ing his vote by any illegal or wrongful means of the commissioners of election.

[NOTE.—If any legal voter has been prevented from casting his vote, from any cause, fill out the following affidavit and deliver same to United States supervisor of the polls where he would have cast his vote, who will return same to F. A. Woolfley, chief supervisor.]

STATE OF LOUISIANA, }
Parish of St. Tammany. }

On the fourth day of November, 1872, I, Richard Waddle, a duly qualified voter in the parish of St. Tammany, presented myself at the polling place at Covington, in said parish, which had been designated by the supervisor of registration as a poll, and offered to perform all acts required to entitle me to vote, and was prepared to exhibit to the commissioners of election at said poll a certificate of registration furnished me during the registration of October, a copy of which is attached, showing me to be entitled to vote in the aforesaid parish. I further state that, owing to the illegal acts of the commissioners of election, I was deprived of my right to vote as a citizen and legal voter, to wit: Required by the State supervisor to furnish three qualified voters before he could register him.

[NOTE.—Here state means used in preventing the voter from voting.]

I further state that I was prepared to offer, and should have offered to the commissioners of election at said poll for deposit in the ballot box the ballot hereunto attached, had I not wrongfully been prevented by the illegal acts of the aforesaid commissioner from so doing, and that the wrongful acts or omissions of said commissioners to receive and deposit my ballot to be counted, is a denial of my rights as a citizen under the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870. I further demand that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

his
RICHARD ✕ WADDLE.
mark.

[Ballot attached.]

Regular National Republican Ticket—Election November 4, 1872.

For President, General U. S. Grant.
For Vice President, Henry Wilson.

Presidential Electors—At large, M. F. Bonzano, Jules Lanabere, Charles E. Halstead; first district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

State Ticket—Election November 4, 1872. For Governor, William Pitt Kellogg; for Lieutenant Governor, C. C. Antoine; for Auditor of Public Accounts, Charles Clinton; for Secretary of State, P. G. Deslonde; for Attorney General, A. P. Field; for Superintendent of Public Education, W. G. Brown; for Congressman at large, P. B. S. Pinchback; for Forty-third Congress, J. H. Sypher; for judge, Sixth Judicial District, W. B. Kemp; for district attorney, Sixth Judicial District, F. M. Bankston; for Senator, Eleventh Senatorial District, E. F. Herwig.

Parish ticket of St. Tammany—Parish judge, Hiram Newell; sheriff, William Tally; recorder, Gustave Dupart; clerk of court, F. E. Guedry; coroner, Thomas Badeaux; House of Representatives, A. J. Cousin; police jurors, first ward, Henry Heiser; second ward, J. E. Smith; third ward, F. Roquet; fourth ward, Louis French; fifth ward, Fritz Mathis; justices of the peace, sixth ward, John Davis, Jules Maillie; constables, Moses Davis, E. R. Shabam.

Signatures of two witnesses who are cognizant of the truth of the affidavit.

His
GOSSE ✕ WILLIAMS.
mark.

Subscribed and sworn to this fourteenth day of November, 1872, before me.
HIRAM NEWELL, Parish Judge.

PARISH OF ST. TAMMANY, }
November 4, 1872. }

I certify that I was at the polling place above mentioned, on the day of election, November 4, 1872, and that the statement of Mr. Waddle above subscribed to, is true in every particular.

WILLIAM A. HUTCHINSON,
United States Supervisor of Election at said Poll.

EXHIBIT II.

Form of affidavit to be used whenever any person has been prevented from depositing his vote by any illegal or wrongful means of the commissioners of election:

[NOTE.—If any legal voter has been prevented from casting his vote, from any cause, fill out the following affidavit, and deliver same to United States supervisor of the poll where he would have cast his vote, who will return same to F. A. Woolfley, chief supervisor.]

State of Louisiana, Parish of Orleans.—On the fourth day of November, 1872, I, Rosimond Thomas, a duly qualified voter in the parish of Orleans, first ward, presented myself at the polling place located at Constance and Annunciation, in said parish, which had been designated by the supervisor of registration as a poll, and offered to perform all acts required to entitle me to vote, and was prepared to exhibit to the commissioners of election at said poll a certificate of registration furnished me during the registration of 1868, showing me to be entitled to vote in the aforesaid parish. I further state that owing to the illegal acts of the commissioners of election, I was deprived of my right to vote as a citizen and legal voter, to wit:

That the commissioners alleged that my name did not appear upon the registration list.

[NOTE.—Here state the means used in preventing the voter from voting.]

I further state that I was prepared to offer and should have offered to the commissioners of election at said poll for deposit in the ballot box the ballot hereunto attached, had I not wrongfully been prevented by the illegal acts of the aforesaid commissioners from so doing, and that the wrongful acts or omissions of said commissioners to receive and deposit my ballot, to be counted, is a denial of my rights as a citizen under the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870. I further demand that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

His
ROSAMOND ✕ THOMAS.
mark.

[Ballots attached.]

Regular National Republican ticket, election November 4, 1872.—For President, General U. S. Grant; for Vice President, Henry Wilson.

Presidential Electors At large, M. F. Bonzano, Jules Lanabere, Charles E. Halstead; first district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

State ticket, election November 4, 1872—For Governor, William Pitt Kellogg; Lieutenant Governor, C. C. Antoine; Auditor of Public Accounts, Charles Clinton; Secretary of State, P. G. Deslonde; Attorney General, A. P Field; Superintendent of Public Education, W. G. Browne; Congress at large, P. B. S. Pinchback; forty-third Congress, second district, L. A. Sheldon; General Assembly, Senator fourth district, D. J. Hutchinson; House of Representatives, tenth and eleventh wards, Battle Payne, W. H. Decker, R. R. Davis.

Parish ticket, Orleans parish—Civil sheriff, C. S. Sauvinet; criminal sheriff, J. L. Herwig; district attorney, F. G. Chamberlain. District Judges—First District Court, M. A. Dooley; Second District Court, S. Belden; Third District Court, E. Meunier; Fourth District Court, B. L. Lynch; Fifth District Court, J. W. Gurley; Sixth District Court, Alfred Shaw; Seventh District Court, Samuel R. Walker; Eighth District Court, H. C. Dibble. Clerks of Courts—First District Court, A. F. Lynd; Second District Court, F. Pace, Jr.; Third District Court, Charles A. Baquie; Fourth District Court, Edward DeBlois; Fifth District Court, Joseph Presas; Sixth District Court, John Kaiser; Seventh District Court, J. O. Lainez; Eight District Court, Thomas Lynne. Coroner for First, Fourth, Fifth and Sixth Districts, Patrick Creagh; sixth justice of the peace, Henry Ballard; constable Sixth Justice Court, Henry Jackson.

City of New Orleans Municipal ticket—Mayor, W. R. Fish; Administrator of Finance, Felix Labatut; Administrator of Police, C. J. Adolph; Administrator of Improvements, James Lewis; Administrator of Commerce, C. W. Ringgold; Administrator of Public Accounts, S. Moody; Administrator of Assessments Lilienthal; Administrator of Waterworks, P. Coyle.

[Signatures of two witnesses who are cognizant of the truth of the affidavit.]

Subscribed and sworn to this fourth day of November, 1872, before me.
R. H. SHANNON,
United States Commissioner.

PARISH OF ORLEANS, LA., NOV. 4, 1872.

I certify that I was at the polling place above mentioned on the day of election, November 4, 1872, and that the statement of Rosamond Thomas above subscribed to is true in every particular.

United States Supervisor of Election at said Poll.

EXHIBIT III.

[NOTE.—If the supervisor of registration fails to register a duly qualified applicant as a voter, the following blank affidavit must be made.]

State of Louisiana, parish of Rapides.—On the third day of September, 1872, I, Sam Brown, presented myself at the office of J. G. P. Hooe, supervisor of registration for the parith of Rapides, located at Alexandria, in said parish, of the opening and establishment of which notice had been given by the said officer, and during the legally established office hours, and offered and was prepared to perform all acts and to take all oaths by the laws made prerequisite to entitle me to registration as a voter, and was wrongfully prevented from obtaining registration by said supervisor of registration.

I further state that I am a citizen of the State, and for more than ten days a resident of the said parish of Rapides, and am in all things lawfully qualified and entitled to vote in said parish.

Signed and sworn to, in presence of George Y. Kelso and H. J. Wright.

his
SAM ✕ BROWN.
mark.

Subscribed and sworn to this fourth day of November, 1872, before me,
THOMAS J. SEVERS,
Justice of the Peace.

MEMORANDUM: The foregoing being executed, the voter will present this whole paper to the commissioners of election, on the day of election, and offer to vote in compliance with the provisions of the law below cited. If refused his vote, he will execute the following affidavit, and deposit this entire paper with the United States supervisor of election—retaining a copy—who will return to F. A. Woolfley, chief supervisor.

State of Louisiana, parish of Rapides.—On the fourth day of November, 1872, I, Sam Brown, a duly qualified voter, in the parish of Rapides, presented myself at the polling place located at Alexandria, Rapides in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote upon the foregoing evidence of having offered to do all acts prerequisite to entitle me to register as a voter in said parish, and of having been refused, denied or unable to obtain registration by J. G. P. Hooe, supervisor of registration.

I further state that I offered to the commissioner of election at said poll for deposit in the ballot box the ballot hereunto attached, and said commissioner refused to receive said ballot, and illegally and wrongfully prevented the ballot attached from being placed in the ballot box and counted, to the denial of my right as a citizen and legal voter. I further demand, under the provisions of the act of Congress, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

[Ballot Attached.]

Regular National Republican Ticket—Election November 4, 1872: For President, General U. S. Grant. For Vice President, Henry Wilson.

Presidential Electors at Large—M. F. Bonzano, Jules Lanabere, Charles E. Halstead. First District, L. C. Roudanez; Second District, A. K. Johnson; Third District, Milton Morris; Fourth District, Joseph Taylor; Fifth District, John Ray.

State Ticket—Election November 4, 1872—For Governor, William Pitt Kellogg; Lieutenant Governor, C. C. Antoine; for Auditor of Public Accounts, Charles Clinton; Secretary of State, P. G. Deslonde; Attorney General, A. P. Field; Superintendent Public Education, W. G. Brown; Congress at Large, P. B. S. Pinchback; Forty-second Congress, short term, Harry Lott; Forty-third Congress, Samuel Peters; for District Judge, Ninth Judicial District, John Osborn; for District Attorney, N. A. Robinson; for Senator, Twenty-third Senatorial District, George Y. Kelso.

Parish Ticket, Rapides Parish—Parish Judge, C. V. Ledoux; Sheriff, John DeLacey; Recorder, V. M. Porter; Coroner, W. H. Shadburn; Clerk of Court, William Hustmeyre; House of Representatives, Joseph Connaughton, Henry Worthy, John Mayon. Police Jurors—First, John Clements; Second, William Kelso; Third, T. G. Compton; Fourth, Jesse Clifton; Fifth, M. C. Barbee. Justice of the Peace—Alexandria, T. J. Severns; Cotile, Louis Goldman; Pineville, W. L. Gray; Rapides, Henry King; Lamourie, Dawson Allen; Spring Hill, Robert Duke; Cheneyville; Jesse Ford. For Constables—Pineville, Jacob Kennedy; Rapides, Jack Josiah; Cotile, John Jackson; Lamourie, Cæsar Morgan; Spring Hill, Turner Wiggins; Cheneyville, David Jones.

his
SAM ✕ BROWN.
mark.

Signatures of two witnesses who are cognizant of the truth of affidavit.
L. J. KENNEDY,
CARTER CARR.

Subscribed and sworn to this fourth day of November, 1872, before me.
THOMAS J. SEVERNS,
Justice of the Peace.

PARISH OF RAPIDES, }
November 4, 1872. }

I certify that I was at the polling place above mentioned, on the day of election, November 4, 1872, and that the statement of Sam Brown, above subscribed to, is true in every particular.

J. W. PORTER,
United States Supervisor of Election at said Poll.

An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes. Approved May 31, 1870.

SEC. 3. That, whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, an act is, or shall be required to be done by any citizen as prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer, charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act; and any judge, inspector, or other officer of election, whose duty it is or shall be to receive, count, certify, register, report or give effect to the vote of any such citizen, who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen, upon the presentation by him of his affidavit, stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall, for any such offense forfeit and pay the sum of $500 to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the court shall deem just, and shall also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than $500, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 8. That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act, and also concurrently with the circuit courts of the United States, of all causes, civil and criminal, arising under this act, except as herein otherwise provided, and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing the United States courts; and all crimes and offenses committed against the provisions of this act may be prosecuted by the indictment of a grand jury, or in cases of crimes and offenses not infamous, the prosecution may be either by indictment or information filed by the district attorney in a court having jurisdiction.

SEC. 23. That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice President, Representative or delegate in Congress, or member of a State Legislature, by reason of the denial to any citizen or citizens who shall offer to vote of the right to vote on account of race, color or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote on account of race, color or previous condition of servitude, such suit or proceedings may be instituted in the Circuit or District Court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment of the constitution of the United States and secured by this act.

EXHIBIT IV.

[NOTE—If after any person has been registered the supervisor wrongfully strikes the name of such person from the registration list, or if for any other reason the vote of a duly qualified voter is refused, fill out the following affidavit and deliver same to United States supervisor of the poll where the vote was refused, who will return same to F. A. Woolfley, chief supervisor.]

State of Louisiana, parish of Orleans, seventh ward.—On the fourth day of November, 1872, I, Eugene Charles, a duly qualified voter in the parish of Orleans, seventh ward, presented myself at the polling place located at Frenchmen, seventh ward, in said parish, which had been designated by the supervisor of registration as a poll, and claimed the right to vote; that I exhibited to the commissioner of election at said poll a certificate of registration furnished me during the registration of 1870, a copy of which is attached, showing me to be entitled to vote in the aforesaid parish. That the commissioners alleged that my name did not appear upon the registration list.

[NOTE.—Or if the voter has lost his certificate, here state the fact, giving the year it was issued.]

I further state that I offered to the commissioners of election at said poll for deposit in the ballot box the ballot hereunto attached, and said commissioners refused to receive said ballot, and illegally and wrongfully prevented the ballot attached from being placed in the ballot box and counted, to the denial of my rights as a citizen and legal voter; I further demanded, under the provisions of the act of Congress entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31, 1870, that my ballot be counted and returned for the several candidates named thereon, as provided by said act.

[Ballot Attached.]

Regular National Republican ticket—Election November 4, 1872.—For President, General U. S. Grant; for Vice President, Henry Wilson.

Presidential Electors—At large, M. F. Bonzano, Jules Lanabere, Charles E. Halstead; first district, L. C. Roudanez; second district, A. K. Johnson; third district, Milton Morris; fourth district, Joseph Taylor; fifth district, John Ray.

State Ticket—Governor, William Pitt Kellogg; Lieutenant Governor, C. C. Antoine; Auditor of Public Accounts, Charles Clinton; Secretary of State, P. G. Deslonde; Attorney General, A. P. Field; Superintendent of Public Education, W. G. Brown; Congress at large, P. B. S. Pinchback; Forty-third Congress, first district, J. H. Sypher; General Assembly, Senator, Third Senatorial District, J. A. Masicot; House of Representatives, seventh ward, L. S. Rodriguez, John Barrow.

Parish Ticket, Orleans parish—Civil sheriff, C. S. Sauvinet; criminal sheriff, J. L. Herwig; district attorney, F. G. Chamberlain. District judges—First District Court, M. A. Dooley; Second District Court, S. Belden; Third District Court, E. Meunier; Fourth District Court, B. L. Lynch; Fifth District Court, J. W. Gurley; Sixth District Court, Alfred Shaw; Seventh District Court, Samuel R. Walker; Eighth District Court, H. C. Dibble. Clerks of courts—First District Court, A. F. Lynd; Second District Court, F. Pace, Jr.; Third District Court, Charles A. Baquie; Fourth District Court, Edward DeBlois; Fifth District Court, Joseph Presas; Sixth District Court, John Kaiser; Seventh District Court, J. O. Lainez; Eighth District Court, Thomas Lynne; coroner, Second and Third Districts, A. Cagnolatti; fourth justice of the peace, Fred Toebelmann; constable, fourth justice court, Jules Gomez.

City of New Orleans municipal ticket—Mayor, W. R. Fish; Administrator of Finance, Felix Labatut; Administrator of Police, C. J. Adolph; Administrator of Improvements, James Lewis; Administrator of Commerce, C. W. Ringgold; Administrator of Public Accounts, S. D. Moody; Administrator of Assessments, T. Lilienthal; Administrator of Waterworks, P. Coyle.

His
EUGENE ✕ CHARLES.
mark.

Attest: F. A. W.

Derbigny, between St. Bernard and —— streets. Inquire of John Langhouse, seventh ward.

Signatures of two witnesses who are cognizant of the truth of the affidavit.

Subscribed and sworn to this fourth day of November, 1872, before me.
F. A. WOOLFLEY,
United States Commissioner.

PARISH OF ORLEANS, }
Seventh Ward, November 4, 1872. }

I certify that I was at the polling place above mentioned, on the day of election, November 4, 1872, and that the statement of Eugene Charles, above subscribed to, is true in every particular.

United States Supervisor of Election at said Poll.

Judgment.

United States Circuit Court, in equity, No. 6830—William Pitt Kellogg vs. Henry C. Warmoth et als.—This application comes before me under a bill to preserve evidence to enable the complainant to prosecute a suit at law. This bill is well known to courts of chancery, and is founded upon the statute, being chapter 101 of the second session of the Forty-first Congress, Sixteenth Statutes at Large, page 140, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," and upon the amendment to the same, being chapter ninety-nine of the third session of the same Congress, Sixteenth Statutes at Large, page 433. Section one of the first act cited provides as follows:

That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections without distinction of race, color or previous condition of servitude, any constitution, law, custom, usage or regulation of any State or Territory, by or under its authority, to the contrary notwithstanding.

Section three of the same act provides:

That whenever by, or under, the authority or laws of any State, or the laws of any Territory, any act is or shall be required to be done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting therein, be deemed and held as a performance in law of such act. And the person so offering and failing as aforesaid, being otherwise qualified, shall be entitled to vote in the same manner and in the same extent as if he had in fact performed such act.

Section twenty-three provides as follows:

That whenever any person shall be defeated or deprived of his election to any office except elector of President or Vice President, Representative or delegate in Congress, or member of a State Legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote on account of race, color or previous condition of servitude, his right to hold and enjoy any such office and the emoluments thereof, shall not be impaired by such denial.

And section fifteen of the amending act provides as follows:

That the jurisdiction of the Circuit Court of the United States shall extend to all cases in law or equity arising under the provisions of this act, or the act hereby amended, and if any person shall receive any injury to his person or property for, or on account of any act by him done, under any of the provisions of this act or the act hereby amended, he shall be entitled to maintain a suit for damages thereof in the Circuit Court of the United States, in the district wherein the party doing the injury may reside or shall be found."

These two acts were passed by Congress to enforce the provisions of the constitution of the United States known as the fifteenth amendment. 16 Statutes at Large, page 1131, which reads as follows:

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The whole matter involved in the discussion which has occupied more than a week before me has been presented on both sides with such ability, research and fullness that I feel greatly indebted to the solicitors of both the complainant and the respondents for the aid which they have rendered in enabling me to come to an early decision.

The first question to be solved is, are the acts referred to constitutional? Do they fall within the appropriate legislation authorized and imposed as a duty upon Congress by the second section of the amendment? To solve this question we must look to the object proposed to be attained by the amendment. It was to protect all citizens of the United States, including the recently emancipated and enfranchised colored citizens in the full and free exercise of the right to vote. Nine years previous to the adoption of the amendment, and the enactment of the statutes passed to enforce the same, 4,000,000 of those who now constitute the great body of the citizens of the United States were slaves. It is not necessary here to repeat the history of slavery in this country. How it was, and continued to be from the very foundation of our government, a source of internal disquiet, increasing year by year until it culminated in a most bitter and devastating civil war. The result of that war was the emancipation and enfranchisement of 4,000,000 of people, who thus passed rapidly from a state of bondage to the possession of all the civil and political rights of citizens of the United States. It was impossible that so large a body of people should be suffered to remain exposed to the assaults of the prejudice naturally growing out of their former condition without securing to them, through congressional legislation, a free and perfect use of the vote which the fifteenth amendment gave to them as a shield and a sword of protection for their persons, their liberties and their property.

Congress has legislated and given us the acts referred to as the means most appropriate for effecting the object proposed. These acts have been highly eulogized by the solicitors on both sides, and they seem to me to be most wise and in the highest sense appropriate. It is to be remarked that the fifteenth amendment is most broad in its comprehensiveness. Though called into existence in order to protect the freedman, it protects as well all other citizens, both native and foreign. It would protect the foreigner who had become a citizen should another Know Nothing excitement agitate the nation, and it would protect the native born should the foreign born citizen ever gain in any State or locality an ascendency, and attempt to use that ascendency oppressively. The same may be said of the acts of Congress to give practical effect to the amendment. The provision of the constitution, that no State shall pass a law impairing the obligations of contracts needed no legislation to enforce it beyond giving the right of review in the Supreme Court of the United States to the party feeling himself aggrieved. But in the case of the fifteenth amendment, the helplessness of the party to be protected rendered a larger and peculiar jurisdiction necessary.

Congress, then, in the acts under consideration, throw around all classes of citizens these effective laws, and secured obedience thereto—first, by criminal punishment; and second, by clothing the candidate of the voter with the right to prevent or redress the wrong attempted or perpetrated upon the vote by an appropriate civil action. Now, what are the grievances set forth in this case? What are the allegations made in the bill? They are, that 10,000 citizens of this State have been, on account of race, color and previous condition, deprived of registration, and after due proffer of the right to vote, and that that 10,000 votes, which were in fact cast for the complainant for the office of Governor, have been, or are about to be suppressed by an illegally constituted board of returning officers, and that without the interference of this court these votes, both those refused and those cast, which ought to be counted for the complainant, will be lost to him, and that thereby he will be defeated for said office.

These allegations are supported by upward of four thousand affidavits of the actual voters. The chief defendant, namely, H. C. Warmoth, meets this weight of testimony solely by his answer and affidavit, and certain acts done by him since the canvass commenced force upon my mind the belief that his defense rests upon no solid foundation. The further allegation is made that the board of canvassers, legally constituted, are deprived by this respondent of the proper returns with the view to deprive the citizens of the right to vote. In other words, that the respondent has prevented a fair canvass of the votes by impeding the legal board and setting up an illegal board. This leads me to consider the facts with reference to these two boards.

By an act of the State Legislature of March 16, 1870, the board of returning officers was made to consist of the Governor, Lieutenant Governor, Secretary of State, Mr. Lynch and Mr. Anderson. The Lieutenant Governor and Mr. Anderson being disqualified on account of having been candidates, the Governor, Lynch and Herron, as a majority of the board, met to fill vacancies. The Governor attempted to remove Herron, who was certainly *de facto* Secretary of State, who seems to have some sort of judgment in his favor against Bovee, the elected Secretary of State, who has for a long period attested all the statutes of the State, and who, without going into his title to the office as against Bovee, was the *de facto* officer clothed with sufficient authority to act as one of the board. The attempt to remove Herron I dismiss with the remark that if all the Governor alleges against him had been true, it could have been established only by judicial inquiry, and gave the Governor no right to displace him. Herron and Lynch by a majority vote filled the vacancies by electing Hawkins and General Longstreet, and these four, together with the Governor, are clearly the legal board of returning officers. Wharton's vote goes for nothing, as he never had any legal status in the board, and with him necessarily fall out DaPonte and Hatch. Thus it appears that the board which we will call the Herron board, in contradistinction to the Wharton board, is the board which this court feels bound to recognize as having been the legal board at the time this suit was commenced. And this brings me to inquire as to the effect of the approval by the Governor of the act of November 29, 1872, the only question before me at this stage of the case connected with the effect of that approval is, did it change in any way the legal status of the Herron board? The act contained a repealing clause, and since it covered the whole subject of the election, and the election can not be said to be complete until the final counting is concluded, I was at first startled by what seemed to me to be the logical inference of some of the authorities cited by the learned solicitors of the respondents, that if the act of 1870 was at that time repealed, it might vitiate the whole election. But it is not necessary for me to pass upon the question, for giving the act of November 29, all the force of law, the Herron returning board must continue to discharge their duties until their successors are inducted into office. Article 122 of the State constitution of 1868 reads thus.

ART. 122. All officers shall continue to discharge the duties of their offices until their successors shall have been inducted into office, except in cases of impeachment or suspension.

Indeed, the Herron board must finish the canvass of the votes, or a new Legislature can not be legally organized so as to create a board of canvassers in accordance with sections two and forty-four of the law of the twentieth of November, 1872:

SEC. 2. Be it further enacted, etc., That five persons, to be elected by the Senate from all political parties shall be the returning officers for all elections in the State, a majority of whom shall constitute a quorum; and have power to make the returns of all elections. In case of any vacancy by death, resignation, or otherwise, by either of the board, then the vacancy shall be filled by the residue of the board of returning officers. The returning officers shall, after each election, before entering on their duties, take and subscribe to the following oath before a judge of the Supreme or any district court:

I, A. B., do solemnly swear (or affirm) that I will faithfully and diligently perform the duties of a returning officer as prescribed by law; that I will carefully and honestly canvass and compile the statements of the votes, and make a true and correct return of the election. So help me God.

Within ten days after the closing of the election said returning officers shall meet in New Orleans to canvass and compile the statement of votes made by the commissioners of election, and make returns of the election to the Secretary of State. They shall continue in session until such returns have been compiled. The presiding officer shall, at such meeting, open, in the presence of the said returning officers, the statements of the commissioners of election, and the said returning officers shall, from said statements, canvass and compile the returns of the election in duplicate; one copy of such returns they shall file in the office of the Secretary of State, and of one copy they shall make public proclamation by printing in the official journal and such other newspapers as they may deem proper, declaring the names of all persons and officers voted for, the number of votes for each person and the names of the persons who have been duly and lawfully elected. The return of the election thus made and promulgated shall be prima facie evidence in all courts of justice and before all civil officers until set aside after a contest according to law, of the right of any person named therein to hold and exercise the office to which he shall by such return be declared elected. The Governor shall, within thirty days thereafter, issue commissions to all officers thus declared elected, who are required by law to be commissioned.

SEC. 44. Be it further enacted, etc., That it shall be the duty of the Secretary of State to transmit to the Clerk of the House of Representatives and the Secretary of the Senate of the last General Assemby a list of the names of such persons as, according to the returns, shall have been elected to either branch of the General Assembly; and it shall be the duty of the said Clerk and Secretary to place the names of the Representatives and Senators elect so furnished upon the roll of the House and of the Senate, respectively; and those Representatives and Senators whose names are so placed by the Clerk and Secretary, respectively, in accordance with the foregoing provisions, and none other, shall be competent to organize the House of Representatives or Senate. Nothing in this act shall be construed to conflict with article thirty-four of the constitution of the State.

I see, therefore, no way of avoiding the conclusion, that in any view of the case the Herron board of returning officers are still authorized to continue their duties, and are still entitled to the protection of the court.

The court keeps within the acts of Congress and the fifteenth amendment. It does not pretend in any way to make a Governor of the State, or in any degree to interfere with the voice of the people expressed through the ballot box. What it does is to aid in making known the voice of the people in accordance with sections three and twenty-three of the act of Congress and with section fifteen of the amendment thereto, and in its action is only a clearly needed adjunct of the legal returning board. Many propositions were discussed during the argument which it is not necessary for me to now pass upon. It is enough that I find the statute constitutional, that the court has jurisdiction, and that the board of returning officers, composed of H. C. Warmoth and Messrs. Hawkins, Lynch, Longstreet and Herron, are the legal board, and as such entitled to the protection of this court.

As to the question of the ineligibility of the complainant in the bill to the office of Governor, this question can not arise under the bill, and could only come before this court in a direct action at law to test the title to the office. It is not, therefore, necessary or proper for me to decide it now; but were it otherwise, I would say that the reason of the thing seems to favor his eligibility, the object of the provision of the constitution being to prevent a man serving two masters and having a divided allegiance. And the fact that contemporaneously with the adoption of the constitution, which first contained this provision, the then territorial Governor was by the then constitutional convention made Governor of the State provisionally, and at the ensuing election, made by the people, the first Governor of the State, would seem to indicate that the meaning of the inhibition was understood to be as I above stated.

It only remains for me now to make the following orders:

That the said defendant, Henry C. Warmoth, during the pendency of this cause, be, and he hereby is, until the further order of this court, enjoined, inhibited and restrained from in any manner, either directly or indirectly, considering or pretending to consider, or canvass any statement, certificate or return of any supervisor or assistant supervisor of registration, or any officer having any duties to perform about or concerning an election held on the fourth day of November, A. D. 1872, in the State of Louisiana, or relating to any votes or ballots cast at said election, except in the presence of John Lynch, Jacob Hawkins, James Longstreet and George E. Bovee, a board of returning officers for said election; and that he do further desist and refrain from submitting or allowing to be submitted, or from aiding or assisting in the submission to the defendants, Frank Hatch, Jack Wharton, Durant DaPonte, or any other person or persons whatsoever, other than the said Hawkins, Bovee, Lynch and Longstreet, any paper document, affidavit, statement of votes, return of officers of election, or other proof in any manner relating to said election, and from allowing any other person or persons whatsoever, other than those in this order excepted, whether pretending to act as returning officers, or in any other capacity, to inspect, consider, have access to, canvass or tamper with any paper document, affidavit, statement of votes, returns or written proof relating to said election or to the fairness and correctness thereof, that may have heretofore or may hereafter come into his hands or possession, and which, by law, should properly be laid before, submitted to or considered by such returning officers of election in making a canvass thereof. And that the said defendant, H. C. Warmoth, be further enjoined and inhibited from altering, suppressing, mutilating, destroying or secreting any such document, proof or paper. And that he further desist and be enjoined from in any manner interfering with, obstructing or hindering the said Lynch, Longstreet, Bovee and Hawkins, or either of them, from full and complete access to, as well as custody of, all such documents, papers and proofs relating to said election, as he may or shall have in his possession, custody or control, or as they shall or may demand, either by refusing to deliver such documents or proofs to them, or either of them, or by any suit or proceeding instituted with the intent to hinder, delay or obstruct them in the performance of their duty as returning officers. And that he be further restrained and enjoined from issuing commissions to any persons based upon any calculation, deduction or pretended canvass of ballots cast at said election, or make, publish, sign or deposit in the office of the Secretary of State, or in any other public office, or cause to be so deposited any document, statement of persons elected to any offices or positions of trust at said election, and from giving any effect to the same if already filed and deposited, unless the same be with the concurrent action and lawfully given consent of the said Lynch, Hawkins, Bovee and Longstreet, or a majority thereof, or of a sufficient number of them to constitute a majority of a board of returning officers, acting as such returning officers.

And it is further ordered that the said defendants Jack Wharton, Frank H. Hatch, Durant DaPonte and the New Orleans Republican Printing Company until the final hearing of this cause or until the further order of the court, be severally and respectively enjoined and restrained to the same extent, effect and manner as said complainant has in his said bill of complaint prayed, they may severally and respectively be restrained. And that writs of injunction in due form of law issue against the said defendants, in accordance with the terms of this order. And that the returning order heretofore issued and allowed in this cause continue in full force and effect until the court shall otherwise order.

And in order that the evidence relating to said election may be perpetuated and preserved, that it may be of avail upon the hearing of this cause, and in any cause which the said complainant may hereafter be compelled to institute and prosecute to test or determine his right to the office of Governor of said State, and in order that public inconvenience may not result therefrom, it is further ordered that the said Henry C. Warmoth do forthwith and without delay deliver unto the said returning officers, John Lynch, George E. Bovee, Jacob Hawkins and James Longstreet, each and every paper, document, affidavit, tally sheet, list, sworn statement, certificate, letter, communication or proof which he has or may have in his possession, or which may hereafter come into his possession from any supervisor or assistant supervisor of registration or election or any officer or person commissioner or commissioners in any manner concerned in the conduct, control, management or direction of the said election, held on the fourth day of November, A. D. 1872, in any manner relating to said election, or any voting or ballots cast at said election or in any manner relating thereto, in order that they may consider, canvass and make due return thereof, as required by law; and when the same are no longer required for the purpose of said canvass, it is ordered that the said defendant, H. C. Warmoth, do thereafter immediately file and deposit the same with the clerk of this court, there to remain until true, accurate and complete attested copies thereof be made by the clerk, subject to the direction of the court.

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District Court of the United States of America for the District of Louisiana.

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