

## MILLER vs. ELLIOTT.

JUNE 20, 1890.—Ordered to be printed.

Mr. ROWELL, from the Committee on Elections, submitted the following

### REPORT:

The Committee on Elections have had under consideration the contested election case of Thomas E. Miller *vs.* William Elliott, from the Seventh Congressional district of South Carolina, and submit the following report:

At the election held November 6, 1888, in the Seventh Congressional district of South Carolina, for Representative in Congress, Thomas E. Miller was the candidate of the Republican party and William Elliott of the Democratic party. The certified returns gave Elliott a majority over Miller of 1,355, as shown by the following table.

*Election returns, Seventh Congressional district.*

Counties.	William Elliott.	Thomas E. Miller.	Robert Simmons.
Beaufort .....	898	2,056	.....
Berkeley .....	1,753	1,547	54
Charleston .....	45	143	.....
Colleton .....	652	210	.....
Georgetown .....	821	957	.....
Orangeburg .....	987	310	.....
Richland .....	367	222	2
Sumter .....	1,782	933	18
Williamsburg .....	1,053	624	.....
	8,358	7,003	74

The notice of contest, and answer thereto, cover all matters considered by the committee.

Before proceeding to examine the charges in detail, and the evidence introduced in regard to them, the committee deems it proper to call attention to some of the general features of the case.

In redistricting the State after the census of 1880, the legislature of South Carolina utterly ignored the Federal Statutes. The territory of the Seventh district is in no sense contiguous. It is well described in contestant's brief.

The new district—the Seventh Congressional district—was created without regard to shape, size, or contiguity of territory as required by law. To secure the appearance of the latter, it is necessary to regard a portion of the Atlantic Ocean as dry land. It extends from the capital of the State to Savannah, Ga., a distance of over 200 miles, and consists of the Republican portions of five of the original districts. It contains only three entire counties, to which is added an irregular patchwork of portions of six (6) counties, and in it is massed the population of every large colored or Republican settlement and town on the sea-coast or interior, and from it has been excluded nearly every white or Democratic settlement. In one place the district is

run into the ocean for the purpose of excluding the Democratic precincts of McClellanville and Mount Pleasant, in Berkeley County, and Sullivan's Island, or Moultrieville precinct, in Charleston County.

In color of population it was made as black as the deeds of the election officers, who have violated every law and principle of justice to return contestee to Congress.

But this monstrosity can not thoroughly be understood without an examination of a map of the district. An examination of the description of the district in the Congressional Directory will show that its contiguity is secured by putting into it the sea beach of Charleston County, a strip of sand a few feet wide and many miles long, covered half of every day by the waters of the Atlantic Ocean and incapable of human habitation. All the habitable main-land of this county is in another district.

The following table shows the population of the district according to the census of 1880:

SEVENTH CONGRESSIONAL DISTRICT.

*Population and number of males of voting age classified by race according to census of 1880.*

	Total.	White.	Colored.	Males 21 years of age and over.	
				White.	Colored.
The district.....	187,536	31,520	156,016	7,695	32,839
Georgetown County .....	19,613	3,466	16,147	852	3,449
Beaufort County .....	30,176	2,442	27,734	693	6,127
Sumter County .....	37,037	9,979	27,058	2,273	4,980
Orangeburg County .....	13,634				
Township of Amelia .....	3,664	629	3,035	169	609
Township of Goodby's .....	1,490	433	1,057	95	199
Township of Lyons .....	2,428	419	2,009	103	369
Township of Pine Grove .....	1,994	393	1,601	89	323
Township of Poplar .....	1,512	446	1,066	110	223
Township of Providence .....	1,260	387	873	83	150
Township of Vance's .....	1,286	206	1,080	47	191
Williamsburg County .....	15,681				
Township of Anderson .....	733	465	268	104	46
Township of Hope .....	2,326	615	1,711	128	302
Township of Indian .....	1,914	317	1,597	75	271
Township of King's, except the town of Kingstree .....	2,458	400	2,058	94	353
Township of Laws .....	1,295	208	1,087	50	193
Township of Mingo .....	1,371	362	1,009	89	177
Township of Penn .....	1,481	237	1,244	58	234
Township of Ridge .....	2,001	410	1,591	101	249
Township of Sutton's .....	779	232	547	46	92
Township of Turkey .....	1,323	310	1,013	58	182
Colleton County .....	12,961				
Township of Collin's .....	1,431	390	1,041	98	271
Township of Adam's Run .....	4,409	537	3,872	154	871
Township of Glover .....	1,337	179	1,158	45	242
Township of Fraser .....	1,708	160	1,548	46	384
Township of Lowndes .....	1,555	78	1,497	27	363
Township of Blake .....	2,521	49	2,472	28	574
Charleston County, except those portions in First district .....	49,553	6,854	42,699	1,735	9,817
Richland County:					
Lower Township .....	8,881	917	7,964	252	1,642

It will be seen that the colored men of voting age in this district outnumber the whites by more than 25,000. It is undoubtedly a misfortune, but it is none the less true, that political parties in this district are divided on race lines. The colored men as a rule are Republicans, and the white men are Democrats. That this is true is nowhere seriously questioned in the record in this case. It is therefore safe to say, unless the mass of colored voters have ceased to take an interest in political matters, that with laws bearing equally on white and black, and with



anything like a fair election, the Republicans of the Seventh district would poll four times as many votes as the Democrats, and would have anywhere from 15,000 to 20,000 majority.

The history of the district as it has come before former Congresses, and as it is presented in this record, precludes the belief that its colored men have to any considerable extent ceased to be interested in elections, especially Presidential and Congressional elections. On the contrary, the colored Republicans have at all times kept up their party organization and have never failed to make a determined effort to secure a Republican Representative in Congress from the Seventh district.

The present election and registration law of South Carolina was enacted by the legislature of that State in 1881. In the brief of contestant that law is characterized in the following vigorous language:

In 1881 the election and registration law of South Carolina, the twin companion of the gerrymandering already described, was enacted by the legislature. It was the high-water mark of political ingenuity coupled with rascality, and merits its appellation, "Fraud made easy and safe." It is perfect in being entirely fair on its face, and sufficiently elastic to be susceptible to any construction in its enforcements, or to permit any species of fraud to be committed without a violation of any of its provisions. It is particularly remarkable in zealously guarding with severe penalties the transmission of the fraudulent results obtained by the local boards, while the neglect that amounts to fraud and offenses against political rights are not even made a simple misdemeanor.

As we call attention to some of the salient features of the law, it will be seen that this language is by no means too emphatic. That this law was enacted for the deliberate purpose of indirectly disfranchising, so far as possible, the colored voters of the State admits of no serious question. We give here so much of the election and registration law of South Carolina as is necessary to illustrate our views.

The constitution of the State prescribes the qualifications of voters. They must be male citizens of the United States, twenty-one years of age, residents of the State one year and of the county sixty days, not inmates of almshouses or prisons, and not of unsound mind. Persons convicted of treason, murder, robbery, or dueling are disfranchised, and the legislature is expressly prohibited from disfranchising any one else.

The first section of the registration act defines the qualifications for voting as in the constitution, except that it adds a new and enlarged meaning to the term robbery.

The second section provides that no person shall be allowed to vote unless registered in the manner provided in the act.

The third section provides for the appointment, by the governor (by and with the advice and consent of the senate), of a supervisor of registration for each county on or before the 1st day of March following the passage of the act, and every two years thereafter; also for the appointment of two assistant supervisors to act with the supervisor as a board of appeals in case of refusal by the supervisor to register any applicant.

Section 4 provides for registration books, two for each precinct.

SEC. 5. After the approval of this act the supervisor of registration, in the months of May and June next, shall make a full and complete registration of all qualified voters, in the following manner: He shall give three weeks' notice of the times and places of registration, by advertising in one or more county papers, or by posting in a public place in each voting precinct where no paper is published in the county. The time for registration shall not be less than one nor more than three days at each registration precinct. Immediately after closing the registration at the precinct he shall open his books at the county seat to correct errors in registration and to register such electors as failed to register at their respective precincts. and who shall then and

there present themselves for that purpose, entering the names of such voters in his book for their proper precincts. At the conclusion of the registration hereinbefore provided for the supervisor of registration shall revise the list, and in case it be made to appear to his satisfaction that there is a qualified voter in a precinct who has failed to register, he may, upon such evidence as he may think necessary in his discretion, permit the name of such voter to be placed on said list and issue a certificate therefor. That for the purpose of registration each township as now laid out and defined be, and is hereby, declared a registration precinct, and in those counties in which there are no such townships that the parish, as formerly known and defined, be, and is hereby, declared such precinct, and in the cities of Columbia and Charleston each ward shall be a registration precinct.

SEC. 6. When the said registration shall have been completed, the books shall be closed and not reopened for registration, except for the purposes and as hereinafter mentioned, until after the next general election for State officers. After the said next general election, the said books shall be reopened for registration of such persons *as shall thereafter become entitled to register* on the first Monday in each month, to and until the first Monday of July, inclusive, preceding the following general election, upon which last-named day the same shall be closed and not reopened for registration until after the said general election; and ever after the said book shall be opened for registration of such electors, on the days above mentioned, until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place.

SEC. 7. Each elector in the State shall be required, at the time advertised for his precinct as hereinbefore provided, to appear before the supervisor of registration, at the place advertised, and make oath before the said supervisor, which oath the said supervisor is hereby authorized and required to administer, that the facts then and there to be stated by him as to his name, age, occupation, and place of residence, and duration of residence in the county and State are true, and thereupon the said supervisor shall enter the name, age, occupation, and place of residence of the elector in the appropriate column in his registration book. He shall make and keep a list of the contested applications for registration which he rejects, and report the same for hearing before the assistant supervisors as hereinbefore required.

SEC. 8. The supervisor of registration shall determine as to the legal qualifications of any applicant for registration by summary process, requiring oath, evidence, or both, if he deem proper, subject to revision by the assistant supervisors and himself in all cases where he has refused to register an applicant. From the decision of the supervisors of registration any applicant who is rejected shall have the right to a review thereof by the circuit court, provided he give notice in writing to the supervisor of his application for such review, and the grounds thereof, within five days from the date of his rejection, and commence his proceedings within ten days from the service of said notice.

Section 9 provides for the registration of persons coming of age.

Section 10 provides for giving a certificate of registration to each registered voter.

Section 11 provides for the renewal of certificates when worn or defaced, and, as amended, provides for renewal of lost certificates, but the applicant is obliged to make oath to the circumstances attending the loss, and "that he has not sold, bartered, or parted with the same for any pecuniary, valuable, or *other* consideration, and has not willfully destroyed the same," and the supervisor is authorized to require *such evidence as he deems necessary* as to the loss.

His decision is subject to review by the board of appeals, when a renewal certificate has been rejected, and their action is subject to review by the circuit court if notice is given within five days and proceedings commenced within ten days thereafter.

Sections 12, 13, 14, and 15 provide for the surrender of the old and the issue of new registration certificates whenever a voter changes his residence, either within the precinct or to another precinct or county. Any one so changing his residence without a transfer certificate, is debarred from the privilege of voting.

SEC. 16. The supervisor of registration shall, immediately preceding each election, revise the registration of electors and mark off the names of such electors as have died and such as have removed from one residence, precinct, parish, ward, or county, to another, without notifying him and obtaining a certificate of transfer as hereinbefore provided.

Sections 17 and 18 provide for furnishing the managers of election with copies of the registration books, and for the pay of supervisors.

It will be seen that under this act a complete precinct registration of all qualified voters who should apply was provided for, to be made in the months of May and June, 1882; the supervisors visiting each township for that purpose, after due notice, and remaining not less than one nor more than three days. In that time he was required to administer oaths to all applicants, requiring a statement of age, residence, occupation, length of residence in county and State, and to take such other evidence as he deemed fit; to make a record of these items, and to issue to each registered voter a certificate containing the same statement required to be recorded. In many of the townships of the State this was an impossibility within the limited time.

Immediately on closing the precinct registration the supervisor was required to open his books at the county seat, to correct errors and register such voters as had failed to register at the precinct registration. Having concluded his registration he is required to revise his lists, and *may, in his discretion*, permit a registration if any qualified voter has failed to register. Having completed his revision the books must be closed and not thereafter opened for registration until after the next general election, and then only for those who have become entitled to registration since the close of the first general registration. After each general election, the books are to be opened on the first Monday in each month up to and including the first Monday in July next preceding any general election, but only for the registration of those who have become entitled to register since the last closing of the books.

Under the letter of this act, any qualified elector who failed to register at the first general registration is forever thereafter debarred from registering and from voting. Any one subsequently becoming entitled to register and failing to do so before the closing of the books in July preceding the general election at which he would first be entitled to vote is forever thereafter disfranchised. A minor failing to register before the first general election following his becoming of voting age is thereafter disfranchised. Such is the letter of the law, and such, we are informed, is the universal practice of registering officers. We quote the testimony of one of them:

James S. Polk, being duly sworn, deposes and says (p. 345):

Question. What official position do you hold in Sumter County?—Answer. Supervisor of registration.

Question. How long have you held that position?—Answer. Two years last October.

Question. It has been testified by several witnesses for the contestant that you refused upon proper demand to register duly qualified Republican voters; was such the fact?—Answer. It was not; I never did.

Question. What is the provision of the registration law in regard to such persons as were refused registration?—Answer. The law provides that a man must be registered for the election preceding which he becomes twenty-one years of age; if from neglect or any cause he fails to register then, then he is debarred from registering afterwards by the terms of the law.

R. H. Richardson (p. 26) says:

Q. Do you know the supervisor of registration of this county?—A. I do.

Q. Is he a Democrat or a Republican?—A. A Democrat.

Q. Do you know that he refused upon proper demand to register Republican voters before the last election?—A. Persons who were of age at the time the general registration laws were passed he refused to register, on the ground that they had neglected their former chance of being registered in their time.

Any one parting with his certificate of registration for any consideration, or willfully destroying it, becomes thereby forever disfranchised,

and yet he has committed neither treason, murder, robbery, nor dueling, nor, indeed, has he committed any offense made a crime by the laws of the State. That these provisions of the registration statutes are unconstitutional and void can not be seriously questioned. They attach the penalty of permanent disfranchisement for failing for any cause to register for the first election at which the citizen would be entitled to vote if registered. They affix a like penalty for parting with or destroying a registration certificate.

But they give such latitude to the supervisor of registration as will enable him to take good care that none of his political friends shall suffer the penalty. After the first general registration, all future registrations and changes of registration must be made at the county seat; and all applications for transfer certificates must be made at the county seat of the county where former registration was had, although the voter may in the mean time have moved to the opposite end of the State. All applications for the renewal of worn or lost certificates must in like manner be made at the county seat of the county where the certificate was issued; and, at the will of the supervisor, such evidence of the circumstances of loss as he may require must be produced.

When the board of appeals has decided against an applicant for registration, he may appeal, but must give notice in writing within five days, and commence proceedings in court within ten days thereafter, or be forever debarred from voting. A special remedy with a fifteen-days statute of limitations!

Under the name of a registration law, these burdensome and unreasonable, and, therefore, unlawful barriers have been erected, to exclude from the polls a large body of citizens.

In States whose constitutions do not provide, nor authorize their legislatures to provide, that persons shall not vote unless registered in a prescribed mode, the question whether a legislative provision to that effect is or is not of constitutional validity always turns upon the question whether it is merely a reasonable and convenient regulation of the right to vote, or is under the pretense of regulation an abridgment, subversion, or restraint of that right. (Paine on Elections, section 340.)

In the case of *Capen vs. Foster* (12 Pick., 485) the supreme court of Massachusetts said:

And this court is of opinion that, in all cases where the Constitution has conferred a political right, or privilege, and where the Constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations in regard to the time and mode of exercising that right in a prompt, orderly, and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulating, should subvert or seriously restrain the right itself.

The supreme court of Pennsylvania, in the case of *Page vs. Allen* (58 Penn. St., 338), pronounced a registry law of that State unconstitutional on the ground that it impaired the free exercise of the right of suffrage conferred by the Constitution. The court said:

For the orderly exercise of these (constitutional) qualifications it is admitted that the legislature must prescribe necessary regulations as to the places, mode and manner, and whatever else may be required to secure its full and free exercise; but this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is regulated. The right must not be impaired by the regulations; it must be regulations purely, not destruction. If this were not an immutable principle, elements essential to the right itself might be invaded, frittered away, or entirely excinded, under the name or pretense of regulation, and thus would the natural order of things be subverted, by making the principal subordinate to the accessory; to state is to prove this position.

To crown all, the supervisor, without notice to anybody, and without posting the names, is required, immediately preceding any general



election, to revise the registry and strike off the names of such persons as he determines have died or have changed their residence and have neglected to notify him and obtain a transfer certificate.

When it is remembered that the white Democrats of the State are largely the property owners, having permanent places of residence, and that the colored men are poor, mostly tenants and laborers, under the necessity of frequently changing their homes the hardship and inequality of the law are more strikingly evident.

It would seem that the law placed enough obstructions in the way of registration to satisfy the most earnest believer in the disfranchisement of the colored men of South Carolina, but, as shown by the record in this case, the supervisors appointed to execute it have succeeded, in almost every instance, in erecting other and most effective barriers not provided for in the statute. They are required to keep their books at the county seat, and to open them for registration on the first Monday of certain specified months, but they are not required to give any notice of where they keep their offices or their books. In many counties a diligent search on the part of Republicans fails to discover the supervisor's office, or, when it is found, so many hindrances and obstructions are interposed that voters fail to get transfers or registry, although they apply at every opportunity, during every month of registration in the year of a general election. In some large precincts no one has been able to secure a transfer since the general registry in 1882.

Albert Beach, supervisor of registration of Colleton County, testifies (p. 293) that in Jacksonborough precinct there have been no renewals or transfers for the last four years; the same for Adams Run, for Delemars, for Gloverville, and for Green Pond.

He further says that he did not advertise where he would meet the citizens for the purpose of renewal, transfers, or original registration, because it was generally known where he would be.

In regard to the action of this same supervisor, we quote the testimony of W. F. Myers (p. 95):

Q. What facilities were afforded by the supervisor of registration in registering, renewing, and transferring certificates?—A. So far as Republicans were concerned no facilities were offered for registering those who have recently come of age, those who had removed, nor for those who desired renewal. I took over a hundred and fifty affidavits of Republicans applying for certificates, and at one time had a number of applicants to come to the court-house from a great distance to meet the supervisor, but he could never be found. On the other hand Democrats were afforded every and undue opportunities to secure theirs. I, on the 4th of November preceding the last election, in the court-room, was an unwilling listener to a conversation between Hon. C. G. Henderson and the supervisor of registration, Beach, when the former asked for those certificates. The latter replied that they were made and in his office. He went out and returned with a package and handed it to Mr. Henderson, which I supposed were the certificates. I have had two citizens, known to be Democrats, to tell me that up to the day before the election they were urgently requested to go up and get a certificate of registration that they could go up and vote on the 6th, which they declined to do.

Q. Did the supervisor have an office; if so, where was it?—A. So far as I could ascertain or find out through diligent inquiry he had not. I inquired at the offices located in the court-house, but none could or would say where he was located, excepting Auditor Smith, who said he (meaning the supervisor) came into his (Smith's) office, but he could not tell me if he had a permanent office.

J. H. Chapman, page 92 of record, corroborates Myers when questioned:

Q. Do you know if any person or persons desiring to register or have their registration certificates transferred or renewed have ever gone to the county seat at any time during 1888? If so, state the dates upon which they went.

(Objected to upon the grounds that the persons applying for renewal of certificates are the best evidence; what witness might say would be hearsay and inadmissible.)

A. I do know of such persons going for the purpose of having their's renewed or transferred; on the first Monday in March, first Monday in April, first Monday in July, and after they, along with myself, got up to Walterboro. I inquired for the office of the supervisor of registration; I inquired of Mr. Myers and Jackson Grant, but I could not find the office.

Q. State into what building, if any, did you go at Walterboro to look for the office of supervisor of registration.—A. I went in the court-house and I looked on each side of the building as I passed through the passage-way for the sign of the office of supervisor of registration, and I never saw any sign of said office.

Q. State if while there looking for said office of registration if you saw the supervisor of registration.—A. I did not.

Q. Did you look into any of the rooms or offices in the court-house building for the supervisor of registration on said days?—A. I did.

W. B. Scott (page 94 of record) goes into the office the supervisor of registration claims to use on the proper day of registration, does not find him, but finds the auditor of the county, who knows nothing except "he sometimes comes in there." Scott being questioned:

Q. Have you ever gone to Walterboro and endeavored to find the office of supervisor of registration; and, if so, state what happened.—A. I went there the first Monday in last March, and as I went I took my registration certificate with me to see whether I could get it change from Jacksonboro to Green Pond, and as I went up I ask Jackson Grant what time the supervisor will be in and whereabouts he held his office; he told me to go to the court-house and I would find out, and I went over and saw the auditor; Mr. Smith told me where the office of the supervisor was; he said sometimes he comes in here and moreover I have not time to bother with you. Then I came on back home and after I came back I wrote a letter to Major Myers.

Q. Did you ever go back again?—A. I went back the first Monday in June and did not see the supervisor, and I went back again in July and the supervisor was pointed out to me; I went to him where his office was and when he would be in, as they had his registrar certificate and desire to have it change from Jacksonboro to Green Pond and had forty affidavits of persons who wanted to change theirs and said he did not know when he would be in Walterboro and he had no office there.

As to Orangeburgh County, we quote from the testimony of E. A. Webster (p. 324):

Q. Are the same facilities afforded Republicans and Democrats alike in registration of voters in Orangeburgh County?—A. In the administration of the law the same facilities are not allowed to Republicans as to Democratic voters. The Republicans are not able to find the supervisor of registration for the purpose of changing certificates, registering and renewing. The supervisor residing some ten miles from the court-house, his office has not been kept open as required by law. Republicans had access only during the time his office was opened. The office on those days crowded with Republicans, and a large number were present who could not register, though they applied. The office has not been open since the first Monday in August, 1888, to Republicans previous to the election. In my judgment there were at least fifteen hundred who applied and were not registered, including necessary transfers and changes, on the last day in question. Just before the closing of the office I presented to the supervisor of registration a large number of affidavits of lost certificates collected from voters present from the Seventh Congressional district, and tendered them to the supervisor, requesting that he should issue certificates thereon, which he refused to do. I will state that while Republicans met with this embarrassment and obstruction certificates were issued to Democrats without personal application. I protested against this, as Republican county chairman, as being unfair. The supervisor, who is a Democrat, stated to me that he was not compelled under the law to make these changes and issue certificates except upon personal application, *but that if he choose to favor his political friends he should do so*. I applied to him several times after the first Monday in August—meeting him on the street—to make some changes in certificates for change of residence, and to issue in place of lost certificates upon affidavits in my possession; this he refused to do. My instructions, as county chairman, to the Republican voters who applied was to wait about or at the office until it was closed. I should judge, on the last day, that about 250 or 300 were there when the office closed; many of them from the Seventh Congressional district.

By means detailed by these witnesses, thousands of Republicans of the seventh district were deprived of such certificates of registration as the managers would recognize. Hundreds of them went to the polls

and presented their old certificates, only to find their names stricken from the books. Many of them were voters who had not changed their residence, even within the precinct of their residence. Some who, after much trouble, had secured transfer certificates, went to the polls and found that the description copied into the precinct registry did not agree with the description in their certificates, and so were unable to vote.

We do not make any account of the number of these voters who failed to get certificates and who tendered their votes, because in this case it would not affect the result farther than to increase contestant's majority; but we hold that all such persons, otherwise qualified, were legal voters.

We go further, and hold that there is no valid registration law in South Carolina. The election machinery of the State, while not so bad as its registration laws, is still of a character which can not well be overlooked. All the machinery of elections is in the hands of the Democratic party. The governor appoints commissioners of election for each county, without provision for minority representation, there being two sets of these commissioners, one for State and the other for Federal elections. These in turn appoint precinct managers. To these commissioners the returns of the precinct managers are returned, to be by them canvassed and certified to a State returning board, composed of certain State officers. Both the county and State returning boards have quasi-judicial powers, instead of being limited to the canvass and certification of the vote as cast.

From seven to nine ballot boxes are required to hold an election; one for governor and lieutenant-governor, one for other State officers, one for circuit solicitor, one for state senator, one for member of the State house of representatives, one for county officers, one for representative in Congress, one for Presidential elector, and a ninth box if any special question is to be voted on at that election.

These boxes are to be labeled according to the officers, the two Federal boxes to be presided over by one set of managers, and the six or seven State boxes by another set. Polls for Federal and State elections may be widely separated. All the tickets are to be of a specified description, and none others can be counted. The voter is required to deposit his own ticket, and find out for himself the right box, the managers on demand only being required to read the names on the boxes, but there is no requirement that they shall designate the boxes while pronouncing the names, or read the names in any particular order. No other person is permitted to speak to the voter while in the polling place. No tickets found in the wrong box are to be counted.

This, in fact, makes an educational test, in direct violation of the constitution of the State. Its practical operation will be seen when we come to consider the details of this case.

In the Seventh district, except in one county, all the supervisors of registration, all the commissioners of election, and all the precinct managers, were Democrats, the Republicans being denied representation on any of the boards. The only way to have watchfulness at the election, by persons not politically hostile to contestant, was to secure the appointment of United States supervisors, one of each party, who, under the present law, are required to serve without compensation.

On the 27th day of September, 1888, the Republican executive committee of the State addressed a communication to Governor Richardson, asking for representation on the election boards. To this commu-

nication the Governor made answer, denying the request, and, among other things, said:

It will be sufficient simply to say that, in my judgment, a departure from the wisely-established methods and principles upon which these appointments are made would endanger the continuance of the perfectly free, fair, and peaceful elections—the professed object of your desire—that are the proud boast and the highest achievement of Democratic rule in this State."

This from the chief executive of the State, when denying to a party which outnumbered his party four to one in the Seventh district, a participation in the conduct of the election, a participation which is regarded almost everywhere else as necessary to honest elections, and when denied is regarded as a matter of law, as casting a suspicion upon the integrity of the election and returns.

But the governor continues:

To the eternal honor of our State and the Democratic party it can now be said that our elections are the freest and fairest in the world, and that not a single citizen of hers, no matter what his rank, color, or condition, can, under her just and equal laws, impartially administered as they are, be by any perversion or intimidation, barred at the polls from the free and full exercise of his suffrage. There is not only perfect freedom in voting, but the amplest protection afforded the voter.

From what we have said of the registration and election law and from the examples given of the conduct of supervisors of registration, it will be seen that we do not agree with the governor. We are at a loss to understand how such language could be used with sincerity. In the further examination of this case we shall show how grievously the governor was deceived as to the Seventh district, if, indeed, his answer to the executive committee had any other purpose than to mislead the people of the United States outside of South Carolina.

With this general review of the situation we come to the examination of the specific facts affecting the election.

#### BALLOTS IN WRONG BOXES.

The first question which we consider, which resulted in a loss of votes to contestant, is the failure to count ballots for him found in the Presidential box. As has been noted, managers of elections are prohibited from counting any ballots found in the wrong box. At the federal polls, at this election, there were two boxes, one for Presidential electors, and one for Congressman. Under the peculiar wording of the statute, unlettered voters are obliged to rely upon those of their associates who can read to learn how to deposit their tickets so as not to get them into the wrong box, and so lose their votes.

If the two boxes are put into position before the voting commences, and are permitted to remain in the same position during the day, there is little danger of any mistake, all the voters being instructed as to their position by those in whom they have confidence. But if the boxes are shifted about at intervals during the day, it follows as a matter of course that every unlettered voter who goes to the poll after the change and before its discovery deposits his ballot in the wrong box, and loses his vote so far as the count of the managers is concerned. There is no prohibition in the statute against shifting the boxes, and so it is assumed by the managers of election that they have a right to shift the boxes as often as they please, for the express purpose, as they acknowledge, of confusing the voters and causing them to deposit their ballots in the wrong box.

It was gravely argued before the committee by an eminent lawyer that there was nothing wrong in this shifting of boxes, and that con-



testee was entitled to all the benefits accruing to him by reason of such action. An act may not expressly be forbidden by law, but if it is done with an unlawful purpose, and succeeds in accomplishing that purpose, the act is thereby made unlawful.

At this election, in a large number of precincts, this shifting of boxes was resorted to. The facts and the motive are proven beyond a reasonable doubt. We submit a few extracts from the evidence upon this branch of the case:

Daniel Ravenel, Republican United States supervisor at Jourdin's, Williamsburgh County, says (p. 8):

Q. Was the position of the boxes changed during the progress of the election that day?—A. Yes, sir.

Q. By whom?—A. By the managers.

Q. About how many times?—A. As well as I can recollect about six or seven times.

Q. Did you show the voters or attempt to show the voters what box to deposit their ballots in?—A. I attempted to show them, but the managers objected.

M. M. Monzon, Republican United States supervisor at Kingstree, says (p. 13):

Q. How many ballots, if any, were found in the Presidential electors' box bearing the name of Thomas E. Miller for member of 51st Congress from the Seventh Congressional district?—A. Sixty-six were in the wrong boxes.

Q. What was done with those ballots; were they counted for Thomas E. Miller?—A. No, sir; they were not counted for Miller. They were destroyed by the managers.

Q. Was the position of the boxes changed that day during the election?—A. They were, a number of times.

Q. By whom were they changed?—A. By the managers of election.

Jesse S. Fulmore, Republican United States supervisor at Indian-town (p. 15), says:

Q. What was done with those 81 ballots?—A. They were taken out and destroyed.

Q. Then they were not counted for Thomas E. Miller?—A. No, sir.

Q. Who destroyed them?—A. The managers of election.

Q. Were the managers of election Republicans or Democrats?—A. They were all Democrats.

Q. Was the position of the boxes changed or shifted about that day, during the progress of the election?—A. Yes, sir; they were changed from one place to another at least five times.

Q. Who shifted or changed them about?—A. The managers of election.

B. J. Fortune, Republican United States supervisor at Corbell's Store (p. 21), says:

Q. What became of the other 29 ballots?—A. They were destroyed by the managers.

Q. Why were they destroyed?—A. Because they were placed into the wrong box.

Q. What box?—A. Into the Presidential box.

Q. Whose names did these ballots bear?—A. T. E. Miller.

Q. Was the position of the boxes changed during the election from the position they were in at the beginning; if so, by whom?—A. They were changed about 8 or 9 times by W. A. Cooper and Robert Wilson, the managers.

Q. Did you hear the managers making any remarks in regard to the change of the boxes?—A. I did not, although I called attention to change.

Q. To what political party did the managers belong?—A. The Democratic party.

L. R. Davis, Republican United States supervisor at Sumter (p. 24), says:

Q. Whose name did these 9 ballots bear?—A. T. E. Miller.

Q. Was the position of the boxes changed during the election from the position they were in when the voting began; if so, by whom?—A. Changed frequently by the managers.

Q. After they were so changed, and a voter would vote, what did the managers say?—A. They did not say anything, except on one or two occasions.

Q. What was said on those occasions?—A. On one occasion I wanted to vote myself; the box was shifted around, and the managers laughed and said I made him vote in the wrong box.

Q. To what political party did the managers belong?—A. The Democratic party.

Q. Did you keep a poll-list?—A. I tried to do it, but was prevented.

Q. State who prevented you from keeping a poll-list.

(Objected to as irrelevant, nothing in the ground of contest.)

A. The list I was keeping was snatched from me several times by Mr. R. D. Lee, counsel for contestee and Democratic county chairman.

(Objected to on above grounds.)

Q. Do you know what official position, if any, Mr. Lee held at the polls on that day?—A. I think he held a position as constable.

Q. Did you keep or succeed in keeping any part of the poll-list?—A. None; I tried twice; it was snatched and destroyed.

Q. Was any violence offered to you by any of the managers, if you should keep a poll-list?

(Objected to as above.)

A. I was threatened to be put out if I kept another poll-list.

M. Johnson, Republican United States supervisor at Eastover (p. 319), says:

Q. State if you can where the boxes were placed while the voting was being done, and if they were changed as to position during the day by any one.—A. The boxes were placed on board partition between the managers and the person voting, and were shuffled by the managers during the day.

Q. State if there was any object or closed partition between where the managers of election stood and where you stood while the voting was being conducted.—A. I was placed at such a position by the chairman of the board of managers from which I could see the voting, but the boxes were being changed so that I could not see them when they were handled or changed by the managers.

Q. Do you mean by above answer to say that either of the boxes was taken off of where they were placed originally, out of your sight, by any one?—A. I do, as the managers took them off from where they were originally placed; I could not see them.

Q. When they took them, or either, from where they were originally placed where would they place them? I mean, would they place them between you and any object or not? If so, state what the object was.—A. They would place them behind this board partition on a box or something of the kind, and would then change them.

Q. While the boxes or box was taken out of its original place and placed behind the board partition were you in a position to see what was done to or with the boxes or box by any one?—A. I was not from the fact that the partition prevented my seeing, and anything could have been done with the boxes while they were changing them.

Q. Why did you not go behind the partition whenever any one took a box or boxes out of your sight?—A. I was assigned to my position in the room by chairman of board, where I had to remain all day.

J. C. Eason, Democratic United States supervisor at Eastover (p. 332), says:

Q. Did the managers or any one of them in any way interfere or intermeddle with any of the voters, except to put to them certain questions required by law, while casting their votes?—A. No; they never interfered with any one.

Q. What disposition or arrangement would the managers make with reference to the boxes during the day while the election was going on?—A. The only thing I saw them do with the boxes was to change the position of the two boxes. That is, place one where the other had been. This was done openly, so Johnson and I could see it done. One box was distinctly labeled for Presidential electors and the other was distinctly labeled for member of Congress.

Q. Why was this interchange of boxes made?—A. I think the cause was that Johnson began sending out notes stating which sides the respective boxes for electors and Congressmen were on.

Q. Can you say how many these shiftings of the boxes were made during the day?—A. I can not.

Q. How long were the managers in making the shifting of the boxes?—A. It was momentarily. They would pick up, move the other in its place, and put it down.

Q. In making these changes was any one of them ever taken out of Johnson's sight?—A. I could always see them myself.

And on cross-examination:

Q. The ballot-boxes, you say, were transposed several times through the day?—A. Yes.

Q. And ballots were deposited by colored voters after these changes as well as by white voters?—A. Yes.

Q. When a voter went to the boxes to deposit his ballot did anybody accompany him?—A. No.

Q. Or did anybody explain to the voter the character of the respective boxes?—A. No.

Q. And therefore if a voter who could not read should deposit his ballots in the boxes according to the information he had previously received as to their location, there would be no certainty of his ballots going into the boxes he had intended?—A. No; I think not.

Q. And is that the way it happened that there were 8 or 10 ballots in one of the boxes which the managers destroyed because they were in the wrong box?—A. I suppose that was the way of it.

Robert Wilson, Democratic manager at Corbett's Store (p. 347), says:

Cross-examined by Mr. WHITTAKER:

Question. By whom was the position of the boxes changed?—Answer. In some cases by myself, and in some by Mr. W. A. Cooper, one of the managers.

Question. Why was the position of the boxes changed?—Answer. *They were changed to carry out the spirit of the law and test the intelligence of the voter.* The voters were being directed by a man who had climbed up a tree so that he could see the position of the boxes over the barricade; the voters were coming in with their tickets and hands held upright, one in one hand and one in another, and whenever the boxes were changed the man up the tree would hollow out, "Mind dare!" "Change dem tickets!"

Question. Why were the boxes labeled?—Answer. They were delivered to us labeled.

Question. State that law which in our State directs the managers to test the intelligence of the voter by any means.—Answer. I know of no law which directs us and none to prohibit. *We understood the spirit of the law to be that each man must read for himself the labels upon the boxes.*

Question. Does the spirit of the law prevent any person outside of the polling place directing a voter how and where to deposit his ballot?—Answer. We think so, as it required us to put up secure barricades.

Question. Was the position of the boxes changed while the voters were in the polling place?—Answer. In some cases it was. \* \* \* The position of the boxes were changed several times that day; I know of no law to prevent it; Fortune objected and we told him if he would show us any law to prohibit, we would not move them again; he examined his copy of the law carefully and told us that he saw none.

As to this witness' statement of the law for putting up "secure barricades," it may be said that the law provides that an inclosure "shall be *railed off*," or otherwise provided" (sec. 29), thus showing that the law does not contemplate a tight barricade which shall shut off the view.

C. O. Marshall, Democratic manager at Eastover (p. 336), says:

Q. Were any of these two boxes in which the election was held carried or taken by any person out of the sight of the managers?—A. They were not.

Q. During the time of the election were these two boxes shifted or transposed on this shelf upon which they rested?—A. They were.

Q. For what purpose were these boxes transposed and in what manner?—A. When we made the first change Meshoch Johnson, the Republican supervisor, spoke to a voter and told him to tell them outside about the position of the boxes. I called his attention to the State law forbidding any one to speak to voters. He then got to sending notes out by voters, trying to give them to voter surreptitiously. The boxes were changed several times in consequence of this U. S. supervisor *trying to defeat the election laws*, thus trying to give his party an undue advantage.

This resulted in a net loss to contestant of over a thousand votes. This account excludes from consideration all votes in those precincts where the voters deposited the same kind of a ballot in each box, so as to make sure that one of them would be counted, and only takes into consideration those ballots which are shown by the number voting, the number of ballots in the box, or by corresponding electoral ballots in the wrong box, to have been placed in the wrong box by mistake, and against the intention of the voter.

In every instance but one, the shifting of the boxes is shown. The purpose was unlawful, the result was the failure to have counted, and

the destruction of over 1,000 ballots cast for contestant by duly qualified voters.

The managers of election took no account of these ballots, immediately destroyed them under a claim that the law so directed (a claim not sustained by the statute), and as witnesses almost universally show a remarkable forgetfulness as to their number. The United States supervisors, present at all the polls when this destruction occurred, kept an account of the number, and by that means we are able to ascertain with reasonable certainty the whole number lost.

Following are the precincts where losses of this character occurred, with the net number after deducting any losses sustained by Elliott.

<b>Williamsburg County:</b>		<b>Orangeburg County:</b>	
Gourdin's .....	22	Washington Seminary .....	25
Blooming Vale .....	10	Fort Motte .....	16
Black Mingo .....	23	<b>Colleton County:</b>	
Greeleyville .....	128	Adams Run .....	95
Salters .....	23	<b>Berkeley County:</b>	
Cade's .....	20	Strawberry Ferry .....	21
Kingstree .....	66	Biggin Church .....	18
Indiantown .....	81	Black Oak .....	44
<b>Sumter County:</b>		Ten-Mile Hill .....	37
Corbett's Store .....	29	Calamus Pond .....	32
Statesburgh .....	3	Muster House .....	38
Sumter .....	9	Brick Church .....	11
Lynchburgh .....	29	Camp Ground .....	150
Raffin Creek .....	12	Haut Gap .....	61
Bethel Cross Roads .....	5		
Mayesville .....	40	<b>Total .....</b>	<b>1,049</b>

Making large allowance for any mistake in numbers, we add 1,000 to the returned vote for Miller, making his vote 8,003, after this addition, and leaving Elliott's majority 355.

It will hardly be claimed by any one that this unlawful attempt by the partisan friends of contestee, acting as managers of election, to disfranchise a thousand voters, ought to be permitted to succeed, in a contest. Both law and justice forbid.

If the intention of the elector can be ascertained, it is not to be defeated merely because the inspector, through mistake or fraud, deposits his ballot in the wrong box; nor because the elector himself, by mistake without fraud, places it in the wrong box. (*People vs. Bates*, 11 Mich., 368.)

Here the elector placed his ballot in the wrong box by mistake, the result of the unlawful and fraudulent acts of the managers of the election. It is no answer to say that the counting of such ballots is prohibited by statute (even admitting that the statute is a reasonable regulation, which, under the peculiar circumstances in South Carolina, we do not), when the mistaken deposit has resulted from the active deception of the managers. It is a crime at common law to enter into a conspiracy to commit any offense against the purity and fairness of a public election. (*Paine on Elections*, section 496, and authorities cited).

#### BALLOT-BOX STUFFING.

##### COLLETON COUNTY.

*Gloverville precinct.*—Here the whole number of votes polled for member of Congress was 134; 113 were returned for Elliott, and 20 for Miller. When the box was opened at the close of the polls it was found to contain an excess of 85 ballots, more than half as many again as were actually voted. This proves that the box was dishonestly stuffed by somebody. The managers were all Democrats and friends of contestee. It is scarcely possible that it could have been done by the voters. But the evidence leaves no doubt upon the question as to who committed the crime.



The United States supervisor went to the polling place very early in the morning, and staid in front of the usual polling place waiting for the managers to come and prepare to open the polls. Before the time for opening the polls James H. Dodd, one of the managers, came to the fire where the United States supervisor was standing, and on being asked, answered that the poll was to be held in the store.

While the supervisor and Dodd were talking the clerk of the store opened the door, where the voters afterwards entered to vote. The supervisor entered the store and asked to have the ballot-box opened before the election commenced. He was then informed that the election had already commenced, and five ballots been deposited. The time for voting had not yet arrived, the polling place had not been opened, no proclamation had been made; with the exception of Nero Williams, who was seen coming from the back door of the store, all of these first five voters slept in the store in which the poll was opened the night previous to the election. Three of the five were not registered voters and two of them were managers of the election.

Here is clear evidence of a conspiracy: The getting together the night before and sleeping in the polling place, the pretended opening of the polls before the polling place was opened and the United States supervisor admitted, and the deposit of illegal ballots so as to make an excuse for not exposing the interior of the box to the inspection of the United States supervisor, the peculiar twisted character of the tickets in the box, which could not have been placed there by the voters on account of the narrow opening, and which were not taken when the excess of ballots was drawn out under a pretense of complying with the law—all reach to the inevitable conclusion that the box was stuffed with Elliott tickets before the voting commenced. We insert here the testimony of E. M. Chisolm, United States supervisor (record, pp. 285, 286, 287):

E. M. Chisolm, being duly sworn, says:

Q. State your age, occupation, residence, and where you were on the 6th day of November, 1888.—A. I am 31 years; am a farmer; live in Gloverville Precinct; was at Gloverville acting as supervisor on November 6 last.

Q. State for whom you voted as member of Congress from the seventh district on the 6th of November, 1888.—A. For T. E. Miller.

(Objection.)

Q. State from whom did you get your ballot, if you can read, and how many ballots or tickets did you vote for Congressman at the last election.—A. From Abraham Small, who was distributing; can read; voted one ticket for Congressman.

(Objection.)

Q. State at what precinct did you vote, and if any one read your ticket for you.—A. Gloverville; read my own ticket.

Q. How many boxes were at the poll that day?—A. Two.

Q. State the name of the person who read your ticket to you, and to what political party he belongs.—A. Abraham Small; he is a Republican.

Q. You have stated that you were supervisor at Gloverville poll; state what time in the morning you arrived at the polls, what you saw, and what was done by you and the managers or any other persons connected with the poll.—A. I think it was about half past four when I reached the poll the morning of election; I met there Abraham Small, Sam Hawkins, and Rob't Smalls; I inquired of them as to where the voting would take place; that was then right opposite the store where elections are generally held; as we saw none of the managers, after being there about half an hour, things being quite still; then we heard a little thumping in the store as if some one was getting up putting on their shoes, after which we saw the two so-called Democrats, Ceasar Chisolm and Nero Williams, come from the back part of the store and walk to our fire; we waited some time when Joe Dodd, another of the managers, come from behind the store with his brother, Julius Dodd; we judge they came from out of the store.

After being there a little while I said to Mr. Dodd, "Where will the poll be held to-day?" He said he was manager of the Congressional poll. I said, "That's the

poll I am asking you about." In that time the front door of the store was opened by W. F. Hill, a clerk in the store. Mr. Dodd invited me in after I told him I was supervisor—Joe Dodd, I mean. He showed me how the voters would come in to a window. I said to him, "Mr. Dodd, the law requires me to look into the box before the voting commences." Instead of giving me a direct answer he touched another of the managers, Ceasar Chisolm, and walked off; then they had a conversation, after which he, Dodd, said, "It is too late now, you can not look in the box." Then I said, "I will note your objections." He said, "All right." He again repeated that "we refuse on the ground that it was too late." I asked him the hour. He said the poll was opened at six o'clock; I said it is not now six o'clock, because we have the time right here and it lacks now five minutes to six. Then he pulled out his watch saying, "Gracious, it is near 7 o'clock!" He said at this juncture that they had commenced voting; I said, "Well, I was here about two hours ago, and I saw no one vote; if anybody has voted give me the names that I may copy them." He presented his name (Joe Dodd) first; the next, I think, was Ceasar Chisolm, W. F. Hill, Nero Williams, and Julius B. Dodd, which I copied.

(W. B. Gruber, counsel for contestee, objects to any conversation had between the supervisors and the managers or any person or other persons than the managers, upon the ground that it is irrelevant and hearsay, and therefore not admissible.)

Q. State whether the election was quiet during the day.—A. Yes, everything went on perfectly quiet.

Q. State what was done by you or the managers at the close of the poll, relating all the circumstances that happened during the canvassing and counting of the votes.

(Objection on ground that if the witness as Federal supervisor performed his duty as the law required him to do and reduced to writing in the form of a report the matters he is now called upon to testify, as to that the report would be the highest and best evidence as to what happened, and secondary evidence inadmissible.)

A. After copying the few names that was given me by Mr. Dodd, and he showed me the window at which the people were to vote, I saw the difficulty that seemed to be intended for fraud. I saw it was necessary the way they had it arranged to have some one right at the window to give these men their tickets. I then choose one I knew was competent to issue out and stand at the window. They were instructed that as each man came up to vote Abraham Smalls was to hand him his tickets. The Democrats did the same, having a man on the other side of the window to hand their tickets. This rule was observed the whole day, vote after vote, until the closing of the poll. Then Joe Dodd, one of the managers, said that "every one of you leave the house, and all of the white men come in." Chisolm, he said, "you can stay; I did not mean you, and Abraham Smalls can stay with you." Before they commenced counting they seemed somewhat confused as to how they should count. That is, Joe Dodd, who seemed to be the chief, and Ceasar Chisolm, they stepped off a space, holding a secret talk. They came back and suggested how they should count, which was that they would throw all the ballots out of the small box into a larger one, which they did. Then Ceasar Chisolm commenced to count right off; then Joe Dodd, pointing his finger, said, "Hold on, you must stir the votes up first; stir them up; keep your eyes out." Then they went on; they then counted without giving candidates any credit at all, after which they had a considerable lot of votes over the names on the poll-list—229 in all in the box. Then they found that the total number of names on poll-list was 134; then they proceeded to give candidates their credit. The question came up as to the excessive votes—what was to be done with them. One of the managers then turned his back, but not his eyes. I then observed that the general Republican votes was folded and a portion of the Democratic votes was folded and the rest was twisted. Then they would draw one of the folded votes—the twisted votes were never drawn—until they got down to the number on the poll-list, destroying as they drew. The managers then suggested that we now go into a general drunk, which was done. I refused to join, against their urgent and frequent requests. They commenced to call off the tickets. Joe Dodd would take them from the box and Ceasar Chisolm would call the names from the tickets, giving each candidate, Miller and Elliott, credits. He called to a certain number and stopped at the suggestion of Joe Dodd to take another drink, seeming to be more polite to me that night than ever before; then they finished up the canvassing, giving Elliott, I think, 114 and Miller 21.

(Counsel for contestee objects on ground that result of the vote should be proved by the written return of the managers and supervisors.)

Q. Did you observe or notice what name or names was on the ballots as they were counted?—A. I did not, because they had the table crowded and they seemed to stand from me while counting.

Q. What was the name of the person who called the names from the tickets, and can he read and write?—A. Ceasar Chisolm; I suppose he can sign his name, you may call that writing, and I suppose he could distinguish the names between Elliott and Miller.

Q. State whether you noticed the hole or aperture in the Congressional box and

whether those twisted tickets could have been voted through that hole and found in the condition which they were.—A. I did notice the hole; that's what aroused my attention to notice these twisted tickets and they could not have been voted through that hole.

Q. State the name of the person who had the key and opened the box or boxes at the close of the poll.—A. Joe Dodd.

Q. Were you in a position to know the number of Republican votes that were distributed by Smalls at the window and voted by the voters?—A. I was; I saw every person as he came and offered to vote. One man, Sam Perry, wanted to assist Smalls and I refused to allow him, as he was not competent to distinguish the different votes. Chisolm, one of the Democratic managers, was there at different times trying to poke Democratic tickets in Republican hands. I know every man in Gloverville Township and know of only two colored men who voted the Democratic ticket.

Q. Do you know the number of white voters who are entitled to vote at that poll; if so, state that number?

(Objected to on ground that the record as kept by the managers is the only evidence competent to prove who actually voted on that day.)

A. The Democrats as I remember now were Joe Dodd, Julius Dodd, John E. Bryan, B. G. Willis, T. S. Ackerman, W. H. Nix, P. Gatch, J. B. Glover, F. T. Glover, H. L. Ackerman, A. E. Griffith, W. F. Hill, H. H. Durant, and B. M. Williams; I think Paul McCants. I am satisfied that the whites do not cast over 21 this time including the two colored men. The total No. of white votes in Gloverville is about (25) twenty-five.

We refer also to the poll-list, page 628, and to the testimony of the registering officer of the county, page 293.

The evidence shows that a large majority of the votes at this precinct were Republican, and that not to exceed 21 voted the Democratic ticket. Inasmuch as it is impossible from the evidence to ascertain what was the true state of the vote, we reject the returns entirely. Taking 113 from Elliott, and 20 from Miller, we have: Elliott, 8,245; Miller, 7,983. Elliott's majority, 262.

*Green Pond.*—At this precinct the returned vote was:

Elliott.....	216
Miller .....	52

Here we have another example of ballot-box stuffing.

John F. Brown, United States supervisor (pages 294, 295, 296), gives a clear statement of the conduct here, and we quote:

Q. State your age, occupation, residence, and where you were on the 6th day of November, 1888.—A. Am about 33; lawyer; live in Green Pond precinct; was at Green Pond poll acting as supervisor on election day last.

Q. State for whom you voted as member of Congress from the 7th district on the 6th of November, 1888?—A. For T. E. Miller.

(Objection.)

Q. State from whom did you get your ballot, if you can read, and how many ballots or tickets did you vote for Congressman at the last election.—A. From J. H. Chapman; I can read; voted one on that day for Congress.

(Objected.)

Q. State at what precinct did you vote, and if any one read your ticket for you.—A. Green Pond; read my own ticket.

Q. How many boxes were at the poll?—A. Two.

Q. State the name of the person who read your ticket to you, and to what political party he belongs.—A. J. H. Chapman; is a Republican.

Q. State what house or place the Federal election was conducted in, or any circumstances that are material to the election that day.—A. It was held in a middle room of the house, a room I took to be the dining-room, owned by J. S. Hickman. I do not know whether it was occupied or not. I arrived at the poll about daylight that morning. About an hour and a half after I was there I saw Mr. Strobel, the depot agent, go down to Mr. Sanders's store; I went down behind him; he called Mr. Sanders, who opened the store and opened a back room in the store, the same we voted in the election before, and a table was placed in a position as if the election would have been held there. I was informed that the election would be held there. About half past six I see no boxes, neither the managers; I felt somewhat uneasy in regard to it being held there. I saw that Mr. Strobel and Sanders were also uneasy; I think either Messrs. Strobel or Sanders told me the election would be held at Sanders's store. I noticed Mr. Strobel walking out of the back door into the back yard,

and being informed that the managers were all at Mr. Hickman's house I walked out of the front door. The crowd followed me, Mr. Strobel goes through into his (S.) yard, then into Mr. Hickman's yard and into the back door of Mr. Hickman's house, the crowd and I following along the R. R. track. When I was about 100 or 150 feet from Mr. Hickman's gate Mr. Strobel came out of the front door of Hickman's house and announced that the poll was opened. I then entered the building and found the managers and M. A. Draudy, the supervisor, at the box; it was then fifteen minutes to seven by my time. I then asked the managers to exhibit the box before voting commenced; they announced the poll had been opened and they could not do it. A dispute arose between the managers and myself in regards to the time, after which I asked him that if they would not exhibit the boxes to give me the names of the persons who had voted. Manager Rice gave me the names of N. V. Robertson and E. G. Strobel as persons who had voted; I took a seat at a table they had prepared for me, about 4 or 5 feet from the table on which the boxes stood. Everything went on quietly after that until about 8 o'clock in the morning, then Manager Rice commenced shifting or changing the boxes around. I called his attention to the fact that he ought not to do it; he replied that all I could do "Report;" after then I said no more about the changing of the boxes. About 10 o'clock he called our attention to the fact that the people had found a way to vote by a split on top of the Federal box near the hole, and that he would remedy it; he goes over to Mr. Strobel, borrowed mullage, came back and took a Democratic ticket from the table and placed it on the split.

Q. Did you keep a poll-list, and have you got it?—A. I kept a poll-list, and here it is.

Q. From the poll-list you kept state how many white voters' names are on it.—A. There are fifteen names on here that I am positive are white, and the name N. V. Robertson, the first name given me and whom I did not see vote; I don't know whether he is white or colored.

Q. The persons whose names appear on your poll-list other than N. V. Robertson and Strobel deposited their ballots in your presence?—A. They did.

Q. How many names have you on that poll-list?—A. Two hundred and sixty-eight (268).

Q. Place the said poll-list in evidence.

(Paper placed in evidence purporting to be the poll-list kept by supervisor at Green Pond, and attached to this testimony.)

Q. Is this paper with the 263 names, beginning with the name of N. V. Robertson and ending with the name of James Campbell, and marked on first page "Poll-list," the list of the voters who appeared and cast their ballots at Green Pond precinct, in Colleton County, on the 6th of November last, at the Federal poll where you acted as U. S. supervisor?—A. It is.

Q. Did you make this list of voters in the presence of the managers of election for Green Pond precinct on the 6th of Nov. last, and is it the original and official poll-list?—A. This is the original list I made in the presence of the managers, and the managers and myself were very careful during the day to see that the two lists tallied, and I have made a copy of this poll-list and sent it to Charleston with my report to the chief supervisor.

Q. State what was the condition of the ballot-boxes when they were opened after the polls were closed, and how the tickets or ballots contained therein compared with the poll-lists kept by you and the managers?—A. When the boxes were opened they were full of votes; they opened the Congressional box first, and counted all the votes out of that box except seventy-three that they torn up as being deposited in the wrong box, and placed them in a large box, that is, the untorn ballots; those placed in the large box were (586) five hundred and eighty-six votes or ballots. When they commenced counting them out of the box I stood near enough to look into the box, and the ballots in the bottom of the box appeared to have been newly folded and laid in; the rest of the ballots appeared as after they were folded they had been held in the hands some time before they were voted; I saw the names on some of these newly folded ballots in the box as they were taken out, and the name I saw was that of Wm. Elliott. They then commenced to draw out the excess ballots; Mr. Blanchard commenced drawing, I noticed him; he drew from the top of this large box. After he was drawing for some time, about 100 or 125, Mr. Rice winked at him and told him if he was tired drawing let him (R.) draw. Mr. Blanchard then moved away from the box; then Rice commenced drawing; I noticed him in drawing; he drew the votes that were in the bottom of the box, and continued to draw until he drawn out all the excess votes. Then they counted the votes and gave candidates credit for the first time. They gave Wm. Elliott 216; T. E. Miller, 52.

Q. Did you know or did you have any way of knowing during the day how many persons at Green Pond voted for Wm. Elliott for Congress?—A. I know this, that when I went into the room in the morning I found the tickets or some tickets for Wm. Elliott on the table by the Congressional box, and the Democratic electoral



tickets by the box for Presidential electors, and every white man that voted the Democratic ticket that day in my presence took the ticket from that table, folded and deposited them in the box, voting for Wm. Elliott and the Presidential electors, Democratic.

Q. Will you take the poll-list placed in evidence and state therefrom the names of the white men who took the Wm. Elliott tickets from the table and voted that day as you described?—A. They are S. B. Sanders, Jas. Gahagan, D. J. Chaplin, J. B. Hickman, B. P. Hooker, R. P. Sanders, Wm. Fuller, Wm. Sallibank, H. D. Bodiford, J. P. Slattery, R. B. Grant, C. A. Savage, C. C. Jones. I have stated that there were 16 white men who voted at Green Pond, but on going over the list again I found that I was mistaken; there are only fifteen white men's names on the list, and I do swear, to my knowledge, that fourteen of them are white. I do not know the fifteenth man, N. V. Robinson, as I did not see him vote.

Q. As to the colored voters who voted there that day, state if any of them voted the Elliott ticket and their names.—A. After I found the Elliott tickets on the table I sat there the entire day to see whether any colored voter would have taken any of the Elliott's tickets from the table and voted it. One man, John Lessington, came into the room without a ticket; the managers asked him if he wanted to vote; he said yes, but had no ticket. We asked him then whether he wanted to vote a Democrat or Republican ticket; he said he wanted to vote a Republican ticket; this was after he was already sworn; the managers thereupon allowed him to go out and get the Republican ticket, and he came back and voted it. Later on John Mustipher, a colored man, took a Democratic ticket from the table and voted it, and he is the only colored man that I saw who voted the Democratic ticket that day, that is, taking it from the table.

The testimony shows that the election was held at a private house, a different place from that at which it had been held at previous elections; that the poll was opened before the legal hour; that the managers of election refused to exhibit the inside of the box to the United States supervisor; that unregistered Democrats were permitted to vote; that the total number of names on the poll-list of those voting was 286, and that there were, at the close of the polls, 659 ballots in the Congressional box, 73 being Presidential tickets, and 586 Congressional tickets. Of these, the 73 Presidential tickets were destroyed, and 300 ballots were drawn out.

That these ballots were placed in the box before the election commenced admits of no reasonable question. They were so folded as to be easily known. The managers were all friends and partisans of contestee. They resorted to stratagem to have the polls declared open before the United States supervisor could get into their presence, and so have an excuse for not exhibiting the box to him. Only 2 votes are claimed to have been cast previous to the demand of the supervisor to have the box opened. One of them, that of Strobel, the decoy, and the other, that of Robertson, an unregistered voter.

The United States supervisor is on hand an hour and a half before the time for opening the polls. When the time approaches he is told that the election will be held at Saunders's store, the usual place; Strobel goes to the store, opens the door, places a table in position for the boxes, and arranges things preparatory for the election; he then steps out through the back door, into a back yard, and then into the back door of Hickman's house, where the election was actually held. The supervisor, on the watch for tricks, follows as fast as possible, followed by the voters; before he reaches Hickman's, Strobel comes out of the front door and announces that the polls are open, and the election managers announce that Strobel and Robertson have voted. All of the election managers, the clerks, and the marshals, all Democrats, went to the polling place the night before, and remained in Hickman's house over night.

The managers of the election were called as witnesses, and while claiming that the box was exhibited to the voters present they confirm

fully the testimony of Brown. The "voters present" were these Democratic election officers, who no doubt did exhibit the box to each other.

The action here is almost identical with that at Gloverville. In addition to the testimony of Brown, the supervisor, contestant introduced Singleton (p. 92), Scott (p. 94), Myers (p. 284), and two hundred and thirty-three others, whose testimony may be found on pages 91 to 93 and 162 to 285, from which it clearly appears that Miller received 252 votes at this precinct and Elliott but 16. Restating the vote according to the facts we have up to this point:

Elliott .....	8,245—200=8,045
Miller .....	7,983+200=8,183

Miller's majority .....	138
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*Jacksonboro Precinct.*—The returns from this precinct gave—

Elliott .....	68
Miller .....	45

Total .....	113
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An excess of 70 ballots at this poll was destroyed by the managers. Here the ballot-box was not stuffed, but what was the equivalent of ballot-box stuffing was done. The managers emptied the box on the heads of some barrels standing behind the counter, where the supervisor had not been permitted to go during the day. The extra ballots were undoubtedly on the heads of these barrels. When the count was made it was found that there was an excess of 70 ballots in a poll of 113. Under pretense of complying with the law these 70 extra ballots were eliminated by the usual method. Such method of disposing of extra ballots is provided for mistakes, and not for frauds. We quote the testimony of the supervisor, L. D. Smalls (page 116), who, after the usual preliminary questions, says:

Q. What official position did you hold in connection with the election, if any?—A. United States supervisor.

Q. Where were you during the day of election; that is, on the 6th day of last November?—A. I was in B. Sander's building, where the election was held for Congressman from the 7th district and Presidential electors.

Q. State how many boxes were in said building and where they were placed during said day.—A. There were two boxes situated on a counter; the box for Presidential electors was on the left of any one coming in the door with his face to the boxes, and the box for Congressman was on the right.

Q. Who was the other U. S. supervisor for Jacksonboro?—A. C. W. Butler.

Q. Did you keep a poll-list of those who voted on said day at said election?—A. I did, and I now have it with me.

Q. Please produce it and place it in evidence.

(Objected to on the ground that the law does not require the U. S. supervisor of election to keep a poll-list.)

A. Poll-list, marked with Maj. Howell's initials, placed in evidence [marked Exhibit A].

Q. How many names are there on said poll-list?—A. 113.

Q. Were you present when the votes were canvassed at the close of the election?—A. Yes, sir.

Q. Were there as many votes or more votes in the Congressional box than there were names on the poll-list at said count?—A. Yes; there were seventy (70) more ballots in the box than there were names on the poll-list.

Q. Do you know how the seventy (70) extra votes got in said box?—A. I do not. Q. Was there any difference between the paper on which the name of T. E. Miller was printed and the paper on which the name of William Elliott was printed?—A. No, sir; but in the printing the words on the Miller ticket were far apart and on the Elliott ticket they were close together.

Q. Where were the boxes and votes placed during the count?—A. After they commenced to count there were two barrels behind the counter, and they emptied all the votes on the barrel heads and commenced to count from there.

Q. How far were the barrels from the counter where the boxes were during the day?—A. About three (3) feet from the counter.

Q. How wide was the counter?—A. About two feet and a half wide.

Q. Were you behind the counter during the day?—A. No; I was on the opposite side from the barrel all day.

Q. Did you ask permission to go behind the counter during the count?—A. Yes, I did; but the managers objected to my doing so.

Cross-X:

Q. Could you see all that was going on during the count?—A. I could see the counting, but could not see the names on the tickets.

Q. How far were you from the managers while the count was going on?—A. I was about five feet from the managers during the count.

Q. Were you present when the result of the election was declared?—A. Yes, sir.

Q. Did you sign the Federal supervisor's return?—A. I signed it under protest.

Q. Were you forced to sign it; did any say that you had to sign it?—A. Yes, sir; L. B. Ackerman, one of the managers at said election, said I must sign the return, that the law required it, and I told him I had not seen the names on the tickets as they were being counted, and Mr. Butler said I could sign and say that I signed under protest. (Mr. Butler was the Democratic supervisor.) A man by the name of Simmons, a State constable, when I said to Mr. Ackerman that I could not see the names on the tickets, said, "Go on with the count, and if this damn supervisor says much I will put him in jail." For that reason I said no more.

Q. Did you say that you could read and write?—A. Yes, I can.

Q. Were you not furnished with the law informing you of the duties of the supervisor?—A. Yes, sir.

Q. Did you read them?—A. Yes, I read them, and called the managers' attention to them, too.

Q. What were your duties?—A. My duty was to keep a strict notice and see that no violation of law while in counting the votes.

Q. Did you make any report to the chief supervisor of any wrong that took place under your observation during the day of the election?—A. I did make a report to the supervisor, but not informing him of the wrong.

Q. Then your report to the supervisor was the same as the managers of election?—A. Yes.

Q. Did you have a full turn-out of the Republican voters of this poll on the day of the election?—A. Not as general.

The validity of the count and return having been destroyed each party is left to prove his own vote, so far as he is able. Contestant proves by calling the voters (pp. 97-124) that 67 of them, whose names all appear on the poll-list, voted for him. Under a strict rule of law the whole return would be rejected, and 67 votes allowed to contestant on the proof. In his original brief filed with the committee, contestant conceded to contestee 46 votes, the remainder of the 113 not proven to have voted for contestant; and for that reason, and because it is now only a question of the amount of contestant's majority, we state the vote as in this brief:

Elliott's vote by last statement.....	8, 045
Deduct difference between vote as returned, and as stated in brief.....	22
And we have for Elliott.....	8, 023
Add 22 to Miller (8183 + 22).....	8, 205
Miller's majority.....	182

Counting the vote according to the strict rule of law, under the evidence, would make Miller's majority 228.

#### BEAUFORT COUNTY.

*Port Royal.*—The returns from Port Royal are:

Elliott.....	199
Miller.....	14
Total.....	213

Fifty-one witnesses (pp. 128-160) testify that they voted for Miller, and their names are all on the poll list as having voted. This evidence stands uncontradicted. Duly qualified voters were refused permission to vote, and names of Democrats are on the poll-list as having voted who had moved away, and were not present at the election, thus further discrediting the returns.

Giving Miller the 37 votes proved and not credited, and deducting a like number from the 199 returned for Elliott, as the vote is stated in contestant's original argument, and we have:

Elliott.....	8023—37 = 7986
Miller.....	8205 + 37 = 8242

Miller's majority ..... 256

Counting, according to the strict rule of law, only such votes as are proven by the evidence, Miller's majority would be 464.

#### BERKELEY COUNTY.

*St. Stephen's.*—The poll-list of St. Stephen's shows that 310 persons voted. Only 285 are returned as voting for Representative in Congress, and a like number for Presidential electors (pp. 600, 602, 603).

It is evident that 25 votes have been lost here by being deposited in the wrong box. Eighty-one qualified voters, whose names appear on the poll-list, testify that they voted for Miller (pp. 52-68 and 74-86). No attempt is made to sustain this return, and, under the evidence, Miller is entitled to be credited with 81 votes, or 75 more than were given him in the returns. Deducting 75 from Elliott's vote, according to the statement in contestant's brief, we have:

Elliott.....	7986—75 = 7911
Miller.....	8245+37 = 8317

Miller's majority ..... 406

Following the strict rule of law, and allowing only the vote proven after rejecting the returns, makes Miller's majority 818.

#### ORANGEBURGH COUNTY.

*Evans's Mill precinct.*—At Evans's Mill the managers return 415 votes cast, crediting Elliott with 390 and Miller with 25.

According to the testimony for contestant there were over 100 more ballots in the box than names on the poll-list.

The testimony of T. T. Green (p. 316) shows that the box had been stuffed by the managers or some other person. The managers were all partisan friends of contestee. According to Green's testimony the managers knew without counting that there was an excess of tickets, for they immediately destroyed 125, and then, upon counting the remainder, found that they had destroyed 7 too many. To restore the 7 which were necessary to make up the full vote, 7 each of Democratic and Republican tickets were put into a box, and 7 of these 14 were drawn out and put with the other tickets.

The managers of the election are called, and acknowledge the destruction of some tickets, and the unlawful method of making up the deficiency after too many were destroyed, but deny that there were so many as stated by Green; upon this question there is a conflict, but upon another there is not. One hundred and forty-two of the voters, whose names all appear on the poll-list, were called as witnesses (pp.



414-476) and 136 of them testify to having voted for Miller, conclusively proving the falsity of the return and the fraud perpetrated by the managers. This would give Miller 111 more than are credited to him, and conceding to Elliott the remainder of the votes cast in accordance with contestant's brief we have:

Elliott.....	7911-111=7800
Miller .....	8317+111=8428

Miller's majority .....	628
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Or, rejecting the fraudulent return, and counting only the votes proven, and we have Miller's majority 1,319.

#### RICHLAND COUNTY.

*Eastover precinct.*—No returns were made from this precinct, and it was not included in the certified result. M. Johnson, the Republican supervisor, testifies (p. 319), that the Miller tickets were printed on coarser and darker paper than the Elliott tickets, and that when folded by the ticket distributors, Miller's name could be seen; that the name was printed in larger letters than Elliott's name; that he watched the voting and kept a tally of the voters, and that Miller's vote was not less than 248, nor more than 257 (some tickets not certain), and that Elliott's vote was from 83 to 92. The managers shifted the boxes two or three times, and in doing so removed them from the sight of the supervisor, to which he objected; and he believes other boxes were substituted at one of these shiftings.

H. W. Woodard (321) testifies to folding the Miller tickets so that the name was in sight and to the description of the tickets, the same as Johnson.

One hundred and ninety-seven colored voters testify to having voted for Miller (pp. 478-570). Forty-two affidavits of other voters were filed with the committee to the same effect. These voters' names are all on the poll-list kept by the supervisor, showing 385 votes cast, 298 by colored men, 11 of which were Democratic. Aside from the testimony of the supervisor, which shows pains-taking care, there is positive testimony taken in due process of law, of 197 voters who cast their ballots for Miller. As we have said, no return for this precinct ever reached the county board.

J. C. Eason (332), the Democratic supervisor, confirms Johnson as to the managers shifting the boxes, as to the whole number of votes cast, and as to Johnson's keeping a poll-list, and as to his being present, all the time, and in a position to see each vote when deposited. He also says that the colored voters in this district largely preponderate, at least two to one, and that when the colored men vote they mostly vote the Republican ticket. He did not keep a tally when the vote was counted, did not keep a poll-list, did not watch the tally nor notice the names on the tickets when they were being counted; in other words, did nothing that was required of him as a supervisor, but, after the managers had made up their return, he took the tally and made his return from that, without any knowledge whether it was right or wrong. According to his report the vote was:

Elliott.....	262
Miller.....	87
Simmons.....	36

Total.....	385
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The commissioner of elections says that no return was made, but that an unsigned statement was found in the box returned, which was not counted. This statement was sent to the secretary of state, with all the papers except ballots, which he did not consider it his duty to count.

C. U. Marshall (335) testifies to the same vote as that given by the Democratic supervisor.

Says he made out the return on the back of an envelope, put it in his pocket, and has kept it there ever since. He testifies to destroying some votes, and then having as many left as there were names on the poll-list. We give some extracts from his testimony, illustrating his idea of an honest election:

Q. For what purpose were these boxes transposed and in what manner?—A. When we made the first change Meshoch Johnson, the Republican supervisor, spoke to a voter and told him to tell them outside about the position of the boxes. I called his attention to the State law forbidding any one to speak to voters. He then got to sending notes out by voters, trying to give them to voters surreptitiously. The boxes were changed several times in consequence of this U. S. supervisor trying to defeat the election laws, thus trying to give his party an undue advantage.

Q. In making these shiftings or transpositions of the boxes how much time was required to do so?—A. It was instantaneously. Often we would say aloud, "Let's change position of these boxes."

\* \* \* \* \*

Q. Did you reside in the 7th Congressional district at the time of the election spoken of?—A. No, sir; on the edge of it.

Q. Did you ever live there?—A. No; a road divides me.

Q. How far is your residence from Eastover?—A. It was 20 miles.

Q. Who were the other managers of election with you?—A. W. S. Taylor and J. E. Touchberry.

Q. You were all Democrats?—A. I think so.

Q. What concern was it of yours as a manager of election if one of the supervisors did write notes to persons outside of the room?—A. If as an officer he had the right as a partisan in the interest of his own party, I think I had a right to upset his plans and transposed the boxes.

Q. Was it your place as a sworn officer of the election to make yourself a partisan for the purpose of counteracting the partisan action of any one else?—A. No; transposing boxes affected both parties; there were many negroes who couldn't read that voted the Democratic ticket. The law requires the managers to read to the elector when he goes to vote the name on the box if he demands it. On one or more occasions during that day I was called upon to read them, and did so for the voter, and nobody else was allowed to give any information.

Q. If the changing of boxes would make no difference in the relative vote of the parties, why did you transpose them for the purpose of antagonizing the Republican supervisor?—A. It was a matter—a byplay between, and we made it a matter of joke.

Dealing with this vote in the manner most liberal to contestee, the least we can give Miller is 239, and the most we can give Elliott is 110.

Elliott .....	7800+110=7910
Miller .....	8428+239=8667

Miller's majority ..... 757

Or by the count made by the strict construction of the law, Miller's majority is 1,448.

#### BERKELEY COUNTY.

*Ben Potter precinct.*—In this precinct there is a difference between the return of the United States supervisors and that of the precinct managers; the supervisors returning 41 as voting, and the managers 141. The evidence here is conflicting, and we do not find it necessary to decide which is the true return. The same is true of Privateer precinct, Sumter County, where Elliott is returned by the managers as receiving 130 votes, and by the supervisors as receiving 88.

*Cooper's Store precinct.*—Here the managers counted 94 for Miller and 96 for Elliott. The evidence satisfies us that the count was a gross fraud boldly perpetrated, by which a large number of Miller tickets were counted and tallied for Elliott by the managers of the election, but it is impossible to ascertain the amount of the fraud from the evidence and we can only reject the whole return, which only changes the result two votes.

Other allegations are made, and proof taken in regard to them, such as failing to hold election at large Republican precincts, etc., but we do not deem it necessary to make further comment on the record. The frauds, false returns, and ballot-box stuffing which we have detailed are so conclusively proven, and the true vote so well established in the various precincts noticed, that there is left no room to doubt that Thomas E. Miller was legally elected, and was, through the crimes of election managers in the Seventh district of South Carolina, deprived of a certificate of election. We therefore recommend the adoption of the following resolutions:

*Resolved*, That William Elliott was not elected a Representative in the Fifty-first Congress from the Seventh Congressional district of South Carolina, and is not entitled to retain a seat therein.

*Resolved*, That Thomas E. Miller was duly elected a Representative in the Fifty-first Congress from the Seventh Congressional district of South Carolina, and is entitled to his seat as such Representative.





MILLER v. ELLIOTT.

JULY 1, 1890.—Ordered to be printed.

Mr. WILSON, of Missouri, from the Committee on Elections, submitted the following as the

VIEWS OF THE MINORITY:

The undersigned, minority of the Committee on Elections, being unable to agree with the majority of the committee in their conclusions in this case, dissent therefrom, and present the following views.

At the general election in South Carolina for President and members of Congress on the 6th day of November, 1888, William Elliott was the Democratic, and Thomas E. Miller was the Republican candidate for Representative in Congress from the seventh district in that State, and the former was declared elected, having received 1,353 more votes than Miller, and having been granted the certificate of election now represents that district in the House of Representatives. The counties comprising that district, and the number of votes cast for each of the candidates, appears in the following table:

*Election returns, seventh Congressional district.*

Counties.	William Elliott.	Thomas E. Miller.	Robert Simmons.
Beaufort .....	898	2,056	.....
Berkeley .....	1,753	1,547	54
Charleston .....	45	143	.....
Colleton .....	652	210	.....
Georgetown .....	821	957	.....
Orangeburgh .....	987	310	.....
Richland .....	387	222	2
Sumter .....	1,782	933	18
Williamsburgh .....	1,053	624	.....
	8,358	7,003	74

The first of the many errors contained in the report of the majority of the committee are found in the following statement on page 2:

An examination of the description of the district in the Congressional Directory will show that its contiguity is secured by putting into it the sea beach of Charleston County, a strip of sand a few feet wide and many miles long, covered half of every day by the waters of the Atlantic Ocean and incapable of human habitation. All the habitable main-land of this county is in another district.

As to the point of contiguity an examination of the map will show that all the land on the south side of Charleston harbor, consisting chiefly of James Island, is in the seventh district, while directly opposite, on the northern side of the harbor, lies Berkeley County, all of which, excepting the village of Mount Pleasant, is in that district. With

equal force might the majority claim that each of the many navigable rivers flowing through the district destroys its contiguity.

More striking is the error of the majority as to none of the "habitable" part of Charleston County being in the seventh district. Immediately before this assertion appears a statement of the vote in the last election, and we find the following :

County.	William Elliott.	Thomas E. Miller.
Charleston.....	45	143

#### ELECTION BY CENSUS.

In proceeding to elect the contestant by the census the majority gives the population and voting strength of the district in 1880, and making out a colored majority of 25,000 votes, say :

It is therefore safe to say, unless the mass of colored voters have ceased to take an interest in political matters, that with laws bearing equally on white and black, and with anything like a fair election, the Republicans of the seventh district would poll four times as many votes as the Democrats, and would have anywhere from 15,000 to 20,000 majority.

The history of the district as it has come before former Congresses, and as it is presented in this record, precludes the belief that its colored men have to any considerable extent ceased to be interested in elections, especially Presidential and Congressional elections.

Apart from the otherwise well-established fact that "the mass of colored voters have ceased to take an interest in political matters," the census, in connection with the vote in this case, gives irresistible force to that conclusion. Take Georgetown County, for example. The census gives:

*Population and number of males of voting age classified by race according to census of 1880.*

County.	Total.	White.	Colored.	Males 21 years of age and over.	
				White.	Colored.
Georgetown.....	19, 613	3, 466	16, 147	852	3, 449

The vote was as follows :

County.	Elliott.	Miller.	Total.
Georgetown.....	821	957	1, 778
Not voting.....			2, 523
Total voting population.....			4, 301

Now, in contestant's notice of contest Georgetown is not mentioned. There is no complaint that the supervisor of registration neglected or refused to register any applicant, nor that the managers of election, one of whom was a Republican at each precinct, refused any one the right to vote, and yet we find that out of 4,301 persons of voting age, in a county where there are five times as many colored as white people, no less than 2,523 failed to vote. No explanation can be given of this ex-

traordinary result except that the mass of colored voters have ceased to take an interest in political matters.

In addition to this there is abundant proof throughout the testimony that colored men voted for contestee.

As to the table of population and men of voting age given by the majority, a careful examination of the books of the last census fails to disclose any such table.

#### THE ELECTION LAW.

In speaking of the election and registration of South Carolina, the majority say—

That this law was enacted for the deliberate purpose of indirectly disfranchising, so far as possible, the colored voters of the State, admits of no serious question.

We deny the allegation, and on our part allege that there is nothing in the law itself, nor in the evidence in the case from beginning to end, to justify it. Let it be remembered in this connection that the constitution of that State was framed by a Republican convention in 1868; that it required the legislature to enact a registration law, which the Republicans of that State for more than five years prior to their being driven from power in 1876 by the honest people of that Commonwealth, irrespective of party, utterly refused to pass, because, we presume, it would be an obstacle in the way to retention of power and the further wrecking of the State.

#### THE LAW CONSTITUTIONAL.

It is also held by the majority of the committee that "there is no valid registration law in South Carolina;" that the said laws are unconstitutional for various reasons stated in their report, and in support of this theory substantially alleges: (1) That as the letter of the law prescribes but one time for a qualified voter to register, he is disfranchised if he fails to obey the law; and the like is the case as to minors coming of age, and others afterwards becoming qualified voters, and who decline to obey the law as to the time required to register.

Now, a sufficient answer to all this, so far as the determination of this case is concerned, is that section 105 of the Revised Statutes requires the contestant to give notice of contest and "shall specify particularly the grounds upon which he relies in the contest." It has been determined over and over again that no point not made in the notice can be considered by the House. No such ground was specified, and it can not now be relied on, and its introduction here does but encumber the record and is wholly irrelevant.

It may further be answered that in the evidence taken herein there is no proof that this law was acted upon in the strict interpretation given, and therefore there is no proof that this requirement lost to either party a single vote.

The majority of the committee can hardly be serious in its declaration that the law is unconstitutional because it affixes "a like penalty for parting with or destroying a registration certificate;" the law carries upon its face a sufficient refutation of the charge, if seriously made. The majority say:

But they give such latitude to the supervisor of registration as will enable him to take good care that none of his political friends shall suffer the penalty.

The implication contained in this paragraph is altogether gratuitous, and as such we dismiss it.

## OBSTRUCTION TO REGISTRATION.

Under this head the majority says:

In many counties a diligent search on the part of Republicans fails to discover the supervisor's office, or, when it is found, so many hindrances and obstructions are interposed that voters fail to get transfers or registry, although they apply at every opportunity, during every month of registration in the year of a general election. In some large precincts no one has been able to secure a transfer since the general registry in 1882.

We challenge contradiction of the assertion that in no county but Colleton is any charge made by the testimony that the supervisor's office could not be found. As to that county, the majority cite the testimony of N. F. Myers (p. 95), I. H. Chapman (p. 92), and W. B. Scott (p. 94).

Myers says:

I inquired at the offices located in the court-house, but none could or would say where he was located, excepting Auditor Smith, who said he (meaning the supervisor) came into his (Smith's) office, but he could not tell me if he had a permanent office.

It will be noted that Myers did find the office, but was not satisfied unless it was a "permanent" one. He does not claim to have gone on any day fixed by law for the supervisor to be at his office, and hence did not find him.

W. B. Scott says:

I went there the first Monday in last March, and as I went I took my registration certificate with me to see whether I could get it changed from Jacksonboro to Green Pond, and as I went up I ask Jackson Grant what time the supervisor will be in and whereabouts he held his office; he told me to go to the court-house and I would find out, and I went over and saw the auditor; Mr. Smith told me where the office of the supervisor was; he said sometimes he comes in here, and moreover I have not time to bother with you. Then I came on back home and after I came back I wrote a letter to Major Myers.

So it seems Jackson Grant knew where the office was, and Mr. Smith told Scott where it was, just as he had previously told Myers.

Now, when I. H. Chapman testifies, he says:

I inquired for the office of the supervisor of registration; I inquired of Mr. Myers and Jackson Grant, but I could not find the office.

He inquired of both Myers and Jackson Grant, who knew that the office was the same as Auditor Smith's, and they must have told him where it was, and he did go to the court-house, but does not say a word about going to the auditor's office, contenting himself with looking for a "sign" and looking into some of the rooms, without ever asking any one which the office was.

As to the general charge of obstructing the registration of Republicans while facilitating that of Democrats, a careful examination of the testimony of these witnesses shows that not a name of a Republican denied registration is given except that of W. B. Scott, who says he wanted his certificate changed from Jacksonborough to Green Pond, and could not get it done, but it appears by the poll-list of Jacksonborough, p. 627, that Scott was the ninety-first voter at that precinct, which establishes, first, that his vote was not lost, and secondly, that he had no right to a transfer to Green Pond. No other name is given. Myers says he had the affidavits of one hundred and fifty persons desiring registration, and Scott says he had forty, but the law requires that the applicant must "appear," and no one can seriously contend that



any registration law should allow registration upon affidavit. As to favoring Democrats, Myers says on cross-examination :

Q. Do you know of your own knowledge any Democrats who registered at any time other than the time provided for by law?—A. Of my own knowledge I can not say.

Q. Who were the parties that told you that they had urged to register just prior to the day of election?—A. I decline to give their names for the reason that under the intolerent system practiced they would be doomed to social as well as political ostracism.

Q. Do you know of any one in Colleton County who has been doomed socially or politically on account of their politics?—A. If I can not a particular one, through the teachings of leading Democratic orators made on the hustings, they have taught members of their party to believe that in the South, at least, it is a social question and all others are subservient.

Q. Does the Republican practice the same ostracism?—A. So far as I know they do not, for in the town in which I live their are colored Democrats with whom I and other Republicans are on the most pleasant terms.

G. A. Beach, the supervisor, says (p. 293) :

Q. Have you during the last four years opened your books for registration at any of the precincts named in your examination and notified the citizens of either of those precincts of your appointment to appear before you as supervisor of registration for the purpose of renewing, transferring, or for original registration?

(Objected to on ground that there is no provision of law by which any such appointments could have been made.)

A. I have not, but did open my office at the C. H., as required by law, for registration and renewal of certificates.

\* \* \* \* \*

X ex. :

Q. You have stated that no renewals have been made by you of registration cfts. of voters at the precincts named. Will you state whether any applications have been made for such renewals?—A. There haven't been any made.

\* \* \* \* \*

Q. Did you have an office at the court-house?—A. I did.

Q. What office did you use?—A. The auditor's office.

Q. Were you in your office every day that you were required to be there by law for the purpose of attending to the duties of registration?—A. I was, except one day I was sick.

At page 374 he further testifies :

Q. State your age, occupation, residence, and where you were on the 6th day of Nov. last.—A. Age, 30 years; lawyer, and resides about 6 miles from Walterboro.

Q. Do you hold any official position in the county of Colleton?—A. I do; I am supervisor of registration.

Q. Have you an office at the court-house? If so, state where it is located.—A. I have one, and hold it at the auditor's office in the court-house.

Q. Why did you occupy the county auditor's office?—A. Because it had been occupied by the other supervisor, and there was no other office that I could get at the court-house, and the auditor offered me his office.

Q. Did you open said office for the business pertaining to your duties on each and every day required of you by law?—A. I did, except one day that I was sick.

Q. Do you remember what day that you were sick?—A. I do not; it was the first Monday in March or the first Monday in April.

Q. How long have you held the office of supervisor of registration?—A. Between three and four years.

Q. Have you always, and since your appointment to said office, occupied county auditor's office?—A. I have.

Q. Have you always kept your records and books in said office?—A. I have.

Q. Have you, since your appointment to said office, offered every facility for the registration and renewal of lost certificates to voters?—A. I have so far as the law required.

\* \* \* \* \*

Q. When you were at Walterboro, on the days required of you by law, and when you were not in the office, were you around on the court hill where you could be seen by any person who may have had business with you?—A. I was; during the time I was absent from my office I was around the court hill where I could be seen.

Q. Then no one was turned off by you from the seventh Congressional district who desired to register or have their certificates renewed?—A. No one at all.

So much for Colleton County.

As to Orangeburgh County the majority rely on the testimony of E. A. Webster, a part of which they give. A careful examination of his whole testimony shows that, happening to meet the supervisor on the street after the first Monday in August, when he admits that by law the books were then closed, he applied for transfer and renewal certificates for other persons, which he also knew was illegal. Much of his testimony is admittedly hearsay, and his cross-examination closes as follows:

Q. Give me the name of any Republicans who applied for registration from the first Monday in Jan'y, 1887, to the first Monday in July, 1888, who were rejected, and when, in the 7th Cong. dist.—A. I will give one as a special case; Gadsden McFadden, a voter in first dist. I can not give the names now, nor date, but I have them on record at my home in Orangeburg.

Q. Then you can not swear, on personal knowledge, to one who was rejected before June, 1888, who applied in person, according to law?—A. As above stated, I can not give the names now. I can not give the name.

E. A. WEBSTER.

The only person named was a voter in the first—not the seventh—district. The foregoing four witnesses are all whom the majority refer to, and yet they do not hesitate to say:

By means detailed by these witnesses, thousands of Republicans of the seventh district were deprived of such certificates of registration as the managers would recognize.

#### BALLOTS IN WRONG BOX.

We come now to the consideration of that clause of the statute of South Carolina providing for the labeling of the ballot-boxes, and the numbers thereof, and in this connection to the allegation "that it makes an educational test, and therefore is in direct violation of the constitution of the State." It is proper here to observe that the law in reference to the number of boxes prevailed in that State prior to 1861, and therefore it will hardly answer the purpose of the majority of the committee in this case. The proof shows that the law was strictly complied with in labeling the boxes for President and member of Congress in plain and distinct Roman letters.

There was no dishonesty proved; no failure to discharge their duty on the part of any of the election officers, the only complaint being that the tickets for member of Congress found in the Presidential box were destroyed, no matter who they were cast for, contestant or contestee, as appears in the evidence of one of contestant's witnesses, one Lawrence Brown, page 14 of the record. He was interrogated on cross-examination by Mr. Gilland:

Question. How many of Mr. Elliott's votes were found in the Presidential box?—Answer. Twenty-one.

Q. Those were thrown out and not counted?—A. Yes, sir.

It seems there was no deviation from this rule, and the law was enforced to the letter in this regard with the utmost impartiality.

The impression is sought to be made that there were six or seven boxes all together at the same place, and the managers kept moving them about, and mixing and shuffling them up like a deck of cards, and the managers, when called on to know the boxes by the ignorant voter, so as to know where and in what box to deposit his ballot, as he was bound to do under the law, utterly refused to read to him the names on the boxes. The evidence fails to support this. As a matter of fact, there were but two boxes at the places designated for the reception of votes for President and members of Congress.

The constitution of South Carolina, section 33, article 1, heretofore cited, requires that the right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from "bribery, power, tumult, or improper conduct." It also provides that right of suffrage shall be exercised by ballot. The object in the laws in all the States which provide for the ballot is to have the exercise of the right to vote a secret, unknown to any but the voter himself, and for the best of reasons. The fact that the intention of this law is often thwarted in the heat of a political campaign is unfortunately true, but not more so in South Carolina than in Massachusetts or Illinois; in fact, we feel justified in affirming that the election laws of the former State are better calculated to protect the voter in the free exercise of the right to vote a secret ballot and thus express his own preference to the exclusion of that of others, than in most of the States of the Union.

It would be difficult to design an election law better calculated to protect the voter from "an undue influence from power, bribery, tumult, or improper conduct" than the law of the State now under consideration. It was mandatory on the legislature of that State to do so, and in so doing it devised a code of rules most admirably adapted for the purpose.

The law requires the voter to go alone to the polls, unattended by the worker, and protected from the bulldozer and the heeler, paid possibly to force him to express by his ballot another's will, and not his own. On reaching the polls he does so a free man, relieved from all coercing influences; no one is permitted even to touch his white ballot but himself; the boxes are before him, properly labeled, and if he wants information on the subject there are sworn officers of the law there to give it to him under the mandates of the law; and then, with his own hand, he deposits his vote in a securely locked box, and thus, free and untrammelled, gives, expression to his own will. If the wise provisions of this law were being interfered with, and rendered nugatory by any outsider at any poll, or if it came under the observation of those selected to supervise the execution of this law that its letter or intention or spirit was being violated, we submit it was the duty of the managers to shift the boxes, or perform any other legal act, to subserve its proper execution.

The subject of a "free ballot and a fair count" has long engaged the anxious attention of those who view in the increasing prostitution of the ballot, year by year, a grave menace to republican institutions upon this continent. Scarcely a session of the legislature in the various States transpires, that this subject is not the object of serious consideration. The miserable spectacle presented at every Presidential election throughout the country, at thousands of its polling places, of long lines of men forced by dire circumstances to surrender their right of suffrage and their manhood to others, and permit themselves to be marched to the polls from workshop, forge, mine, and factory, and the unlimited employment of money and other modes and methods of the "greatest managing politicians of the land," is fast bringing about a revolution in the election laws of the country.

The election laws of South Carolina have blazed the way to genuine reform. It is the skirmish line behind which comes to do battle purer methods and greater protection from "all undue influence from power, bribery, tumult, or improper conduct." Many of its features have been adopted in the States where what is known as the Australian system of voting now by recent enactment obtains.

For the benefit of the majority and any others who may be horrified and indignant because the law of South Carolina refuses to permit the political bummer and hired swashbuckler to attend voters to the polls to help them vote, and makes him rely on himself, and protects him in so doing, we here quote some of the provisions of a law recently enacted in the State of Missouri and other States, and known as the Australian system of voting, and which justified in their practical operations the high encomiums passed upon them by those sincerely desirous for a "free ballot and a fair count."

SEC. 24. On any day of election of public officers in any election district, each qualified elector shall be entitled to receive from the judges of the election one ballot. It shall be the duty of such judges of election to deliver such ballot to the elector. \* \* \*

SEC. 25. On receipt of his ballot the elector shall forthwith and without leaving the polling place retire alone to one of the places, booths, or compartments provided to prepare his ballot. He shall prepare his ballot by crossing out therefrom the names of all candidates except those for whom he wishes to vote, or in case of a ballot containing a constitutional amendment or a question to be submitted to the vote of the people, by crossing out therefrom parts of the ballot in such manner that the remaining parts shall express his vote upon the questions submitted. After preparing his ballot the elector shall fold the same so that the face of the ballot will be concealed, and the signatures or initials of the judges may be seen. He shall then vote forthwith and before leaving the polling place.

SEC. 26. Not more than one person shall be permitted to occupy any one booth at one time, and no person shall remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes.

SEC. 28. Any elector who declares to the judges under oath that he can not read or write, or that by reason of physical disability he is unable to mark his ballot, may declare his choice of candidates to either one of the judges having charge of the ballots, who, in the presence of the elector, shall prepare the ballots for voting in the manner hereinbefore provided; or such elector, after making such oath, may require one of such judges to read to him the contents of the ballot, so that the elector can ascertain the relative position of the names of the candidates on each ballot, whereupon the elector shall retire to one of the places, booths, or compartments provided to prepare his ballot in the manner hereinbefore provided.

We direct special attention to the following sections:

SEC. 23. All officers upon whom is imposed by law the duty of designating polling places, shall provide in each place designated by them a sufficient number of places, booths or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, in which compartment the electors shall mark their ballots, screened from observation, and a guard so constructed that only persons within the rail can approach within five feet of the ballot-boxes, or the places or compartments herein provided for. The number of places or compartments shall not be less than one for every hundred electors who voted at the last preceding general election in the district. No persons other than electors engaged in receiving, preparing, or depositing their ballots shall be permitted to be within said rail, except by authority of election, and except as now by law otherwise provided. The expenses of providing such places, or compartments, or guard-rails, shall be a public charge, and shall be provided for in each town and city, in the same manner as the other election expenses.

Now this law embodying the same ideas and principles as the law of South Carolina, has never been declared unconstitutional, nor has it so far as we know ever been questioned. The object of both laws is to separate the voter when he goes to deposit his ballot from all outside influence and dictation.

Both laws were made to place the voter on his own intelligence, or on such information as he obtained from the judges of election or managers, who are sworn officers of the law.

No better illustration of the wisdom of this law can be found than is furnished by the evidence in relation to Grahamville and Ladies' Island precincts in Beaufort County, where a large number of voters, under the instruction of contestant and others of those voting them, deposited a Miller ballot in both boxes.



This was a willful and corrupt violation of the law, knowingly committed, and the House of Representatives is gravely asked to sanction and condone it. Grahamville was the home of Miller. He was present at that precinct a large part of the day, with tickets in his hands and very active, and voted. The count of the boxes and returns showed that there were 237 votes polled. Miller received in the Congressional box 205 votes and in the Presidential 189 votes, and not one solitary vote was cast for the Republican Presidential ticket. Miller himself forgot to vote for Harrison and Morton, but manifestly cast two votes for himself.

I. C. Rue, who had charge of contestant's tickets, gives this explanation of the above—p. 452:

Q. Do you know if the Congressional ticket was voted in the Congressional and electors' boxes at Grahamville; if so, by whose dictation?—A. In the morning when I went to the polls and began distributing tickets, I only gave one ticket to each voter. Some of the voters called my attention to the fact that there was also a Presidential box, whereupon I gave them another Congressional ticket and told them they just as well vote that one also, for luck, and continued to do so the rest of the day, as they did not seem satisfied in voting the one ticket.

The majority of the committee, in speaking of "ballots in wrong boxes," uses the following language:

As has been noted, managers of elections are prohibited from counting any ballots found in the wrong box. At the Federal polls, at this election, there were two boxes, one for Presidential electors and one for Congressmen. Under the peculiar wording of the statute unlettered voters are obliged to rely upon those of their associates who can read to learn how to deposit their tickets so as not to get them in the wrong box, and so lose their votes. If the two boxes are put into position before the voting commences, and are permitted to remain during the day, there is little danger of mistake, all the voters being instructed as to their position by those in whom they have confidence. But if the boxes are shifted about at intervals during the day it follows, as a matter of course, that every unlettered voter who goes to the poll after the change, and before its discovery deposits his ballot in the wrong box, loses his vote, so far as the count of the managers is concerned. There is no prohibition in the statute against shifting the boxes, and so it is assumed by the managers of elections that they have the right to shift the boxes as often as they please, for the express purpose, as they acknowledge, of confusing the voters and causing them to deposit their ballots in the wrong box.

We submit that the majority of the committee entirely misconceives the spirit and meaning of the law. The law on this subject reads as follows:

At each precinct a space, or inclosure, such as the managers of election shall deem fit and sufficient, shall be railed off, or otherwise provided, with an opening at one end or side for the entrance of the voter, and an opening at the other for his exit, as a polling-place in which to hold the election for the State, circuit, and county officers. A similar, but distinct, space or inclosure shall be railed off, or otherwise provided, as a polling-place for the election of Congressman and Presidential electors, at such distance from the polling-place for State officers as the commissioners of election for each county shall determine and appoint for each election precinct. *But one voter shall be allowed to enter any polling-place at a time, and no one except the managers shall be allowed to speak to the voter while in the polling-place casting his vote.*

The italics are our own. Now, what is the object of this law? Manifestly the very same that the Australian system has in view, and which has been heretofore cited, and which is attracting such favorable attention in the various States, to throw the protecting arm of the law around the voter, especially the weak and timid; enable him to give expression to his own will at the polls, and not that of others; in other words, to shield him, and, in the language of the constitution of South Carolina, "prohibit all undue influence from power, bribery, tumult, or improper conduct." Incredible as it may seem, yet our friends of the majority, because the managers refused to permit the voters to be SPOKEN

to, and directed how to vote by "those in whom they had confidence," propose to repeal the law here, ignore the constitution of a State under the provisions of which this law was passed, and count against their political enemy, and in favor of their political friend, one thousand votes cast at the various polls in the district.

One of the witnesses testified that at one of the precincts a man climbed a tree, and from his perch among the branches directed men how to vote. Another witness, cited by the majority at page 13, testifies that at a different precinct, Eastover, one of the United States supervisors spoke to and wrote notes to the voters telling them how to vote; and all that in the very teeth of the law providing for a barricade to protect the voters from just such interference, providing but one man should be in there at the same time, and further providing that no one should speak to the voter while in the polling-place casting his vote, except the managers. The indictment thus preferred against the election and registration laws of South Carolina, and also against the managers, presumes guilt instead of innocence. And the statement that "the managers acknowledged that they shifted the boxes for the express purpose of confusing the voters and causing them to deposit their ballots in the wrong box," is not borne out by the testimony; nor is the further statement that in every instance where the boxes were shifted "the purpose was unlawful," borne out either by the law or the facts.

As the majority virtually decides this case against contestee by giving to contestant 1000 votes alleged to be found in the wrong box, we think it necessary to examine carefully the testimony. Speaking generally, we claim, first, that the testimony relied on by the majority is very unsatisfactory in character, and was given under very suspicious circumstances. It was taken about four months after the election, and in one case only did the witness pretend to rely on anything but his memory; and yet, as a rule, the witness as to each precinct undertakes to give from memory the precise vote cast, with exact numbers in the wrong box. When it is remembered that contestant's attorneys had in every case certified copies of the manager's returns and poll-lists, it can very easily be seen how the testimony relied on by the majority could be obtained. Here is a sample. B. I. Fortune, as to Corbett's store (p. 21):

Q. How many ballot-boxes were at that poll?—A. Two.

Q. How many persons voted at that precinct that day?

(Objected to on the ground that it does not call for the best evidence.)

A. 199.

Q. How many votes were returned by the managers of election for T. E. Miller?

(Objected to on the same ground.)

A. 79.

Q. How many for Wm. Elliott?—A. 91.

Q. How many for both?—A. 170.

Q. What became of the other 29 ballots?—A. They were destroyed by the managers.

Q. Why were they destroyed?—A. Because they were placed into the wrong box.

Q. What box?—A. Into the Presidential box.

Q. Whose names did these ballots bear?—A. T. E. Miller.

How easy for the witness to give a perfectly satisfactory answer when the attorney put the question, "what became of the other 29 ballots?" On the other hand, it was almost impossible to contradict the witnesses as to details by men having strict regard for the obligation of an oath and for the very reasons above alleged. It was four months after the election, and they could not undertake to swear to exact figures. Coming to the several precincts at which the majority gives contestant votes under this head, we note the following points: At Gourdin's they

give contestant 22 votes. The only witness, Daniel Ravanell (p. 8), says: The votes in the wrong box "were about 21 or 22." On this testimony contestant, in his brief (p. 18), did not venture to claim more than 21, but the majority unhesitatingly gives him 22. Not very material, to be sure, in point of numbers, but it indicates the tendency of the report throughout. We give the following from the testimony of the managers. W. M. O'Bryan (p. 412):

Q. How did the ignorant voters distinguish the boxes?—A. They asked the managers.

Q. Did the managers tell them?—A. They did.

Q. I understand you to say that the managers would tell the voters which was the electoral box and which was the Congressional box.—A. Exactly.

Q. Were there votes for both Miller and Elliott in the wrong boxes?—A. There were.

Q. Can you say how many for each?—A. I can not.

Q. Do you know Daniel Ravanell?—A. I do.

Q. What was he doing there that day?—A. He was supervisor.

Q. Did Ravanell keep any account of any votes that day?—A. He did not, to the best of my belief; I was standing where I could see him when the votes were counted and he took no account then.

A. M. Gorden (p. 413) says:

Q. How did the ignorant voters distinguish the boxes?—A. They asked the managers.

Q. When asked did the managers tell them?—A. Yes.

Q. Were there any votes in the wrong boxes that day?—A. Yes.

Q. For whom were those votes?—A. There were some for Elliott and some for Miller.

Q. How many for each?—A. I have no idea; I kept no record of them.

Q. Where was Ravanell's position while the votes were being counted?—A. Standing right by me.

Q. Could he see the votes as they were read?—A. He could.

Q. Did he keep any kind of tally?—A. He kept no record at all; he had neither paper nor pencil in his hand during the entire counting of the votes.

Cross-examined by S. J. LEE, Esq.:

Q. Did Ravanell make a return as supervisor?—A. He did.

Q. May he not have kept account of the number of Miller's ballots in the wrong box in his head?—A. I don't think it was possible for him to have done it.

Q. There were not more than twenty-five or thirty ballots found in the wrong box, were there?—A. I don't know how many.

Q. Your return shows one hundred and fifty-one votes as being cast in the proper box that day for Congressman, while the poll-list shows one hundred and seventy-three persons voted, a difference of twenty-two. Ravanell says these twenty-two were Miller's ballots found in the electoral box. Can you say that this is untrue?—A. I can.

Q. Please explain?—A. I called the votes myself, and saw that there were Elliott votes in the wrong box.

Q. How many?—A. I kept no account of how many.

Q. How many Congressional ballots were found in the electoral box?—A. Don't know; there were some; kept no count.

A. M. GORDON.

#### SALTERS.

This is the poll already mentioned at which the Republican supervisor, Lawrence Brown, proves that Miller lost 23 and Elliott 21 in the wrong box.

#### KINGSTREE (66).

These votes are given on the testimony of M. M. Morzon, Republican supervisor (p. 13), who says that the vote was as follows:

Miller.....	66
Elliott.....	133
Miller in wrong boxes.....	66
Total.....	320

and that "the others" were cast for Dargan. By his return made to the chief supervisor on the night of the election, he gave the vote as follows (p. 664):

Miller.....	159
Elliott.....	133
Dargan.....	56
Whole number for Congress .....	348

The total is 28 more than he swore to, and Miller's vote is 27 greater than he swore he got in all boxes,  $66 + 63 = 132$ . In his return he said not a word about votes in wrong boxes but gave Miller 27 more than he swears he got in all boxes. Did he know most about the vote on the night of the election, November 6, 1888, or on February 11, 1889, the day he testified? His testimony certainly shows that he knew nothing about it on the night of the election; how did he afterwards acquire more correct information? The mystery is explained when we find that the poll list introduced by contestant (p. 639), shows only 320 votes cast. Before his examination he had the privilege of seeing it, and shaped his testimony accordingly. This conclusion is irresistible, and clearly establishes the unreliable character of this whole line of testimony. And yet it is upon such proof that the majority gives contestant 1,000 votes and a seat in Congress.

#### INDIANTOWN.

Upon the testimony of Jesse S. Fulmore, Republican supervisor (p. 14), the majority gives contestant 81 votes at this poll. All that Fulmore can say is that that was the number "as well as I can remember." There is no other testimony to sustain it. On the night of the election he made his return as follows (p. 664):

Miller.....	82
Elliott.....	30
Whole number for member of Congress .....	112

His duty was to report anything wrong, and yet not a word is said about votes for contestant not being counted.

#### LYNCHBURG (29).

The witness is I. R. Smith (p. 27), and he swears to the following vote:

Total.....	181
Miller.....	18
Elliott.....	134
Miller in Presidential box.....	29
	181

We give his testimony in full on this point.

Testimony of I. R. SMITH, sworn:

Q. State your name, age, residence, and occupation.—A. I. R. Smith; 36 years old; Lynchburg Township, and a farmer.

Q. Where were you on the 6th day of November, 1888?—A. I was at Lynchburg polls.

Q. What official position did you hold?—A. I was a U. S. supervisor.

Q. Were you at the polls during the entire day?—A. I was.

Q. Did you see the votes counted?—A. I did.

Q. How many ballot-boxes were there?—A. Two; the Congressional and Presidential boxes.

Q. How many persons voted at that box on that day?



(Objected to as not calling for the best evidence.)

A. 181.

Q. How many votes were returned for T. E. Miller?

(Objected to as above.)

A. 18.

Q. How many for Mr. Elliott?

(Objected to as above.)

A. 134.

Q. How many for the two?—A. 152.

Q. What became of the other 29?—A. They were counted out.

Q. Where were the other 29 ballots?—A. In the Presidential box.

Q. Whose names did these ballots bear?

(Objected to as being secondary evidence.)

A. Thos. E. Miller.

(Objected to as above.)

This reads very nicely, and is perfect in arithmetic. It was very easy for the witness, in answer to the suggestive question "What became of the other 29" to say "They were counted out," and had the name of "Thos. E. Miller" on them. But unfortunately for the witness, he, too, made a return on the night of the election, and here it is (p. 662):

Miller .....	18
Elliott .....	134
Robert Simmons .....	15
Scattering .....	14

Whole number for member of Congress. .... 181

On the night of the election he gave Robert Simmons 15 votes and reported 14 as scattering, but when he came to testify on February 9, 1889, he utterly ignored this return, probably had forgotten all about the figures, and boldly gave the whole 29 to contestant as being cast in the wrong box. We think further comment is unnecessary.

#### BETHEL CROSS-ROADS (5).

G. W. Michau (p. 34) is the witness relied on to give contestant these 5 votes. On his cross-examination he says:

Q. In what box were they found, Congressional or President?—A. 2 in the Presidential and 3 in the Congressional box.

G. W. MICHAU.

The result is, therefore, that the majority give contestant 3 votes found in the Congressional box, on the ground that they were not in that box, but in some other box.

#### MAYESVILLE (40).

A. C. McCall (p. 36) is the witness. He swears to the following vote

Total .....	220
Miller .....	58
Elliott .....	122
Miller, in wrong box .....	40
Making .....	220

He, too, made a return on the night of election (p. 662), as follows:

Miller .....	58
Elliott .....	122
Simmons .....	3

Whole number for member of Congress. .... 183

Not a word is said about any votes for contestant in the wrong box, but, in his testimony, he gives him 40 votes, including those cast for Simmons, whom he does not mention.

## FORT MOTTE (16).

R. M. Claffy (p. 381) is the witness. He says:

Q. Were any ticket with the name of Miller on them for Congress found in the Presidential box?—A. I think there were.

Q. Were they counted for Miller?—A. No.

Q. Were they destroyed by managers?—A. Yes.

Q. Can you state about how many?—A. There were about fifteen or sixteen in both boxes alt. gether; there were some for Presidential electors and some for Miller.

On this testimony contestant's counsel (p. 14) had the modesty to claim only fifteen votes, but the majority increase it to sixteen.

## BIGGIN CHURCH (18).

Carolina Holmes (p. 18) gives the vote as follows:

Miller .....	83
Elliott.....	26
Miller, in wrong box.....	18
Simmons .....	17
Total.....	144

His return as supervisor on night of the election is (p. 667):

Elliott.....	26
Miller .....	83
Robert Simmons.....	17
Whole number for member of Congress .....	126

## BLACK OAK (44).

The witness Sampson Flowers (p. 43) gives the following vote:

Miller .....	66
Elliott.....	21
Miller, in wrong box.....	44
Total.....	131

His return as supervisor, signed also by the Democratic supervisor, is (p. 66):

Miller.....	66
Elliott.....	21
Whole number for member of Congress.....	87

## CALAMUS POND (32).

M. P. Richardson, Republican supervisor (p. 48), swears to the following vote:

Total .....	259
Miller .....	166
Elliott.....	61
Miller in wrong box.....	32
	259

Both supervisors made the following return (p. 665):

Whole number for member of Congress.....	227
Elliott.....	61
Miller.....	166
	227

#### STRAWBERRY FERRY (21).

Contestant claims nothing at this poll, and very properly, because there is no proof that any of his tickets were found in a wrong box. The supervisor, Edward A. Jenkins, page 41, says, "21 Presidential electors Republican tickets were found in the Congressional box." On this the majority give contestant 21 votes that he never claimed.

We now call attention to some errors in statements made by the majority. At foot of page 13 they say:

In every instance but one the shifting of boxes is shown.

In the following instances there is either direct proof by Republican supervisors that the boxes were not shifted, or there is an entire absence of proof on the subject, to wit:

Bloomington, Cades, Black Mingo, Bethel Cross Roads, Fort Motte, Ten Mile Hill, Adams Run, Calamus Pond, and Haut Gap. This does not include cases where the shifting was denied by the managers.

Another statement of the majority (p. 14):

The United States supervisors, present at all the polls when this destruction occurred, *kept an account of the number*, and by that means we are able to ascertain with reasonable certainty the whole number lost.

The majority say the supervisors "kept an account of the number." Out of the twenty-seven precincts there are just two, Camp Ground and Haut Gap, at which the testimony shows a tally was made at the time, with no proof that it was preserved, and *one only*, the majority's precinct, Strawberry Ferry, at which an account was kept and used at the examination, and at that precinct there was no proof of Congressional votes being in the wrong box. Upon a review of the whole testimony we can not believe that the House will sustain the majority in giving contestant these 1,000 votes, or any part of them.

#### GLOVERVILLE.

The majority next rejects the whole vote at Gloversville precinct, in Colleton County, because "the box was dishonestly stuffed by somebody," and though there is no competent evidence on this point as to who did it, yet, taking it for granted that the sworn officers of the law were the culprits, puts on the stand E. M. Chisholm, one of the United States supervisors at that precinct, and who Mr. J. H. Dodd, a merchant of Centerville in that precinct and county, says, "is looked upon by the leading men of the neighborhood as the most notorious liar in it," and by his unsupported evidence alone deprives Elliott of 113 votes and Miller 20 votes, notwithstanding the following evidence from reputable sources:

J. H. DODD, a witness in behalf of the contestee, being duly sworn, says:

Question. State your age, occupation, residence, and where you were on the 6th day of Nov. last.—Answer. I am 36 years old; merchant, and reside at Centerville; I was at Gloversville voting precinct.

Q. Did you vote at the election held at the Gloversville precinct on the 6th day of Nov. last for a Representative in Congress?—A. I did.

- Q. Did you act in any official capacity that day? If so, state in what capacity.—  
A. I was one of the managers of the Congressional box.
- Q. At what time was the polls opened?—A. At 7 o'clock in the morning.
- Q. Was the voting during the day peaceable and unmolested?—A. Yes.
- Q. Who was the other two managers?—A. C. P. Chisholm and J. E. J. Bryant.
- Q. Did you open and expose the box before the voting commenced, as required by law?—A. We did.
- Q. Were you present and did you assist in the canvass of the votes at the close of the polls?—A. I was present and assisted in the canvass of the votes.
- Q. Please state how the votes were canvassed, and with what result.—A. The first thing we done was to open the boxes and count the votes, putting them in a pile on the table. Finding there was more votes than there was names on the poll list, we put all the votes back into the box. One manager turned his back and drew out the overplus and destroyed them. Then the remainder was taken from the box and counted, showing a hundred and thirteen for William Elliott and, I think, twenty-one for Miller.
- Q. In the examination of the votes that you found in the box, did you find any folded together? If so, state what you found and the kind of tickets you so found.—  
A. I found the Congressional ticket with Miller's name on it folded with the Presidential ticket.
- Q. From the appearance of those tickets would you say that they had been voted by the same man?—A. I should say that they were voted by the same person.
- Q. Who acted as supervisor of the Republican party at Gloversville precinct?—A. E. M. Chisolm.
- Q. Was he present when the polls were opened?—A. He was not.
- Q. Do you know where he was?—A. Yes; he was across the road, standing around the fire, about 50 yards away.
- Q. Did you know before the polls were opened who the Republican supervisor was?  
A. I did not.
- Q. When were you first informed that E. M. Chisolm represented the Republican party in the capacity of supervisor? A. Some little time after the voting had started I walked out to the fire and asked E. M. Chisolm if he knew who was the supervisor. He said that he was supervisor. I then asked him why he did not go to his post. He said he would be in after a little.
- Q. Did he come in after a little? A. He did.
- Q. What did he say when he came in? A. He asked me if I refused to let him see in the box. I told him I could not let him see in the box, as the voting had started. He said that was all right, and that he would make a note of it. I then invited him to take a seat at the table, which he did, and staid there the greater part of the day; at times he put another man in his place and went out, as he said he wanted to take a little exercise.
- Q. Then the poll-list kept by the supervisor was the work of others as well? A. It was, as several had a hand in keeping Chisolm's poll-list.
- Q. Did Chisolm occupy a place in the room while the votes were being counted?—  
A. Yes; and also Abram Smalls.
- Q. Do you know A. B. Smalls?—A. Yes.
- Q. Was he at the polls that day; if so, what did he do?—A. He stood outside at the window, and folded votes and gave them to voters as they came up.
- Q. Did he remain at the window during the entire day?—A. No; he was only there a portion of the time.
- Q. Did you see Elliott tickets in circulation among the voters that day?—A. I did.
- Q. Did you see any colored men distributing Elliott tickets?—A. Yes; there was three or four colored men that were working in that direction that day.
- Q. Were these colored men that you saw distributing Elliott tickets men of some influence with the colored people?—A. They were the leading colored men in that section of country.
- Q. During the day did A. B. Smalls apply to any one of the managers for the correct time of day?—A. He asked me three times during the day to let him set his watch by mine. One time I took his watch in my hand and it was four hours out of the way.
- Q. Do you or do you not know whether the number of white voters residing in Glover Township largely exceeds twenty-five?—A. I think the white voters in Glover Township number about 38 or 40.
- Q. Are you not intimately acquainted with the white men who voted at Gloversville precinct that day?—A. I am personally acquainted with every one.
- Q. Did any white man vote for State and county officers on the 6th of Nov. last and refuse to vote for William Elliott for Congress?
- (Counsel for contestant objects to the question because witness was not at the State polls in any official capacity, and can not state except on information given by the voters.)
- A. That there was no white man who refused to vote for William Elliott that day. I can not say as to the State and county polls, as I was not a manager there.



Q. Do you or do you not know that every white man that you saw at the precinct that day who was legally entitled to vote voted for Elliott?—A. I know they did.

Q. Do you know a white man residing in Gloversville Township by the name of H. B. Ackeman?—A. I do.

Q. Did he not vote at Gloversville precinct for William Elliott on the 6th of Nov. last?

(Counsel for contestant objects to the question upon the ground that the testimony of the voter mentioned is the best evidence.)

A. He did.

Q. Did any white man offer to vote for William Elliott that day and was rejected by the managers?—A. Yes; William Holts.

Q. When the tickets were given to the colored voters on the outside of the building by A. B. Small, was it possible for E. M. Chisolm to have watched the people to whom they were given and see that the same tickets were deposited in the box by the people to whom they were given?—A. It was impossible; it was on account of the position he occupied in the room, and further that the tickets were given out at the window, and the voters very often took the ticket and went off in the crowd and knocked about awhile and then came back and voted.

Q. After the polls had been closed and the Congressional box had been opened were any tickets found folded with a twist which could not have been voted through the opening in the lid of the box?

(Counsel for the contestant objects upon the ground that the question is leading.)

A. No, none.

Q. Did you find any tickets twisted at all?—A. None; the tickets were all folded.

Q. When the polls were formally closed was anybody, white or colored, ordered to leave the room?—A. No one was ordered to leave the room, but just requested that the crowd should fall back so as to give them room to work. I invited A. B. Small to come up to the table and witness the count.

Q. Is it true that you or any one of the managers told the white men present to crowd around the table?—A. We did not; there was no such language used that night.

Q. Is it true that the managers indulged in a general drunk while the count was being conducted and endeavored to get the Republican supervisor drunk?—A. There was no one under the influence of liquor that day except A. B. Smalls. I gave him nothing but one glass of ginger ale. Neither of the managers invited E. M. Chisolm to drink.

Q. After the polls were closed is it true that yourself and C. P. Chisolm went off and had a private consultation as to how the votes were to be counted?—A. We did not.

Q. While Chisolm was calling the names from the tickets did he at any time throw one of the tickets over his ear and then pretend that it was a mistake?—A. He did not.

Q. Did you at any time during the day see A. B. Smalls at the State and county polls?—A. I did; he voted a man at the Congressional poll and then told him that he must go to the Democratic boxes and vote there. I followed Smalls and the voter to the State and county polls, and saw Smalls folding the Democratic tickets and the voter putting them in.

Q. Is it true that when C. P. Chisolm drew the tickets from the box that he turned his back but not his eyes?—A. His face was turned away from the box.

Q. What opportunities were offered the Republican supervisor for witnessing the voting during the day and the count after the polls had closed?—A. He was invited to take a seat at the table on which the ballot-boxes were placed, and when we went to count the votes he occupied the same position at the table as he had at times during the day. As I called out the votes I asked him to notice each vote and to see if it was right. He told me that he could see, and Abram Smalls was in a foot of my elbow and saw every vote as I called them out to the tally-keeper.

Cross-examined by W. F. MYER, counsel for contestant:

Q. How long have you been living in Gloversville Township?—A. I have been living on the township line all my life.

Q. Are you a voter at Gloversville precinct?—A. I am.

Q. Are you or not an officer in the Democratic Club in Gloversville?—A. I am an executive officer, if you call that an officer.

Q. Keeping stores at two most popular points in the precinct you know pretty well the white and colored voters of the precinct, do you not?—A. I do.

Q. Who were present when you asked Chisolm who was Republican supervisor?—A. C. P. Chisolm, A. B. Small and his brother.

Q. As the poll was open, there being but three managers, a majority of them then was interviewing Chisolm, the Republican supervisor, away from the poll?—A. The place that the boxes were arranged were in full view of the fire. All persons having voted that were present, white and colored, C. P. Chisolm and myself walked out to the fire.

Q. The boxes being in full view of those who were standing at the fire, do you mean to say that the men at the fire did not know the polls were open and voting going on until said voting was over and you went out to them?—A. I take it as a matter of course that they knew that voting was going on as several persons had come in and voted.

Q. State how many up to this time had voted?—A. About four, or maybe five.

Q. Please name them.—A. I think Nero Williams was one, my brother and myself. I was not acting as secretary, therefore did not charge my memory with it.

Q. Whose store was it, and who occupied it at the time?—A. It was my store, in partnership with Hill.

Q. Did you or not stay at the store on the night preceding the election?—A. I did.

Q. Who stayed with you?—A. The clerk, W. F. Hill, J. B. Dodd, and C. P. Chisolm.

Q. Was not Nero Williams in there?—A. Not until the polls had been opened next morning.

Q. Do the men above named always sleep there, or was it the custom at the time mentioned for them to do so?—A. No. Myself and brother had been on business down to Cottageville, and until a late hour in the night. As it was nearer to my Gloversville store than to my home, and knowing that we would have to go down there early next morning, we called in and spent the night with the clerk at the store.

Q. Then you can name those only who were in the store that voted before E. M. Chisolm was notified?—A. I told you that Nero Williams came as soon as the poll was opened. He did not stay there that night.

Q. What direction did he come from, and what direction did he go after voting?—A. I did not see where he came from or where he went to.

Q. How did the voters approach the poll to vote, through the store or at the window?—A. Most of them voted at the window. Some came inside and voted.

Q. You say you know all of the white Democratic voters of Gloversville. Will you please give the names of all or some of them who voted that day?—A. H. B. Ackeman, T. S. Ackeman. I can't remember all the names except referring to the list, but they were nearly all present.

Q. As you can not tell all who voted, can you tell all who were not present?—A. I don't remember who was not present of the white Democrats.

Q. You stated that you know pretty well white and colored voters of this precinct. Will you state the names of the colored Democrats?—A. I don't wish to do so, as it would only bring down the wrath of the Republican leaders upon their heads.

Q. Are these colored Democrats members of your club, or are they organized into a separate club?—A. Some of them are; others are not. I mean our club; other colored Democrats are not members.

Q. Are not C. P. Chisolm and Nero Williams Democrats and known to your community?—A. They are.

Q. They being known as Democrats by white and colored, never have been molested or wrath brought down upon them, why can not you give the names of other colored Democrats?—A. Because I have been informed that they—Chisolm and Williams—have been threatened with lynching by the Republican leaders in the neighborhood.

Q. Did you ever hear a Republican leader make this threat, or are only giving what you heard others say?—A. I am telling what I know to be true.

Q. How do you know it to be true?—A. By information received from responsible parties.

Q. Will you name them?—A. I will not name them unless I am forced to do it.

Q. Have these men ever been lynched?—A. No; but they have been cussed and abused and threatened with lynching.

Q. Do they not live in the most thickly-populated settlement of the colored people in Grover Township?—A. No; they live in the upper part of the township, and most of their neighbors are near relatives.

Q. Then I suppose these two men have to be accompanied with a guard to protect them from lynchers?—A. No; they do not. I have known them to go around together for protection to each other, and have been forced to carry arms for their protection.

Q. Is Chisolm not an active worker for the Democratic party?—A. Yes; he expresses his opinion generally.

Q. Name the colored men whom you saw going amongst the colored voters with Elliott tickets on election day last trying to induce them to vote the Democratic ticket?—A. I can not give their names in justice to those colored men.

Q. You said in your direct that those men were openly working amongst the colored voters for the Elliott ticket; they were not molested then; why do you refuse now to give their names?—A. Because at that time all the white strength was out as a reason why they were not molested; things are quiet now, and I don't wish to bring them to any trouble this late day.

Q. Did not the Republicans down there know these men?—A. I don't know whether they did or not, but I did.

Q. Please state if Smalls or Chisolm did not compare time with your watch when you went to the fire.—A. Nothing said about time at the fire; but when E. M. Chisolm came he said it lacked 15 minutes to six by A. B. Small's watch; and then it was some time after seven by mine.

Q. Was that the time Small's watch was four hours behind?—A. No.

Q. What manager drew the votes from the box while counting them?—A. C. P. Chisolm.

Q. Did he lay them on the table, or put them in another box?—A. He drew them out, called the name, passed them on to me and A. B. Smalls, and the two of us looked over them.

Q. When you requested the crowd to fall back or withdraw, what was the language used by you?—A. I do not remember the exact language, but wanted Smalls and Chisolm to take seats at the table and assist in counting the votes.

Q. Were they, or either of them, a manager?—A. They were not, but I wanted to show the Republicans present a free ballot and a fair count.

Q. As you wanted to show them a free ballot and a fair count, how is it that, of the number of Republicans around the poll, and the very few Democrats, only one Republican was admitted and all the Democrats who were present?—A. The Republicans all congregated in front of the store, and did not seem to want to come in. There was only one or two white Democrats that staid in the room when we first started to count; but when the managers of the State and county boxes got through they came in and took back seats.

Q. Did you and the other managers sit at the same table with E. M. Chisolm?—A. We did.

Q. Did the managers have a good view of the voters as they approached the window to vote?—A. Those of us who sat at the side of the table had full view of the voters as they came to the window.

Q. The managers having been able to see the voters sitting at the same table with E. M. Chisolm, how do you account for his inability to see as well as you?—A. Because I sat at the side of the table, while he (E. M. Chisolm) sat at the end of the table, which put him two feet away from the window.

Q. Are you well acquainted with E. M. Chisolm?—A. I have known him all my life.

Q. He is very active and earnest as a Republican, is he not?—A. I can't say. He is so tricky that I don't know.

Q. Being tricky, as you say, yet with this qualification, standing in full view of a lone building where every voter's attention was centered, the early morning being the most interesting time of voting, with men passing in and out, Chisolm, as you say, did not see or know the poll was open. Am I to understand that you outtricked him on that occasion?—A. No; you did not understand me to say so. I think he lies when he says he did not know the poll was open.

Q. Though a manager at the Congressional poll, you actively extended to the State and county poll the scrutinizing of voters and rallies, the knowledge of colored men being openly Democrat and rallying for the Democratic ticket, but you refuse to tell the name or names of colored men who voted for Elliott on the 6th of Nov. last, excepting Nero Williams and C. P. Chisolm, do you?—A. The colored men who voted the Democratic ticket that day made me promise faithfully that I would not give them away, as they did not want the ill will of their neighbors, and at the same time wanted to do what they thought was to their best interest. At the time I went out to the State and county boxes and saw A. B. Smalls voting a colored man, there was no voting going on at that time at the national box and the boxes were left in charge of two managers and the Republican supervisor.

Re-direct:

Q. E. M. Chisolm, a witness on the part of the contestant, heretofore testified that when he entered the poll in the morning the name of W. F. Hill was given to him by the managers as the one who had already voted, and that later during the day the said Hill presented himself and said that he had not voted, and was then permitted to vote by the managers; is that true?—A. That is not true; Hill did not vote but once, as will be seen by the poll-list.

Q. How long have you known Mr. Chisolm?—A. I have known him all my life.

Q. Are you intimately acquainted with the general reputation for truth of E. M. Chisolm in the community in which he lives?—A. I am.

Q. What is that reputation?—A. As I have before stated, his is tricky and not to be trusted; he is looked upon by the leading men in the neighborhood as the most notorious liar in it.

Q. Being a merchant and residing in the immediate vicinity of Gloversville precinct do you not know the sentiment of the colored voters regarding their political leaders?—A. I do.

Q. Was T. E. Miller popular or unpopular with the colored people of that community?—A. From what I have learned from leading Republicans in the township, I suppose he was very unpopular.

Q. Do you know the reasons which they assigned for his unpopularity?—A. Those whom I heard say anything about it seemed to think that he had not dealt fairly with Rob't Smalls, ex-Congressman, and they did not like a mulatto anyhow.

Q. Do you not know that a great many colored people at that precinct remained away from the polls for the reasons above given?—A. That is what I have been informed, and know there was nothing like a full vote polled.

Cross-examination :

Q. Who were the colored men that said they were down on Miller because of his treatment to Smalls and his condition birth?—A. I don't think that I am liberty to make public the parties who held this conversation in my store, as I think what one hears under his own roof is sacred.

Q. You claim now to be scrupulous of telling conversation because of their sacredness; why did you tell of the sacred conversation that occurred in your store by two leading colored men in reference to Miller under your own declaration; is it less sacred to give the name as I asked?—A. I have only made public what I believe to be the general sentiment of the colored people, but at the same time, not having divulged the names of the parties holding the conversation, I have done them no harm.

Q. As the men held the conversation in a public store, asking no injunction as to secrecy, how came you to regard it more sacred than they?—A. They were the only persons in the store at that time. I was in the office writing, and I don't suppose they intended me to hear what they were talking about.

Q. Seeming to be an expert in matters relating to the standing of men and the sentiments of the people in your community, you mean to say that the opinion of the entire Republican vote down there must be governed by the sacred conversation had in your store by two men?—A. As political leaders always understand the sentiment of their party, I took it for granted the two leading Republicans know the sentiment of their township.

Q. Are you or are you not postmaster at the Round or Centerville P. O.?—A. I am postmaster at Round.

Q. Is that now in the district represented by W. Elliott in Congress?—A. I think it is.

Q. You have expressed a thorough knowledge of things in Glover precinct; I desire you to state if the Round P. O. is not in the Seventh Congressional District, now represented by William Elliott?—A. I told you it was.

J. B. DODD, being duly sworn, says :

Question. State your age and residence.—Answer. I am 23 years old and reside at Gloversville precinct.

Q. Where were you on the 6th day of Nov. last?—A. At Gloversville voting precinct.

Q. Were you at the precinct at the time that the Congressional poll was opened?—A. I was; I was in the room when the poll was opened.

Q. Were the boxes opened for the scrutiny of those who wished to see before the voting commenced?—A. Yes.

Q. Did you vote in the Congressional box that day, and if so, whom did you vote for?—A. Yes; I was manager of that poll.

Q. Did you, at any time during the day, see A. B. Smalls at the State and county poll?—A. Yes; I was manager of that poll.

Q. What was A. B. Smalls doing there when you saw him?—A. He came to that poll with a colored, who seemed to be a very ignorant man, and told him he must vote in all of those boxes, and folded Democratic tickets, giving him one to poll into each box, which the man did; stated as he left that he was going to bring more votes to the boxes at which he was manager. He was about the State and county polls several times that day, but never brought any more voters.

Q. When you voted for William Elliott at the national poll did you not have your registration certificate?—A. Yes; I had.

Q. Have you that certificate with you now?—A. I have not; as I never carry it except to elections.

Q. Do you remember about how long ago it was issued to you?—A. Not exactly; about four years, I think.

Q. Do you remember its serial number?

(Counsel for contestant objects, as the original certificate is the proper evidence.)

A. No. 90, I think.

Cross-examination :

Q. Who acted with you as managers at the State and county precinct on election day last?—A. T. S. Ackerman, and H. B. Ackerman a portion of the time. The reg-



ular manager did not come, and as soon as H. B. Ackerman got there we appointed him to act with us.

Q. You say a portion of the time H. B. Ackerman acted; that is, when did he reach the poll to act with you?

(Counsel for contestee objects to the question upon the ground that it is irrelevant; this examination has reference to the conduct of the election at the Federal poll, and not the State and county.)

A. About ten o'clock, as well as I remember.

Q. When you opened the State and county poll, did you open the boxes to allow the voters to see that they were all right?

(Objection as above.)

A. Yes.

Q. At what time or what o'clock was this done?—A. About 7 o'clock.

Q. How far was the State and county poll from that of Congressional?—A. From 75 to 100 yards.

Q. Am I to understand that you got up, dressed, and voted at the Federal poll in the building in which you slept the night preceding, saw the managers examine box or boxes, you and others voted then, and yet you got to the State and county poll and opened at 7 o'clock a. m.?—A. In the first place I did not say I opened at 7, but about 7, and further I did not wait to see anybody vote but myself, and the time that it took me to walk 75 yards could not be considered difference enough to make the time illegal.

Contestant's case, as heretofore stated, rests on the testimony of E. M. Chisolm, who, as J. H. Dodd says, "is looked upon by the leading men in the neighborhood as the most notorious liar in it." In one place he says about his report as supervisor:

I simply could make one reference, and that was that the poll-list only called for 134 votes, and that there were 229 ballots in the box.

In another place he says:

I reported several objections; one is that the manager, while pretending to scratch his head, threw a vote over his back.

Again he says:

I remember giving the total number of votes cast, and at the bottom I made a statement as to how the true number of votes were not given, making a statement of the irregularities.

And here is the return that he did make (p. 661):

#### EXHIBIT A.

*Return of the election held at Gloverville precinct, Colleton County, November 6, 1888.*

The whole number of votes given for member of Congress was .....	134
Of which William Elliott received .....	113
Of which Thomas E. Miller received .....	21
Of which        received .....	
Of which        received .....	

We, the undersigned supervisors, certify that the above is a correct return of the votes cast at the election held at Gloverville precinct, of Colleton County, on the 6th day of November, 1888.

E. M. CHISOLM,  
Supervisor.

I certify that the foregoing is a true copy of the original return now on file in my office.

SAMUEL T. POINIER,  
Chief Supervisor.

According to his own account he did not before election day notify the managers that he was supervisor, and even on election day did not notify them until "some time" after he had seen one of them, but contented himself with hanging around a fire, when, according to J. H. Dodd, he had to be asked who was supervisor, and even after being told that the polls were opened, and asked why he did not go to his post,

said "he would be in after a little." When the ballots are being counted he does not examine them because he was "keeping a poll-list." The testimony indicates very strongly that Chisolm was simply laying the foundation for the charge that he was not allowed to examine the box, and thereby defeat the election. If his demand to examine the box after the voting had commenced had been complied with, then we would have had a fervid complaint based on that fact. The only testimony explaining the surplus of ballots in the box shows that Republican tickets were found folded together, Congressional and electoral. Nothing is said about the vote in the electoral box. After the performance at Grahamville, under contestant's eye, what may not be expected from Republican leaders in South Carolina? Uncontradicted testimony shows that leading colored men at the precinct were favoring contestant's election, on account of contestant's treatment of ex-Congressman Smalls, and two uncontradicted witnesses prove that A. B. Smalls, possibly a relative, who was relied on to distribute contestant's tickets, was openly pushing the Democratic ticket at the State polls. Contestant undertook to swear the voters as to their votes, but gave up the attempt after examining three witnesses.

#### GREEN POND.

The returns in this precinct gave Elliott 216, Miller 52.

Notwithstanding these returns by the sworn officers of the law, the majority, on the strength of the testimony of one Brown, who was one of the United States supervisors at that poll, and against the testimony of five reputable citizens, managers and clerks of the election, 200 votes are taken from Elliott and 200 added to Miller, thus giving Miller 400 votes off hand at that precinct.

In order that the House may have a just conception of the character of evidence employed in this case to unseat Mr. Elliott, we give here some sample extracts:

#### Cross-examination of Emanuel Youton (p. 186):

Question. When were you born; what year?—Answer. I can not tell the year.

Q. How many ballot-boxes were at the poll that day?—A. There were two.

Q. Did each of the boxes have labels on them?—A. Yes.

Q. What did those labels contain?—A. Don't know.

Q. Then you don't know whether you put your ticket for T. E. Miller in the box labeled Presidential electors or the box labeled Representative in Congress?—A. I do not know.

#### Cross-examination of July Gadsden (p. 187):

Q. How many tickets did you vote on the 6th of Nov. last?—A. I voted one ticket.

Q. How many ballot-boxes were at the precinct at which you voted?—A. Two.

Q. Then you did not vote in but one of them?—A. But one.

Q. Did you vote that one ballot in the box labeled Rep. in Congress or the box labeled Presidential electors?—A. In the Congressional box.

Q. Who did you vote for President?—A. Harris.

Q. Now, you testified a few minutes ago that you did not vote but one ballot on Nov. 6th last, and that you voted that one ballot for T. S. Miller for Congress in the box labeled Rep. in Congress, and now you say that you voted for Harris for President. How do you account for that?—A. Singleton read the ticket that Miller was on it for Congress, and I voted that.

#### Cross-examination of Prince Warley (p. 201):

Q. Did you notice any difference in the construction in the two boxes of the precinct?—A. I notice that one hole was large and the other small in the two boxes.

Q. On which side was the box located containing the large hole?—A. On the right.

Q. How many ballots did you vote on that day?—A. Two.

Q. For what officers were those two ballots voted?—A. One was for President and the other for Miller.

Q. What was Miller running for, governor?—A. He did not run for governor; I have forgotten what he ran for.

### Cross-examination of Bristow Mitchell (p. 208):

Q. Did you see Chapman vote on on that?—A. I saw him vote.

Q. Did you read the ticket that Chapman voted for President?—A. Yes; I read his ticket,

Q. Did he vote for Grant or Garfield for President?—A. Yes; he did vote for Garfield.

Q. Did the boxes at the precinct that day have labels on them?—A. Yes; they had labels.

Q. What did these labels contain?—A. The labels was to show you the difference for Presidential electors and Congressman.

Q. Will you swear of your own knowledge that you voted for Miller in the box labeled Presidential electors?—A. No; I voted for Miller in the one on the right with the large hole.

Q. Did you vote for the same man for President that Chapman voted for?—A. I did not vote for the same man.

Q. Did you vote for Grant or Sherman for President?—A. No.

Q. Who did you vote for for President?—A. I can not remember the names that were on the ticket, but I voted for the electors on the ticket.

Q. Are you willing to swear of your own knowledge that the word Republican was printed on your ticket?—A. No; that was not there.

Q. Did you vote for Cleveland for President?—A. I did.

### Cross-examination of Wm. Alston (p. 208):

Q. Who did you vote for for President, Cleveland or Conklin?—A. I voted for President at large.

Q. Then you just went it blind, for nobody in particular?—A. No; I voted for nobody in particular.

Q. You voted for Congressman in the same way, did you not?—A. Yes.

Q. How many ballots did you vote on that day?—A. I voted two.

Q. Did you vote them both for the same officer?—A. Yes.

Q. Did you vote them both in the box on the right with the big hole in it?—A. No, I did not.

Q. Did you vote them both in the box on the left with the little hole in it?—A. No, sir; I put one in each box.

Q. Which box had Miller's name for Congress on it, the one on the right or left?—

A. The one on the left with the small hole for Miller.

Q. Then you voted for Miller in the small hole?—A. Yes.

Q. In which box did you vote for Miller, on the right or on the left?—A. I voted in the right for Miller.

Q. For what office was the President running?—A. For Senator.

Q. In which box did you vote for Senator?—A. In the right-hand box.

### Cross-examination of Jeffrey Smith (p. 204):

Q. You really did not have but one ballot that day?—A. Only one.

Q. You have already sworn that you did not vote but one ballot that day, and that was for Congressman. Why did you not vote for President also?—A. May have been two tickets in one for what I know; he gave me the ticket, saying it was Republican, and I voted it.

Q. What did you put in the other box—the box with the little hole?—A. I put them in just as they were given to me; if there were two tickets I put them in the box with the big hole.

### Cross-examination of Paris Smalls (p. 205):

Q. What office was Harrison running for?—A. I understand he was running for President.

Q. What office was T. E. Miller running for; was he running for U. S. Senator?—A. I do not know.

Q. If you do not know what office he was running for, how did you testify a few minutes ago that you voted for him for Congress?—A. By Chapman's instructions.

### Cross-examination by W. B. Gruber, esq., of Jake Brown (p. 206):

Q. Who did you vote for for President on November 6th last?—A. I voted for Miller.

Q. Who did you vote for for Congress on November 6th last?—A. I voted for nobody but Miller.

Q. How many ballots did you vote on November 6th?—A. Two.

Q. Did you vote both of those ballots in the same box for the same candidate?—A. One on the right and one on the left.

Q. You have already testified that you saw but one box, and that you voted in that for Miller; now in what kind of a machine did you deposit your other ballot?  
A. There were two holes there.

#### Cross-examination of Denibo Washington (p. 210):

Q. How many ballots did you vote that day?—A. I voted two.

Q. Did you vote for President?—A. I voted for Miller at large.

Q. Did you vote for Miller for President?—A. Yes, sir.

Q. How many ballots did you vote for Miller for President?—A. I cast two, but I had an understanding of the difference.

Q. Did you vote for Elliott or Smalls as Representative in Congress?—A. I voted for Smalls.

Q. Who did you vote for for Vice-President, Cleveland or Thurman?—A. I did not vote for either.

Q. Who did you vote for for Vice-President?—A. I do not understand the men's names, as I can not read.

Q. Didn't you vote for Miller for Vice-President?—A. I cast my vote for Miller, but as I can not read myself I do not know.

Q. If you can not read yourself how did you happen to testify just now that you voted for Miller for President?—A. So far as I got the ballot to cast I ask the name, and they gave me Miller's name.

#### Cross-examination of George Morgan (p. 212):

Q. Did you notice any difference in the construction of the two boxes?—A. No, sir.

Q. Then how did you know which box in which you should deposit your ticket for Congressman?—A. I know by instruction; I put it in on the right.

Q. Was that the box in which you were instructed to vote for Presidential elector?

A. Yes, sir.

Q. Was that also the box in which you were instructed to vote for Congressman?

A. Yes, sir.

Q. Did you vote as you were instructed?—A. Yes, sir.

Q. Did you vote for Miller for President?—A. Yes, sir.

Q. Did you vote for Miller for U. S. Senate?—A. Yes, sir.

#### Cross-examination by W. B. Gruber, esq., of P. Cattles (p. 219):

Q. Then you did not know whether you were voting correctly or not?—A. I voted, as I think was proper to my advantage.

Q. Did you vote for T. E. Miller as a presidential elector?—A. That's what I did.

Q. Did you notice any difference in the construction of the boxes?—A. I did; one box had a small hole and the other hole was larger.

Q. Was the small hole on the right or left?—A. On the left.

Q. Did you vote for T. E. Miller in the small or large hole?—A. In the large hole.

Q. Did you vote in the large hole for President Sherman?—A. In the large hole for President Sherman.

Q. Did you vote in the large hole or the small for V. President Cleveland?—A. In the small hole.

#### Cross-examination of Sam Rutledge (p. 220):

Q. Will you swear that you actually voted for Miller as Presidential elector?—A. Yes, sir.

Q. Will you swear that you actually voted for Harrison for Congress?—A. No, sir.

Q. Did you vote for Morton for Vice President?—A. No, sir.

Q. Did you vote for Harrison for President?—A. Yes, sir.

Q. Did you notice any difference in the construction of the boxes?—A. Yes; one box had a larger hole than the other.

Q. Did you vote for Harrison for Congress in the big or the little hole?—A. Vote for Harrison in small hole, but did not vote for him for Congress.

Q. Was the small hole on the right or the left?—A. On the left when I voted.

Q. Will you swear, of your own knowledge, that that was the box in which you voted for Miller?—A. Yes.

#### Cross-examination of Charles Nichols (p. 221):

Q. Will you swear that you voted for Miller for President?—A. I did not know what he was running for. I took the ticket and voted as instructed.

Q. For whom did you vote for President—Elliott or Miller?—A. Miller.

Q. Did you vote two ballots or tickets in each of the boxes at the precinct?—A. One in each.



Q. Did you notice any difference in the construction of the boxes at the precinct?—A. One box had a larger hole than the other. The right-hand box I voted for Miller in.

Q. Having voted for Miller in the right-hand box, will you swear that you voted for Elliott in the left?—A. I voted in the right-hand box.

Q. In which of them did you vote for Elliott—the right or the left?—A. The left.

Q. For what office did you vote for Miller—President or Senator?—A. President.

Q. For what office did you vote for Sherman—President or Congress?—A. I don't know what office he ran for, but I vote two papers.

Q. What kind of papers did you vote—registration certificates or letter receipts?—A. I voted a paper like print.

#### Cross-examination of Sam Frazer (p. 222):

Q. Did the boxes at the precinct have labels on them?—A. Yes; some were torn.

Q. Did those labels indicate in which box you were to deposit your ballot for the officers for whom you were voting?—A. No; it did not. I was looking for that purpose.

Q. If the labels did not indicate in which box you were to deposit your ballots it was therefore impossible for you to vote correctly, was it not?—A. They told me before going in that the box with the small hole was for Congress and the big hole for President.

Q. In which hole did you vote for Miller, the big or the little hole?—A. I voted for Miller in the big hole.

Q. Miller was running for President, was he not?—A. Miller was running for President.

#### Cross-examination of Ben Green (p. 225):

Q. In which box did you vote for Miller for Presidential elector, the right or the left, the big or the little hole?—A. In the large hole.

Q. Then if you voted for Miller for Presidential elector in the big hole, in which hole did you vote for Elliott for Congress?—A. Did not vote in either for Elliott.

Q. For what office was Miller running, President or Senator?—A. Miller was running for President.

Q. Did you vote for him for that office?—A. 'Twas my intention to vote for him for what he was running for.

Q. For whom did you vote for Congressman, Sherman or Harrison?—A. I voted for Miller.

Q. Are you willing to swear that you voted for Elliott or Sherman for President?—A. I voted for Miller.

Q. How many ballots did you vote that day?—A. I voted one ticket that day.

Q. Did you vote that one ticket for President?—A. Yes.

Q. Did you vote for Miller for President?

(Objected to on ground that witness has fully answered the question; it is misleading and intended to materially injure contestant.)

A. I voted for Miller for President.

#### Cross-examination of Sharper Gillings (p. 228):

Q. Were you born in 1784 or 1785?—A. In 1775; but you must speak plain, I am an Englishman.

Q. Did you come over to this country in the Mayflower or originally with Christopher Columbus?—A. I was born right here.

Q. How is it then that you call yourself an Englishman?—A. Because that's the way my mother and father learn me the English language and in politics.

Q. Did you vote for Miller for President in the big or little hole?—A. I voted for Miller for President in the big hole.

Q. In which hole did you vote for Elliott, in the big or little one?—A. I voted for all who was along with Mr. Miller; they just told me and I voted.

Q. In which hole did you vote for Mr. Sherman for President, the big or the little hole?—A. All what was with Mr. Miller went in the big hole.

Q. Then you did not vote in the little hole at all, did you?—A. I voted in the big hole on the right and the little one on the left.

Q. Did you vote for Miller in the little hole on the left?—A. I voted for Miller on the right.

Q. Who did you vote for on the left and what office was he running for?—A. I don't know.

#### Cross-examination of Jackson Pinkney (p. 233):

Q. To what religious denomination does the Republican party belong—African,

Methodist, or Baptist?—A. I believe the Republican party belong to every denomination.

Q. Are you willing to testify that the words "Republican party" were printed on the ticket that you voted that day?—A. Yes, the word was printed on the ticket.

Q. Who did you vote for for President, Beck or Elliott?—A. Beck and Harrison.

Q. Did you vote for both Beck and Harrison for President?—A. The same ticket I voted for Beckman for V. President I voted for Harrison.

Q. What did you vote for Mr. Sherman for, Congressman or governor?—A. I vote for Mr. Miller for Congressman.

Q. Who did you vote for governor? Did you not vote for Sherman?—A. I did not vote for any governor.

Q. You know who you voted for, do you not?—A. I do.

Q. For what office, then, did you vote for Sherman?—A. I did not vote for Sherman for any office.

Q. In which box did you deposit your ballot for Miller?—A. The one to the right, with the big hole, for Miller.

Q. Was that the box labelled "Representative in Congress"?—A. Yes, that is the box.

Q. Are you willing to testify that the name of Beck and Harrison were printed on the ticket which you voted?—A. I am willing.

#### Cross-examination of Sam Simmons (p. 230):

Q. In which hole did you vote for Miller for President—the big or the little one?—A. The large one on my right.

Q. In which hole did you vote for Elliott for Congress—the big or the little one?—A. I voted in the little hole.

#### Cross-examination of April Ford (p. 233):

Q. How many ballots did you vote that day?—A. Two.

Q. Did you vote them for Miller for Congress?—A. I vote them for Miller for Congress.

Q. Did you notice any difference in the construction of the boxes at the precinct?—A. No.

Q. For what office was Wm. Elliott running?—A. I do not know.

Q. Did you not vote for him for President?—A. No; I did not.

Q. Are you willing to testify that you actually voted for Miller as Presidential elector?—A. Yes.

Q. Who did you vote for as Representative from this district in the 51st Congress—Harrison or Cleveland?—A. I did not vote for Harrison or Cleveland for Congress.

Q. Are you willing to swear that you did not vote for Harrison or Cleveland on that day?—A. Yes; I am willing to swear I did not.

Q. Did you vote in both of the boxes at the precinct that day?—A. Yes.

Q. Did you vote two ballots in each of the boxes?—A. No; one.

Q. And each of these ballots contained the name of your friend, T. E. Miller?—A. Yes.

#### Cross-examination of Baalam Burnet (p. 234):

Q. If I were to call the name of the man for whom you voted for Congressman from this district, would you know it?—A. Yes.

Q. Was it Harrison?—A. Yes, sir.

Q. If I were to call the name of the man for whom you voted in the box for President, would you know it?—A. Yes.

Q. Was it Sherman?—A. No.

Q. Was it Garfield?—A. No, sir.

Q. Was it Miller?—A. Yes, sir.

#### Cross-examination of Philip Robinson (p. 236):

Q. Did you read Harrison's name on your ticket?—A. No, sir.

Q. Then you did not vote for Harrison on that day?—A. Yes, I voted for Harrison.

Q. Then you were mistaken were you not when you said just now that you did not read his name on your ticket?—A. I am not mistaken, because I did not read his name.

Q. When Chapman read your ticket to you did he read the name of Harrison?—A. Yes, sir.

Q. Are you willing to testify, of your own knowledge, that you voted for Miller in the box labeled Presidential electors?—A. Yes, sir.

#### Cross-examination of Baalam Ford (p. 238):

Q. Who did you vote for for President, Sherman or Rob't Smalls?—A. I did not vote for either one.

Q. Are you willing to swear that you voted for Miller in the box labeled for Presidential electors?—A. Yes, sir.

Cross-examination of Simon Fraser (p. 242):

Q. If you voted for Miller for Congress, for what office did you vote for W. F. Myers, governor or President?—A. I can not read and can not tell.

Q. Will you swear that the words Republican party were printed on the ticket which you voted for Miller for Presidential elector?—A. Yes, sir.

Q. Will you swear that you voted for Miller in the box labeled Presidential electors?—A. Yes, sir.

Cross-examination of Bencher Morgan :

Q. Who did you give the tickets to that Smith gave to you?—A. I put them in the box.

Q. Are you willing to testify that the words, "Republican Party Rally 'round the Poll" was printed on the ticket you voted?—A. I can not tell.

Q. Are you willing to swear that nobody read your ticket to you?—A. No one read them.

Q. Then you don't know who you voted for for Presidential electors and Representative in Congress?—A. I do not.

Cross-examination of Ben Harlbeck (p. 244):

Q. If you voted for Miller for Congress, for what office did you vote for W. F. Myers, governor or President?—A. President.

Q. Are you willing to swear that you voted for Miller for Presidential elector in the box with the large hole?—A. No.

Q. Are you willing to swear that you voted for him for Presidential elector in the box with the small hole?—A. Yes.

Cross-examination of Tony Robinson (p. 248):

Q. Are you willing to swear that you didn't vote but one ticket on the day of election?—A. I voted two tickets.

Q. Are you willing to swear that you voted for Miller for Presidential elector?—A. For President.

Q. If you voted for Miller for President, for what office did you vote for Cleveland; gov. or senator?—A. None.

Cross-examination by W. B. Gruber of Bob Robinson (p. 249):

Q. Are you willing to swear that you actually voted your registration certificate for Tom Miller? A. Yes, sir.

Q. Are you willing to swear that you voted for Miller in the box for Presidential electors?—A. Yes, I did.

Cross-examination of John Lessington (p. 250):

Q. Will you swear, on your honor as a man, that you did not vote but one ballot on the 6th of Nov. last? A. One.

Q. In which box, the right or the left, did you vote for Miller for Presidential elector, the big or the little hole?—A. There were two boxes, one on the right and the other on the left, and just as Chapman gave me the tickets I voted them, as he instructed; I don't know whether I voted for him in big or little hole.

Q. Will you swear that you actually voted for him that day for Presidential elector?—A. Yes, sir.

Q. If you voted for Miller in one of the boxes, who did you vote for in the other?—A. I did not hear the name of the man.

Q. Did you vote in both of the boxes?—A. Yes, sir.

Q. You have already sworn that you did not vote but one ballot that day, now you swear that you voted in both boxes; will you explain how you voted one ballot in two boxes?—A. I don't know how.

Cross-examination of Jackey Wragg (p. 253):

Q. Will you swear positively that you did not vote but one ballot that day? (Objected to on the ground that the question is irrelevant to the issue and intended to prolong the examination for the benefit of the contestee.)

A. I voted two tickets.

(Counsel for contestee objects to counsel for contestant stating that witness can answer as he answered before.)

Q. For whom did you vote for President, Col. Wm. Elliott or T. E. Miller?—A. I voted for Harrison and Miller.

Q. Will you swear of your own knowledge that you voted for both Harrison and Miller for President?

(By contestant.—Objected on the ground that the witness has already answered the question; the question is irrelevant to the issue, as the witness has testified already that he voted for Miller for Congress and Harrison for President.)

(By contestee.—Objection is made to above objection on ground that it is unfair to recall to recollection of witness what he has formerly testified to for the purpose of enabling witness to answer correctly, and for the further reason that the witness has not answered that he voted for Harrison for President separately, but both Miller and Harrison together for the office of President.)

A. I voted for Harrison for Congressman.

Cross-examination of Wm. Boggs (p. 254):

Q. Will you swear that you voted for Sherman for President in the left-hand box with the small hole?

(Objected to on ground that the question will benefit neither contestant nor contestee, and is irrelevant to the issue.)

A. Miller for President.

Cross-examination of Anthony Bartlett (p. 265):

Q. Will you swear that you voted for Miller in the box labeled Presidential electors on the right-hand side with the big hole?—A. Yes, sir.

Q. Will you swear that the words Republican party were printed on your ticket?—A. Yes, sir.

Q. Will you swear that you voted for Grant, the Republican nominee for President?—A. I don't know anything about him.

Q. If I were to call the name of the person for whom you voted for President would you know it?—A. I don't know, because I can't read.

Q. Did you ever hear his name?—A. No, sir.

Cross-examination of Moses Field (p. 266):

Q. Will you swear that you voted but one ticket that day?—A. Voted one ticket.

Q. Will you swear that that one ticket contained the name of Benj. Harrison for President?—A. Yes, sir.

Cross-examination of Scipio Campbell (p. 268):

Q. Will you swear that the name of T. E. Miller was not printed on the ticket for Presidential elector?—A. I don't know whether it was on there for President, Senator, or not.

Q. Will you swear that you voted for Miller for Senator?—A. Yes, sir.

Q. Will you swear that you voted for Harrison in the box labelled or marked Representative in Congress?—A. Yes, sir.

Cross-examination of Toby Elliott (p. 269):

Q. Will you swear that you voted for T. E. Miller in the right box for V. Presd't?—A. Yes, sir.

Q. Will you swear that you voted for T. E. Miller in the box labelled Presidential elector?—A. Yes, sir.

Cross-examination of Aaron Judge (p. 270):

Q. For whom did you say you voted for President that day?—A. Miller.

Q. Are you willing to swear that that is true?—A. Yes, sir.

Q. Are you willing to swear that you put the ticket containing Miller's name in the box labelled Presidential electors?—A. Yes, sir.

Cross-examination of Chas. Mitchell (p. 270):

Q. Are you willing to swear that the name of T. E. Miller was actually printed on the ticket you voted for Vice-President?—A. Yes.

Q. Are you willing to swear that you voted for Mr. Miller in the box labelled for that officer?—A. I voted for Miller in the left box.

Q. Are you willing to swear that that was the box labelled or printed Presidential electors?—A. Yes, sir.

Cross-examination of Titus Wright (p. 271):

Q. Are you willing to swear that you voted for T. E. Miller for Presidential elector, in the right-hand box with a big hole?—A. Yes, sir.



## Cross-examination of Ambrose Morgan (p. 271):

Q. Are you willing to swear that Dan'l Fields read the words "Republican party" on your ticket?—A. Yes, sir.

Q. Are you willing to swear that he read those words on the ticket which you voted for Miller, and that you put that ticket in the box labelled or marked "Presidential electors"?—A. Yes, sir.

## Cross-examination of Wm. Huguinin (p. 272):

Q. Are you willing to swear that the words Republican party were on the ticket which you voted for Miller?—A. Yes, sir.

Q. Are you willing to swear that you voted for Miller for Presidential elector in the right-hand box with the big hole?—A. Yes, sir.

## Cross-examination of Smith Bowan (p. 273):

Q. Will you actually swear that you threw two tickets in the box?—A. I threw one.

Q. Will you swear that that ticket was voted in the box for Presidential electors?—A. Yes, sir.

## Cross-examination of Mooner Washington (p. 273):

Q. Did you have your specks on day of election, but haven't got them to-day?—A. Yes, and I can not read without them.

Q. Will you swear that you voted the ticket with Miller's name on it in the box labelled Presidential electors?—A. Yes.

The contestee examined O. P. Williams (p. 369), manager; M. A. Draudy, clerk (p. 371); Sam'l Driggs, constable (373); B. H. Padgett (375); J. T. Blanchard, manager (376). In order to show that this poll was honestly conducted, and everything on the part of managers was legal and fair, their testimony will be given:

O. P. WILLIAMS, a witness in behalf of the contestee, being duly sworn, says:

Question. State your age, occupation, residence, and where you were on the 6th day of Nov., 1888.—Answer. Age, 33 years; merchant; residence at White Hall, and was at Green Pond.

Q. In what capacity, if any, were you at Green Pond on that day?—A. I was one of the managers of election at the Federal box.

Q. At what hour were the boxes opened?—A. At seven o'clock a. m.

Q. At what place at Green Pond were the polls held?—A. At Hickman's Hotel.

Q. Did the managers expose the boxes to those present when they opened the polls?—A. Yes.

Q. Did the voters have free access to the polls during the entire day, and did everything pass off peaceably and without hindrance?—A. Yes.

Q. Were you present when the polls closed?—A. Yes.

Q. Was the canvass of the votes made in accordance with law?—A. Yes.

Q. Did you find in the canvass more votes in the box than there were names upon the poll-list?—A. Yes.

Q. How did you dispose of the excess of votes?—A. Mr. Blanchard and Mr. Rice counted the votes and disposed of the excess.

Q. Did they blindfold or did some one turn their back and draw the excess?—A. Yes; Mr. Draudy drew them with his back turned to the box.

Q. At the close of the polls, who were permitted to remain in the building during the count and canvass of the votes?—A. The managers were present and the supervisor, J. F. Brown, and some others; I do not now remember their names. The room was very small and would not admit of many persons being in there.

Q. It has been testified to that Mr. Rice, one of the managers, during the count took quantities of the tickets or ballots and tore them up. Is that true?—A. No, it is not.

Q. Do you know that a quantity of tickets with the name of William Elliott were distributed and given out on the day of election?—A. Yes.

Q. Are you well acquainted with the colored people who live in that vicinity and vote at the Green Pond precinct?—A. I am.

Q. Did you, prior to the last election, know that there was a strong sentiment existing amongst the colored people against Thomas E. Miller? If so, state their reasons as gathered by you from your intercourse and dealings with them?

(Objected to as leading.)

A. Well, the sentiment was this, that they preferred Smalls; if not Smalls, they wanted a white man, as Miller was neither one nor the other, and they frequently cited Mackey.

Q. Then you know that the colored people did not desire Miller to represent them in Congress?—A. That is my impression, gathered from my dealings with them.

Q. Did you find on opening the Congressional box any tickets folded together?—A. Mr. Blanchard and Mr. Rice took them out; I did not.

Q. How long after the polls had opened was it before J. F. Brown, the supervisor, made his appearance?—A. I don't remember the exact time, but it was after the polls had opened; I sent for him; I thought he was in the house.

Q. Did he, Brown, make a demand on the managers to open the boxes and let him see in them?—A. He did not; I suggested to him that if he desired it I would let him see in the boxes; that the hour had arrived for opening the polls and I could not wait. Brown replied and said it made no difference and declined to insist on the boxes being opened.

Cross-examined:

Q. Did you or not stay in the house in which the voting was held the night preceding said voting?—A. We got there very late that night and laid down and took a rest.

Q. Who else besides you were in the house that night? Please name them.—A. Mr. Rice, Mr. Blanchard, Draudy, and Dreggers. If there was any one else in the house I don't know.

Q. What relation had these gentlemen or any of them to the election that was conducted the next day?—A. Mr. Blanchard and Rice were managers and Mr. Draudy was acting as clerk; the others I don't think had anything to do with it.

Q. Who was the Democratic supervisors?—A. We had none.

Q. Did you and the other managers stay in the house until time to open the poll at seven o'clock?—A. I did, but Mr. Rice and Blanchard were out a few moments and returned immediately.

Q. Locking yourselves up in the polling place the night preceding the election and opening the doors that morning without publicly notifying the voters who had gathered around, and taking care not to notify J. F. Brown, the supervisor, until after the voting had commenced, will you here under oath say that you were carrying out the laws governing you as manager.

Q. As you did not admit citizens to the room during the count because it was small, why did you and other managers order the windows and doors closed, thus shutting out the view of a number of citizens who were quietly looking on?—A. I did not order the windows shut, nor do I think any of the managers ordered them shut. As to the doors, they had to be closed to prevent the crowd from coming and disturbing us during the count.

Q. Will you deny that the window was closed and the back door opening into the room in which you were conducting the count?—A. I don't know that the windows were closed; I won't say they were not closed.

Q. Do you not know that the front door was open and a constable placed thereat during the count?—A. I do not know. I don't think there was any one at the door during the count.

Q. This front door led through a passage to the room in which you conducted the count?—A. Yes.

Q. Do you know the number of Democratic votes at the Green Pond poll?—A. I do not.

Q. Are you not largely acquainted down there?—A. I am very well known down there.

Q. Can't you give an approximation of the vote?—A. I can not.

M. A. DRAUDY, being duly sworn, says:

Q. State your age, occupation, residence, and where you were on the 6th day of Nov. last?—A. Age, 36; farmer; reside at Cook's Hill, Verdur Township, and was at Green Pond polling precinct on the 6th day of Nov. last.

Q. In what capacity, if any, did you act in the election held on that day?—A. I was clerk of the board of managers at Green Pond.

Q. At what time were the polls opened on that day?—A. Well, sir, when we opened the polls on that day it was 10 minutes past 7 in the morning.

Q. Were the boxes opened and exposed before the voting commenced?—A. Yes, they were.

Q. Do you know J. F. Brown?—I do.

Q. How long after the polls had opened was it before he came in?—A. I suppose about 5 or 10 minutes. I don't know exactly how long.

Q. Did the voters have free access to the building and box for the purpose of voting during the entire day?—A. They did.

Q. Were you present when the polls were closed?—A. I was.

Q. Did you assist in canvassing the vote and declaring the election?—A. I did.

Q. After opening the box did you find more than one ticket folded together? If so, state how many and whose name appeared on said tickets?—A. Well, I found, on

drawing the tickets from the box from one to five folded together. Thomas E. Miller's name was on all of them that were folded together.

Q. After you had counted the votes did you find more tickets in the box than there were names on the poll-list?—A. We did.

Q. Who destroyed the excess of ballots, and how were they destroyed?—A. Mr. Blanchard and Mr. Rice destroyed them. I don't know whether they tore them up or threw them on the ground.

A. They blindfolded me and asked me to turn my back and draw, which I did.

Q. Did you prevent any person or persons from entering the building during the count?—A. We did. We were in a small room and the weather was pretty warm. We also had the train lying over waiting for us, and we could not have been bothered with everybody and have been ready for the train.

Q. It had been testified to here that Rice, one of the managers, during the count would take tickets out of the box and tear them up. Is that true?—A. I deny any such charges. It is not true.

Cross-examination:

Q. Where did you stay the night preceding the election?—A. I staid in Mr. Hickman's house, the place where the voting was held.

Q. I suppose you did that for the purpose of being early to open the polls, did you not?—A. I did not.

Q. Why did you stay there that night?—A. Well, because I went down on the train that night and found no other place to stay. Mr. Hickman is a particular friend of mine, and I always stop with him when I go to Green Pond.

(Counsel for contestant objects to the latter clause of answer, as it is stated under direction of counsel for contestee, and not the original words of the witness.)

Q. Who else staid with you there that night, and what relation had they to the conduct of the election at Green Pond?—A. Charley Rice, Oliver Williams, T. J. Blanchard, Samuel Driggers, Rhett Hickman, Noel Robinson. Myself was clerk for the Democratic party; Mr. Rice, Mr. Blanchard, Oliver Williams was managers. Mr. Driggers, Mr. Hickman, they were marshals on the election grounds.

Q. Did these parties above named, or either of them, vote at Green Pond on that day?—A. I can not say.

Q. You say you were clerk; having kept a poll-list, and knowing these parties intimately, you can not tell whether or not they voted?—A. I never kept a personal poll-list, but put all of my returns in the box.

Q. Did you keep a poll-list at all?—A. Of course I kept a poll-list; I did not write it all.

Q. Did you write any of it, and how much?—A. I don't remember how much.

Q. Who else kept the poll-list with you?—A. Charley Rice; he acted in my place a good deal of the time.

Q. Who acted as clerk that night after the poll was closed and the canvass was being made?—A. Charley Savage done that.

Q. Then you did very little work yourself, but relied on others?—A. I did a heap of writing during the day, but was only excused for about 5 minutes.

Q. Can you read and write sufficient to keep a poll-list?—A. I can.

Q. How long after the boxes were put on table before front door was opened?—A. From 2 to 5 minutes.

Q. What was then done after the door was open; did you swear and vote men?—A. We did.

Q. That was the very next thing in order then?—A. It is reasonable that that was the next thing in order.

Q. Where do Mess. Rice, Blanchard, O. P. Williams, Samuel Driggers, Rhett Hickman, Noel Robinson, and yourself reside? Do you or any of you live in the precinct of Green Pond?—A. Rice and Blanchard reside in Walterboro'; myself, I reside about 6 miles below Walterboro', on the Cook's Hill place; Mr. Diggers reside about 4 miles below Walterboro'; as to O. P. Williams I don't know where he was living at that time; Noel Robinson at that time was living at Green Pond. It is a hard matter to tell where Rhett Hickman was living; I think somewhere near Walterboro.

Q. Where did you vote on election day last?—A. I did not vote.

Q. Why did you not vote at Green Pond, having been there?—A. The reason why I did not vote at Green Pond was because my certificate was not for Green Pond precinct. I am a citizen of the precinct of Walterboro'.

Q. You being a citizen of the precinct of Walterboro', Mess. Rice and Blanchard, two of the managers, living in that precinct, Mess. Driggers and Hickman, two marshals living in Walterboro' precinct—all of you acting at Green Pond on election day, seems that there were no Democrats, or not enough to even fill the few election positions; how do you explain such a transfer?—A. Well, I don't know.

Q. You said, amongst other reasons for not admitting citizens or some of them to witness the count, as the law requires, that the train was waiting and you all did not

want to be bothered, or words to that effect. I suppose you attached more importance to getting on train than in having the votes publicly counted?—A. No, we did not.

Q. Then why did you so state in your direct testimony?—A. Well, because in a close room a man don't want to be smothered down by the heat of other men.

Q. You want to avoid being smothered by the heat of these men; that being the case, under what sanitary laws did you find authority for closing the back door and windows that night of election?—A. I don't know, on that occasion, that any doors or windows were closed.

Q. Will you under oath say positively that these places were not closed during the counting that night?—A. I don't think they were.

Q. Do you know that they were not closed?—A. If I were called on to say positively whether they were or not I should say they were not.

Q. Will you swear positively that they were not?—A. I can say that they were not closed as long as I paid any attention.

Q. Will you swear positively that those windows were not closed that night during the count?—A. I refuse to swear any further.

Q. Do you refuse to answer the question above propounded?—A. I do.

Redirect:

Q. Do you refuse on the grounds as explained by you to the several questions relating thereto?

(Objection by counsel as being leading and not in reply to anything newly brought out.)

A. Yes, I do.

Q. You stated awhile ago that you did not know exactly where O. P. Williams resided on the 6th of Nov. last. Do you not know as a fact that he lived in the immediate neighborhood of Green Pond station and was merchandizing near there for a number of years?—A. Well, I did know some time back, but right at that time I did not know.

Q. You don't know that Blanchard, one of the managers, was conductor on the G. P. and W. Railroad and spent a large part of his time at Green Pond prior to and after Nov. the 6th last, do you?—A. I do.

(Counsel for contestant objects to question and answer as not being pertinent, no question having been raised as to Manager Blanchard's occupation, but to his place of residence, which this witness has already answered, that he lived at Walterboro' precinct.)

SAMUEL DRIGGERS, being duly sworn, says:

Question. State your age, occupation, residence, and where you were on the 6th day of Nov. last.—Answer. Age 37 years; I reside 3 miles and a half below Walterboro'; farmer; I was at Green Pond on the 6th day of Nov. last.

Q. In what capacity, if any, did you act at the election held at Green Pond precinct on that day?—A. I was constable.

Q. Were you present when the polls were closed?—A. I was at the front door, just a few steps from the box.

Q. Did you prevent the crowd from passing or going in the room when the count was going on? If so, state what you done and what was done.—A. Yes, I did; and kept them out. I did not do anything, but kept them out—from going in on the managers.

Q. Did you prevent whites as well as blacks from crowding around the managers?—A. I did.

Q. Do you know that a number of Elliott tickets were in circulation at the precinct on the day of election?—A. Yes, sir; I saw some come in with the voters, and that they voted them as they said they were going to do.

Q. Were they white or colored people?—A. They were colored, and there was a few whites voted that day.

Q. Did you have any conversation with the colored voters that day in reference to Elliott and Miller; if so state what was said?—A. I saw some of them with whom I talked. I asked them who they were going to vote for, and some of them said they were going to vote for Elliott and some for Miller, I believe.

Q. Do you believe this or do you know it?—A. I know it.

Cross-examination:

Q. In what voting precinct do you reside, and where did you live on the 6th of November last?—A. I lived in the Walterboro' precinct, and lived there on election day.

Q. Do you know the citizens of Green Pond, generally?—A. No.

Q. Name the men who said they were going to vote for Elliott.—A. I don't know their names.



Q. Are you not frequently in and around Green Pond?—A. No; but I go there sometimes, once or twice a year.

Q. You said some colored men said to you they were going to vote for Elliott. What office did they say?—A. They did not say what office.

Q. Was Elliott really a candidate that day, and what office was he running for?—A. He was a candidate, and he was running for office of Congress, I think.

Q. From what district was he running?—A. Seventh, I think.

Q. Do you know the relative strength—voting strength, I mean—of the Democrat and Republican parties at Green Pond poll?—A. No, I don't.

Q. You said you saw some of the men with Elliott tickets. How do you know they were Elliott tickets?—A. They had them open in their hands and I saw them.

Q. Do you mean to say that you read them yourself?—A. I did read them all myself; I saw Elliott's name on some of them.

Q. Can you read?—A. I can read a little.

Q. How long were you acting marshal at the door or in the building; were you there continually during the day?—A. I was there acting from seven o'clock until six in the evening. I went one time to the depot and right back. Another time I went in the kitchen to eat my dinner. Those are the only times I left my post.

Q. State what time of day you went to the depot, and what time of day you took dinner.—A. I suppose it was about 10 o'clock when I went to the depot; about two o'clock I took dinner.

Q. When you went to the depot, did you pass by many people to get there?—A. No.

Q. How near did you pass to any persons in going to the depot?—A. I passed some in two or three feet of me, the others were further.

B. H. PADGETT, a witness in behalf of contestee, being duly sworn, says:

Question. State your age and occupation, and where you reside.—Answer. Age, 33; I am a physician, a merchant, and treasurer and business manager of the Green Pond, Walterboro' and Branchville Railroad; I reside at Walterboro'.

Q. Were you at any time on the 6th of November last at Green Pond?—A. I was there at nine in the morning and staid until about eleven; and from about five in the afternoon until the polls were closed and the votes had been counted.

Q. Did you at any time after the polls had been closed, and before the count of the ballots had been finished, enter the room in which the poll was held?—A. I did; and a few others.

Q. Were you permitted by the managers to remain in that room?—A. I was not; the managers were counting the votes when I reached the door, and others crowded in, and we were ordered out, the managers stating that the train was waiting for them, and they wanted the crowd to disperse so that they could get through counting the votes.

Q. At what time was the train scheduled to have left Green Pond?—A. The train was scheduled to have left Green Pond at 5.30 p. m., Charleston time, and the managers did not finish canvassing the votes until about 9 o'clock.

Q. Was there any distinction made between white and colored on the part of the managers in ordering the crowd to leave the room?—A. If there was I did not notice it. I noticed colored people in the room when I was in there.

Cross-examined:

Q. In what precinct do you reside, and to what party do you belong?—A. I reside at Walterboro precinct, and belong to the Democratic party.

Q. Were you and others not in the room when W. F. Myers asked for admission and was refused?—A. I was, but had been ordered out, and was on my way out when I heard them talking to him.

Q. You stated that colored men were in the room when you were there. How many of them did you see, and who were they?—A. There were two or three: I did not know them but one—Brown.

Q. Do you know the relative strength of the Democratic and Republican parties at Green Pond poll?—A. I do not.

T. J. BLANCHARD, a witness in behalf of the contestee, being duly sworn, says:

Question. What is your age?—Answer. Thirty-three years of age.

Q. Where do you reside?—A. Walterboro.

Q. What is your occupation?—A. I am conductor of the Walterboro Railroad, running between Walterboro and Green Pond.

Q. Where were you on the 6th day of November last?—A. I was at Green Pond.

Q. In what capacity, if any, did you act at the election held for Congressman on that day?—A. One of the managers.

Q. At what time were the polls opened?—A. Seven o'clock, some time.

Q. Do you know J. T. Brown?—A. I know Brown who acted as supervisor.

Q. Was he there when the polls were opened?—A. I did not see him.

Q. Was he there during the day?—A. Yes; I suppose it was five minutes after voting had commenced, as several had come in and voted.

Q. Was he present when the polls closed, and did he remain in the room when the canvass of votes was made?—A. Yes.

Q. Did the managers exclude colored people and white people alike from the room while the count was going on?—A. Well, we did not at first, but after we had started to count found it impossible to get along without having them removed from where we were counting, as the entry where we were counting was very small, and the talking and noise was so great that you could not hear anything, and we were anxious to get through and get back on the train; the train had been already waiting at least two hours.

Q. Do you know what became of the poll-list kept at the poll that day?—A. It was put in the box after we got through counting and locked up and brought to the commissioner.

Q. Did the voters have free access to the building in which the election was held during the day for the purpose of voting?—A. Yes.

Q. At the close of the polls was the canvass made, the excess of tickets, if any, destroyed, according to law?—A. They were.

Q. Do you know O. P. Williams, who acted as one of the managers?—A. Yes, sir.

Q. Do you know where he resided at that time?—A. White Hall Station, about four-and-a-half miles from Green Pond.

Q. Do you know that White Hall is in the Seventh Congressional district?—A. Yes.

Q. Is it in the Green Pond voting precinct?—A. Yes.

Q. Do you know that tickets bearing the name of William Elliott for Congress was circulated at the precinct on the day of election among the voters?—A. Yes.

#### Cross-examination :

Q. At what time did you reach the poll, or reach the place where the voting was conducted, and who accompanied you?—A. Between twelve and three in the morning; there was myself, Mr. Rice, O. P. Williams; there was four colored men who pulled the crank car from Walterboro to Green Pond.

Q. Did you all stay at the house in which the voting was to be conducted next day?—A. We staid in the house where it was conducted.

Q. What relation or connection the others had to conduct of election?—A. There were at least a dozen who staid in the house who were not connected with the conduct of election; Mr. Rice and Mr. Oliver Williams; I am not sure all the managers slept in the same room.

Q. Where did the voters come from who voted before the supervisor appeared; were they those in the house or some of them?—A. They came from the outside; they did not sleep in the house, what I saw of them.

Q. Who were they?—A. I don't remember their names or who they were.

Q. Will you testify that none who slept in house the night preceding voted before the supervisor appeared?—A. After the poll were opened and the voting had commenced I went to wash my face.

Q. And yet you can not tell who or how many had voted?—A. I was so worn out from the loss of rest I did not pay any attention to who had voted.

Q. All the managers having slept in the house in a room of which the voting was conducted did they announce publicly to the large number of voters on the outside, including J. F. Brown, supervisor, that they were ready to receive votes?—A. The voting was not conducted in the room in which we slept, but in the entry. Yes, they were all notified; don't know who was among them, don't know whether Brown was there or not. I found him there when I came from washing.

Q. This house being used as private quarters for the managers, do you mean to say that Brown, as supervisor, and other voters could have gone in until they were invited, or notified that the voting was to be conducted there.—A. They were invited as soon as the polls were open. The house was unoccupied at the time, but I think Mr. Hickman's clerk slept there.

Q. Was it not occupied, the night preceding the election, as a lodging place for the three managers?—A. It was the only place we could get.

Q. Do you know the relative strength of the Democratic and Republican parties at Green Pond precinct?—A. No.

Q. Your being a citizen of Walterboro' precinct and another of the managers living there, also the entire board being Democratic, was it for the want of material down there that they had to deprive a majority of the board the right to vote at home?—A. No.

Q. You said you saw Elliott tickets in circulation that day; was it not in the entry and on the table or box where the voting was being conducted?—A. All around the precinct.

Q. You saw them circulated; are you prepared to swear that they were voted?—  
A. Some of them were.

Q. You say the room was so crowded that they, the outsiders, were ordered to leave. About how many was in there, and who were they?—A. They were not ordered to leave, but simply to move back—Mr. May and several others, white and black.

Q. Who was clerk that day?—A. Mr. Rice, Mr. Williams, and Drawdy, who relieved them.

Redirect:

Q. Do you not know that Mr. Drawdy was regarded as the clerk?  
(Objected to as leading.)

A. Yes.

Q. What was the location of the building in which the election was held?—A. It was right in the center of the town, in the most public place in the town, and the only place that could have been gotten that I know of. The building was about five steps from the railroad track.

Q. Is not that railroad track used as a thoroughfare or walkway for almost if not every colored man who goes to Green Pond?—A. Yes; and white, too.

Q. What was the situation of the passage-way in relation to the railroad track?—  
A. The house and passage-way fronted the railroad track.

In reply:

Q. State what part of the entry-way the boxes were located. Was it not in the extreme rear, leading to the kitchen?—A. About the center.

Q. About how many feet from the back door was the table?—A. About ten or twelve feet.

Now where is the truth? With the five unimpeached witnesses or with the man Brown? The bare suggestion, it seems to us, will suggest the answer without allusion to the law of evidence touching the preponderance of the testimony. The evidence discloses that there were from 1 to 5 ballots with Miller's name on them, folded together and stuffed in the box. Who did it? There is no doubt that Miller's adherents were the ballot-box stuffers there.

#### JACKSONBORO PRECINCT.

At this poll it is charged that there were 183 ballots, and about 70 were in excess of the poll-list. On the evidence of one witness, the United States supervisor, L. D. Smalls, who testified that he signed the returns and reported the same as the managers, and who says he objected to signing at the start because he could not see the names on the tickets when they were counted, and for that reason only, but finally signed them all, declares the validity of the return to have been destroyed, and with great reluctance conceding to Elliott 46 votes (because Miller in his brief gives them to him), places all the balance to the credit of Miller.

Somewhat taken aback, however, it seems, by their own liberality in allowing to Elliott what Miller himself admits the majority deem it necessary to apologize for the same, which it naïvely does in the following language:

*In his original brief filed with the committee, contestant conceded to contestee 46 votes, the remainder of the 113 not proven to have voted for contestant; and for that reason, and because it is now only a question of the amount of contestant's majority, we state the vote as in this brief, etc.*

The italics are ours. It is a noticeable fact in the record that very few, only 14, of the witnesses for contestant, who say they voted for him, can read or write, and most of them in the density of their ignorance, such as we have heretofore illustrated herein, evidently knew as little about what they were doing as the common run of ten-year-old children.

W. F. Myers, contestant's chief witness, swears (p. 95) that the Democratic voting strength at Jacksonboro' is "about 70." Contestee got 68.

## PORT ROYAL, BEAUFORT COUNTY.

The return shows—

Elliott.....	199
Miller.....	14
Total.....	213

All the proof as to this poll is summed up as follows by the majority (p. 22):

Fifty-one witnesses (pp. 128-160) testify that they voted for Miller, and their names are all on the poll-list as having voted. This evidence stands uncontradicted. Duly qualified voters were refused permission to vote, and names of Democrats are on the poll-list as having voted who had moved away and were not present at the election, thus further discrediting the returns.

And the majority adds 37 to contestant's vote and deducts that number from contestee. Taking first the statement that "duly qualified voters were refused permission to vote," what is the testimony? Two men only were rejected—John Hicks and Benjamin Wroten. John Hicks says (p. 156):

Q. Did you offer to vote at the last election; and, if yes, were you objected to, and at what precinct?

(Objected to on the ground that the poll-list is the best evidence.)

A. Yes, sir; but I was objected to because they said my register certificate was not dated right at Port Royal precinct.

On cross-examination he says:

Q. Where is your registration certificate?—A. At home.

Q. Who said it was dated wrong?—A. Mr. Rodgers was there at the box, also Mr. Stickney and Mr. Bull. I don't remember who said it was wrong. I think it was Mr. Stickney.

Q. How was it dated?—A. I can't tell; I don't remember.

Q. Was it somebody else's certificate?—A. No, sir; I went there and got it myself and put it away until the day of election; nobody had anything to do with it.

He had the certificate at home and yet could not produce it. What proof is there that he was registered at all? Is it possible to consider this as "discrediting" the returns? The other rejected voter is Benjamin Wroten, who says he was rejected because the name on his certificate did not correspond with the registration book used by the managers.

On cross-examination he says (p. —):

Q. Where is your registration certificate?—A. I have it at home.

Q. How do you spell your name?

(Objected to on the ground that voters are not required by law to spell their names neither at the time of registering, nor at the poll, to enable them to register or vote. The supervisor of registration is supposed to spell each person's name correctly on the registration certificate, and to so copy it on the registration list.)

A. Benjamin Wroten, but I find most people here spell it Roten.

Again the certificate was not produced, and for no earthly good reason. By referring to the two notices of deposition at page 162 it will be found that in one his name is spelt "Rhoten" and in the other "Roden," while he was sworn as "Roten." It is upon the foregoing testimony that the majority finds that "duly qualified voters were refused permission to vote."

Now as to the next statement, that Democrats who had moved away were on the poll-list as voters. John McClellan, p. 142, swears there were two, J. W. Barnes and T. E. Barnes. On cross-examination he says:

Q. Do you mean to swear that neither J. W. or T. E. Barnes were in Port Royal on election day, or do you mean to swear that you did not see them?—A. T. E. Barnes



was not in this town on that day, and if J. W. Barnes was here I did not see him, nor for weeks before.

Q. Will you swear that I was not here on election day?—A. No, but I can swear I did not see you.

Q. Did you vote in the Presidential box?—A. No, sir; I did not.

JOHN (his x mark) McCLELLAN.

Why was McClellan, who can not sign his name, relied on to prove this instead of the Republican supervisor, who could certainly have proved that these men did not vote? We submit that there is nothing in this testimony to overthrow the presumption of the correctness of the return, so as to admit proof as to how each voter voted, as the majority decides. Of the witnesses who swear they voted for Miller, twenty-four made their mark. They got their tickets chiefly from John McClellan, who himself had to make his mark. Fourteen of them were examined without notice—Kit Chisolm, Cicero Lawton, F. Brown, A. Black, W. Stelling, H. Jourdan, S. Anderson, W. Flowers, D. Johnson, J. Toomer, A. Green, Rich Heyward No. 1, J. Jones, and A. Moye, p. 162. They were all objected to on this ground; and each is styled in the depositions "voluntary."

ST. STEPHEN'S, BERKELEY COUNTY.—The objection to this precinct is that eighty-one persons say they voted for Miller. There was no proof to overthrow the presumption of the correctness of the managers' return. Of the eighty-one, fifty-six made their marks to their depositions. Every one swears that he got his ticket from one Tobe Price, and the great majority that they relied entirely on his representation as to its kind. We call especial attention to the following testimony (page 75):

JINGO DINGLE, sworn:

Q. State your name, age, residence, and occupation.—A. Jingo Dingle; age, 37; residence, Old Field Plantation; occupation, laborer.

Q. Where were you on the 6th of November, 1888, the day of the last general election?—A. At St. Stephen's.

Q. Did you vote there that day?—A. Yes, sir.

Q. For whom did you vote as candidate for Congress?—A. Mr. Miller.

Q. Who gave you your ticket?—A. Mr. Price.

Cross-ex.:

Q. Can you read and write?—A. No sir.

Q. Then you know you voted for Miller because Price told you so?—A. Yes, sir; he read the ticket to me and told me so.

(Same objection as to last witness.)

Redirect:

Q. Did you vote the ticket Price gave you?—A. Yes, sir; the same he gave me.

Q. What is that?

(Counsel hands witness a ticket, T. E. Miller, Representative for 51 Congress.)

A. That was not the kind of a ticket he read to me.

Q. What kind of a ticket did he read to you?

(Objected to.)

A. He read Mr. Miller's name to me for Congress.

JINGO (his x mark) DINGLE.

when contestant's counsel showed witness the ticket "T. E. Miller, Representative for Fifty-first Congress," he answered "*that was not the kind of ticket he read to me.*"

Now it is very strange, in this connection, that Price, who gave out all these tickets, was never sworn to tell what tickets he did distribute. No explanation is given of this failure. As to most of the witnesses, therefore, there is absolutely no proof what ticket they voted. We give the following testimony.

JACOB CAMPBELL, sworn (p. 52):

Q. State your name, age, residence, and occupation.—A. Jacob Campbell; age, 50 years; residence, Jervey's Chapel; occupation, laborer.

Q. Where were you on the 6th November, 1888, the day of the last general election?—A. At St. Stephen's voting precinct.

Q. Did you vote there that day?—A. I did.

(Objected to, as the poll-list is the best evidence.)

Q. For whom did you vote as candidate for Congress?—A. I voted for Smalls.

Q. Who gave you your ticket?—A. Tobe Price.

Q. How many tickets he gave you?—A. One.

Q. Can you read and write?—A. No, sir.

Q. Who was the Democratic candidate for Congress?—A. That man that ran against Smalls; can't think of his name.

Q. Do you know if Thomas E. Miller was a candidate for Congress?

(Objected to as leading question.)

A. Yes, sir.

Q. Was Thomas E. Miller the Republican or Democratic candidate that day?—A. I could not exactly tell; he seem to be pressing very hard for Small.

JACOB (his x mark) CAMPBELL.

SHIRER MIDDLETON, sworn (p. 80):

Q. State your name, age, residence, and occupation.—A. Shirer Middleton; age, 57; residence, Gillinsville; occupation, farmer.

Q. Where were you on the 6th November, 1888, the day of the last general election?—A. St. Stephen's.

Q. Did you vote there that day?—A. Yes, sir.

Q. For whom did you vote as candidate for Congress?—A. Thomas E. Miller.

Q. Who gave you your ticket?—A. Tobe Price.

Q. Can you read?—A. I can read enough to find the name of Thomas E. Miller.

Cross-ex.

Q. You said you can read, read this [hands witness printed paper and asks him to read a line thereon].—A. I can not read it, sir.

Q. Can you read that line [shows witness first line of the heading of the answer of Wm. Elliott, which read: "Thomas E. Miller vs. Wm. Elliott"]?—A. I can't read it.

JERRY MAURICE, sworn (p. 54):

Q. State your name, age, residence, and occupation.—A. Jerry Maurice; age, 45; residence, Speir's Still; occupation, farmer.

Q. Where were you on the 6th November, 1888, the day of the last general election?—A. At St. Stephen's voting precinct.

Q. Did you vote there that day?—A. Yes, sir; at the county and State poll, but not at the Congressional poll.

Q. For whom did you vote as candidate for Congress?—A. Thomas Miller, but I did not vote for Congressman.

BEN WILSON, sworn (p. 77):

Q. State your name, age, residence, and occupation.—A. Ben Wilson; age, 32; residence, Buck Hall; occupation, farmer.

Q. Where were you on the 6th November, 1888, the day of the last general election?—A. At St. Stephen's voting precinct.

Q. Did you vote there that day?—A. No, sir; they would not let me vote.

Q. For whom did you vote as a candidate for Congress?—A. Did not vote.

Q. Who gave you your ticket?—A. B. T. Price.

Q. Did you go to the polls to vote?—A. Yes, sir.

Q. Who were you going to vote for?—A. I was going to vote for Miller.

Q. Did you have your registration certificate with you?—A. Yes, sir.

Cross-examined:

Q. Why was it they would not let you vote?—A. They said my certificate was not right.

Q. What was wrong about it?—A. They never said what was wrong about it.

Q. Where were you living on the day of election?—A. At Buck Hall.

Q. Did the managers ask you any questions?—A. No, sir; just asked me where I was living.

BEN (his x mark) WILSON.

All these witnesses are included in the 81 allowed contestant, although several say they did not vote for him. The majority refrain from depriving contestee of his entire vote only because contestant's counsel did not demand it, they say.

EVANS' MILLS, ORANGEBURGH COUNTY.

At this poll the majority, while admitting that "there is a conflict" as to the facts, say the box was stuffed. A careful examination of the testimony will show that this is not so. The only witness (T. T. Green, p. 316), speaking of ballots being torn up, says:

For the right number, I can not exactly tell. I suppose about 125, or more, taken from the three different piles.

The Republican precinct chairman came in just after, but Green did not report a word of the destruction to him. Hazard Barden, Democratic supervisor, says (p. 386):

When we went to count the Congressional box we proceeded in like manner. After tearing up all the Presidential tickets found therein there was an excess in the box of tickets. I don't remember how many, but a few; and on the tally which three kept—myself, Dr. Lawton, and T. T. Green—there was a difference in the tally of all three of some few votes. We decided to take the tally of T. T. Green, the Republican supervisor, and the ballots were all put back in the box and stirred up thoroughly. Dr. A. C. Baxter, jr., was blindfolded and requested to draw out the excess and tear up in the presence of all without knowing what he tore up; then we proceeded to count. After the count we found that there had been seven tickets too many drawn out and torn up, and to make it fair we put in seven Democratic and seven Republican tickets, and we blindfolded a colored man by the name of Wm. Hilliard to draw out the seven tickets, and Hilliard, to the best of my knowledge, drew out five for Elliott and two for Miller.

\* \* \* \* \*

Q. From whence did you obtain the seven Miller tickets, and to whom did you first apply for them?—A. I applied to Wm. Hilliard for them; he was a ticket distributor for the Republican party. He gave me seven tickets and I went to hand them to the managers, and I looked at the tickets and found them to be Elliott tickets; I then applied for more Miller tickets, and they were handed to me by some one, Baldrick, I think, and they were placed in the box.

Dr. Lawton says (p. 387):

Q. Can you state how many ballots were found in excess?—A. About seventeen, according to Green's tally; that number was drawn out the box, and then votes were counted and found to be seven less than poll-list.

Q. Can you state the number of votes Miller received as member for Congress?—A. I don't remember; neither Mr. Elliott's.

Q. Did Mr. Miller receive no more votes at that poll than those you gave him in your official return as manager of election at that precinct?—A. All Miller tickets found in Congressional box were counted for Miller.

Q. Were any found in any other box?—A. There were; some were found in the Presidential box.

Q. Can you state how many?—A. I can not.

Q. Did Mr. Miller receive the benefit of those tickets found in Presidential box?—A. He did not; neither did Elliott receive the benefit of his tickets found in same box.

Q. Are you a Republican or Democrat?—A. A Democrat.

Q. Were the other managers Democrats or Republicans?—A. They were Democrats.

W. H. LAWTON, M. D.

So stood the matter when contestee closed his case, his testimony being strictly in reply to contestant's. In rebuttal, however, contestant called a large number of witnesses to prove how they had voted (pp. 414-476), whereupon contestee's counsel filed the following:

Mr. Dautzler, attorney for Wm. Elliott, makes the following objections:

1st. That the notice to take testimony is illegal, having been served before the time of Mr. Elliott in reply had expired.

2d. That objection is made to taking testimony before John H. Ostendorff as notary public, his name being on the record in the case as one of the attorneys of the contestant.

3. That the evidence taken is not in rebuttal.

The objection to Mr. Ostendorff being notary while being contestant's attorney on record was certainly valid. He was not only attorney and notary but also a witness (p. 69), not an uncommon occurrence in this case. The testimony was certainly not in rebuttal, and should be ruled out. (See Posey vs. Parrott, page 1 of Report.) Of the 142 who testified, 109 made their mark. The great majority of them say they got their tickets from Bill Green, the remainder from Tom Allen, Edward Hartwell, Wesley Shuler, Rufus Felder, Lee Williams, and William Hilliard. Strange to say neither Bill Green, Tom Allen, Wesley Shuler, nor Lee Williams is sworn, neither as to the tickets they distributed and not even that they themselves voted. Edward Hartwell and Rufus Felder say they voted, but say nothing about the tickets they distributed. Here is Hartwell's cross-examination (p. 444):

Q. Will you read this paper? [Hands witness copy of newspaper.]—A. I decline to read the newspaper.

He had sworn he could read. The other distributor was Bill Hilliard, who, as testified to by Mr. Hazard Bardin, had Elliott tickets and not Miller's. We note the following testimony (p. 420):

STEPHEN WASHINGTON, who being sworn, says:

Q. State your age, occupation, residence, and where you were on the 6th day of November, 1888.—A. Age, 26; farmer; Floods; Evans Mill.

Q. State for whom you voted as member of Congress from the 7th district on the 6th of November, 1888.—A. Green.

Q. Who did you vote for?—A. Mr. Elliott.

Q. State from whom did you get your ballot, if you can read, and how many ballots or tickets did you vote for Congressman at the last election.—A. Mr. Green; can't read; one.

Q. State at what precinct did you vote, and if any one read your ticket for you.—A. Vance's.

Q. State the name of the person who read your ticket to you, and to what political party he belongs.—A. Green; Republican party.

STEPHEN (his x mark) WASHINGTON.

He got his ticket from Green and voted for Elliott. Numbers of the voters swear they received and voted only one ticket. We note three of these in succession on page 418—Wellfare, Gettress, and Oliver.

Perry Dun (p. 415) says:

Cross-ex'd by Mr. DAUTZLER

Q. How many tickets did he give you?—A. One.

Q. Where did you vote it?—A. In the *Presidential* box.

Time and again witnesses who swore they could read refused the test on cross-examination. Here are samples:

Cross-ex. (p. 438):

Q. Did you read your ticket?—A. Yes, sir.

Q. Tell me exactly what was on that ticket?—A. 7th Congressional and Miller.

Q. Is that all?—A. That is all I can remember just now.

Q. What Miller was that?—A. T. B. Miller.

Q. You say you can read; read this [hands witness copy of newspaper].—A. I refuse to read for you.

(Same objections.)

ELLISON (his x mark) HUGGINS.

Cross-ex. (p. 439):

Q. For what Miller did you vote?—A. T. A. Miller.



Q. Can you read [offers paper to read] ?—A. Yes, I can read, but I decline to read. (Same objections.)

BRANTLY (his x mark) MOORER.

Cross-ex. :

Q. For what Miller was it that you voted ?—A. Thomas Miller.

Q. You stated you can read a little, read this for me ? [Hands witness copy of newspaper.]—A. I am a little hungry; don't feel like reading now.

(Same objections.)

DUDLEY (his x mark) EVANS.

#### EASTOVER, RICHLAND COUNTY.

The return from this precinct not having been sent up in time the votes were not canvassed and not included in the result. The majority say :

M. Johnson, the Republican supervisor, testifies (p. 319) that the *Miller tickets were printed on coarser and darker paper than the Elliott tickets, and that when folded by the ticket distributors, Miller's name could be seen*; that the name was printed in larger letters than Elliott's name; that he watched the voting and kept a tally of the voters, and that Miller's vote was not less than 248 nor more than 257 (some tickets not certain), and that Elliott's vote was from 83 to 92.

It was upon this kind of proof as to the vote cast that the supervisor made his return, and it is substantially the only proof as to the vote cast introduced by contestant in chief, no voter being called to prove his vote. Contestee then had the manager's return and poll list proved and had the ballots in the box produced and counted, which verified the return, thus :

Elliott .....	262
Miller .....	87
Simmons .....	36
Total .....	385

On November 21, 1888, contestant had filed the following with the State board of canvassers :

#### EXHIBIT C.—J. T. B.

In the matter of the election of a Representative to the 51st United States Congress in the Seventh Congressional district of the State of South Carolina.

*To the honorable the Board of State Canvassers :*

The undersigned, a candidate for Representative to the 51st Congress in the Seventh district for the State of South Carolina, begs leave to suggest and give information to your honorable board that in respect to the statement and return of the county board of canvassers for Federal elections for Richland County, the said board has not included in their statement the poll cast at the precinct of Eastover, in said county and in the Seventh Congressional district, upon the ground, as the undersigned is informed, that the return from said precinct had been defectively made; that the undersigned was not aware of such fact while said board was in session, and has just come into possession of such information long after said board had finally adjourned; that it appears by a statement made by the managers on the poll-list of said box, but not signed by the managers, that the undersigned, William Elliott, received 262 votes, Thomas E. Miller 87 votes, and ——— Simmons 36 votes, giving the undersigned a majority over Thomas E. Miller of 175 votes; that the undersigned is informed and believes that votes cast and in the box at said precinct exactly correspond with the statement of the vote made upon the poll-list and now in your possession. All of which facts and things may be verified by an inspection of the papers sent down to your body and the votes in said box.

The undersigned therefore respectfully begs that this suggestion may be filed by your board in the records of the election in the Seventh Congressional district.

WILLIAM ELLIOTT,

Per B. L. ABNEY,

Att'y for Wm. Elliott.

Nov. 21, 1888.

After all of contestee's testimony was in, contestant, in violation of the law, as at Evans Mill, took in rebuttal and against objection the testimony of 197 witnesses to swear to their vote, the same not being in rebuttal. He also gave contestee's attorney notice of deposition before three notaries at the same place, at the same hour, to which objection was made, as well as to the questions being printed instead of written, which was common on the part of contestant. The testimony is of the same general character as that heretofore noted. We call attention to the following ruling of N. F. Myers, notary (p. 526):

Q. When you voted that day did you show your registration ticket?—A. Yes, sir.

Q. Have you that ticket, now?—A. Yes, sir.

Q. Let me see it.

(Notary public refuses to let the witness produce registration ticket, as counsel for contestee is not a judge as to competency of voters.)

Counsel for contestee objects to ruling on the following grounds: That the witness has stated that he voted at the Congressional election and it is desired to show whether or not he was legally qualified to vote; 2d, that the notary has no right to rule on questions of law, as he has already ruled himself that his duties were purely ministerial and not judicial in their character.)

Myers, as will be remembered, was an important witness for contestant as well as notary in Colleton County. To show how he was influenced as notary by his interest for contestant we refer to his ruling in Colleton County, already mentioned, where he declined to exclude from the room witnesses for examination on the ground that his was "merely a clerical position with not a shadow of judicial powers."

In this connection we call attention to the fact that in addition to the above and that John H. Ostendorf was contestant's attorney, notary, and witness, there were these other witnesses: J. F. Brown was notary, page 92; witness, page 294. Jno. C. Rue was notary, page 97; witness, page 452. T. J. Reynolds was notary, page 543; attorney, page 128. H. D. Edwards was attorney, page 459; witness three times, pages 302, 310, 324.

#### BEN POTTER'S PRECINCT.

##### The majority say:

*Ben Potter precinct.*—In this precinct there is a difference between the return of the United States supervisors and that of the precinct managers; the supervisors returning 41 as voting, and the managers 141. The evidence here is conflicting, and we do not find it necessary to decide which is the true return.

In order to show the facts as to this precinct we quote from contestee's brief, p. 131, the following which is sustained by the testimony:

The managers' return gives Elliott 141 votes, Miller none. Contestant attacks this return, alleges that 103 votes were illegally and fraudulently given contestee, and contends that the true return should have been—

Elliott.....	38
Miller.....	3
Total .....	41

To sustain this he relies on the testimony of J. H. Johnson, supervisor (p. 46), who swears that but 41 votes were cast; that Elliott got 38 and Miller 3, and that he and the Democratic supervisor, W. H. Parsons, signed such a return and forwarded it to the chief supervisor. Instead of making out a case of fraud against the Democratic officials the testimony discloses a disgraceful series of crimes on the part of contestee's adherents.

In the first place, Parsons was not the Democratic supervisor, but W. P. Gardner was. (See certificate of clerk of U. S. Circuit Court, p. 667.) The copy of Johnson's return put in evidence was not certified to by the chief supervisor, but by contestant's notary (p. 661). When the original return was examined by contestee's attorney, it was found that there had been a clumsy attempt at changing the figures—

changing the total vote from 141 to 41, and changing Elliott's vote from 141 to 38, and giving Miller 3 votes. Thereupon, contestee had the paper examined by E. H. Sparkman, cashier, and gave notice of his examination at the office of the clerk of U. S. Circuit Court, when the original was filed, *on 2d April*. The return was seen and examined on 1st April by both Sparkman and Hon. H. K. Jenkins, contestee's attorney; but *it had disappeared during the night*—all the custodians being Republicans—and *on the 2d could not be produced*, having been sent out of the State for no reason whatever. Sparkman was examined as to the above changes and testified to them. Contestant was present and *objected to Sparkman's testifying as to the forgeries without the paper being produced*. He subsequently admitted to Mr. Jenkins that he had "got information yesterday that you were going to examine an *expert as to erasures and forgeries*."

We give the following testimony:

E. H. SPARKMAN, sworn (p. 395):

1. Q. State your name, age, occupation, and residence.—A. E. H. Sparkman; 43 years; cashier in bank; Charleston.

2. Q. Does your occupation require that you should pay particular attention to written instruments, with a view to detecting forgeries, alterations, erasures, etc?—A. It does.

3. Q. Did you examine the return of a supervisor of elections which was on file in this office, or in this room or building for Ben Potter's precinct on yesterday?

(T. E. Miller objects to the above question on the ground that there is no proof of there being any return on file in any room or any building anywhere in the world in these records.)

A. I examined a paper which was submitted to me, and which, I think, I could identify if produced again.

4. Q. Where did you examine this paper?—A. In this room, clerk's office of the United States circuit court.

5. Q. Do you remember anything peculiar about the appearance of that paper; if so, state what?

(T. E. Miller objects on the ground that the paper is the best evidence of its peculiarity, and witness is not competent to testify about its condition until the said paper has been produced or it is proven that the said paper is not in existence.)

A. The paper bore evidence of alteration in some of the figures and erasures in others.

6. Q. Can you state what those alterations and erasures were? If you can please do so.

(T. E. Miller objects because the paper or supervisor's report is the best evidence of its condition.)

A. I would say that in my opinion the original returns called for 141 votes, and was so altered as to read 41. Lower down on the same paper the same figures, 141, were changed to read 38; next lower, comes the figure 3, representing the vote for somebody, who, I don't remember. On the next two succeeding lines below, on each, there is the figure 3 with a line drawn horizontally through each.

Cross-examined by T. E. MILLER:

The cross-examination consists chiefly of elaborately prepared questions as to forgeries, of which we give the following:

12. Q. Are you an expert in handwriting?—A. I have been examined as such.

13. Q. Can you distinguish between the writing that is intended to mislead, or to make one believe that it is done by one and the same person?—A. I have found differences in handwriting by comparison which detected the forgery.

14. Q. I have here a paper with the name of Thomas E. Miller written forty-nine times, the key to which is in an envelope. Please tell me, if you can, whether all of the forty-nine names were written by one and the same person, and I state that No. 2 on this paper is a [H. K. Jenkins objects to this question until he can see what the key is or how it is intended to be used] genuine signature, and you will so find it stated in the key.—A. In the forty-nine signatures submitted there is an evident attempt to mislead, which makes it quite possible that they were all written by the same person.

We give a part of the testimony of H. K. Jenkins, contestee's counsel, who was compelled to testify later as to the abstraction of the record.

HAWKINS K. JENKINS sworn (p. 400):

My name is Hawkins King Jenkins; my age, 29 years; occupation, attorney and counsellor at law, and I reside in Mt. Pleasant, S. C. I am one of the counsel for Col. Elliott in this contest. As such counsel, on the 30th day of March last, I served

Genl. S. J. Lee, who accepted service as attorney for the contestant, with notice that I would examine Mr. E. H. Sparkman on the Tuesday succeeding, at the custom-house in Charleston, at 2 o'clock p. m., on behalf of Col. Elliott. During a short conversation which I had with Genl. Lee at that time, he said that he would like to know what I was going to examine Mr. Sparkman about, and asked who Mr. Sparkman was. I replied, "I will tell you at the examination. I am going to examine him as to Ben Potter's. On Monday, the 1st of April, Mr. Sparkman was taken into the office of clerk of the circuit court of the United States for the purpose of having him examine the return of the United States supervisor for Ben Potter's precinct. This return, along with the others, had been kept in that office, where I had examined it carefully on two occasions. I had noticed that the figures on this return had been changed and erasures had been made, so as to show a total vote of 41 instead of 141, and a vote of 38 for Col. Elliott instead of 141. I therefore determined to call an expert, and summoned Mr. Sparkman, who I knew had been used as such on former occasions in the State court. On Tuesday, at the hour appointed, I went to the custom-house with Mr. Sparkman and S. Porcher Smith, notary public. After a few moments Mr. Miller and W. H. Berney, esq., his notary, came in. I asked Col. Hagood, the clerk of the circuit court, from whom I had gotten them on former occasions, to let me have or see the supervisor's return for Ben Potter's. He said they were not there. I asked him where they were. He said, "I have sent them to Washington." I replied, "Why, they were here yesterday, for Mr. Sparkman examined the returns for Ben Potter's at that time." Mr. Hagood replied, "I know that, but I sent all of the supervisors' returns to Washington by this morning's mail." I think he said that he had sent them to Col. Poinier. We then examined Mr. Sparkman. At the close of his testimony I remarked to the contestant, "You seem to have expected evidence as to forgeries." He replied, "Yes, I did." I asked him, "What made you expect it?" He replied, "Well, the examination is over now, and we are talking as men, and I don't mind telling you that I got information yesterday evening that you were going to examine"—I don't remember whether he said Mr. Sparkman or an expert—I think he said an expert "as to erasures and forgeries." Mr. Hagood is a Republican, and so is Col. Poinier, the chief supervisor. In the conversations given above I think I have given the exact words. I have certainly given the exact meaning or import thereof.

(All of the above testimony is objected to by counsel for contestant as irrelevant, hearsay, and inadmissible, who gives notice that at the proper time and place he will move to strike the same out of the record.)

Cross examined by S. J. LEE.

2. Q. Do you know at whose request those records were sent to Washington?—A. I know that Col. Hagood was informed by Col. Elliott (or at least I do not know of my own knowledge), upon the authority of a letter from Col. Poinier addressed to Col. Elliott, which I have in my possession, that it was not necessary to forward the original returns to Washington or to him, but that Col. Elliott might have copies made of any which he needed, and that if Col. Hagood would write out the certificate and forward the copies with the certificates so written, he would cheerfully sign the same.

3. Q. You have not answered my question. With Col. Poinier's letter in your possession did you call on Col. Hagood and ask him to make the copies referred to, and forward them to Col. Poinier?—A. I did not intend to evade answering your question, and will now state that I do not believe that Col. Hagood was requested by any Democrat or by Col. Poinier to forward the records or any part of them to Washington; he was certainly not requested to do so either by Col. Elliott or myself, as we both knew that we would need this particular return on Tuesday for the purpose of submitting it to an expert. In reply to your last question I would say that I did not; I believe that Col. Elliott asked that copies should be made and forwarded with certificates as directed in Col. Poinier's letter to him, but "Ben Potter's" was not among the number asked for. I say this because I was present when Col. Elliott made a list, in Col. Hagood's office, of different records of which he desired copies. He took the "Ben Potter's" return out of the package; we examined it together; I reminded him that contestant had put in a certified copy of it, and he replaced it in the package, and said, "we would not need a copy." At that time I did not have Col. Poinier's letter in my possession.

4. Q. Who were present when you and Col. Elliott examined that return?—A. Col. Hagood's clerk was in the room, and a part of the time, I think, a gentleman named Seignious. Col. Elliott and myself examined the papers at Col. Poinier's desk in one corner of the room; several people passed through the room while we were there.

5. Q. Who was present with you when you first examined that return?—A. Col. Elliott was with me.

On 13th of April, after contestee's time to take testimony had expired, the return is produced by contestant's witness B. A. Hagood,



deputy clerk United States circuit court (p. 455). *Not a word of explanation is given of its disappearance, nor of its restoration.* Mr. Hagood, on cross-examination, testifies that there had been an erasure of one figure before the figures 41—the whole vote for member of Congress and that under the figures 38—the vote given Elliott—he could see 41, and that there was an erasure before 38, showing undoubtedly that the vote originally given Elliott was 141. Although contestee was thus prevented from showing by an expert this forgery, yet it is as clearly proved as if a hundred experts had testified to it.

So stood the matter at the close of the taking of testimony and after contestee's brief had been filed. When contestant put in his brief in reply the following appeared therein, dated six months after the testimony had been closed:

UNITED STATES OF AMERICA,  
District of South Carolina:

Personally appeared B. A. Hagood, deputy clerk of the United States circuit court for the district of South Carolina, who deposes and says: That the returns of the Federal supervisors of election for the precinct of Ben Potter's, in the county of Berkeley, in the Seventh Congressional district of the State of South Carolina, were in the custody of the clerk of this court, and were never out of the office of the clerk except when on the 2d of April, 1889, they were, with other returns, sent by the clerk to the chief supervisor of elections, who at that time was in the city of Washington, D. C., in order that the said chief Supervisor might, under his hand and seal, certify to the correctness of certain copies thereof forwarded with said originals at the same time, said copies being made for and at the request of William Elliott, contestee. That they were sent in pursuance to a letter received from the chief supervisor of elections, which said letter contained the following:

"WASHINGTON, D. C., March 28, 1889.

"Be kind enough to let Mr. Elliott have free access to all the records of the supervisor's office. If he finds any that will be of service to him in his contest *let him have copies made of them. If you or your father will write the certificates, that they are true copies and will forward them to me, I will sign them.*"

Copies of returns having been made they were, in accordance with directions from chief supervisor, forwarded to him at Washington, D. C., and but for the aforesaid request the returns would have been in the office of the clerk.

Sworn and subscribed to before me this 15th day of November, 1889.

[SEAL.]

B. A. HAGOOD,  
Dep'ty Clk U. S. Ct. Court Dist. S. C.

JULIUS SEABROOK,  
Dep. C. D. C. U. S. S. C.

The italics are ours.

As already stated, Mr. Hagood had been examined in the case, and had said not a word about the disappearance of the return, which he then produced, but six months afterwards he made this affidavit. But it does not at all help the matter, because the letter of the chief supervisor says distinctly that the *copies*, with the certificates written out, were only to be sent. In fact, it proves beyond a doubt, and by written testimony, that the originals were not to be sent from the office. Moreover, Mr. Jenkins testified that contestee did not want a copy of the return from this precinct and had not asked for it, because contestant had already put it in evidence. We have not time to comment further upon the foregoing testimony, the true character of which every one must understand.

#### PRIVATEER, SUMTER COUNTY.

The majority say:

The same is true of Privateer precinct, Sumter County, where Elliott is returned by the managers as receiving 130 votes, and by the supervisors as receiving 88.

That is, "the evidence is conflicting and we do not find it necessary to decide which is the true return." In the first place this charge was never made in the notice of contest. In the second place, there is no evidence whatever, except the return of the Republican supervisor, not *supervisors*, as the majority say, and that of the managers. Contestant did call a witness who was "distributing tickets and keeping a memorandum of the voting" at this very place, R. C. Andrews (p. 31), and yet he was never asked a word about this charge. The managers' return and poll-list will be found at pages 652, 653. Contestant in his brief (p. 53) asserts that the return was that of the "Democratic supervisor." The record shows (p. 668) that he was not the Democratic but the Republican supervisor. Why was not this alleged fraud made a ground of contest, or why was not this supervisor called to prove it?

#### COOPER'S STORE.

We dissent entirely from the conclusion of the majority as to this precinct, but as their action only makes a difference of two votes we will not discuss it.

We have considered all the cases in which the majority has made any change in the vote as returned and have given our views thereon, together with the testimony. We do not agree with the majority in their conclusion, but conceding, for the purpose of the argument, that they are correct in all respects excepting as to the 1,000 votes alleged to be found in the wrong box and given contestant, still the contestee would have a majority of 243.

We would therefore offer the following substitute for the resolutions of the majority:

*Resolved*, That Thomas E. Miller was not elected a Representative from the Seventh district of South Carolina to the Fifty-first Congress.

*Resolved*, That William Elliott was duly elected, and is entitled to retain his seat.

R. P. C. WILSON.

C. F. CRISP.

CHARLES T. O'FERRALL.

LEVI MAISH.

L. W. MOORE.

J. H. OUTHWAITE.