than his certificate purports to have been executed. Does any one suppose he would have commenced a contest and served papers on January 2, if he held then a certificate of his election honestly made and delivered one month before that time? But still stronger evidence if possible, is found by a comparison of several papers together as they are furnished by Wallace himself. Great stress is laid on the statement of the board of State canvassers of South Carolina by the majority of the committee.

What is the subject of that statement? In its caption they say it is made "in the case of the election of W. D. Simpson." They say nothing of the assumed election of Wallace in the caption. The first sentence in that statement is an admission that at the date of its execution Simpson was considered as elected, and Wallace not in possession of any evidence of title to a seat, except such as every contestant may make for himself in a notice. That sentence is as follows:

To the House of Representatives of the United States:

The board of State canvassers, in the discharge of the duties imposed upon them by law, have felt compelled to declare upon the return of the commissioners of election that William D. Simpson has been *prima facie* elected to the 41st Congress of the United States as the representative of the 4th congressional district of the State of South Carolina.

If that admission be not sufficient proof that they considered Simpson as the only party entitled *prima facie* to the seat, what could be? They admit that they had accredited him as the party elected, and at the time of signing that "statement" had made no other certificate. Now, what is the date of that paper? No where on its face does a date appear! Strange omission! A document paraded as a state paper and relied upon to settle rights, both public and private, without any date, when the question of date is so material as in this case? By technical rules this defect would be regarded as an admission of the party producing the paper, and would authorize the conclusion that its date would, if given, damage the interest it was intended to subserve. But no such implied admission is needed to fix the date as being subsequent to December 2, for in this "statement" the parties signing it professedly as a "board" admit the election of Simpson, and say nothing about certifying in favor of Wallace.

So the published certificate in the paper, the notice of contest, and the statement by the canvassers all unite in declaring that Wallace's certificate of election was made long subsequent to the day appearing on its face as its true date, and thus the "presumption of regularity" relied on by the majority is destroyed, and the only evidence of title shown by Wallace is impeached before the House.

But can a board of canvassers undo their official act, and perform another at a later date inconsistent with the first? Inasmuch as this same question is involved in modified forms in various other cases before the committee, it will only be considered here so far as is necessary to the correct decision of this case. Let it be remembered that by the law of South Carolina the canvassers are not only required to "make a statement of the whole number of votes given at such election for the various officers," and "certify such statements to be correct, and subscribe the same with their proper names," but shall, "*upon such statements*," proceed to "determine and declare what persons have been by the greatest number of votes duly elected," and 'shall make and subscribe on the proper statement a certificate of such determination, and shall deliver the same to the secretary of state." Here are several successive official acts required, each in turn deriving its authenticity from the due performance of the act preceding in the series. First of all is the making of a "statement" of the number of votes, and parties receiving them for various officers, which must be certified and subscribed by their proper names. This foundation was laid in the paper dated December 1, 1868. All other later acts are based on that. Upon that is based the determination and declaration "what persons have been by the greatest number of votes duly elected. That was done in Simpson's paper of December 2, corresponding with the preceding statement of December 1, while the paper of Wallace is a

departure from the preceding official acts, and therefore could have no legal value, even if of honest date.

But, in addition, even if a public officer or a board of officers may annul an official act, and, by subsequent determination, move in a different direction, there must of course be a period of time, or a point in the series of acts dependent upon each other, beyond which no such discretionary power could be exercised. As to time, let it be remembered they commenced their work as a board as early as December 1, for that is the date of their first official paper. How long, then, may they continue to act, or, in other words, what is their official term? Section 40 says:

The board shall have the power to adjourn, from day to day, for a term not exceeding five days.

Then, measured by time, all their official acts must be performed within the term of five days. But as to power, regardless of time, we deem the true rule to be that when an official act is in itself completed, and other subsequent official acts of the same or other officer has been based upon such completed act, it may not be retracted.

The majority are understood to hold that the statement, without date, by Cardozo, Parker, and Chamberlain, amounts to an official recantation of their official act of December 1, upon which act have since been based—

First. A public statement.

Second. A certificate to the party.

Third. A commission by the governor.

We submit that, both by lapse of time and force of subsequent official action, these men were barred from recantation even if on any showing they might exercise it. This view, if correct, disposes of the argument that Neagle might retract, for if three together may not, of course one cannot.

But it is assumed that these "canvassers" were intimidated and under duress when they first acted. Where is the proof? The opening statement heretofore quoted, that they "have felt compelled to declare!" Compelled by what? Intimidation? Violence? Threats? This is mere pettifogging. Could not the same force that "compelled" the first act prevent the publication of this "statement?" That sentence merely says that a strict discharge of official duties under the law compels certain action on their parts, which is a declaration that Simpson and not Wallace has *prima facie* right to the seat; and they then say why they think will be found to be the relative rights of the parties on final hearing of the case on its merits. So far as this paper is a "protest," or that of Neagle "dissent," the law of South Carolina provides for its reception by the secretary of state, in whose office it shall be recorded in a book kept for the purpose, but in no section is found authority for an act of revocation, or a paper annulling a preceding official deed.

But this statement of the canvassers not only does not assert *prima facie* right in Wallace, but expressly states that he received a minority of votes, for in it they base Wallace's ultimate right on Simpson's ineligibility. They do not reverse the final decision as to the *prima facie* case, but admit and affirm it, declaring, however, their view of final rights or merits as follows:

The board of State canvassers, while not deeming themselves competent to give final judgment upon the question herein involved, do submit that if such disqualification in fact exists, then the election of the said Simpson is wholly illegal and void; and that in consequence thereof A. S. Wallace, who received the next highest number of votes, is lawfully entitled to the seat as representative of the 3d congressional district aforesaid.

A. S. Wallace, they say, "received the next highest number of votes." Next to whom? W. D. Simpson? and "if Simpson is disqualified, then

his election is illegal and void;" and, in their judgment, as a result "in consequence thereof, A. S. Wallace, who received the next highest number of votes," ought to be admitted. Suppose Simpson were not disqualified? Then his election would not be illegal and void, and Wallace would have no claim, *prima facie* or otherwise, to a seat here. Now, if the House is ready to adopt this theory, that the disqualification of Simpson elects Wallace by a majority vote, so let it be. In so doing it will reverse its own decision in the preceding congresses, admit its error in the case of Brown and ———, from Kentucky, in the last Congress, place majorities in control of minorities, and in advance sanction party intrigue and official misconduct in suppressing the popular will.

For reasons imperfectly given above we dissent from the majority, and offer as a substitute for their resolution the following:

Resolved, That W. D. Simpson is not entitled, under resolution of March, 1869, to a seat from the 3d district of South Carolina, by reason of ineligibility; and that A. S. Wallace is not entitled to such seat, because he was not "by the greatest number of votes duly elected" by the people of that district.

SAMUEL J. RANDALL.
ALBERT G. BURR.

41ST CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 8.

APPROPRIATIONS.

APRIL 5, 1869.—Referred to the Committee of the Whole House on the state of the Union, made the special order for to-morrow (April 6) after the reading of the journal, and ordered to be printed.

Mr. DAWES from the Committee on Appropriations made the following

REPORT.

The Committee on Appropriations, to whom the bill (H. R. No. 123) "making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes for the year ending June 30, 1870," together with the Senate amendments thereto, was referred, having considered the same, beg leave to report as follows:

They recommend concurrence in the amendments of the Senate numbered 1, 3, 5, 7, 10, 15, 17, 29, 30, 32, 33, 42, 56, 58, 126, 129, 133, 134, 149, 150, and 151.

They recommend concurrence in the amendment numbered 57, with an amendment as follows:

Strike out all after the word "*Provided*" in line 20 of said amendment down to and including the word "Kansas," and insert in lieu thereof as follows:

That no part of said money due or belonging to minor children shall be paid to them, or to any person for them, until such children shall have attained the age of 21 years.

They recommend concurrence in the amendment numbered 152, with an amendment striking out all after the enacting clause, and inserting in lieu thereof as follows:

That there be appropriated the further sum of two millions of dollars, or so much thereof as may be necessary, to enable the President to maintain the peace among and with the various tribes, bands, and parties of Indians not otherwise provided for in this act, and to promote civilization among said Indians; bring them, where practicable, upon reservations, relieve their necessities, and encourage their efforts at self support; a report of all expenditures under this appropriation to be made in detail to Congress in December next.

They recommend non-concurrence in all the remaining amendments.

MYERS VS. MOFFET.

APRIL 6, 1869.—Laid on the table and ordered to be printed.

Mr. STEVENSON, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to which the petition of Leonard Myers, who contests the right of John Moffet to the seat now held by him as a representative in the 41st Congress from the 3d district of Pennsylvania, was referred with the accompanying proofs, respectfully report:

That after due notice to the sitting member and an answer from him in accordance with law, each party took testimony in support of his claim, which, with the printed statement or brief of each, has been submitted to the committee without further argument.

The proofs, including a number of exhibits, cover 450 pages. The briefs of the parties, however, stating distinctly their several conclusions of law and fact, and referring particularly to the pages on which they rely, have saved the committee much trouble. In several important instances the parties agree in their statement of the facts, as will hereafter appear. In others of equal importance, where they arrive at different conclusions, the law, as quoted, is not controverted. Again, although evidence is presented by the contestant under several specifications, the committee are not urged to render a decision upon them, he claiming that his case does not require such decision.

The points at issue are thus very much narrowed down, and your committee will consider them in order.

The sitting member, by his counsel, in his brief suggests "that further time should be afforded him to produce his witnesses, if, indeed, his case needs any further testimony." One hundred and sixty-nine witnesses were examined for the contestant, and sixty-nine for the sitting member, but as many as ninety-one of contestant's witnesses were called for the purpose of proving their votes for him. In reality, he only examined nine more witnesses on the general merits than his opponent.

There is no ground on which to base an application for extension of time; nor if allowed, does it appear in what respect it could avail against that which is admittedly proved.

While contestant does not urge the rejection of any of the votes cast upon what are called the supreme court naturalization papers, of which incumbent admits at least 159 were proved, he does ask that some legislation may be founded upon the knowledge of what he claims to be frauds in these, and in similar cases elsewhere. There is not time at present for any such legislation, but without pronouncing against the

reception of these votes, or in favor of rejecting the 32 which both sides agree were rejected, your committee believe some legislation on these subjects imperative at as early a day as practicable. The opinion of Judge Read, of the supreme court of Pennsylvania, at *nisi prius*, out of which these papers were issued, presents an alarming state of facts. He says more than 6,800 persons were naturalized in one month—more than 2,800 in a week, 720 in one day of five hours; no court authorized to naturalize being in session—a single judge sitting—as Judge Read states, there being "no examination at all," unless by tip-staves, and as proved, no interpreter where parties could not speak English—professional vouchers making citizens by the dozen—a lack of obedience not only to the letter of the law, but its scope and intent. The elective franchise will become worthless if such proceedings are not soon checked.

Passing thus from any further reference to questions not to be decided upon, the contestant claims he was duly elected, 1st, by the proof of single illegal votes deposited for the sitting member, sufficient to overcome his alleged majority by 159, even after deducting 30 illegal votes which he does not deny were cast for himself. 2d, By the guilty conduct and gross fraud of the election officers in the 6th and 7th divisions of the 17th ward, sufficient, as he contends, to cast from the count the entire return of these divisions, less the vote proved to be legal, giving to contestant with the remaining proofs of fraud in the district, 741 majority.

The sitting member on his part claims, 1st, to have proved 53 illegal votes cast for contestant in the whole district. 2d, That the return of the 10th division 19th ward, which gave contestant 173 majority, should be excluded, because the election was not held by the rightful officers, and many persons in consequence failed to deposit their votes for incumbent in that division. The sitting member is returned as elected by a majority of 127. The errors of 35 in the count were all stated in contestant's specifications, and were discovered upon an examination of the election papers, both parties being present. They are borne out by reference to the exhibits.

The errors claimed by incumbent are not borne out by the proofs. The error of five is alleged, but there is nothing to show that the figures of the board of return judges are not as much entitled to credit as those filed in the court of common pleas, which should have been duplicates. The alleged error of 53 in the addition of the tally-list of the 8th division 19th ward has no existence, nor did incumbent's answer specify it. There is a transposition of figures in the hourly return, an evident mistake of the clerk in copying; and the tally-list of the votes cast, the only foundation for any of the additions, shows this to be so.

Then, 1st, it is shown by the proof that contestant is entitled to his seat without rejecting the return of any poll in the district. Your committee find that he is so entitled.

The return as reduced by errors of 35 in additions would still give Mr. Moffet a majority of 92. It would involve more labor and time than could be well given to the case at this late day of the session to verify each item of proof as to single fraudulent votes. If it were necessary, the time and labor would be given, but it is not. In this computation, therefore, the committee propose to give to the sitting member the benefit of his own statement. Contestant claims to have proved in the 4th division of the 17th ward 24 illegal votes, and in all the remaining ones of the district, except the two which it is asked shall be rejected, 35 (see his brief, page 19.) The sitting member (see his brief, pages 4 and 5) admits 41 illegal votes in

these divisions. In the 6th division of 17th ward contestant claims 34 personations, besides 87 not assessed and not proved in the manner the laws of Pennsylvania require. In the 7th division, same ward, he claims 29 illegal votes, besides 72 not assessed or proved. Now, as it will appear directly, the counsel for incumbent do not deny the fact that these 87 and 72 voters were not assessed, and do not set up any law under which their votes could be taken without proof, so that these votes must be thrown out, including five in the 6th division of the 17th ward which were cast for Mr. Myers, and must be deducted from him.

Of the remaining illegal votes, 21 in the 6th division are scarcely denied, (see pages 21, 22, and 23 of incumbent's brief;) and of the 29 in the 7th division of 17th ward, five are very faintly denied. On the other hand, 53 illegal votes, it is asserted, were deposited for contestant, his brief admitting 30.

Taking the sitting member's admissions of fact the result would stand:

Majority for Mr. Moffet, after corrections of mistakes in addition.		92
Less votes not assessed and not proved, 6th division, 17th ward, cast for him, as will be presently shown....................	82	
Less votes not assessed and not proved, 7th division, 17th ward	72	
Less illegal votes, (personations,) 6th division, 17th ward	21	
Less illegal votes, (personations,) 7th division, 17th ward	24	
Less illegal votes in the remainder of the district	41	
	—	240
Majority for Myers....................................		148
From which must be deducted, of the unassessed votes, 6th division, 17th ward, cast for him	5	
Illegal votes, in all, which incumbent claims were cast for Mr. Myers..	53	
	—	58
Leaving a clear majority for Mr. Myers of...............		90

Notwithstanding this result, your committee do not feel at liberty to avoid the decision of the main question involved in the case.

Two hundred and forty votes might have been illegally cast for either candidate in a large district without causing the loss of more than that number to either, when proved, but 200 or more votes cannot be received by election officers with a guilty knowledge that they were illegal, or in gross violation of the election laws, which they were bound to consult, without entailing a stronger penalty. In such cases not only State courts but legislatures and Congress have not hesitated to declare the whole poll void and of no effect, except as to such votes as either party chooses to save, by proof of their legality.

It appears in Pennsylvania, and particularly in Philadelphia, where these wrongs are of frequent occurrence, the courts have uniformly declared such to be the law.

The contestant's brief quotes the acts of assembly governing elections.

That of the sitting member does not pretend to set up a different standard of action.

Here there is and can be no dispute. Under the act of 1839, where a person is not assessed, in order to entitle himself to vote he must answer certain questions *under oath*, as to tax, age, residence, &c., and in addition prove his residence *by the oath of a qualified voter* of the division, and in all such cases it is "the duty of the inspectors" to require such proof whether the vote be challenged or not.

Even if assessed, in case of a challenge they must require the proof. Where the vote is taken, the inspectors must add to the list of taxables furnished them by the commissioners, note of the fact, and of the name of the voucher or person making such proof for the voter. The judges have said, in a number of contested election cases, that nothing can dispense with these requirements. The committee have stated that the law is not disputed. Now, contestant proves that in the 6th division of 17th ward, 98 such unassessed persons were permitted to vote, and in the 7th division of same ward 72, without being sworn themselves or producing a voucher. That in the 6th the list of taxables, which is the index and test of the conduct of an election, was missing from the box. In the 7th it was found, and corroborated contestant's witnesses, as it failed to show that any proof had been required of any unassessed voter. If incumbent denied this there might be some dispute to settle; but his only reply is, "This is an unreliable objection. * * * Among nine election officers at the window, one or more would know the voter personally, and in such cases voters are continually recognized."

If "in such cases voters are continually recognized," it must be in just such election districts as the 6th of the 17th ward, which, it appears, was discarded by the court of common pleas, only last year for that very cause. Congress can certainly never lend its sanction to such a shameful breach of law.

The act of 1839 fines any election officer who knowingly takes *one* such vote without proof, $200; and the act of April 16, 1866, inflicts a penalty of $1,000 and an imprisonment of two years for knowingly taking *ten such votes* or upwards without proof.

With these laws before us, your committee can not fail to pronounce these polls violated by such a crime against the rights of the citizens.

Incumbent's counsel reply that in the 6th division of the 17th ward, five of these votes were cast for Mr. Myers, and in the 7th that it is not fully proved for whom they were cast. Were this true it would not alter the matter. On the contrary, the very uncertainty of the result caused by the fraud would tend to destroy all the returns. But it is not true. In the 6th division, 17th ward, 55 votes were returned for Mr. Myers. He was able to prove 51 of them. Except the remaining four, and the five of those unassessed who voted for him, the 87 unassessed and all others proved to be illegal, must have been cast for Mr. Moffet.

In the 7th division the numbers at which the votes were cast will show that the vote for Mr. Myers during the last five or six hours of the day was proved, these being the hours of the greatest fraud; and besides, not only were the headings of the tickets thus fraudulently voted, shown to be democratic—a fact not disputed—but proof was made that every republican on the voters' list but one was assessed. Over two months elapsed after the testimony that the unassessed votes of these two divisions were taken without proof, and it is remarkable that none of these voters, except the five for Mr. Myers, were called to the stand to prove even that such persons ever resided there. The democratic election officers did not attempt to do so.

Residence, without proof on the election day, would have given them no title to vote, but at least it might have taken some of the taint of fraud from the officers of the election. It could not, however, have helped them, for a number of men in each of these divisions were personated from the assessors' lists. In one instance, (page 95) five from one house—one who was known by the inspector to be in prison; one who had lived with, and near him, 11 years; two or three were known

by these inspectors to be dead; several they were aware had moved. A fraudulent intent—a guilty knowledge—which, not counting the unassessed votes, would of itself vitiate the election.

It was in the power of contestant to prove some of these frauds; but how many more were perpetrated it is difficult to say.

Challenges in these divisions, except of republicans, were entirely disregarded, and a number of "repeaters" were permitted to cast their ballots.

The 6th division presents the most glaring violations of law. The act of 1839 requires delay of an hour before opening the polls, where there is a vacancy in the board of officers. Here there were several vacancies, and the democratic inspectors sent the only republican officer away in search of others, telling him to "stay out the first hour." This he did, but the poll was opened, and that hour resulted in 69 for Moffet, 8 for Myers. The votes cast in that hour are all illegal on both sides. Votes taken after the time of closing the polls are all illegal, (4 Pennsylvania Law Journal, p. 341,) and any taken before the proper hour are equally valueless.

It will not be said, after all this—it has not in reality been contended, that these acts were justified by any law; but that there may be no doubt of the criminal intent, the committee have a right to judge of these officers by their conduct at the election a few weeks later.

This democratic inspector although unable to contradict any of these statements, alleges the October election in his division to have been a fair one. If under no other principle it is proper, as contestant claims to test at least the value of his opinion by what occurred at the November election.

In this same division in November, the democratic inspectors and clerks, after receiving more votes than there were names on the assessors' list, taking as many as 25 votes at a time in several instances, and 119 votes in one hour! added 54 names to the voter list *in alphabetical order*, and then counted up 88 more.

There were only 15 repeaters there in October. Three weeks later 45 helped to do the work; and if corroborative proof of the fraud in October is yet needed, the fact that 103 of that division who voted in October did not present themselves in November, and in the 7th division 82 were missing, including 39 of those not assessed, would furnish it.

Contestant states these frauds in his brief, but a reference to John R. Scott's testimony on page 176, and to that of Charles Mousley on page 208, will not only confirm them, but show that the sitting member had full notice of these allegations.

If these officers were innocent, why has he not claimed or attempted to show it, after so much has been proved against them?

Perhaps few stronger cases were ever presented, of polls that were so unworthy of credit as these. How can your committee after this summary decide them to be legal, except as to the votes proved to have been so. If their exclusion works any disfranchisement of any voter he will be glad of the opportunity to see to it hereafter that such men shall not deprive him of his rights, and will concur in a vindication of the law, which it is hoped will aid to assert the purity of the ballot-box.

The vote for Mr. Moffet in the 6th division, 17th ward, less an error of 5 votes in the addition is			462
Five of these voters are shown to be legal			5
			457
The vote for Mr. Myers is		55	
All of them proved, except		4	
Deduct unassessed		5	
Deduct not proved		4	
		—	9
Vote for incumbent, rejected			448
The vote for Mr. Moffett in 7th division 17th ward is	352		
Four of these were proved to be legal	4		
		348	
The vote for Mr. Myers is	85		
Of which he proved	40		
		45	
Votes for Mr. Moffet rejected			303
Illegal votes admitted by incumbent in remainder of district			41
			792
Allowing, as above stated, all the votes claimed to have been cast illegally for the contestant			53
Total illegal votes to be rejected from the return for Mr. Moffet			739
Less amended return for John Moffet			92
Leaving a majority for Leonard Myers of			647

Before finally declaring this result there remains to be considered the demand of incumbent that the poll of the 10th division in the 19th ward shall be excluded.

In this division there was a conflict of authority, and it seems to be conceded that each set of officers supposed itself the legal election board. Violence in ejecting one set, it is true, was charged, but the preponderance of the evidence is to the effect that only Hooper, who claimed to be the judge, was removed by the police at the request of Addis, the duly elected judge. Four of incumbent's witnesses swear to that fact, and it appears from the testimony of Brower that there had been disturbances about that election poll for ten years. This does not seem in any former year to have been deemed a cause for exclusion of the poll. In fact, contestant's witnesses declare the election to have been an unusually quiet one during the day.

If Hooper was the rightful judge, then his removal would be sufficient reason to exclude the vote of the division. It is all important, therefore, first to determine who were the legal officers.

The misunderstanding arose from the sub-division of the 10th precinct of the 19th ward, part being still called the 10th and the rest the 14th: By this action of councils, Mr. Addis, who had been elected judge of the old 10th division, became a resident of the new one—the 14th. In such cases the law is explicit.

By the act of April 28, 1857, sec. 1, Pamphlet Laws, page 329, it is provided—

That whenever a *new election division* or divisions has been or shall be created in any of the wards of the city of Philadelphia, by the councils of said city, the officers to conduct the election next thereafter occurring shall be chosen as follows: If such division shall be formed *entirely out of an old division, the officers elected* to conduct the election in *said* division *shall appoint* the officers *for the new* division, the judge appointing the judge and each of the inspectors appointing an inspector.

Addis, not aware of this law, had given authority to Hooper to act in the old, but on ascertaining that his appointment would have to be for the new division, he and two of the other legally chosen officers of the old division presented themselves at that poll demanding to act. This was refused by Hooper, whereupon Addis read the law to him, stating that he only desired to do what was right, and after a second refusal Simpson also read the law to him. Unless Hooper should leave, the whole poll might really have been invalid. The police were accordingly summoned, and the violence complained of was no more than necessary to remove Hooper. The others left, Brower among them, and after waiting an hour the citizens chose officers to supply the vacancies.

The committee are compelled to decide that Addis was the legal judge, and that the officers who acted with him were all legally chosen.

It is urged with some force in the brief for the sitting member that he lost many votes in that division by these occurrences.

It is certain that a number of democratic voters, apparently in the hope that the whole vote would be declared illegal, some of whom were dissuaded from voting, (see page 193,) absented themselves from this poll. Two witnesses guess at the number thus lost and one other (page 195) states that the democrats in November polled 82 more votes there. Ignorance of the law on the part of citizens will not operate to throw out a poll. There was no fraud here. No citizens were deprived of the opportunity of voting. On the contrary, democrats who wished to vote were furnished tickets or told where they could get them, (see page 189.)

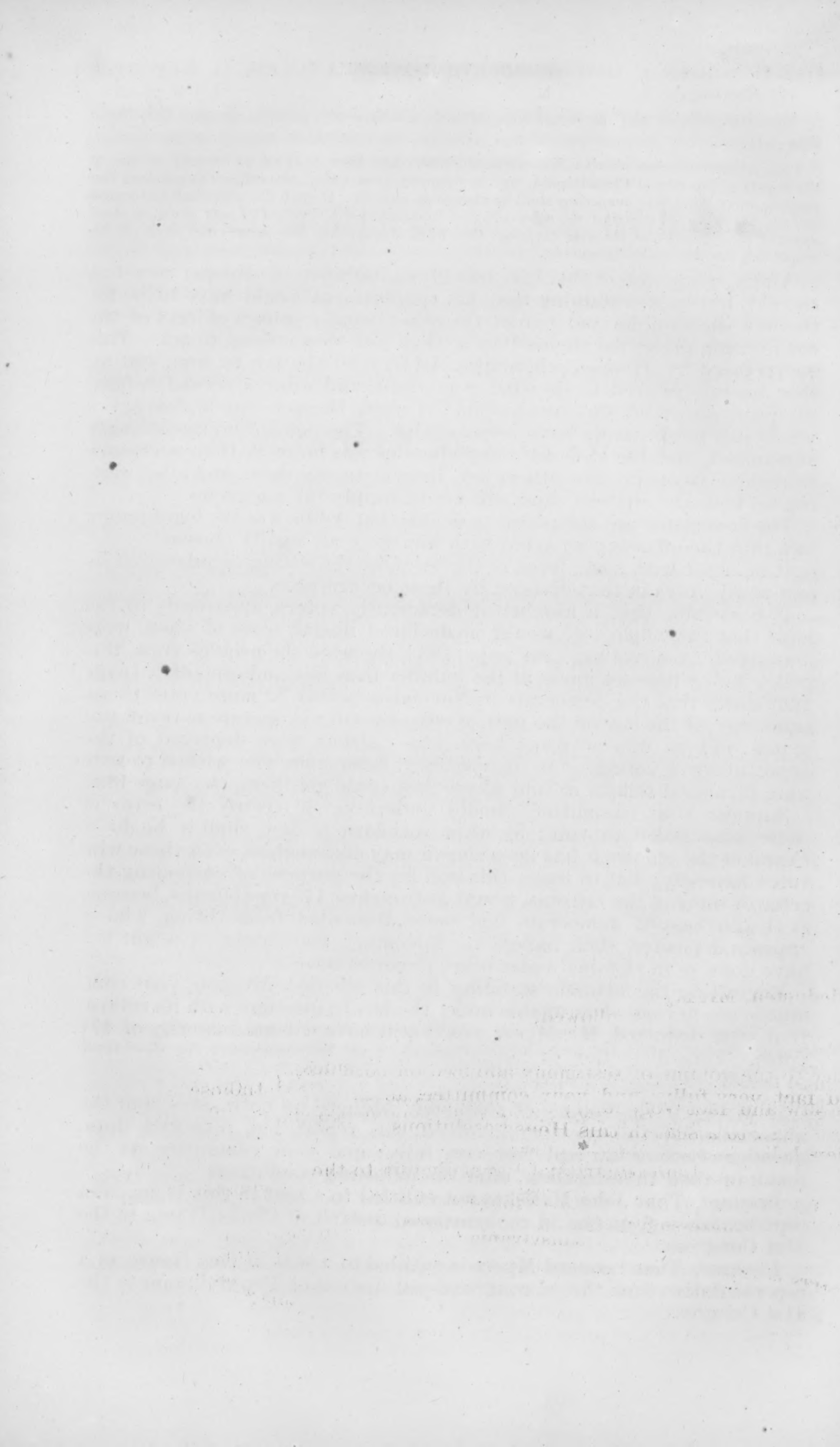
Suppose your committee should undertake to rectify the error of those who failed to vote; by what standard of law shall it be done. Fraud of the officers it has been shown may disfranchise even those who voted honestly; but to reject this poll for the purpose of correcting the error of some of the citizens, would disfranchise 173 republicans, because at the farthest 82 democrats had been dissuaded from voting, who it appears deposited their ballots in November, and might or might not have done so in October under other circumstances.

Regretting the misunderstanding in this election division, your committee are nevertheless unable under the law to interfere with its return. If it were deducted, Mr. Myers would still have a legal majority of 474 votes. This deduction is not allowed, and his majority is declared to be 647.

In justice to the volume of testimony adduced on both sides, and the importance of the question involved, this report has reviewed those questions both of law and fact very fully; and your committee, as the result of their investigation, offer the following resolutions.

Resolved, That John Moffet is not entitled to a seat in this House as a representative from the 3d congressional district of Pennsylvania to the 41st Congress.

Resolved, That Leonard Myers is entitled to a seat in this House as a representative from the 3d congressional district of Pennsylvania to the 41st Congress.



MYERS vs. MOFFET.

April 6, 1869.—Ordered to be printed.

Mr. Randall, from the Committee of Elections, presented the following as the

VIEWS OF THE MINORITY.

The minority of the Committee of Elections, to whom were referred the papers in the contested election case of Myers *vs.* Moffet, in the 3d congressional district of Pennsylvania, submit the following as their reasons for not concurring in the views and conclusions of the majority of the committee in the said case. The evidence, when examined, will be found to contain much of *hearsay* testimony—all such, to our minds, is outside of the record for any purpose of examination by us, and reduces the points at issue to a few—which we propose to take up in order.

First. The attempt of the contestant to attack and have stricken from the count all such votes as were cast by persons naturalized by the supreme court of Pennsylvania at *nisi prius* sitting, cannot for a moment be sustained. As we understand the reading of the majority report, it is not held by them as tenable; and it would not be necessary further to notice this point, except that the contestant seems to place much stress upon it, and relies upon an *ex parte* and indecorous address from the bench by Justice Read, of the supreme court of Pennsylvania, spoken in October, 1868.

The brief of the contestant recites as follows:

The first is the naturalization in Philadelphia in September and October, 1868, of 6,856 aliens by a single judge of the supreme court, sitting as *nisi prius*, not authorized to naturalize. * * * * The committee are referred to the able opinion of Judge Read, of the supreme court, sitting at *nisi prius*, exposing the great wrong that was done by this illegal naturalization and the failure to comply with any substantial requirement of the laws of the United States affecting naturalization, declaring "the whole issue illegal, contrary to the act of assembly, and that it *should be rejected at the polls*." This opinion will be found on pages 305, 306, and 307 of the testimony, Exhibit No. 2, and also the order made by him November 2, 1868, "that no more aliens should be naturalized in said court."

A perusal of this opinion will best afford some conception of the wrong done the citizens of Philadelphia in the grant of these naturalization papers.

Let us review this "speech" from the bench, which would have been appropriate in the forum from a partisan, or any other person than a judge, having jurisdiction in the matters alluded to.

The third section of the act of Congress of April 14, 1802, defines the courts that are entitled to naturalize aliens in these words: "Every court of record in any individual State having common law jurisdiction and a seal and clerk or prothonotary."

Is the court of *nisi prius* in Philadelphia such a court?

The supreme court of Pennsylvania was established by a provincial law of 1722, after the model of the Court of King's Bench in England. As *nisi prius* was an incident of the King's Bench, it became an incident also of the supreme court of Pennsylvania.

The name of this court was derived from two words in the writ of summons which issued in latin out of Westminster Hall, in the King's name, to any county in the realm, commanding the defendant to appear on a day certain before our justices at Westminster, *nisi prius*, (unless before,) we come by our justices into the said county of York or Surrey, or whatever county it might be.

The justices, or one of them, was sure to come to the appropriate county to receive return of all writs and to hold court; and the court he held was called a court of *uisi prius*, taking the name from these words in the writ.

We adopted the same name without the same reason. Our *nisi prius* was always held by one of the justices of the supreme court, and tried civil issues, but judgment was rendered by the court in banc. It was little more, originally, than a court for ascertainment of facts, the conclusions of law arising from these facts being declared by the supreme court.

By act of assembly of 26 July, 1842, the judge at *nisi prius* was authorized to "*enter judgment in all cases brought or to be brought in said supreme court on original process, and to make all orders and decrees in such cases as fully as any court of record could or might make.*"

This carried all the original jurisdiction of the supreme court into the *nisi prius*. The supreme court was essentially a court of errors and appeals, but from a very early day the legislature gave it original jurisdiction in the city and county of Philadelphia in civil controversies where $500 of value was involved. On the reorganization of the courts by the act of June 16, 1836, this original jurisdiction was continued, but it was limited to the city and county of Philadelphia, and not extended to the rest of the State.

Then, by the act of 1842 before cited, this original jurisdiction was to be exercised, not by the court in banc, but by the court of *nisi prius*; and the supreme court have decided in many cases that bills in equity, common law suits, and all original proceedings, must be had before that court and can come into the supreme court only by appeal from the *nisi prius*. The seal of the supreme court and the prothonotary have been the seal and clerk of the *nisi prius* from the beginning, and its records are kept in the same dockets as the proceeding of the court in banc. Thus it has been constituted an independent court, with full common law powers, with a seal and a clerk, no less truly its seal and clerk, than if they were not also the seal and clerk of the supreme court.

Naturalization of aliens is original process. Nobody will question this proposition. By the uniform practice of the supreme court, and by the express terms of the act of 1842, this process belongs to the *nisi prius*. It cannot regularly be exercised by the court in banc in the city and county of Philadelphia, and it has scarcely ever been attempted. But the records show naturalization of aliens by the *nisi prius* as early as 1799, and from that day down to this time, that court has granted naturalization. From 1840 to 1869 the whole number naturalized in that court has been 16,414.

What better evidence of the law can be had than this traditional testimony? The legislature, the supreme court, the public, have all agreed for 70 years that naturalization in the supreme court belonged to the *nisi prius*, and it has been exercised without question, until Judge

Read, for the merest partisan purposes, threw doubt over the subject. He had naturalized many aliens at *nisi prius*, as each one of his brethren had done, but last fall, on the eve of the election, a political dodge was agreed on by which naturalization papers should be discredited. Judge Read and William B. Mann went into the court-room one morning. Mann made his valedictory speech on taking leave of the office of district attorney, and in response to his speech, Judge Read adverted to the subject of naturalization, and declared that the certificates recently granted by his brethren Thompson and Sharswood, when sitting at *nisi prius*, were void.

The republican press published his impertinent words as a decision of the supreme court vacating several hundreds of naturalization papers, and republican election officers were very ready to accept it as law, and thus this discreditable trick enured to the benefit of the republican party.

Now, when it is considered that the naturalization granted by Chief Justice Thompson and Justice Sharswood at *nisi prius* was in accordance with the usage of the court for 70 years; that it accorded with the practice of every judge who has sat at *nisi prius*, including Judge Read himself; that one judge at *nisi prius* has no power to review or reverse the proceedings and judgment of another judge, but this can be done only by appeal to the court in banc; that the cases which Thompson and Sharswood had passed upon were in no wise before Read; that he had no case relating to naturalization before him; that his words were not a judicial opinion, but an impertinent defamation of two of his brethren, and of the clerk of the court. When all these facts are considered, is it possible that there can be any two opinions among honorable men as to the conduct of Judge Read? However acceptable his conduct may be to mere partisan politicians, is any man bold enough to say that Judge Read could by the mere breath of his mouth blast the certificates of naturalization granted by his brethren?

He pretended that men were not duly sworn. How did he know? He was not present to see how Thompson and Sharswood performed their judicial functions. They had power to naturalize; they were duly sitting at *nisi prius;* they are competent and experienced judges—far more competent for their duties than Judge Read; and without any testimony as to their mode of performing their duties, and without any power to review their conduct, what right had Judge Read to slander them from the bench? And what were his slanders worth except for the ephemeral purpose for which they were intended? They were designed to help a political party at the polls, and they accomplished this dishonest purpose, but let them not be reproduced as evidence of the law of Pennsylvania.

If tipstaves administered oaths they did it as the agents of the clerk whose appropriate duty it was. The crier and the tipstaves of the *nisi prius* are accustomed to administer oaths to jurors and witnesses, but they do it in the presence and under the eye of the judge, and as his agents or servants. The clerk when he does it acts as the agent of the court. The judge himself never administers oaths at *nius prius*, but causes it to be done by some of these subordinate officers. If this were an irregularity, which it was not, Judge Read had no corrective power. His conduct was a gross impertinence.

Why is his unauthorized and impertinent opinion cited in this election case? Is it referred to as evidence of the law? Is it cited to lead the House to the truth or to mislead them? Forney's Press would be as good authority to cite. Judge Butler, in the Chester district treated the opinion with the contempt it deserved, and the majority of the Com-

mittee of Elections would have done well to cast it out as Judge Butler did. The certificates of naturalization under the seal of the court were judicial records that could be impeached only by regular process of review before the court in banc. Judge Read had no more power to vacate them than he had to repeal patents or upset judgments.

Not relying solely on our opinion and judgment, we quote the *decision* of President Judge Butler of the Chester and Delaware district within the State of Pennsylvania, in the case of Commonwealth *vs.* Daniel Leary, not a made-up issue, but one properly before him for decision.

The law upon this question has been ruled by Judge Butler, an eminent republican judge, the president of the court of common pleas of Chester and Delaware counties, in the following opinion:

CHARGE OF JUDGE BUTLER IN COMMONWEALTH vs. DANIEL LEARY.

The tenth section of the act of assembly of April 4, 1868, provides that if any prothonotary, clerk, or the deputy of either, or any other person, shall affix the seal of office to any naturalization paper, or give out the same in blank, whereby it may be fraudulently used; or furnish a naturalization certificate to any person who shall not have been examined and sworn in open court, in the presence of some of the judges thereof, according to the act of Congress, shall be guilty of a high misdemeanor; or if any person shall fraudulently use such certificate of naturalization, knowing that it was fraudulently issued, or shall vote or attempt to vote thereon, he shall be guilty of a high misdemeanor, and either or any of the persons guilty of either of the misdemeanors aforesaid, shall, on conviction, be fined in a sum not exceeding $1,000, and imprisoned in the proper penitentiary for a period not exceeding three years.

The defendant is indicted under this act for attempting to vote on "such a certificate." The Commonwealth has shown that he presented himself at the polls and offered his vote, exhibiting as evidence of his right a certificate of naturalization purporting to be issued out of the supreme court of this state, signed by its prothonotary and bearing its seal. And nothing further pertinent to the issue is shown. Clearly this does not make out a case. A certificate of naturalization in due form and properly attested is sufficient evidence, in the first instance, that the individual named in it "was duly examined and sworn in open court in the presence of some of the judges, according to the act of Congress," and that the certificate itself was regularly and lawfully issued. It is not *conclusive*. The contrary may be shown. But those who assert that the individual was *not* "examined and sworn in court," &c., or that the certificate was not issued according to law, but in the language of the act, "was given out in blank," must prove it. Until this be done the *prima facie* case established by the certificate stands. It was the right of any one challenging the defendant's vote thus to attack his certificate, and it was the right of the Commonwealth to do so here. Had we any evidence that the certificate is, within the meaning of the act, a fraud, there would be something to submit to the jury; but we have not. The certificate stands unimpeached. It seemed to be supposed by the counsel that the Commonwealth could rest its case on a paper exhibited, called "An opinion of the supreme court, by Judge Read." This was a mistake; the paper is wholly unimportant to the prosecution. No opinion has been pronounced by that court touching the truth or genuineness of the certificate here involved, or in any way affecting this case. The eminent judge referred to has made certain statements in respect to the manner of naturalizing individuals in the supreme court, and the issuing of certificates therefrom; and has given expression to his views in relation to it. But there was no case before him calling for the exercise of his judicial functions, and nothing, therefore, was or could be decided. His statements, tending to impeach this and other certificates, are of no higher value in a court of justice than the statements of any other man knowing the facts. His statement of the law, when the duties of his office call upon him to expound it, are entitled not only to great respect, from his ability and learning, but, from his eminent position, are conclusive and binding. Under any other circumstances his statement of the law decides nothing, and his statement of facts cannot, under the rules of evidence, even be heard, except as we hear that of any other person, on the stand as a witness. We must not forget that we are in a court of justice, where no rumor or outside unsworn statement, (no matter by whom made,) can be allowed the slightest weight.

The evidence of the defendant's admission or confession, that he had not resided in the country the full period of five years, it must be observed, is wholly unimportant in the issue before us. It does not attack the *truth or genuineness* of the certificate, and does not, therefore, tend to prove an offence within the act of assembly. It does tend to show that the court issuing the certificate was imposed upon; but *that* question is not before us. It doubtless had much to do with the rejection of the vote, and the commencement of the prosecution. This, however, was a mistake; an honest mistake, judging from what is before us. The election officers could not inquire into the fact whether the defendant had resided in the country for five years, nor into any other matter involving *his right to naturalization*. All these facts were passed

upon and *decided* by the tribunal to which the law has referred the subject, *the court*. *Behind this decision* the election officers could not go. Like all other judgments of a court, it settles all questions of fact upon which it depends, and cannot be collaterally attacked or impeached. The election officers may inquire into the *truth and genuineness* of the *certificate*, and it is their duty to do so. This is simply the *evidence* of the *judgment* pronounced by the court. And if it be proved untrue or spurious, they should disregard it. But if it stand unimpeached, they cannot, we repeat, go behind it and inquire whether the *judgment of naturalization* itself was rightly pronounced. They cannot rejudge what the court has already adjudged and decided. Any error into which the court has been led must be corrected by itself.

No case being made out by the Commonwealth, the defendant must be discharged.

For the purpose of a clear, full, and comprehensive understanding of the matter, we hereunto directly annex the opinions of Justice Sharswood and Chief Justice Thompson of the said supreme court of Pennsylvania, associates with and members of the same court as Justice Read.

In the matter of the rule on James Ross Snowden, esq., prothonotary of this court, to show cause why an attachment should not issue against him for contempt.

SHARSWOOD, J.:

The process of attachment for contempt is a summary remedy which has been exercised by the courts in England as far back as the annals of the law extend.—(4 Blackst. Com. 286.) The use of it was so much enlarged by judicial decisions that the legislature of this State saw proper to provide by the act of April 3, 1809, (5 Smith, 55,) that "the power of the judges of the several courts of this Commonwealth to issue attachments and inflict summary punishments for contempts of court shall be restricted to the following cases, that is to say, to the official misconduct of the officers of such courts respectively, to the negligence or disobedience of officers, parties, jurors, or witnesses against the lawful process of the court; to the misbehavior of any person in the presence of the court obstructing the administration of justice." This provision was re-enacted by the revised act of June 16, 1836.—(Pamphlet L. 793.) The mode of proceeding is well explained in Hollingsworth *vs.* Duane.—(Wallace Sea. Rep. 78.) A rule is generally granted in the first instance on affidavits, upon the return of which the defendant answers on oath, the evidence is heard, and if the court should be of opinion that the fact on which the rule was taken is not sufficiently answered or excused, and that in point of law a contempt has been incurred, an attachment is awarded when the defendant is brought in on this writ to answer interrogatories propounded to him on behalf of the Commonwealth, in whose name the writ always issues, and if he gives such answers as purge him from the criminality, he must be discharged.—(4 Blacks. Com. 287.) Case of Hummel and Bishaff, 9 Watts, 416. In this case the rule was granted upon affidavits that 12 naturalization certificates, purporting to be signed and sealed in blank by the prothonotary of this court, had been found on the person of a prisoner, who had been arrested and was in custody on another charge. The certificates were produced. I allowed the respondent on the hearing of the motion to prove, which he did by several witnesses well acquainted with his handwriting, that the signatures were forgeries; yet as the impression of the seal appeared to be genuine, I granted the rule. On the return of it the respondent put in an answer on oath, in which he positively and distinctly denied any knowledge of the papers, or that any such had ever been signed, sealed, or issued with his knowledge or by his authority. No attempt ever has been made to prove by a single witness that the handwriting is that of the respondent. The attorney general, Mr. Brewster, with that candor which always characterizes him as a gentleman and a lawyer, has admitted that it is not. He has also declared, with the same frankness, that he does not believe the respondent to have knowingly issued, or permitted to be issued, any blank certificates like those in question. The whole evidence establishes this beyond a doubt. The personal integrity of the respondent is, therefore, fully vindicated. But the ground has been assumed that he has been guilty of gross negligence in allowing the business in the office to be so transacted, that naturalization certificates such as these might be surreptitiously obtained, and such gross neglect, if it exists, would unquestionably constitute official misconduct. All the clerks in the office, some who have been heretofore connected with it but are not now, and many other witnesses, have been examined. The widest range and the fullest opportunity by adjournment have been given to the commonwealth to pursue the investigation. It was due alike to the court and the community, and the respondent himself, that this should be done. The specifications of alleged negligence have been reduced to five, which I will proceed to examine. First, as to the seal, that the die by which the seal is affixed to writs and records should be carefully guarded must be admitted by every one acquainted with the law on this subject. It is established beyond all question that the seal of a court of record proves itself; nor is it necessary for a party offering it in evidence to prove it or the signature of the attesting clerk. The burden of disproving it is cast upon him who alleges that it is false. This is the law as daily administered in all our courts, as laid down in every standard work on evidence, and fully supported by all the decided cases. "In proving a record by a copy under seal," says Mr. Greenleaf, "it is to be remembered that the courts recognize *without proof* the seal of

State" and the seals of the superior courts of justice, and of all courts "established by public statutes." "The seals of the courts of justice," says Mr. Starkie, "are of public credit and are part of the constitution of the courts, and supposed to be known to all." (1 Greenleaf on Ev., 503; Starkie on Ev., 8; Am. ed., 258; 1 Phillips on Ev., 385; Hill & Cowins' note 714, in which the American cases are collected.) I could multiply citations on this point, but I forbear, as I do not believe any lawyer can be found who questions it. That such a certificate of a judicial proceeding is conclusive and cannot be set aside on the ground of any errors, illegalities, or irregularities, where the court has jurisdiction, unless by the same court in which it took place, or some higher court on error or appeal, and stands conclusive as to all the world until it is actually so set aside, is a point equally incontrovertible. (McPherson *vs.* Cunliff, 11 S. & R., 429; Weekerly *vs.* The German Lutheran Congregation, 3 Rawle, 180; Marsh *vs.* Pier, 4 Rawle, 284; Bower *vs.* Tullman, 5 to 25, 556; Gaple et al. *vs.* Titus et al., 5 Wright, 195.) A legion of authorities might be invoked as well from this as from every State in the Union to the same effect. It has been held in the Supreme Court of the United States that the judgment of a court admitting an alien to become a citizen is conclusive that all the provisions of the law have been complied with. (Stark *vs.* The Chesapeake Insurance Company, 7 Cranch, 420; Spratt *vs.* Spratt, 4 Peters, 393.) "This judgment," says Chief Justice Marshall, "is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and like every other judgment to be complete evidence of its own validity." The same principle has been recognized and applied to certificates of naturalization in every State court in which the question has ever arisen. (McDaniel *vs.* Richards, 1 McCord, 187; Ritchie *vs.* Putnam, 13 Wendel, 524; McCarthy *vs.* Richards, 1 Selden, 263.) I have searched diligently, but without success, through all the books for any decision or even *dictum* which either denies, qualifies, or doubts this doctrine. It is one of the firmest settled foundation-stones of the law. It is evident, then, from these considerations, that the importance of guarding the seal of the court from being tampered with cannot be over-estimated. It is objected against the respondent that it is not kept in a safe position. It has been proved, however, that it was kept in the same place for many years before he was appointed prothonotary. He found it there when he first took possession of the office. Every judge who has been on this bench during all that time has, of necessity, frequently seen it. It is within the view of all the clerks when the office is not crowded, and when it is crowded it is near and within view of one of them. When the crowd became so great lately that the attention of this clerk might either accidentally or designedly be diverted to another quarter, the respondent appointed a clerk, whose sole duty it should be to take charge of it and see that it was affixed to no papers unless by some one duly authorized. It is certainly unimportant that this person had been but a few days before employed when this duty was assigned to him. It required no special knowledge or experience to perform it; of his sobriety, intelligence, and integrity no question has been made. That the seal should be kept locked, and be unlocked every time it is needed, is an idea no one can entertain for a moment, unless indeed the clerks should be allowed to keep always on hand a very considerable number of all kinds of writs and certificates of records, ready sealed, which, however, the commonwealth objects to strenuously as being itself evidence of negligence. We must not leave out of view, in the consideration of this case, that the room provided for the prothonotary of this court is small and narrow, entirely insufficient for the safe and convenient transaction of its business and the security of its important records. That, however, is not the fault of the respondent. I think this specification is not sustained. The second allegation is that the respondent authorized his name during his absence to be signed by the clerks to certain documents to be used at Washington in obtaining pensions and bounties from the treasury of the United States. It seems that the rule in that department is not to receive documents signed *per procusationem.* Whether this was right or wrong in the respondent I do not think I am called on to decide. It does not relate to the records or business of this court. It is done, as I undestand, to authenticate the signatures of aldermen to jurats and other documents. If his practice is wrong he is amenable to the federal authorities. It is fully proved that he never authorized it to be done in certifying the records of this court, but expressly forbade it. I dismiss this specification. The third allegation is that he allowed naturalization certificates, signed and sealed, blank, to be used by his clerks. If the fact was clearly established, I would consider it as evidence of negligence. Provided due precaution were observed as to the custody of the papers, I see nothing in the fact that each of these clerks may have had at times a pile of certificates directly before him and immediately under his eye ready signed and sealed while engaged in filling them up. The evidence shows that since the crowd became so great as to make such a practice dangerous it has been discontinued. Certainly, if Mr. McCarthy is to be believed, since the seal has been placed in his charge no certificate in blank has passed under it. I find no negligence, therefore, under this head. The fourth allegation is that the clerks permitted blanks, neither signed nor sealed, to be taken out of the office to be filled up by strangers. I do not know that this has been shown to have been brought to the knowledge of the respondent. It has been testified, however, to be a common practice in all the offices. It very much expedites business. Without the seal and attestation the blank is nothing, and I cannot see that it would be much security against frauds to refuse this accommodation. The fifth and last allegation is, that the respondent appointed, tempo-

rarily, as a clerk a man who, in 1853, was convicted and since served out an imprisonment of two years for the offence of altering forged pension certificates. It clearly appears that the respondent engaged him on the recommendation of his chief clerk, Mr. Ross, without any knowledge of the fact of such conviction, or of anything against the character of the man, as he has sworn in his supplemental answer filed. Mr. Ross confirms this, and adds that though he had known the individual in question for many years and many persons of his acquaintance, he had never heard of the conviction, and that when he recommended him he believed his character to be good There is not the slightest evidence that this clerk was guilty of any irregularity or impropriety during the short period that he was employed in the office. No negligence has been established in this matter. After hearing the whole case, in connection with the clear and satisfactory testimony of Mr. Anthony Morin, an expert of long and large experience as to the entire practicability of making by the electrotyping process a false seal from a good paper impression of the original, which would make impressions on paper equal to the best of them appearing on these forged blanks, I am strongly inclined to the opinion that they were not sealed in the office. That opinion has been confirmed by comparing these impressions with 12 genuine ones made at the same time, and which are in evidence. Every one of the seals of the forged papers, except one, is better than the uppermost and best of the 12 true ones, and are all about equally good; yet none of them is so sharp and good as a true impression taken separately. The letters on all the false papers are distinct and legible, while after the first four or five of the genuine ones no letters can be distinguished at all. I think it most probable, from their uniform appearance, that the false seals are all single separate impressions from a die not so sharp as the original—just such a one as, according to Mr. Morin, could be electrotyped from a paper impression. It will be observed that in the course of this searching investigation into the conduct of the respondent no charge has been made nor any evidence given of any misconduct in that part of naturalization which was under his immediate supervision in court. None of the clerks or officers engaged to asisst him in those duties have been called or examined. Yet, as irregularities in all parts of the process have been alluded to, I may take this opportunity to make a few remarks in explanation of the mode adopted in this. and, heretofore, in the other courts of this city, in admitting aliens to the rights of citizen ship. I do not mean, of course, to express any opinion upon the legality of that mode, because the question may, in some form, come before the court in banc, and it would evidently be improper for me, as it does not arise in the case before me, to prejudge a question of such importance. It is not inconsistent, however, with my duty in that respect to say hat if this mode, so long pursued, be illegal, and, therefore, void, and the naturalization certificates issued under it can be lawfully rejected, then nine-tenths of all the aliens naturalized by our courts during the last 30 years will be reduced again to the condition of aliens. Any man, whether lawyer or not, who can draw a logical inference, must acknowledge that this consequence is inevitable. When I took my seat upon the bench of the district court in 1845, I found this system had been followed by the learned and pure men who were members of the court which had preceded that to which I had been appointed, and by that distinguished jurist, Judge King, then president of the court of common pleas. That system is this: In the cases of application on declarations of intention the judge examines the papers, and if found to be regular, delivers them to the clerk or one of the officers to administer the required oaths to the petitioner and his voucher in the court-room. In the case of those who apply on the ground of having arrived in the country under the age of 18 years, as they are required to produce no papers, there is nothing to examine. The petition, with the accompanying affidavits, is a printed form, the same in all these cases, and the clerk has only to see that it is properly filled up with the name and the country of the petitioner, and the year of his arrival. Upon taking my seat in the court of *nisi prius* on the first Monday of September of this year, I found on inquiry that the established practice here had been to refer the examination of the papers in all cases to the prothonotary, with directions, however, that if any doubt or question arose in his mind in any, to report it for the opinion of the judge. I saw clearly the reason of this difference. The prothonotary of this court is a lawyer of mature age and experience, appointed by the court itself, and possessing its entire confidence. He is always personally present in court attending to his duties. Whereas in the other courts the prothonotaries and clerks are generally not lawyers, are not appointed by the courts, and act entirely by deputies. I determined, on reflection, to pursue the same practice I had always followed in the district court, not from any—the slightest—want of confidence in Colonel Snowden. But I thought I would feel better satisfied if I gave such personal supervision to the matter as I had been in the habit of doing. I acted accordingly. There was one other difference, but in which I thought the practice here was a decided improvement. I observed that the oath administered to petitioners as minors, instead of being general "that the contents of their petitions were true," recited particularly the facts set forth in them. I took occasion to express my approbation of it to the prothonotary. As to the policy or expediency of changing this practice of so many years' standing, by substituting one accompanied with more formality and delay, it is unnecessary that I should now express any opinion. If any plan can be adopted by which the naturalization of foreigners can be spread rateably over the whole year, instead of nine-tenths of it being crowded into the few weeks before the election, it would undoubtedly be an improvement. Even then I apprehend it would be

found a very serious interruption and impediment to the other business of the courts, if it were required that the judge should personally examine every petitioner and his voucher, during which time all other pleas must of necessity cease. My recollection is that in 1851 it was tried in one of our courts, I do not know how long, but it was abandoned because it was found impracticable consistently with a regard to the rights of other suitors. But however this may be, it is plain that any such change of practice ought to be announced at least nine months before an election, so that all persons entitled may take measures accordingly. To spring it upon the community on the eve of such an event would work the grossest injustice. By the delays it would occasion it would very much increase the crowd in and at the doors of the court-room. There would be clamor and struggling for precedence which could not well be prevented or restrained. If arranged in a line it would require the petitioners and their vouchers to wait in attendance perhaps several days before their turns would come. Laboring men would thus lose valuable time which they could ill afford, and it would be a practical denial of the right to hundreds of men fully and justly entitled to it under the laws of the land. It may be that among so many cases there are instances of fraud, perjury, and false personation. But I doubt if the change proposed would tend to prevent those crimes. Every day that I sat, except during the first two weeks, when the applications were comparatively few, I rejected many petitions. In several instances I specially examined the petitioner and his voucher on oath, if anything appeared doubtful or suspicious on the papers. That a very large number have been naturalized is true, but not more, I think, than was to be expected. In every election preceding a presidential election which I remember, except 1864, the number has been large. In the fall of 1856, 12 years, ago more than 5,000 persons were naturalized in the district court alone. Since then the yearly influx of foreigners has been very great. But there exists special reasons why the numbers should be much greater on this year than on any former occasion. During the war naturalization almost entirely ceased. This is the first presidential election since its close; so that there is in fact nearly the arrivals of eight years, which have been held back. I remarked in examining the declarations, how very large a number there were who might have been naturalized prior to 1864. There is another cause for a very considerable percentage of increase. In 1862, Congress passed an act allowing any honarably discharged soldier to be naturalized, on one year's residence and without any previous declaration. I think that during the month I sat at *nisi prius*, I examined as many cases of discharges as of declarations of intention. It is no argument, therefore, to parade numbers as evidence of frauds or irregularities. If there is any impression among the members of the bar, and in the community, that the whole process of naturalization has been conducted by the prothonotary without any personal supervision by me, and that in a loose and unusual manner, it will be seen from this statement that it is entirely without foundation in fact. I have thus disposed of this case, so far as the rule on the prothonotary is concerned; I order it to be discharged. But I have not forgotten that the main object with which this investigation was commenced was to discover by whom, and how, forged papers, if they did come from the office, were obtained, in order that the guilty parties might be discovered and punished. The first application to me on the part of the Commonwealth was for an attachment, or bench warrant as it was termed, against John Devine, in whose possession they were found, in order that he might be compelled to disclose how they came into his possession. I thought it very clear that, under the act of assembly before referred to, I had no power to issue an attachment for contempt in such a case. It was at my suggestion that the rule was entered on the prothonotory, by which the process of the court could be used to compel the appearance of Devine and other persons, so that the perpetrators of this great crime might be discovered and brought to that condign punishment which they so well deserve. I said I would award a writ of *habeas corpus ad testificandum* to bring up Devine from prison, but that he ought to have counsel present to advise with and instruct him as to his rights as a witness. No application, however, was made to me for the writ during that day, which was Saturday, October 3, 1868. It now appears that Devine was discharged from prison that same night. The committing magistrate, by whom he was discharged, has not been produced, and we have no evidence as to who went his bail. Devine himself says that he does not know. I must confess I should have been better satisfied if the bail had been brought before me to be examined as a witness. No subpœna was taken out against Devine on Monday, nor any charge preferred against him. When the court met at 12 o'clock m. on that day, according to adjournment, a motion was made for a writ of *habeas corpus*, but no petition and affidavit were presented. I would have allowed time, however, to prepare them, issued the writ and waited for its return. It being suggested, however, that Devine was present in court, I directed his name to be called. He answered and appeared. On his subsequent examination he said that he had come of his own accord, without suggestion or advice from anybody, because he understood from what he read in a Sunday newspaper that he was to be tried. I think it somewhat remarkable that this man, upon whose person these blanks certificates were found, had thus the most ample opportunity, if he was guilty, to fly from justice or to avoid appearing as a witness in this case. Being without counsel, he was carefully instructed by me, before giving his testimony, that he had a right to decline to answer any question which would either criminate or tend to criminate himself. He submitted to answer and did to all appearance answer every question fully. I see no rea-

son whatever to doubt the truth of his testimony. It was clear, consistent with the testimony of the other witnesses, and consistent with itself. No contradiction has been attempted to be pointed out. No man, I think, can entertain the belief for a moment, that he, John Devine, either stole these blanks out of the office or forged the names. The presumption in the first instance undoubtedly is that they were in his possession for an unlawful and guilty purpose. I do not believe on the evidence, however, that he knew that these papers were in his possession, or at all events what they were. Nor do I believe that they were given to him or put in his pocket for election purposes. The man or men who would commit the crime of purloining and forging them would not select such an agent to consummate it. I have come to the conclusion, after full consideration and weighing all the circumstances, that John Devine, on the night or early morning of his arrest, at the corner of Jefferson avenue and Washington street, fell among his enemies, personal or political. His worst enemy, indeed, was that which he had "put into his mouth to steal away his brains." Like Cassio, when he awoke later in the day, he remembered "a mass of things, but nothing distinctly; a quarrel, but nothing wherefore." That he was drunk the police officer, who arrested him for snapping a pistol at a man and his wife crossing the street, testifies, and he himself confesses it. He remembers nothing about the quarrel, the pistol, or the papers. He admits the watch and the money, which were taken from him and afterwards returned, though he found the money much less than he expected, which is not surprising considering the manner in which, by his own account, he had spent the day. The pistol was not returned to him, and it has not been produced here, so that he might say whether it was his or not. Not a single witness has been called who was present when the arrest is made, to tell us who were there and how the quarrel arose; for there were loud words, says the policeman not even the man and his wife who were crossing the street and at whom it is said the pistol was snapped. Some person or persons followed the officer and him after the arrest. At the door of the station-house, as he was going down the steps, Devine was assaulted from behind, and struck a severe blow, or blows, on the head with some blunt instrument. He was stunned. This is his own account, and the officer testifies to the same thing. He, the officer, says there was no one at the station-house to receive the prisoner, and that he could not, therefore, arrest the assailant without letting him go. I think he would have been perfectly justified in doing so, even if Devine had escaped, which was not very likely in his then condition. He did not call for help nor spring his rattle. He does not know who the assailant was, and I suppose the perpetrators of this gross outrage will never be brought to justice. When Devine awoke from his drunken debauch he found his hair clotted with blood and gore, and requested in vain for some one to wash and dress it, offering to pay. When the other prisoners were sent down to prison he wished to go also, and asked why he was not taken. He says that the officer in charge, whom he named, answered that "they wanted to make use of him." No one has been produced to contradict these statements of Devine, or to explain them. I very much regret this for the sake of the character of the administration of the law. If I thought that Devine had possession of these papers knowingly, and for a fraudulent purpose, I would feel myself bound of my own motion to order his arrest, and to commit him to prison or bind him over to answer the charge before the proper tribunal. But I think that the evidence before me corroborates his own statement that he was in possession of these papers without guilt on his part, and I therefore make no order in regard to him.

Rule discharged.

I certify that the within and foregoing is a true copy of the opinion delivered by Justice Sharswood in the above case.

In witness whereof, I have hereunto set my hand and affixed the seal of the said court at Philadelphia, this 18th day of February, 1869.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

To the honorable the judges of the supreme court in and for the eastern district of Pennsylvania:

The petition of the undersigned citizens of the United States of America and of the State of Pennsylvania, and resident voters within the city and county of Philadelphia, respectfully represent:

I. That it appears from the records of this court, in the matter of the admission to citizenship in the following cases on the following days, namely: Thomas Nagley, September 18, A. D. 1868; Moses Paper, September 18, A. D. 1868; John Nugent, September 18, A. D. 1868; Daniel Bradley, September 18, A. D. 1868; Edward Wright, September 18, A. D. 1868; Michael McGrath, September 18, A. D. 1868; Patrick Gallagher, September 18, A. D. 1868; Francis McShane, September 19, A. D. 1868; John Keenan, September 19, A. D. 1868; Pat. McQuillen, September 19, A. D. 1868; John McGarrity, September 21, A. D. 1868; Dennis King, September 21, A. D. 1868; Hugh Loughrey, September 22, A. D. 1868; Richard Sommers, September 22, A. D. 1868; James Skelly, September 23, A. D. 1868; Thomas Gibbons, September 23, A. D. 1868; John McGonnigle, September 23, A. D. 1868; John Cronin, September 23, A. D. 1868; Felix Heneger, September 23, A. D. 1868; Thomas Donohue, September 23, A. D. 1868; George Wilton, September 23, A. D. 1868;

George Daniels, September 23, A. D. 1868; William Halloway, September 23, A. D. 1868; Edward Harly, September 23, A. D. 1868; Thomas Phillips, September 23, A. D. 1868; Andrew Quinn, September 23, A. D. 1868, wherein the said parties aforesaid had not made any previous declaration of intention to become citizens of the United States before a court of record, as provided by the statutes of the United States, and were without a certificate of such declaration of intention; the place or places where the said applicants respectively have resided for five years immediately preceding the time of their application are not stated and set forth in the record of the court admitting such applicants as required by the said statutes, and that nevertheless certificates of naturalization have been issued to them respectively by the prothonotary of your said court.

II. That it appears from the record of this court of the admissions to citizenship in the following cases, 27 in number, upon the 21st, 22d, 23d, and 24th days of September, one and the same person, to wit, James A. Watson, was the only voucher, viz:

John Collins, Martin Hunt, and Michael Cochran, on September 21, A. D. 1868.

Peter Leonard, James Phalen, Michael O'Connel, on September 22, A. D. 1868.

Martin McAvoy, James Broadly, Patrick Boyle, Michael Finnegan, Michael Friel, Henry Winters, William Bennett, Michael Docherty, on September 23, A. D. 1868.

John Graham, Henry Riley, Frederick Baur, Patrick Dorlan, John Moore, David Carroll, William McCauley, Patrick Coffee, Henry Smith, James Owens, Michael Cavanagh, Daniel McFadden, John Gabel, on September 24, A. D. 1868.

III. That in the following cases each of the said applicants vouched for the other, when of necessity one of them must have been not a citizen of the United States at the time he so vouched, viz: on the 21st of September, A. D. 1868, Henry Ernst vouched for Henry Holl, and Henry Holl vouched for Henry Ernst.

Your petitioners, therefore, pray the court to grant a rule upon the parties above named who have been admitted to citizenship, to show cause why the admissions, to citizenship in their cases, and all the proceedings had therein in reference to said admissions, as appear by the records of this court, shall not be vacated, and also to show cause why an order should not issue to direct that the certificates of naturalization issued to the said parties be delivered up to the prothonotary of your said court to be cancelled by him.

And your petitioners will ever pray, &c.

CHARLES E. WARBURTON,
WATSON AMBRUSTER,
A. J. McCLEARY,
EDWARD PENINGTON, Jr.,
JAMES H. ORNE,
STEPHEN A. CALDWELL,
ELISHA H. HUNT,
T. R. DAWSON,
L. D. JUDD,
N. B. BROWNE.

Refused because not sworn to. J. T.

Since the above entry was made the paper attached as part of the sheets following sheets. It was understood by me as a separate petition. J. T.

City of Philadelphia, *ss:*

Alexander J. McCleary, of the city of Philadelphia, being duly sworn according to law, deposes and says that he is a reporter of the Evening Telegraph, a newspaper, published in the city of Philadelphia, and that within the last few days he has had occasion, in the discharge of his business, to visit the office of the prothonotary of the supreme court in and for the eastern district of Pennsylvania, and inspect a portion of the records of naturalization recorded in said office, and that—

I. From personal inspection and supervision, find that the following-named persons on the days mentioned—to wit, on September 18, 1868: Moses Paper, John Nugent, Edward Wright, Thomas Nagley, Daniel Bradley, Michael McGrath, and Patrick Gallagher.

On September, 19, A. D. 1868: Francis McShane, John Keenan, and Pat. McQuillen.

On September 21, A. D. 1868: John McGarrity, and Dennis King.

On September 22, A. D. 1868: Hugh Loughrey and Richard Somers.

On September 23, A. D. 1868: James Skelly, John McGonigle, Felix Henegen, Thomas Gibbons, John Cronin, Thomas Donohue, George Wilton, William Halloway, Thomas Phillips, George Daniels, Edward Harley, and Andrew Quinn—were admitted to citizenship of the United States of America by the said supreme court, and that the records of the said office do not contain the residences of any of the persons aforesaid.

II. And that they find among the said records the following named persons on the following named days, to wit:

On September 21, A. D. 1868: John Collins, Martin Hunt, and Michael Cochran.

On September 22, A. D. 1868: Peter Leonard, James Phalen, and Michael O'Connell.

On September 23, A. D. 1868: John Graham, Henry Riley, Frederick Bauer, Patrick Dorlan, John Moore, David Carroll, William McCauley, Patrick Coffee, Henry Smith, James Owens, Michael Kavanaugh, Daniel McFadden, and John Gabel—were admitted to citi-

zenship of the United States of America by the said supreme court, and that the said records show that all the said parties were vouched for by one and the same man, to wit, James A. Watson.

III. And that on the 21st of September A. D. 1868, Henry Ernst vouched for Henry Holl, and Henry Holl vouched for Henry Ernst.

A. J. McCLEARY.

Personally appeared before me Alexander J. McCleary, and being duly sworn, depose and say that the facts set forth in the above affidavit are true, except the last clause of the third statement in regard to the case of Louis Gosh, of which case he personally knew nothing.

A. J. McCLEARY.

Sworn and subscribed before me this 5th day of October, A. D. 1868.

DAVID BEITLER, *Alderman.*

[Copy of endorsement.]

Petition of Alex. J. McCleary and others for a rule on within-named persons to show cause why their admission to citizenship should not be vacated, and the certificates to said admission should not be delivered up to the prothonotary to be cancelled by him.

OCTOBER 6, 1868.—Rule granted as per opinion filed, and application refused as to other persons named. See opinion as filed.—T.

Filed October 5, 1868.

In the matter of the petition of A. J. McCleary for a rule on Moses Paper and others in said petition mentioned for a rule to show cause why their admission to citizenship should not be revoked, and the certificates of said admission should not be delivered up to be cancelled:

I have concluded to grant the rule as prayed for in the case of Henry Ernst and Henry Holl, who it is set forth were naturalized on the 21st of September ultimo. The cause alleged is that each of these persons vouched for the other, and consequently that one of them must have been an alien when he was received as voucher.

I shall grant the rule; but it is done on the condition that the attorney general shall appear on the record to prosecute the rule. One citizen cannot impugn the action of a court in naturalization cases so far as to require the cancellation of naturalization papers. Some public authority must do this, and I understood when this petition was handed up that the attorney general was to be the official party to the proceeding; yet his name does not appear on it as an actor. That can be made right now, if that officer chooses. Even then it is a most serious question how far and in what manner this court can act. If the certificates were in the possession of the court, no difficulty would arise; it could be cancelled without doubt; but whether I have the power to proceed as in equity or otherwise, and compel the party to give it up, or in default to make a decree invalidating it, is not clear, and will be the subject of consideration on return of the rule. Reserving these questions, and not deciding them *in limine*, I will grant the rule in the cases above mentioned in the name of the attorney general, if he files his assent to it. If no such power exists as is attempted to be invoked, I think it ought to be conferred by competent legislative action, and not to remain questionable as it is.

And now, October 6th, rule granted upon Henry Ernst and Henry Holl, in accordance with the prayer of the petitioners and to certain grounds charged for the application, returnable on Saturday, the 10th instant, at 10 o'clock a. m., at the supreme court rooms in this city. Personal service of the rule 24 hours previously to said time is required. *Per curiam.*

[Copy of endorsement.]

In the matter of the petition of A. J. McCleary *et al.* Opinion of Thompson, C. J.

Filed October 6, 1868.

Additional opinion.

There is a ground for a rule contained in a portion of the petition which was understood to be an unsworn paper, and refused for that reason: but as it has been said by counsel that it was to be attached to that sworn to, and has been so attached, I must notice it.

The rule is asked against Thomas Nagely and 24 others, who are charged with procuring naturalization certificates without a previous declaration of intention, but it is not stated whether they were naturalized on minority proofs, where a previous declaration of intention is not required, or where such a declaration is required. We cannot, therefore, tell to which class the persons named belong, and cannot aid the defect in the petition for want of the proper averment. The rule is refused, therefore, on this ground of complaint.

Read in open court, October 6th, A. D. 1868, and to be filed with the opinion read this morning.

THOMPSON, C. J.

[Copy of endorsement.]

Additional opinion in the matter of the petition of Alexander J. McCleary *et al.* To be filed.—J. T.

Filed October 6, 1868.

And now, 6th day of October, A. D. 1868, in the matter of A. J. McCleary, *et alia sur*, prayer for rule on Henry Ernst and Henry Holl, the attorney general appears in open court and asks officially that said rule shall be granted as prayed for, and in manner as the same is granted by the court and set forth in the opinion of the chief justice now on file in said case.

BENJAMIN HARRIS BREWSTER,
Attorney General.

[Copy of endorsement.]

Rule in the matter of Henry Einst and Henry Holl, October 6, 1868. Allowed.—Thompson, C. J.

Filed October 6, 1868.

And now, October 12, 1868, the within-named petitioner, Henry Ernst, having surrendered his certificate granted on the 21st inst., and having prayed leave to file a new petition on the grounds appearing endorsed on his certificate, it is allowed, and this certificate is to remain on file.

Per curiam. THOMPSON, *C. J.*

Henry Ernst came into court and prays leave to surrender his certificate because of charges that he was illegally vouched for by Henry Holl. The truth of which charge he cannot affirm or deny, as he does not recollect whether said Holl was sworn as a citizen at the time or not, and prays leave to prove his residence by Nicholas Newling, and to procure a new certificate. He further declares that he was not aware of anything wrong in the circumstance of Holl vouching for him.

HENRY EARNEST.

Sworn in open court October 12, 1868.

J. R. SNOWDEN, *Prothonotary.*

Erasures by me.

THOMPSON, *C. J.*

Let the petitioner present a new petition. *Per curiam.*

October 12, 1868. New petition filed and naturalization certificate granted.

J. T.

STATE OF PENNSYLVANIA, *Philadelphia County, ss :*

I certify that the foregoing is a full and true copy of the record and proceedings in the case of the rules herein stated.

Witness my hand and the seal of the said court this 23d day of January, A. D. 1869.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

Among the records of the supreme court of Pennsylvania in and for the eastern district, the following is contained:

In the matter of the petition of W. J. McCleary and others for a rule to show cause why certain certificates of naturalization should not be revoked.

OPINION OF CHIEF JUSTICE THOMPSON.

The rule prayed for against Moses Paper, John Nugent, and 25 others, on the ground "that the records of the supreme court do not contain the residences of any of the persons aforesaid," must be refused for the reason that there is nothing in the acts of Congress requiring the residences of applicants for naturalization to be set forth, excepting only the residence in the United States and State. It is not alleged that that has not been done in the cases of the persons named in the petition.

If it be meant that the numbers of the residences of the applicants are not marked on the papers, it is only necessary to say that no such requirement is to be found in the law, and the omission would not vitiate the papers. My brother Sharswood, who held the *nisi prius* before which the persons named were naturalized, gave directions to the clerks to mark the numbers of the residence of vouchers and applicants on the papers before swearing them, in order that false swearing and fraudulent practices might be detected. This was the first time this precaution was ever taken in any court, as I am informed, in this city; but a failure to observe it he did not declare should vitiate the papers granted. He had no power to make such order or declaration, and did not do it, nor attempt to do it. The omission is but an irregularity at best in the order of proceeding, without affect on the petitioner whatever. Neither by accident nor design could the omission effect the applicant, as he was not required by law to set forth his exact place of residence. The order was in the nature of a police regulation or precaution, and not a condition of citizenship. This ground of application for the rule is therefore refused.

The application for a rule against John Collins, Martin Hunt, and 25 others, because vouched for by one and the same individual on different days, as set forth in the petition, viz., James A. Watson, is also refused. There is no allegation that this was fraudulently

done, or that the voucher swore falsely when he attested to his knowledge of the residences of the persons named in the State and United States, &c. The application stands solely on the ground, therefore, that it is illegal for one man to prove the residence of more than one applicant. This is entirely an untenable ground. A witness may legally vouch for as many persons as he has sufficient knowledge of to enable him to avouch accurately, and this has always been the practice. Nor is it to my mind at all wonderful, or of itself a circumstance of suspicion, that in this city, the largest manufacturing community in the United States, containing establishments, many of them employing hundreds of operatives constantly, that their employers, or one of the number, might know 25 or even 50 or 100 persons engaged about such establishments and know of their residences in the United States five years, or that he might know the operatives in neighboring establishments as well as the one in which he might be employed. Countrymen from the same lands, and especially fellow-craftsmen, are very likely to remember each other, and to keep up an acquaintance once made under such circumstances. So, too, where there are so many beneficial and relief institutions as in this city, it is easy to understand how a member might be able to vouch for the national and State residence of any number of his fellow associates, if they have been in such association for the requisite periods. We must, however, presume the court to have been satisfied as to the voucher's knowledge, before admitting the applicant for naturalization to be sworn. The seal of the court closes the controversy as to this, unless it be alleged that the voucher has sworn falsely and the naturalization papers fraudulently obtained. In such a case, the attorney general becoming the actor and asking for a rule, I would be disposed to grant it. Nothing like this, however, appears on this paper, and the application for the rule on the ground noticed is dismissed.

Per curiam.

[Copy of endorsement.]

In the matter of the petition of W. J. McCleary and others, for rule to show cause why certain certificates of naturalization should not be revoked. Rule dismissed. Opinion of Thompson, C. J.

Filed October 12, 1868.

STATE OF PENNSYLVANIA, *Philadelphia county, ss:*

I, James Ross Snowden, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby certify that aforegoing is a true copy of the opinion of the court in the matter of the petition above mentioned, as filed of record in said court, on the 12th day of October, A. D. 1868.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Philadelphia, this 18th day of January, A. D. 1869.

[SEAL.] JAMES ROSS SNOWDEN, *Prothonotary.*

Thus stated, no just and equally balanced mind can vary from dismissing the doubt endeavored to be cast upon the legality of the naturalizations issued by the court sitting at *nisi prius* in the State of Pennsylvania and city of Philadelphia. The minority congratulate themselves upon the fact that the author and mouth-piece of said majority have waived a reliance upon the contestant's claim in respect to these naturalizations.

The next most important matter to examine is the returns made in the 6th and 7th divisions of the 17th ward, which the majority of the committee have adjudged should be thrown out. From the testimony of four election officers in these two divisions we find in fact that the election in those districts was conducted properly, lawfully, and legally; that no disorder of any serious character or of any sort took place at either of these polls, showing that no intimidation or effort was made to prevent those entitled to the privilege from voting.

Mr. John Tomlinson, republican inside window inspector, testifies as follows as to 6th division of the 17th ward:

JOHN TOMLINSON, being duly sworn, doth depose and say:

By Mr. FAUNCE:

Question. When you were examined as contestant's witness, did you state that you were an officer in the 6th division of the 17th ward; and if so, please state what officer.—Answer. I was minority window inspector.

Q. Was there any qualified citizens of said division deprived of their right to vote on that day.—A. None that I know of.

Q. To what political party do you belong.—A. I belong to the republican party. I generally vote that ticket.

Re-examined by Mr. FAUNCE:

Q. Who put the tickets into the box.—A. I did.

Q. Was not the election in said division conducted properly, lawfully, and legally.—A. I am not posted on the laws of election; but I saw nothing inside that I suspicioned any foul play about. I had not the chance to see the list of taxables, to see whether a man's name was on the list when he came up to vote.

Q. Would Mr. McGuckin have refused to show you the list had you desired.—A. That I can't say; I did not ask him.

Mr. James McGuckin, the other inside window inspector, testifies as follows as to 6th division 17th ward:

JAMES MCGUCKIN, being duly sworn, deposes and says:

By Mr. HIRST, Jr.:

Question. Where do you reside.—Answer. 1408 Cadwallader street, 6th division of the 17th ward.

Q. Were you an election officer in that division; and if so, what were your duties.—A. I was majority window inspector; I kept the tally list of the list of taxables; that is, I mean the list of taxables.

Q. Did you mark the letter V opposite the name of each voter on the list of taxables as they voted.—A. I did; I might have missed a few.

Q. Was not the election in the 6th election division of the 17th ward conducted in every manner legally and according to all the requirements of laws regulating elections.—A. It was, to the best of my knowledge and opinion, and the rest of my brother officers so said while in the room.

Mr. JAMES MAHONEY testifies as follows as to the 7th division of the 17th ward:

JAMES MAHONEY, being duly sworn, deposes and says:

By Mr. FAUNCE:

Question. Where do you reside.—Answer. 1532 Bodine street, in the 7th division of the 17th ward.

Q. Were you an election officer in the 7th division of the 17th ward at the election held on the 13th day of October last—A. I was the majority window inspector.

Q. How was the election conducted in said division on the 13th of October last.—A. Conducted properly, as I thought.

Q. Was anything said—if so, what was said, as to the election being conducted in a proper manner.

(Question objected to, because the best evidence the witness could give would be a statement of the manner in which the election was conducted. It will be for Congress to decide whether it was conducted in the proper manner.)

A. As soon as the window was closed, some of the republican officers (I am not certain whether they all did or not—that I cannot say) returned me and the rest of the democratic officers their thanks for the manner in which we conducted the election. Mr. Carson, who was the window inspector's clerk, seemed to be jubilant in regard to the way the election was conducted. He was a republican officer.

Thus it is established beyond cavil or dispute, that in the 6th division of the 17th ward nothing was done even to occasion suspicion of "foul play" on the part of the republican officer who handled the tickets put into the box during the entire day. This statement of facts is fully corroborated by Mr. James McGuckin, the other inside window inspector.

In reference to the 7th division of 17th ward. Mr. James Mahoney's testimony exhibits that everything was conducted in that division in such manner as to meet the entire approval of the republican election officers during the day, and when they came to separate the democratic officers received the thanks of their political opponents for their fairness. It is attempted to impugn the votes of 87 voters not assessed in the 6th division, many of whom were well known to the citizens, not being even challenged, and were without doubt fully entitled to vote in said division; but the evidence nowhere discloses the fact for whom these voters cast their ballots for Congress, and may with as much propriety and reason be deducted from Mr. Myers as from Mr. Moffet. It is a well settled principle of law that no citizen shall be deprived of his vote or

be disfranchised by reason of any neglect on the part of an officer of the election; hence from the evidence we conclude there is neither reason nor justice in throwing out the entire vote of this division, and in the absence of testimony showing that the 87 who were unassessed and voted were fraudulent, should either invalidate the entire poll or be deducted from either candidate.

The same state of facts exists as to the 7th division of the 17th ward, except that the contestant made effort to prove his entire vote as cast for him in this division. In this he failed, being able to show but 40 out of 85 given him by the election returns. Seventy-two unassessed votes are again impugned in this division; and it is manifest they were as likely to have been given to one as the other of the candidates.

As to personizations alleged in these two divisions, a careful reading of the testimony shows that they were not personizations but different men of the same names. In three cases they appear to be father and son of same name.

We, the minority, are therefore of opinion that these two divisions should be computed in the count and not cast out apparently for the object of bringing about a desired result.

The claim of the sitting member for 53 votes in the 8th division of the 19th ward the minority do not allow, it being plain that such change of result as claimed in that division was produced by a transposition of the figures, giving Mr. Moffet 47 votes and Mr. Myers 23; whereas it should have been 47 votes for Mr. Myers and 23 for Mr. Moffet, as it was computed by return judges. This disallowance does not therefore affect the result.

The next division which requires attention and examination is the 10th division of 19th ward. From testimony here inserted it appears that this poll was taken possession of by a mob of men and the election officers driven by force from the room wherein the election was held and not allowed during the day to perform any part in connection with their assigned duty as election officers of said division.

EMANUEL HOOPER, being duly sworn, doth depose and say:

By Mr. FAUNCE:

Question. Where do you live.—Answer. 2009 Amber street, in the 10th division of the 19th ward.

Q. Were you the lawful judge of election of the 10th division of the 19th ward, and were you such on Tuesday, October 13, 1868.

(Objected to.)

A. Yes.

Q. Who were the other lawful election officers of the 10th division of the 19th ward at the election held on the 13th of October last.—A. Peter Brower was return inspector. Nathan L. Potts was the other that was elected, but he had moved out of the division. The minority judge appointed Thomas Jones to act in his place. The window inspector was Thomas Berryman and John Henry elected; he being in the 14th division, appointed James Rafferty to act in his place.

Q. Did you, as the lawful judge, act as judge of election in the 10th division of the 19th ward at the election on the 13th of October last.

(Objected to.)

A. They wouldn't let me; I was drove away; I did not act; I couldn't.

Q. Please state in your own way why you did not act as judge in said division on the 13th of October last.—A. I went there in conjunction with James Rafferty, Thomas Jones, Peter Brower, and the clerks. We went in the room and began to arrange the books and fix up things at the window, and so on. I believe it was about twenty minutes of seven that we went in, as near as I can recollect. I was putting the table right and putting the board up at the window and arranging things in order: some eight or ten men came in, headed by Theodore Hacket, the day sergeant of the police; Simpson in the comptroller's office was another, and a candidate for school director named Lefferd. He came in and he ordered me out: he said I had no right there; he said we are going to conduct the election here to-day. He came up a little closer to me, and I told him I thought a police officer's duty was to keep 30 feet from the polls; I ordered him out after a good bit of talking; I left him talk on, as

it was no use. He talked away a good while; he ordered me out again, and I told him I wouldn't go; he went to the door and he brought two police in and forced me and dragged me out. Brower, I believe, after I was outside, I looked around and asked him what he was outside for, and he said he had been served the same way. We went outside, and met James Rafferty, the other window inspector; he told me that when he saw we two served alike he thought that he had better make way with the election papers, as he thought he would be served the same. We went down the city to get some advice from a lawyer about the matter, who advised us to wait until the court opened, and see Judge Allison. We went and seen Judge Allison, and laid the case before him; I showed him my certificate; he consulted with the lawyer there at the time.

(Objected to.)

He sent for Purdon's Digest, read the law, and decided or thought I was the legal judge Said I appeared to be the legal judge. I told him how I had been treated, and he issued warrants for the arrest of the policemen. He told me to go back and demand my right to act as judge, and if any one molested me to come back to him and he would issue warrants for their arrest. I went back, and when I got back in the room I should judge there were 50 or 75 men there—that is, the tavern or outer room before you get in; I looked around, and found they were principally from other precincts; I couldn't recognize five that were in the room. I walked through the room to the precinct door; the room was about 30 feet long, and I went through it. I knocked several times, and two or three men from the outside got around me and told me that I couldn't go in there to-day; they were going to do things as they liked that day. I found it was useless to go any further, and made my way out to go down to the judge. I got about the middle of the room, and the first thing I knew I was knocked back of the head: the further I went the more I got, and I got out of the door the best way I could; I was struck just as I got out of the door, that knocked me pretty near senseless, with what I thought was a slung shot, for it took the skin off my jaw and pretty near broke it. The one that struck I afterwards learned was one that was appointed by the mayor a deputy that day; his name was David Martin, from the 4th precinct. Outside I was knocked down, and I picked myself up as best I could and the first thing I knew I were taken to the hall by another deputy named Hoffman. While that was going on there was four policemen stood opposite seen all that was transacted. I was afterwards released on *habeas corpus*.

Q. Were the policemen who thus treated you afterwards arrested under the writ issued by Judge Allison, and taken before his honor.

(Objected to.)

A. I was took out that day, about three hours after I was arrested, under a writ of *habeas corpus*, before Judges Allison and Ludlow. In the mean time I was out under bail from Alderman Heins here. I didn't go down because I was not out. The officers, I understand, were held for a further hearing.

Q. Did you afterwards appear as witness against these officers.—A. Yes; the Saturday morning after, in court.

Q. Did Judge Allison, sitting as committing magistrate, bind them over at that hearing to appear at court.

(Objected to, because only provable by record.)

A. Yes, he held them in $500 each.

Q. How many persons voted in the 10th division of the 19th ward at the last October election.—A. There were 219 on the lists as voted.

Q. How many names are there upon the assessor's list of the 10th division of the 19th ward for the year 1868.—A. There are 443 on the regular assessment and 40 on the extra.

Q. Have you got the assessor's list of said division with you.—A. Yes, sir; here is the regular assessment, here is the extra assessment.

(Offered and marked "Exhibit J.")

Q. Did or did not the action of the police in said division on the day of the October election intimidate and prevent a number of qualified citizens from voting in said division at the last October election.

(Objected to.)

A. When I came out of the station-house I was threatened before I got my private papers. I was coming up from the cell to get my papers. He followed me up, and the lieutenant had to take hold. He attempted to strike me. The lieutenant called at him, and I went away. He followed me out, and I had to run in order not to be struck, and two policemen witnessed it, too. I was told if I came near the polls that day they would kill me, by two different individuals.

Q. Did you vote in said division at the October election.—A. No.

Q. Please state, if you know, about how many democratic electors staid away from the election in said division through the conduct of the said police officers and rioters.

(Objected to.)

A. I should judge there were full 100; from that to 125.

Q. Please state, if you know who, after your expulsion from said polls by the police and rioters, the names of the persons who usurped the places of the said legal officers of the 10th division of the 19th ward, on the 13th of October last.

(Objected to.)

A. The judge was John C. Addis, living in the 14th precinct at the time. Nathan L. Potts was the return inspector, living in the 6th division at the time. The clerk was the same. The other two were Albert Hyde and Peter Faunce, both living in the division. Thomas Berryman was the only legal officer that was living in the precinct, there; he was window inspector.

Cross-examined by Mr. LONGSTRETH:

Q. You have said that you were the lawful judge of election in the 10th division of the 19th ward on the 13th of October, 1868; when were you so elected.—A. The precinct was divided somewhere about the latter end of April or the beginning of May, 1868. John C. Addis was elected judge in October, 1867, in the 10th precinct, which now comprises the 10th and the 14th. He appointed me judge of the 10th, he then living in the 14th. Previous to his doing of it we called on William B. Mann for his opinion—the late district attorney.

Q. When were you appointed.—A. On the 8th day of May, 1868.

Q. Was that appointment in writing, or verbal.—A. In writing.

Q. Where is it.—A. When I went to Mr. Mann he drew a line out in this style. He said to Mr. Addis, where do you live? He says in the 14th. (Contestant's counsel here objects to the witness in answer to a question, where his appointment is introducing irrelevant and hearsay evidence.) He says if you live here you appoint for there. He said if you live in the 14th you appoint for the 10th; and so on, he says, with the inspectors; if the inspector lives in the 10th he appoints for the 14th, and if he lives in the 14th he appoints for the 10th. When we were going out of the office Mr. Mann said he would give us a legal written opinion if it was required. We took the paper he had drawn out, and said it was not necessary. Here is the copy of the certificate which Mr. Addis gave me. The original certificate was left in some lawyer's office, and could not be found; Judge Allison seen and a half a dozen in the room seen it.

Q. By whom was this copy made.—A. By myself.

Q. Is this the only copy of it you have.—A. I believe I have one at home.

Q. Have you any objection to this copy which you have produced being attached to the record as part of your testimony.—A. Not if you will give me another copy. You can copy it off and give me the original.

Q. Why do you object to having this copy you have produced being attached.—A. I have no objection; but you had better take a copy and give me the original.

[*Copy.*]

MAY 8, 1868.

This is to certify that I appoint Emanuel Hooper judge of the 10th division of the 19th ward, now judge of the 14th division, late a part of the 10th division of the 19th ward.

JOHN C. ADDIS.

Q. When did you make this copy.—A. I wrote this copy out this morning.

Q. Had you the original before you when you wrote out that copy.—A. No, sir.

Q. How long is it since you saw the original.—A. A couple of months or more. It was down among the other papers. I am positive that is a correct copy. I have read it a hundred times and more, having it in my possession six months or more before the election.

Q. Do you mean, then, that what you call a copy was written from your recollection of the terms of the original paper.—A. From my recollection. I am positive, having so many times looked at it, that it is a correct copy.

Q. Did you act at any election under this appointment.—A. There was no election before October.

Q. What is your age and occupation.—A. My age is 47, and my trade is a glove cutter.

Q. When you got to the polls on that morning, was John C. Addis there.—A. When I went in he was not there; he came in afterwards.

Q. Did he come in before or after Hacket and the others you have alluded to.—A. He came in just after Hacket. Hacket was the first man I recognized.

Q. Was that before or after seven o'clock.—A. I should judge it was about a quarter of seven o'clock, or 10 minutes before.

Q. Did Addis say anything to you on that occasion.—A. He said he was going to act there that day. I said to him, you appointed me, and if there had been any alteration in the contract you ought to have let me know the day or night before, and I should not have come.

Q. Why did you not mention Addis's name when you were describing, in your examination-in-chief, what took place at the polls on that occasion.—A. I did not recognize Addis until four or five minutes after Hackett ordered me out. Hackett ordered me out twice before I saw Addis.

Q. Are you sure that your original appointment as judge had not the signature of either of the inspectors on it.—A. Yes, sir. I have half a dozen persons here in the room that could swear to it.

Q. Do you not know or had you not been advised before the last October election that this appointment by Addis alone was void.—A. No, sir.

Q. What has become of your prosecution against Hackett, Simpson, and Lefferts.—A. Leffert and Simpson were never prosecuted by me. Hackett and two other policemen were prosecuted, but I have never had notice to appear at court. But I have heard about a month after that the bill was ignored without my knowledge. That is all I know.

Q. Did you appear at the grand jury room on the first day of the term to which these people were bound over to prosecute your complaint.—A. I had no notice of it.

Q. Were you not in court when they were bound over.—A. Yes, sir.

Q. On what charge were they bound over.—A. I don't know exactly; interfering with the officers, I should judge.

Q. Were they not bound over simply to answer a charge of assault and battery.—A. Not to my knowledge. I understood it the other way.

Q. When was Peter Brower elected return inspector of the 10th division of the 19th ward.—A. On the 2d Tuesday in October, 1867.

Q. Did you hear him ordered out of the room.—A. I seen them bringing him out.

Q. Was the other return inspector in the room at the time.—A. Do you mean the one that was elected. Yes, and the one the minority judge appointed was there too.

Q. Was John Henry one of the window inspectors that you say was elected there that morning.—A. No; he served in the 14th.

Q. When you were before Judge Allison on the morning of election day, did you tell him that John C. Addis had before the time for the polls to open revoked your appointment as judge.—A. I did not, for he did not revoke it.

Q. What did you mean, then, by saying a little while ago, that John C. Addis on that morning, a few minutes before 7 o'clock, told you in the room where the election in that division was to be held, that he himself was going to act as judge there that day.—A. I met him some weeks before in the street. I told him I had heard of rumors; some people wishing him to revoke the appointment. He said no one had been to him, but if all the men in the precinct would come he would not do it. He said he didn't think he would have any legal right to do it if he was disposed to do it. Mr. Buckley was with me at the time he used those words; that was in the month of August.

Q. Did you tell Judge Allison, on that morning, what Mr. Addis had said to you at the polls.—A. No; I don't remember that; he never asked me the question. When I went there and told him of the three policemen he seemed very much surprised, and immediately issued the warrants for them.

Q. Could you identify, and can you now give me the names of any of the men from other divisions that were in the tavern when you went back there, and you were going to the room in which the election was being held.—A. When I went to the door and knocked, John Martin, from the 4th precinct, was the first man to come up to me. David Martin, his brother, who struck me, was his brother. I can't recollect others. There was one from the 5th who took a prominent part.

Q. What time did you get back from court to the polls.—A. About 11 o'clock.

Q. Did you see any of the inside officers who were conducting the election on that occasion.—A. No.

Q. Do you mean to be understood as swearing that you were kept from going to the polls to vote by fears of bodily harm, or only that you did not go because you denied the right of the persons conducting the election to hold it.

(Objected to as argumentative.)

A. I was threatened and fearful of bodily harm, and I did not think they had any right to hold the election.

Q. Have you any actual personal knowledge of any other of the 100 or 125 democratic electors you have spoken of, being kept away from the polls by fear of bodily harm.—A. I was inside all day; but I understood since there was a number kept away. I mean I was nside of the cell three hours, and in my house the balance of the time.

Q. Did you prosecute any of the men that had you on that day.—A. There was no use to throw good money after bad; have the bill ignored without being sent for.

Q. Please give me the names of the two individuals who told you if you came near the polls that day they would kill you.—A. There were two men came up to me just after I left the station-house; I do not know their names, but I know them very well by sight. I know one person who threatened to come around and burn my house down. I have got a witness of that if it is required.

Q. When you went away from the polls did you carry off with you the list of taxables and election papers.—A. No, I did not.

Re-examined by Mr. HIRST, jr.:

Q. Did, or did not, Judge Allison decide after a revision of the law, and proof of the division of the old election division, and on the signature of John C. Addis, that the same John C. Addis was the last judge of election of the 10th division, decide that you were the properly qualified judge, and in open court tell you to return to the polls and take possession and carry on the election.

(Objected to.)

A. Yes.

Counsel for respondent hands witness "Exhibit G." of respondent's exhibits, which is a certified copy of the list of votes of the 10th division of the 19th ward at the last October election, and asks witness to tell him the name and residence of the first voter named therein.

(Objected to.)

A. Theodore Hackett, 2128 Frankford road.

Q. Is that the same Theodore Hackett whom you have mentioned as being the sergeant of police, and who was bound over.—A. Yes.

Q. Please look at the same certified copy of the list of voters and give me the names of those persons appearing thereon as voters who do not reside in that division.—A. One Lawrence Bley, 2023 Coral street, voting No. 125. He is not on the regular or extra assessment, nor never resided there. No, it is a mistake in the name.

By Mr. FAUNCE:

Q. Mr. Hooper, you have given me the names of the persons who usurped your places as election officers in the 10th division of the 19th ward at the last October election. Please tell me to what political party did said persons belong.

(Objected to.)

A. They were all republicans.

Q. Then all the officers of election in the said division were republicans.

(Objected to.)

A. Yes, sir.

Re-cross-examined by Mr. LONGSTRETH:

Q. Had you not been drinking on the day of the election.—A. No, sir.

Q. Were you not noisy and abusive in your language when you came back to the tavern after being down to Judge Allison.—A. No, sir; I never opened my lips, but just knocked at the door.

Q. How long were you occupied in making your statement before Judge Allison.—A. About a quarter of an hour. I have told you before about all that was said. Judge Allison sent for Purdon's Digest to examine the law.

Q. Did anybody appear on that occasion, or was any argument made on behalf of Addis's right to act as judge.—A. No, sir; that was impossible. We came from the precinct house right down.

Q. Can you give me the words of the judge in making the decision alluded to in the first question on re-examination.—A. Mr. Hirst, jr., handed him Purdon's Digest I handed him my certificate myself. He said, speaking to Mr. Hirst at the time, that everything appeared correct, and then Mr. Hirst asked him whether he decided I was the judge. I forgot that in the first question. He said yes.

Re-re-examined by Mr. HIRST, jr.:

Q. Did, or did not, Judge Allison direct the clerk to issue a warrant, to be placed in the hands of the mayor, for the immediate arrest of those police officers.

(Objected to.)

A. I know he ordered the clerk to issue a warrant. I don't know what officers it was. I understood it was to be immediate. He was to be up there as quick as me, I believe, was the word.

E. HOOPER.

Sworn to and subscribed this 28th day of January, A. D. 1869.

CHARLES M. CARPENTER,
WM. R. HEINS,
Aldermen.

PETER B. BROWER, being duly sworn by the uplifted hand, doth depose and say:

By Mr. FAUNCE:

Question. Where do you reside.—Answer. No. 527 Charter street, 10th precinct of the 19th ward.

Q. Were you an officer in said division at the last October election.—A. I was.

Q. Please state what officer; when and how elected.—A. I was elected return inspector by the citizens of the precinct in October, 1867.

Q. Did you act as such officer in said division at the last October election.—A. I went to act, but they forced me out. I could not act.

Q. Please state in your own way all that occurred at the time you went to the polls on the morning of the 13th of October to act as election officer in said division.—A. Well, I went there about a quarter before 7; when I arrived there, there was my clerk, the other inspector and his clerk, and the judge was there, Mr. Hooper; I went inside and commenced to fix the window; the judge had received the books and papers from the county commissioners. I mean Mr. Hooper. We were about getting sworn in and I looked around and says I, "Where is the other officer of election, Mr. Berryman?" There were no one in the room but us few at that time Just as I had inquired for Berryman there came a big crowd of men in the door, headed by Theodore Hacket and Ambrose Simpson, and a man by the name of Leffort Addis came next; and Henry Smethurst and the telegraph operator of the station-house—his name is Potts: I don't know his first name—and 20 or 30 more. They went

immediately over to Mr. Hooper; Mr. Hacket informed Mr. Hooper that he could not act as election officer there that day. He said he was election officer, and he would act as judge. There was a few words said between them. Mr. Hooper ordered the police out of the room. I immediately ordered all that didn't belong there out of the room. Hacket went to the door and called in two other officers, and he grabbed hold of Mr. Hooper. Mr. Hooper made some resistance. Hacket said we will conduct the election ourselves. They then jerked Mr. Hooper off the chair and dragged him violently to the door. I then ordered them to leave and let him be. One of them grabbed me by the back and pushed me out of the door. The crowd then filled up the room so as I could not get back again in that door; I ran around to the other door; I met Mr. Rafferty, the other window inspector. He had the books and papers of the precinct. I looked in the room, and they were cursing and swearing there, and I thought my life was not safe there. I said, then, I guess we had better go down to the court and see what we will do. We then went down to get legal advice. We had to wait there till the court opened; the court opened; stated our case to Judge Allison; after issuing warrants for the officers—police officers—he then directed us to go back and take our seats as election officers. After looking over the Digest, he stated that we were the qualified officers. I then stated to Judge Allison that it was dangerous for us to go there. He told us to go; and return and let him know if we didn't get in. We went; rode up there in the cars; got out at Norris street; then walked up to Amber street, and went to the corner; I looked at the window where they were taking in votes. Ambrose Simpson was there, and he closed the shutters. We had to go in the bar-room to get to the door; Mr. Hooper went ahead, I followed after him—and the others followed after. Mr. Hooper knocked at the door; John Martin and William W. Bain, constable of the ward. He told him that he could not go in there; he knocked again and the door was locked from the inside; he turned to go away and he was struck by John Martin, and then there was a kick made; I don't know whether at myself or Mr. Hooper; but I was kicked by John Martin. After that I had to look out for myself; I was then struck again in the back, I don't know who; by that time Mr. Hooper got outside. I was at the door; David Martin was striking Hooper. There were three police officers on the opposite side of the street; the officers did not interfere to prevent him from getting beat. An officer went over and arrested Hooper, and took him to the station-house. I found it was impossible for me to act as officer there; I started with two or three others down to court; I went before Judge Allison in court; I told him we come off short, one or two missing, locked up. He then sent us to the other court for *habeas corpus*. That was issued. We then went back to Judge Allison; he gave it to a man to serve—the *habeas corpus*. We then stayed around the court there for the rest of the officers. They didn't come, and the judge said he would issue a writ for the mayor if they didn't come, and that fetched them. They then postponed a hearing till the next day, I believe, at 10 o'clock. Then they got their hearing, and was held to bail in the sum of $500 for appearance at court.

Q. Then I understand that notwithstanding you were the regular elected return inspector to act at the last October election in said division you were ejected by force from the room and the place of holding the election.

(Objected to.)

A. I was.

Q. Did you vote in said division on the 13th of October last.—A. I did not.

Q. For whom would you have voted for a member of Congress had you not been prevented from exercising your right as an elector by the police and the rioters on that day.

(Objected to.)

A. John Moffet.

Q. Please state if you know how many duly qualified democratic electors of the 10th division of the 19th ward, owing to the action of the police and the rioters, were deprived of the right to vote in said division at the last October election.

(Objected to.)

A. To the best of my opinion about one hundred.

Q. Can you tell me what position Nathan H. Potts held on the 13th of October last, whom you have named as one of the usurpers in said division, and also give me the division in which he resided on the 13th of October last.

(Objected to as grossly incorrect and leading.)

A. He held the position of telegraph operator in the 11th police district. He lived in the 6th division of the 19th ward; had lived there four months. He had moved before the October election out of the 10th division.

Cross-examined by Mr. LONGSTRETH:

Q. What is your age and occupation.—A. Forty-seven on the 22d day of next February. I am a cordwainer by trade.

Q. How did it happen that you, a return inspector, having no duties to perform until 8 o'clock or after, were there so early with only the other democratic election officers, preparing for the election.—A. The law requires me to be there at 7 o'clock; that is the reason I was there.

Q. Had you any previous arrangement with the other two democratic officers whom you met there, to meet them at the polls some time previous to the hour for commencing the election.—A. I had told my clerk to be there in the morning. I think that was all.

Q. Had you no arrangement with Hooper or Rafferty.—A. No, sir.

Q. Had you been sworn when you went there that morning.—A. No, sir.

Q. Were you sworn at all to act as return inspector that day.—A. I was not. They prevented me from being sworn.

Q. Who pushed you out of the door.—A. That I can't say positive. He had a uniform on—a police uniform; all but the hat.

Q. Did Addis or any other of the election officers order you to go, or make any objections to your remaining and acting as return inspector.—A. I don't remember any of them saying so. I was pushed out and could not get back again.

Q. When you went around to the other door, after being pushed out, and met Rafferty, what was there to prevent you from going into the room again —A. Well, they were so boisterous and noisy in there, cursing and swearing, that I did not think it safe to go in. I don't consider Theodore Hackett—— The last eight or nine years we have not held an election in that precinct without being disturbed by Theodore Hackett and others.

Q. Did any one say or do anything to you that morning until you attempted to interfere in the way you have detailed in favor of Hooper.—A. No; for I went directly in the room, and there were no one there until they came.

Q. When you were pushed out of the door, had the time for opening the election arrived.—A. No; I think it wanted a couple of minutes of it.

Q. Was Ambrose Simpson outside of the window when he closed the shutters.—A. He was.

Q. Was it not just the end of an hour, when the election is generally intermitted for a few minutes, for the purpose of transferring the ballots from the boxes for the hourly count.—A. That is more than I can state. I don't know the exact time.

Q. Did you mean to leave the impression by your testimony in chief that Ambrose Simpson, seeing you, closed the shutters to prevent you communicating with the officers inside through the window.—A. I don't know of any other object he could have, for he never closed the window shutters when we were taking count of votes.

Q. Did you go up to the window.—A. I did not.

Q. Was there any further circumstances casting any impediment in the way of your acting as election officer except those you have detailed.—A. I don't think there is.

Q. Did you afterwards go up to the window and offer to vote.—A. I did not. I was afraid to go there to the polls to vote for fear of bodily harm.

Q. What made you afraid.—A. Because they had always been fighting around the precinct every election, and it is impossible to get our vote in when there was no disturbance without fighting it in—especially since the police station-house has been in that division.

Q. How long has the police station-house been in that division.—A. Ten years, to my knowledge, and over.

Q. Please give me the names of all the democratic electors out of the 100 that you have spoken of as being prevented from voting, who, to your personal knowledge, staid away from the polls through fear.—A. I can't name the whole 100; I can't name them.

Q. (Question repeated.)—A. Well, I was one; I can't name a hundred men staying away from the polls. I didn't make that positive assertion.

Q. I again ask you to name any democratic electors beside yourself who, to your personal knowledge, staid away from the polls that day through fear.—A. There were 23 democratic electors voted there, all told.

Q. I again ask you to name any democratic elector besides yourself who you know staid away from the polls that day through fear.—A. Well, I heard different men say they did, but I have every reason to believe them; but I don't know. I could name some.

Q. Please name them.—A. Frederick Farley, John Farley. I can't think of names; they slip my memory.

Q. When did Frederick Farley and John Farley tell you they were afraid to go to the polls on the day of the last October election.—A. Frederick Farley told me on election evening that it was dangerous to go up there, and he did not go and vote; and John told me one day through the week, on Friday after the election, I believe.

Q. Did either of them tell you by whom they had been threatened or deterred from going to the polls.—A. They did not.

Q. After your return from court the second time did you remain in the neighborhood of the polls.—A. I went home; my home was in the neighborhood.

Q. Could you see the window at which the votes were being received from your house.—A. No, sir.

Q. Do you know whether or not the election, after the polls were opened, was conducted quietly and peaceably.—A. Well, I was in court, with the exception of the time I was sent up by the judge. Then it didn't appear very quiet and peaceable; I don't know further. I have been lame some since that day over it.

Q. On that occasion was not the disturbance you have mentioned confined to the bar-room of the tavern, and the striking of Hooper in the street.—A. I think it was; in the bar-room and in the street. Hooper made no resistance, nor I made no resistance.

Q. Did you see a line of voters in any way interfered with.—A. No, sir.

Q. Was Nathan H. Potts holding the position of telegraph operator at the station on the 13th day of October, 1868.—A. He was, on the 12th and on the 14th.

Q. Do you not know that he resigned before and was reappointed after the election.—A. On the evening of the 12th and on the morning of the 14th I saw him at the telegraph operating. I think it is doubtful that he did.

Q. Did you prosecute the men who put you out of the room for assault and battery.—(Objected to.)—A. Well, all the prosecution there was, was when the judge held them to bail. I didn't prosecute them.

Q. Had you acted at any previous election in that precinct as an election officer.—(Objected to.)—A. Yes, frequently. I have lived there 19 years, and I have been election officer a good many times; a half dozen, anyhow.

Q. Did you act as election officer under your election in October, 1867, at any time previous to October, 1868.—A. No; there were no elections.

PETER B. BROWER.

Sworn to and subscribed this 28th day of January, A. D. 1869.

CHARLES M. CARPENTER,
WM. R. HEINS,
Aldermen.

JAMES RAFFERTY, being duly sworn, doth depose and say:

By Mr. FAUNCE:

Question. Where do you live.—Answer. No. 426 Otis street, 10th division of the 19th ward.

Q. Were you an officer of election in said division at the election held on the 13th of October last.—A. I was appointed as an officer; window inspector.

Q. Were you the legal window inspector in said division at the last October election. (Objected to.)

A. I was appointed by Mr. Henry the legally elected minority window inspector.

Q. Please state under what circumstances you were so appointed.—A. The division was divided, and Mr. Henry being in the new division, he appointed me for the 10th. He said he couldn't act in the old division—live in one division and act in another. He appointed me for the old.

Q. Did you act as window inspector in said division at the last October election.—A. No, sir.

Q. Please state in your own way why you did not act as such officer, and all that occurred at the time you went to the polls for the purpose of acting on the morning of the 13th of October in said division.—A. I went to the polls about quarter before seven, and, getting ready to receive votes, I saw Mr. Addis in the room. He said that he was going to act as judge of the election on that day. Mr. Hooper sat on the chair; said that he was legally appointed judge, and was going to act as judge that day. Addis said that he was going to act as judge. They began arguing. Mr. Hackett, Sergeant Hackett, came in the room and asked Mr. Addis if he wanted the room cleared. Mr. Addis said he did. Mr. Hackett and one or two more officers got hold of Mr. Hooper and ran him out of the room. Then the crowd got in the room and Mr. Brower was run out. The return inspector and I, thinking I was going to share the same fate, I took the papers away with me, and we went down to the court; Mr. Brower, Mr. Hooper, Mr. Jones, and myself. Mr. Hooper and Mr. Brower went in the court-room, and I don't know of anything that happened there; but when they came out I went up with them in the car, and they told me (objected to) that the judge told them to go up and demand their place as election officers. We got out of the car Front and Norris streets and walked up as far as Otis. I told them to stand on the corner until I went up and changed my clothes. When I had come out of the house I looked for them, but could not see them. Then I started for the division house and met Mr. Jones, who told me to turn back; that they had beat Hooper and Brower, and it wasn't safe for me to go. Then, turning towards home, I looked on the other side of the street and saw Mr. Hooper under arrest. That is all.

Q. Did you vote in said division at the October election.—A. No, sir.

Q. For whom would you have voted for a member of Congress had you not been prevented from exercising your right as an elector.—A. Mr. John Moffet.

Q. Were you or were you not kept away from the polls, on the 13th of October last, by the action of the police and the persons who were there assisting them.—A I was at court in the court-room some two or three hours waiting for the officers to be brought there by a warrant sent for them. I have got such a bad memory, I can't recollect that.

Q. Why did you not vote in said division.—A. I thought there was no use in voting. I didn't think the men who were there had any right to be there, and therefore didn't go.

Q. Please state how many qualified democratic electors of said division did not vote at the last October election.—A. Well, I judge from 70 to 75.

Q. What has been the democratic vote of said division.—A. I suppose there was about 100 democratic votes polled in the November election; I judge there was that many.

Q. Do you not know that there was not a large number of democratic electors in said division who did not vote at the November election.

(Objected to.)

A. I know of two that did not vote in November.

Q. Were all the officers who conducted the election alleged to have been held in the 10th division of the 19th ward on last October republicans.—A. They were all republicans.

No cross-examination.

JAMES RAFFERTY, JR.

Sworn to and subscribed this 28th day of January, A. D. 1869.

CHARLES M. CARPENTER,
WILLIAM R. HEINS,
Aldermen.

The majority, however, fail in their partial review of the evidence to look upon the proved and sworn declarations as to the force and intimidation—we may say riot—in this division. If any division vote in this congressional district ought to be declared void, this district should in our opinion have priority.

The 4th division of the 17th ward is also impugned by the contestant. He claims 24 illegal votes by the sworn statement of Mr. Geo. Painter. Fourteen of these 24 alleged illegal votes are satisfactorily accounted for by the testimony of Mr. James Gilchrist, hereunto directly annexed:

JAMES GILCHRIST, being duly sworn, doth depose and say:

By Mr. HIRST, jr.:

Question. Where do you reside.—Answer. I reside at No. 240 Oxford street, 7th division of the 17th ward.

Q. Where did you reside at the time of the last October election.—A. In the 4th division of the 17th ward, No. 1349 Hancock street.

Q. Mr. Painter, witness called on the part of contestant, has stated under oath that he compared the list of voters with the list of taxables in the 4th division of the 17th ward, with a view to ascertain how many voted whose names were not on the list of taxables, and in response to the question gave the following names: John McAllister, John McDonald, Joseph James O'Rourke, Thomas O'Rourke, E. F. Glacken, Patrick Kebler, Isaac Cohen, George Cohen, Thomas Landy, George W. Bornman, John Murphy, John Donnelly, Dominick Murphy, John Cook, Henry Black, Christian Steuben, Adam Goodfletcher, John Faber, and Walter Dewing; please tell me whether you canvassed that division and made inquiries as to these persons as to their being residents, and what was the result of those inquiries, giving them name by name and their residence.—A. I did canvass the division because I seen from one of the daily papers the evidence of Mr. Painter. I afterwards made it my business to go round to those parties to their residences. John McAllister resides in Palethorpe street above Thompson, on the west side of the street. He voted his first vote in October last. John McDonald, in Girard avenue, on the north side. The reason why that he don't appear on the assessment list is that there was a dispute arose at the extra assessment, and the assessors made up their minds that each party coming to get assessed should either show naturalization papers or take an affidavit before an alderman that they had a right to be assessed. Mr. McDonald being American born, and not requiring naturalization papers, and would not satisfy them to take an affidavit before an alderman, he was not assessed: but a great many in the division knew that he was a regular citizen; I did myself. Joseph James O'Rourke and Thomas O'Rourke both reside in Second street between Thompson and Master, on the east side of Second, and are regular voters. Edward F. Glacken resides in the same house, a brother-in-law to them. Patrick Kebler resided back of 1232 Mascher street, in the rear of Henry Black's. Isaac Cohen and George Cohen, his son, reside at 143 Girard avenue. The father told me that he and his son were both bona fide voters. Thomas Landy resided in Hancock street at the time I canvassed this, back of the first house above Thompson street. George Washington Bornman resides on the west side of Mascher, between Thompson and Master. John Murphy resided in Hancock street below Thompson, on the west side. John Donnelly resided in Palethorpe street below Master, on the east side, and voted on age, which I believe is a bona fide voter. Dominick Murphy, jr., resides in Second street, between Thompson and Master, on the east side. John Cook resides in Palethorpe street, between Thompson and Master, on the east side. Henry Black resides in 1232 Mascher street, on the west side. Christian Steuben resided in Hancock, below Master, at the October election, and after for some time. A musician by profession, Adam Goodfletcher, (there is another name nearly the same as this,) lives in Hancock street, between Master and Thompson. Baker by profession, John Faber, he resided with his father-in-law, Mr. Wolf, in Hancock street, between Thompson and Master, on the east side, at the time of the October electlon and some time after. Walter Dewing resides in Palethorpe street, with his mother, between Girard avenue and Thompson, east side.

Q. Were not all the persons you have mentioned residents in the 4th division of the 17th ward at the time of the last October election, to the best of your knowledge and belief.—A. Yes, sir.

This reduces the claim, Appendix D, even if clearly made out as votes improperly allowed, to ten, in this division.

The minority, if time could be allowed, (which, by-the-by, has been refused, unaccountably, in this case,) would make a thorough and full examination of the testimony, so as to exhibit the exact result of the evidence taken; a cursory review of it makes it manifest that many of the votes called in question by Mr. Myers would be satisfactorily accounted for by Mr. Moffet. In the main it would appear, as we believe, favorable to Mr. Moffet. We are, however, forced to the review, upon examination as shown in large proportions, and we can thus overturn the result violently reached by the majority.

Thus it will appear:

Moffet's returned majority		127
Review of tally papers entitles him to		5
Admitted frauds against him—single votes proved in each individual case		53
Actual majority as above for Mr. Moffet		185
Deduct:		
Gain for Mr. Myers by re-examination of tally	35	
Illegal votes agreed to by both parties	30	
		65
Ascertained majority for Moffet		120
Taking an enlarged view, by throwing out (as it should be by fair dealing) the 10th division, 19th ward, where the polls were taken possession of by an armed mob		173
		293

The minority, therefore, submit to the consideration and favorable action of the House the following resolution:

Resolved, That the evidence does not warrant the displacement of John Moffet from the seat now occupied by him in this house, and that he is entitled to the same, and ask that they be relieved from the further consideration of the subject.

SAML. J. RANDALL.
A. G. BURR.

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MOREY VS. McCRANIE.

APRIL 6, 1869.—Laid on the table and ordered to be printed.

Mr. PAINE, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the case of Frank Morey vs. G. W. McCranie, from the 5th congressional district of the State of Louisiana, in obedience to the following resolution of the House of Representatives, adopted March 22, 1869—

Resolved, That in all contested election cases referred to the Committee of Elections in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist, the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress—

submit the following report:

It was alleged in writing before the committee by said Morey, that said McCranie could not take the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862. The committee thereupon, in obedience to said resolution, inquired into the said charge; and, upon the written admission of said McCranie, have found and do report to the House that G. W. McCranie, claiming the right to represent the 5th congressional district of the State of Louisiana in this house, is unable to take the oath of office prescribed in the said act of July 2, 1862.

41st Congress, 1st Session. } HOUSE OF REPRESENTATIVES. { Report No. 11.

SYPHER vs. St. MARTIN.

April 6, 1869.—Laid on the table and ordered to be printed.

Mr. Paine, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the case of J. H. Sypher vs. *Louis St. Martin, from the* 1st *congressional district of the State of Louisiana, in obedience to the following resolution of the House of Representatives, adopted March* 22, 1869—

Resolved, That in all contested election cases referred to the Committee of Elections in which it shall be alleged by a party to the case, or a member of the House, that either claimant is unable to take the oath prescribed in the act approved July 2, 1862, entitled "An act to prescribe an oath of office, and for other purposes," it shall be the duty of the committee to ascertain whether such disability exists; and if such disability shall be found to exist, the committee shall so report to the House, and shall not further consider the claim of the person so disqualified without the further order of the House; and no compensation will be allowed by the House to any claimant who shall have been ineligible to the office of representative to Congress at the time of the election, and whose disability shall not have been removed by act of Congress—

submit the following report:

It was alleged in writing before the committee by said Sypher that said St. Martin could not take the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862. The committee thereupon, in obedience to said resolution, inquired into the said charge; and, have found and do report to the House that Louis St. Martin, claiming the right to represent the 1st congressional district of the State of Louisiana in this house, is unable to take the oath of office prescribed in the said act of July 2, 1862.

JOHN B. RODGERS.

April 7, 1869.—Laid on the table and ordered to be printed.

Mr. Heaton, from the Committee on Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the certificate of John B. Rodgers as a representative from the State of Tennessee in the 41st Congress, submit the following report:

The Constitution, article 1, section 2, provides that "representatives * * * shall be apportioned among the several States which may be included within the Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons * * * three-fifths of all other persons." A decennial census is provided for, and the number of representatives limited "not to exceed one for every 30,000, but each State should have at least one." Beyond this the apportionment of representation among the several States devolves upon Congress to regulate by legislation.

ACTION OF CONGRESS—PRECEDENTS.

Until a census could be taken and an apportionment made accordingly, the number of representatives in the House was fixed at 65. By the first general apportionment act, April 14, 1792, ch. 23, the number was increased to 105, and the ratio of 33,000 adopted. The second, January 14, 1802, ch. 1, retained the ratio of 33,000, and increased the number still further to 141. The third, December 21, 1811, ch. 9, fixed the ratio at 35,000, and the number of representatives at 181. The fourth, March 7, 1822, ch. 10, increased the ratio to 40,000, and the number of representatives to 212. The fifth, May 22, 1832, ch. 91, advanced the ratio to 47,700, and the number of representatives to 240. The sixth, June 25, 1842, ch. 47, established the ratio at 70,680, and incorporated the novel principle of one additional representative for each State having a fraction greater than one moiety of the said ratio. This reduced the number of representatives to 223. Each of these acts followed the taking of the census and was based upon the results, and, though in terms of unlimited duration, was manifestly intended to continue in force but for ten years, until after the next succeeding census.

The difficulty of this legislation had been found so great that it produced the act of May 23, 1850, ch. 11, for the taking of the seventh census. This act fixed the number of representatives at 233, to be apportioned among the several States by the Secretary of the Interior, according to their respective populations as ascertained by the census, and was obviously designed to be permanent. Sections 25 and 26 of the act prescribe the method of apportionment, and after the taking of the seventh census in 1850 the representatives were so apportioned. These, it is

believed, are all the general laws upon this subject, extending in their operation to all parts of the country, and ascertaining the numerical character of the House.

From time to time special acts have been passed to meet the exigencies of particular cases, at the discretion of Congress. The act of February 25, 1791, ch. 9, gave two representatives each to Kentucky and Vermont, until there should be "an actual enumeration of the inhabitants of the United States." By the act of June 1, 1796, ch. 47, Tennessee was admitted to the Union, with one representative "until the next general census." The act of April 30, 1802, ch. 40, enabled Ohio to form a State and gives her one representative "until the next general census." The act of April 8, 1812, ch. 50, admitting Louisiana, gives her one representative "until the next general census." The act of April 19, 1816, ch. 57, enables Indiana to form a State government, and until the next general census entitles her to one representative. She was admitted to the Union by joint resolution December 11, 1816. A similar act was passed for Mississippi, March 1, 1817, ch. 33, and a similar joint resolution December 10, 1817; also for Illinois, April 18, 1818, ch. 67, and December 3, 1818; and for Alabama, March 2, 1819, ch. 47, and December 14, 1819.

The act of April 7, 1820, ch. 39, reduced the number of representatives in the 17th Congress from the State of Massachusetts to 13, and gave the remaining seven to the recently formed State of Maine.

The general apportionment act of March 7, 1822, gave to Alabama two representatives. The following year a special act, January 14, 1823, ch. 2, gave her an additional member upon fuller information as to the number of her inhabitants. The act of March 6, 1820, ch. 22, enables Missouri to form a State government with one representative until the "next general census." She was admitted to the Union by joint resolution, March 2, 1821.

The act of June 15, 1836, ch. 100, admitted Arkansas to the Union with one representative "until the next general census."

The legislation by which Michigan was admitted to the Union was attended with much difficulty. It will be found in the acts of June 15, 1836, ch. 99, of June 23, 1836, ch. 121, and of January 26, 1837, ch. 6, and its difficulties are illustrated by the debates of the two houses. In the present purpose it is deemed sufficient to refer to section three of the act of June 15, 1836, which provides that as soon as the people of Michigan should have complied with certain fundamental conditions the President should announce the same by proclamation; and thereupon, without further action of Congress, "the senators and *representatives who have been elected by the said State*" should be entitled to take their seats without further delay; nothing appearing in the statutes to indicate the number of representatives.

The act of March 3, 1845, ch. 48, for the admission to the Union of Iowa and Florida, provides that "until the next census and apportionment" each State be entitled to one representative. Iowa was not, in fact, admitted under this act and not until near the close of the following year, act of December 28, 1846, ch. 1; but no further provision was made for her representation.

The joint resolution of December 29, 1845, ch. 1, admits Texas to the Union with two representatives until the next apportionment.

The act of August 6, 1846, ch. 89, enables the people of Wisconsin to form a State government, with two representatives "until another census" and apportionment.

The act of September 9, 1850, ch. 50, admits California to the Union, with two representatives, until the next apportionment. Before that

time the seventh census was taken pursuant to the act of May 23, 1850, and California declared, by virtue of her ascertained numbers, to be still entitled to two and only two representatives; and yet Congress thought proper, by act of June 2, 1852, ch. 91, for reasons appearing in the body of the act, to accord to her one additional representative in the 37th Congress.

The act of February 26, 1857, ch. 60, enables the people of Minnesota to form a State government, and provides for the taking of a census in the Territory with a view to ascertain the number of representatives to which, as a State, she would be entitled. The act of May 11, 1858, ch. 31, admits her to the Union, with two representatives "until the next apportionment."

The act of February 14, 1859, ch. 33, admits Oregon to the Union, with one representative "until the next census and apportionment."

The act of May 4, 1858, ch. 26, providing for the admission to the Union of Kansas, under the Lecompton constitution, and that of January 29, 1861, ch. 20, admitting her, under the Wyandotte constitution, both declare her entitled to one representative "until the next general apportionment."

The act of December 31, 1862, ch. 6, erects a portion of the State of Virginia into the new State of West Virginia, with three representatives, leaving unchanged the number to which Virginia is entitled.

The act of March 21, 1864, ch. 36, enables the people of Nevada to form a State government with one representative "until the next general census;" and, on the 19th of April, 1864, an act similar in all respects was passed by the people of Nebraska, under which acts both States have been admitted to the Union, completing the present number, 37.

These various acts have been collated at some pains, to show how completely the number of representatives in the House has been contested, at the discretion of Congress, a discretion scarcely less absolute than that of each house over "the elections, returns, and qualifications of its own members."

This is illustrated by the arbitrary, nay, artificial numbers, at which the ratio was successively fixed, by allowing representatives for the fractions of the ratio, by the admission of new States with one, two, three, or more representatives according to their estimated populations, by reducing the representation of a State whose population had been reduced by the excision of part of her territory, by increasing the representation of States, as in the case of Alabama and California, when it was manifested that their population had been under-estimated, and by determining the aggregate number of the House and requiring our executive officer to make the apportionment among the several States.

It is illustrated even more forcibly, if possible, by the act of March 4, 1836, ch. 36, which increases the number of representatives from 233, the number established by the general law of May 23, 1850, to 241, giving to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island, each one additional member to which they were not entitled under the general law.

In a word, these acts establish the general proposition that Congress has complete jurisdiction to adjust the representative numbers of the House, and has repeatedly and constantly exercised it at discretion, according to the varied equity of each particular case.

THE CASE OF TENNESSEE.

The case of Tennessee is this: According to the census of 1860, the inhabitants of the United States, reckoning all free persons and three-

fifths of all others, numbered 29,553,273. Divide by 241, the number of members now composing the House, it gives 122,627 as the present representative ratio. Tennessee had 834,082 free inhabitants, white and colored, and 275,719 slaves; a total of 1,109,801. Three-fifths of her slaves, however, added to her free population, on the principle of the representative enumeration, made 999,514, by virtue whereof she has now eight representatives.

In February, 1865, she, by *voluntary act*, a popular vote, manumitted and emancipated her 275,719 slaves, nearly one-fourth of her population. Two-fifths of this number, 110,288, are thereby added to those already entitled to representation. This, with a previous representative fraction, leaves 128,785, for which the State has no representative, counting only the population as it was in 1860. This excess of popular numbers over the number of her present representatives is not the result of growth or natural increase, in which the several parts of the country are presumed to keep pace, at least, until the contrary is demonstrated by the census, but of a great political act as conspicuous and distinctive as would be the annexation of a foreign territory containing so many people. For the purpose of this inquiry, it is as if the boundaries of Maine were, by treaty, extended to embrace Nova Scotia, with 110,288 inhabitants. Is it equitable and just that they should be denied a representative? The undersigned think not.

Since the voluntary action of Tennessee in emancipating her slaves, Congress has taken not only an important step toward settling the status of American citizenship, but also indicating a further proper basis of representation. On the 16th of June, 1866, what is known as Article XIV was submitted to the legislatures of the different States. On July 20, 1868, this article was formally proclaimed as a part of the Constitution of the United States by the Secretary of State. The second section of said article, to which particular attention is invited, reads as follows:

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

This section, though general in its terms, was adopted with particular reference to the recently emancipated colored population, and is a declaration to the several States in which this population is found, that if they are enfranchised, *the State shall be represented accordingly;* if not, *representation shall be diminished.* It either means this, or is a mockery and means nothing.

As soon as possible after the promulgation of the proposed amendment—on the 16th of June, 1866—Tennessee convened her legislature and ratified it. She then changed her franchise laws to conform to the spirit of this amendment by removing from all colored people within her boundaries all civil and political disabilities, and conferring upon them the right to elect and to be elected to every office, from the highest to the lowest. Having done this, and the 14th article having become valid as a part of the Constitution, what was before a claim for full and complete representation, resting in the discretion of Congress, became now *an absolute, constitutional right.* For it must be borne in mind always that this action of Tennessee has been her own, independ-

ent and in advance of executive proclamations, constitutional amendments, and reconstruction acts. She has met all the conditions of the Constitution in a spirit of the most cheerful loyalty, and has created in her favor an obligation which cannot be cancelled by being denied.

Her legislature, viewing the matter in this obvious light, has, by appropriate action, provided for the election of an additional representative. On the 3d day of November, 1868—the day of the late presidential election, and the day designated by law for the election of members of Congress in Tennessee—the people of that State, fully impressed that they were fairly entitled to an additional representative, proceeded to elect, and did elect, the Hon. John B. Rodgers to the 41st Congress.

It was a matter of general notoriety in Tennessee, some time before it occurred, that such an election would be held. The people of the State were duly advertised of the fact by the act of the legislature and executive proclamations. The friends of the present applicant for a seat brought him forward as a candidate at a popular convention, unusually largely attended, at the capital of the State. The popular will was fully reflected at the polls in the fact that the applicant received nearly as many votes as were cast in that State on the same day for the prevailing presidential electoral ticket. The places for voting in this case were the same as those at which votes were given by persons of different political proclivities for different candidates for Congress, and candidates for electors for President and Vice-President. Returns of the result in different counties were made in due form to the secretary of state, as appears in official documents, duly certified to. On these returns, after having been duly canvassed, the result was declared and a certificate of election issued by the governor of Tennessee to the claimant, which has been presented to the House and properly referred.

Thus stand the important facts in the case. The entire proceeding, from its conception to its consummation, has been remarkably regular and consistent.

The precedents cited as bearing upon the case are as weighty and significant as they are singularly numerous. *It is believed they have not been, or cannot be, successfully met or explained away.* These pointed examples of the unreserved exercise of legislative authority are, in themselves, a powerful warrant for the course which has been pursued by Tennessee. The vital point in the matter, however, is that Tennessee has not only followed "the line of safe precedent," but has conformed strictly to the true intent and meaning of the 14th article of the Constitution.

The fact that Tennessee happens to be the *first* State to claim the practical application of the inestimable rights conferred in said article should not be regarded as anomalous or involving a precedent of doubtful or "dangerous policy."

Objections founded upon any such reasoning are altogether likely to be speculative and fallacious, and lead to great injustice and wrong.

To admit the correctness of the somewhat sweeping statement sometimes made that the admission of the claimant would be "a most dangerous precedent," would certainly be a most severe commentary upon many of the deliberate acts of the Congresses preceding the present.

In the present instance Tennessee claims no right or privilege she would not willingly concede to any other State having a similar record.

If, upon a fair investigation of the grounds upon which she bases her right to an additional representative, it is found her cause rests upon merit and justice, and is sustained by unquestionable authority, her demand should receive a prompt and favorable response. To deny to her a manifest constitutional right upon the questionable and untenable

objection that some other State may set up a similar claim, would surely afford abundant grounds for criticism, and come in direct antagonism with the policy heretofore maintained and pursued by Congress.

The part borne by the 60,000 men of Tennessee who rallied to the standard of the Union in the late great struggle was one upon which the whole country may look with gratification for all time. Of this number 20,000 were colored men whose devotion and patriotism was illustrated upon the historic and sanguinary fields of Franklin and Nashville. Surrounded as Tennessee was by a cordon of slave States, she has no reason to look, other than with pride, at the course she has pursued in securing for our common country universal emancipation.

It is notorious that a new era has been inaugurated in our country as to popular rights. By the wonderful results of the late rebellion, long-entertained theories have been overthrown and repulsive dogmas forever obliterated. Four millions of bondmen have been raised from a position of abject servitude to the high and responsible position of American citizenship. The conferring of additional representation in the case of Tennessee will not only be a proper recognition of the claims of the recently enfranchised portion of our fellow-citizens, but will evince a consistent regard for the late decree of the American people expressed in their written Constitution.

The committee therefore recommend the adoption of the following resolutions:

Resolved, That John B. Rodgers, upon the facts and circumstances shown in his case, will be rightfully entitled to a seat in this house, from Tennessee, as soon as Congress enacts a law in relation thereto.

Resolved, That the following bill is hereby recommended for adoption:

A BILL for an act to allow the State of Tennessee an additional representative in Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee, by the emancipation and enfranchisement of her colored population—slaves at the taking of the eighth census and the making the apportionment thereon—having added to her population, entitled to be represented in Congress, a number which, added to a portion previously unrepresented, is greater than the ratio by which the representatives are now apportioned, the said State shall be allowed, until the next general census and apportionment, one additional representative in Congress, who may be chosen from the State at large, unless the legislature of the said State shall otherwise provide.

VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee of Elections, are unable to agree to the result arrived at by the majority of the committee, with respect to the claim of General John B. Rodgers to a seat in this house as an additional representative from Tennessee, and with the permission of the House give the following reasons for their dissent:

The claim of General Rodgers to a seat, and of Tennessee to an additional representative, is based upon the following facts: The census of 1860 showed 275,719 slaves in that State, two-fifths of whom, or 110,287, were deducted from her representative numbers, under the Constitution of the United States. Eight representatives were given to Tennessee by the apportionment of 1862, based upon the census of 1860, the ratio of representation being 127,000. In February, 1865, the people of Tennessee, by their own voluntary act, in the adoption of a new constitution, emancipated and enfranchised their slaves, by so doing adding, as it is claimed, to her representative population, with a fraction left unrepresented by the apportionment of 1862, more than sufficient to entitle her to an additional representative.

On the 12th March, 1868, the general assembly of Tennessee, by joint resolution, required the governor "to issue a writ of election *to the State at large* for the purpose of electing one additional member to the Congress," and the claimant was accordingly elected in November, 1868, as representative at large from the State of Tennessee for the 41st Congress.

No law of the United States exists under which this seat can be claimed; and the act of July 14, 1862, requiring representatives to be elected by single districts, has been violated in the manner of the election of the claimant; but it is alleged that the facts of the case justify, if they do not require us to legalize this claim by the passage of a law for that purpose.

The provision of the Constitution of the United States which regulates representation is as follows:

Representation and direct taxes shall be apportioned among the several States which may be included within the Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative.

The second section of the fourteenth article of amendments to the Constitution relates to the same subject, and modifies, to some extent, so much of the above as relates to representation, and is as follows:

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

While these provisions differ as to the manner in which the representative numbers in the States shall be ascertained, they agree in providing that representatives shall be apportioned among the States according

to these numbers, and we have thus a definite and absolute rule established, according to which apportionment shall be made, and which forbids any assignment of representatives to any State for any other reason, and which requires that if representation be given to one State, equal proportionate representation shall be given to any other State similarly situated in respect of its representative numbers or population.

The provision of the Constitution first above quoted, also provides the means for making the apportionment so required, by requiring that once in ten years an actual enumeration shall be made; and it would follow, by fair implication, that a reapportionment should only be made after such enumeration had shown its necessity. The practice of the government has been uniformly in accordance with this view since the adoption of the federal Constitution.

After each decennial census, and at no other time, a new apportionment of representatives has been made among the States, and to each State according to its representative population as fixed by the Constitution and ascertained by the census.

The legislation of Congress admitting new States forms no exception to this rule, since under the Constitution they may be admitted at any time, and by the provision above quoted each must have at least one representative; but, subject to this last provision, the number of representatives allowed to each new State has always been the number to which it was supposed to be entitled by its representative population, upon the ratio of the last preceding apportionment. The act of March 4, 1862, by which the aggregate membership of the House was increased from 233 to 241, and one additional member was given to each of the States of Ohio, Pennsylvania, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island, and also the acts of January 14, 1823, and of June 2, 1862, by which Alabama and California were each allowed a member in addition to the number previously apportioned to them also, are not exceptions, since the first was passed to give representation to large fractions of representative population which would otherwise be unrepresented, and the last two were intended to correct errors arising from insufficient census returns in the apportionment previously made to those States.

We have no right, therefore, under the Constitution and the uniform practice of our legislative history, to give representation to the 110,287 slaves in Tennessee, as shown by the census of 1860, who were excluded from making a part of the representative population of that State under the Constitution as it stood in 1860, but who, as freemen, if now living in that State, would, under the same Constitution, be a part of such representative number, without at the same time providing for equal representation to the 1,469,925 persons in other States, who, slaves then, have since become free. The fact that the slaves of Tennessee became freemen by the voluntary act of the people of the State, while those of other States were made such without the assent and against the will of the people of those States, cannot affect the question, since it is the *fact* of their freedom, and not the *manner* in which they became free, which alone has any legal significancy in the case.

It is no answer to this objection that no other State than Tennessee asks for this additional representation. It is the duty of Congress to apportion representatives among the States according to their respective numbers, and this whether the States ask for it or not, and to give additional representation to Tennessee, while withholding it from States equally entitled to it, and upon facts equally within our knowledge, would be a violation of this duty.

The passage of such a general law at this time would not be proper, since the adoption of the fourteenth amendment has given a new rule for ascertaining representative numbers, and representatives are *required* to be apportioned among the several States according to those numbers. No enumeration heretofore made of the people of the United States would enable us to ascertain the present representative numbers of the several States. Such an enumeration, however, must be made under the Constitution before the close of the next year. Then, and not till then, can an apportionment be made such as the Constitution now requires.

There is another consideration to which the minority deem it proper to call attention, and which seems to answer fully the equitable ground for this claim, urged on the part of the State of Tennessee.

The next census will undoubtedly show a very large increase of the population of the United States. This increase has been added, almost entirely, to the population of the States which were loyal during the war, and were not slaveholding States at its commencement. During the war the immigration to this country was excluded from the southern States by the blockade, and by the presence of our armies, and since has been almost equally excluded by the distracted condition of those States.

The loss of life, and the check to the increase of population from other causes, is also believed to have been much greater in the States which were the immediate seat of hostile operations. We do not believe that any one will seriously question that the apportionment of 1862, based upon the census of 1860, gives to each of the lately slaveholding States a larger porportionate representation than they would be entitled to upon an enumeration made at the present time, and according to the rule by which such representation must now be made. To yield the claim of Tennessee would increase this disproportion, and would be unjust to the States which were faithful to the Union through all its trials, and who by their fidelity saved the republic.

The fact that another census is so near at hand is a sufficient reason why this matter should be allowed to rest until we shall have the means of readjusting representation upon the basis which the Constitution as amended now requires, and with entire fairness to all the States of the Union.

The minority of the Committee of Elections therefore recommend the adoption of the following resolution:

Resolved, That General John B. Rodgers is not entitled to a seat, as a representative from Tennessee in the 41st Congress, and that the Committee of Elections be discharged from the further consideration of the claim of Tennessee to an additional representative.

JOHN C. CHURCHILL.
ALBERT G. BURR.
SAMUEL J. RANDALL.
H. E. PAINE.