[CONTINUED FROM THIRD PAGE.]

and petitioner further prays for costs and all general relief.

Simeon Belden, Attorney General; A. P. Field and J. Q. A. Fellows, of counsel.

Filed fourteenth November, 1872.

ROBERT LYNNE, Deputy Clerk.

Eighth District Court, No. ——. State of Louisiana, ex rel., Attorney General, on information of F. J. Herron et als. vs. Jack Wharton, F. H. Hatch and Durant DaPonte. The supplemental petition of the plaintiffs herein respectfully represents:

That all the allegations in the original petition are true, and in addition thereto that the attempt of the said defendants to act in the manner alleged in said petition, and to sit as the returning officers of elections and to act as such returning officers, will defeat the object of this suit and render nugatory the judgment therein prayed for, and that an injunction is necessary to prevent such a defeat of the objects of this suit, and prevent the law and the rights of the State and the parties in interest from being violated;

Wherefore petitioner prays for a writ of injunction against said Jack Wharton, F. H. Hatch and Durant DaPonte, injoining and restraining them from in any way or manner, either directly or indirectly, sitting or acting as returning officers of elections, and especially of the election held in this State on the fourth of November instant, or from in any manner interfering with the returning officers named in this petition for whose benefit this suit is brought, and from intruding into and usurping the office of returning officers of elections, and from in any way interfering or hindering the returning officers, and especially Frank J. Herron, James Longstreet and Jacob Hawkins in the discharge of or from their performing the duties of such returning officers, and petitioner further prays that after all due proceedings this injunction be made perpetual and for costs and all general relief.

Simeon Belden, Attorney General; A. P. Field and J. Q. A. Fellows, of counsel.

Personally appeared the undersigned, who being duly sworn, says that all the allegations and statements of fact in the foregoing supplemental petition are true, and that an injunction is necessary.

F. J. HERRON.

Sworn to and subscribed before me, this fourteenth November, 1872.

THOMAS LYNNE, Clerk.

Filed fourteenth November, 1872.

ROBERT LYNNE, Deputy Clerk.

Let the defendants be ordered to show cause on Saturday, November 16, at 11 A. M., why an injunction should not issue as within prayed for and according to law. Meanwhile let the defendants be ordered to desist from the acts complained of until the swearing and determination of this rule.

New Orleans, November 14, 1872.

HENRY C. DIBBLE, Judge.

Let writs of injunction issue as within prayed for without bond, the State being plaintiff.

New Orleans, November 19, 1872.

HENRY C. DIBBLE, Judge.

Eighth District Court, Nos. 13,545 and 13,546. The State of Louisiana ex rel., etc., vs. Jack Wharton. The State of Louisiana ex rel., etc., vs. F. H. Hatch, Durant DaPonte, etc.—The defendants for cause why the injunction should not issue in these cases as prayed for and for answer to the rule nisi, say:

First—The petition discloses no cause of action of which this court has jurisdiction.

Second—The said Wharton, as appears by the affidavits on file, was duly appointed to discharge the duties of the office of Secretary of State during the suspension of George E. Bovee, and he is actually and peaceably in the discharge of said duties now, and was so at the time the petition and supplemental petition were filed.

Third—That as it appears by the affidavits on file the said F. H. Hatch and Durant DaPonte were duly summoned to act as returning officers for the election held the first Monday of November, 1872, being the fourth day of said month, and qualified as such, and their selection and appointment are valid.

Filed November 16, 1872.

O. M. TENNISON, Deputy Clerk.

Eighth District Court, No. 13,545. The State ex. rel. Attorney General vs. Jack Wharton.—Now comes H. C. Warmoth, by his counsel, Semmes & Mott, and moves to dismiss the proceedings taken in this case in his name and without his authority, he having never authorized the same.

H. C. WARMOTH.
Semmes & Mott.

Not granted but simply filed, by order of the court.

Filed November 16, 1872.

O. M. TENNISON, Deputy Clerk.

Eighth District Court.—H. C. Warmoth et als. vs. F. J. Herron et als.—John Lynch being duly sworn, says that he is the person named by statue 100 of the acts of 1870 as returning officer of elections; that on Tuesday, November 12, 1872, there met of the said returning officers in the parlor of the Governor of the State, the following persons: Henry C. Warmoth, F. J. Herron, P. B. S. Pinchback and affiant; that all four were mutually recognized as such returning officers, though the question was raised as to the eligibility of P. B. S. Pinchback, Lieutenant Governor, to act at this election, he being a candidate, but no determination was arrived at. No question was made as to the qualification of the other three members of the board as named above. The board proceeded to an organization by electing Governor H. C. Warmoth, , and John Lynch, affiant, Secretary, when, there being no magistrate present to administer the oath of office required by the statue, the board adjourned to meet the next day at 12 M., at the same place. F. J. Herron during all this time was recognized by affiant and Governor Henry C. Warmoth as Secretary of State, and as such as one of the returning officers designated by law, and no question was raised as to his character or status as such returning officer. That on the next day the board met according to the above adjournment, the members present as before, when after discourse thereupon, the question of the eligibility of Lieutenant Governor Pinchback was temporarily postponed, and the Chief Justice of the Supreme Court of the State, Hon. John F. Ludeling being present, he being requested, administered the oath of office as returning officers to H. C. Warmoth, F. J. Herron and affiant; the oath was administered simultaneously to the three, each one rising from his seat and neither objecting to any other, but all at least tacitly consenting to the eligibility of each other as legally members of the board of returning officers; each of the three members then resumed their seats, and without turning aside to any other business proceeded to act upon the eligibility of Lieutenant Governor Pinchback, who, on motion of affiant and by his vote and that of F. J. Herron, was declared ineligible by Governor H. C. Warmoth, the president of the board. From that moment, the Governor, H. C. Warmoth, did not leave the table nor sign any document removing F. J. Herron from the office of Secretary of State, nor any commission of Jack Wharton as Secretary of State until after the board adjourned and until after the affiant had left the room with the minutes of the proceedings of the board in his possession, and which he took with him as secretary. That what followed in the proceedings of the board, and immediately after the announcement of the result of the vote on the motion of affiant declaring Lieutenant Governer Pinchback ineligible as returning officer of this election is detailed in the minutes of the proceedings hereto annexed and made a part marked exhibit A—(that the Governor, after receiving the vote of F. J. Herron as a member of the board of returning officers, and after joining with him in taking the oath of office from the Chief Justice, did not sign any document removing F. J. Herron from office or appointing Jack Wharton to office until after the board adjourned; that what he may have done subsequently in that regard affiant does not know)—that the motion was made by F. J. Herron and voted for by him and affiant, appointing James Longstreet and Jacob Hawkins returning officers, as detailed in the proceedings, exhibit A. That affiant did vote loudly "No," on the motion of Governor Warmoth to appoint Durant DaPonte and F. H. Hatch as returning officers of election, and that Jack Wharton did not vote, he never having taken the oath of office as returning officer, had he even been Secretary of State. That he did not take such oath in the presence of the board, nor was ever any certificate of such oath exhibited to the board. Affiant further says that it is not true that the oath of office had been administered to Durant DaPonte and F. H. Hatch as returning officers before he left the room, or that they had taken their seats at the board; that the board adjourned while Messrs. DaPonte and Hatch were holding up their hands and Judge Cooley was administering to them the oath of office. Affiant, with the minutes of the proceedings in his possession and in company with F. J. Herron, left the room; that he went without delay to his room, at once proceeded to put the proceedings of the board in form while the whole thing was fresh in his mind, and that the exhibit A is a correct copy of those minutes, and that the minutes are true and correct. That subsequently, on the same day, affiant and F. J. Herron jointly notified James Longstreet and Jacob Hawkins of their appointment, and received from them the certificate of the oath of office as returning officers, and saw the oath administered by the Chief Justice Ludeling, all on the same day. Affiant further says that when he, on consultation with the Secretary of State, F. J. Herron, had concluded that James Longstreet and Jacob Hawkins being, as he believed and does believe, fair and just men, would be suitable persons to fill the vacancy caused by the disqualification of Messrs. Pinchback and Anderson, and he attended the meeting of the board, the two sessions held by the board on Tuesday and Wednesday, the twelfth and thirteenth instant, with intention of voting for them to fill said vacancies.

JOHN LYNCH.

Sworn and subscribed to before me, this nineteenth day of November, 1872.

THOMAS LYNNE, Clerk.

Filed November 19, 1872.

O. M. TENNISON, Deputy Clerk.

A true copy:

ROBERT LYNNE, Deputy Clerk.

[Copy of record of and affidavits in suit No. 13,546, in Eighth District Court for the parish of Orleans.]

To the Honorable the Eighth District Court for the Parish of Orleans:

The petition of the State of Louisiana through Simeon Belden, Attorney General, upon the information of Francis J. Herron, a resident of the city of New Orleans, with respect, shows:

That the said Francis J. Herron, joined with the State of Louisiana, is legally entitled to possession, and is in actual possession of the office of Secretary of the State of Louisiana; that he is entitled to hold and to exercise the functions and duties of said office until his successor, elected at the general election held in the State of Louisiana, on the fourth day of November, 1872, shall have been lawfully inducted into the said office.

The petitioner further represents that one Jack Wharton, a resident of the city of New Orleans, is illegally assuming to be, and is illegally asserting a right to the possession of the said office of Secretary of State, in violation of the constitution and laws of the State of Louisiana; that the said Jack Wharton has no color of right or authority to possess or exercise the functions of the said office, or to possess the said office, but that, nevertheless, he asserts himself to be and assumes to be Secretary of State as aforesaid; and to that extent the said Jack Wharton is illegally and unconstitutionally usurping and intruding into the said office, in violation of the constitution and laws as aforesaid.

The State of Louisiana, by these proceedings, joins the said Francis J. Herron herewith, and prays that the said Jack Wharton may be cited to appear and answer these proceedings; and that, after all due and legal proceedings had, that he may be decreed to be usurping, intruding into, and unlawfully assuming or asserting the right to exercise the functions of the office of Secretary of State as aforesaid. And furthermore, the petitioners pray that a judgment may be rendered in favor of the plaintiff, and in favor of the said Francis J. Herron, Secretary of State as aforesaid, herewith joined with the State of Louisiana, decreeing the said Francis J. Herron to be entitled to have and to hold the office of Secretary of State, and to be entitled to exercise the functions of said office; and that the decree may be so rendered as to maintain him in possession of said office until his successor has been inducted into office as aforesaid.

The petitioner prays for all such further and general relief as the exigencies of the case may demand or the law warrant, and for costs.

Simeon Belden, Attorney General of Louisiana; A. P. Field and J. Q. A. Fellows, of counsel.

Filed November 14, 1872.

ROBERT LYNNE, Deputy Clerk.

To the Honorable Eighth District Court for the Parish of Orleans:

The supplemental petition of the State of Louisiana, through Simeon Belden, Attorney General, and of Francis J. Herron, Secretary of State of the State of Louisiana, with respect represents:

That these proceedings have been taken and are had with the view of maintaining the said Francis J. Herron, herewith joined with the State of Louisiana, in possession of the office of Secretary of State, which the said Francis J. Herron is now legally and actually possessing and exercising; that Jack Wharton, defendant herein, has threatened and is now attempting, in violation of the constitution and laws of the State, to take forcible possession of the office of Secretary of State of the State of Louisiana, and is, by force and arms, asserting a right to possess and exercise that office; and that the said defendant, Jack Wharton, is furthermore attempting, illegally and unconstitutionally, to exercise certain of the functions pertaining to the office of Secretary of State, which are not actually discharged in the office of the Secretary of State, especially the right to sit as a member of the returning board, organized for canvassing the returns of the general election under the act relative to elections in the State of Louisiana.

The petitioner further represents that, in order to prevent a violation of the constitution and the law, and in order to maintain the said plaintiff in the possession of said office pending these proceedings, in conformity to the constitution and the laws, and in order to prevent the said Jack Wharton from asserting a right to or attempting to obtain possession of the said office of Secretary of State, and in order to prevent the said defendant from attempting to exercise any of the functions of the office of Secretary of State, or doing any act pertaining to said office, and especially to prevent the said defendant from attempting to exercise the duties of a member of the returning board, under the law relative to elections in the State of Louisiana, it is necessary that a writ of injunction issue, restraining the said defendant from attempting to assert a right to the office of Secretary of State, or to exercise any of the functions of said office.

Wherefore the petitioner prays that the said Wharton be cited to answer this petition; that a writ of injunction may issue herein, injoining Jack Wharton, defendant herein, from attempting by any manner or form to obtain possession of the office of Secretary of State of the State of Louisiana, and injoining him, the said Jack Wharton, from asserting a right to the said office in any other manner than by legal proceedings in accordance with law, and injoining him, the said defendant, from exercising or attempting to exercise any of the functions of the office of Secretary of State, and especially injoining him, the said defendant, from attempting to exercise, or from exercising any of the functions pertaining to the office of Secretary of State in connection with the canvass and returns of the general election held throughout the State of Louisiana on the fourth day of November, 1872.

The petitioner prays for general relief and for costs. S. Belden, Attorney General of Louisiana. J. Q. A. Fellows and A. P. Field, of Counsel.

Personally appeared the undersigned, who being duly sworn, says all the facts and allegations in the foregoing petition are true.

F. J. HERRON.

Sworn to and subscribed before me this fourteenth day of November, 1872.

ROBERT LYNNE, Deputy Clerk.

Let this supplemental petition be filed and the defendant be cited. Let the defendants be ordered to show cause, on Saturday, November 16, at 11 A. M., why an injunction should not issue, as within prayed for and according to law. Meanwhile, let the defendants be ordered to desist from acting, or assuming to act, as returning officers until the hearing and determination of this rule.

HENRY C. DIBBLE, Judge.

New Orleans, November 14, 1872.

Let injunction issue, as within prayed for and according to law, without bond, the State being plaintiff.

HENRY C. DIBBLE Judge.

New Orleans, November 19, 1872.

OATH OF OFFICE.

I, Jack Wharton, do solemnly swear (or affirm) that I have not been convicted of treason, perjury, forgery, bribery, or any other crime punishable by imprisonment in the Penitentiary; and I do further solemnly swear that I am not subject to the disabilities contained in the third section of the fourteenth amendment to the constitution of the United States; that I accept the civil and political equality of all men, and agree to not attempt to deprive any person or persons, on account of race, color or previous condition, of any political or civil right, privilege or immunity enjoyed by any other class of men: that I will support the constitution and laws of this State, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as Secretary of State of Louisiana, according to the best of my ability and understanding, so help me God.

JACK WHARTON.

Sworn and subscribed to before me, this thirteenth day of November, 1872.

Y. A. WOODWARD,
Assistant Secretary of State.

A true copy from the original on file in the office of Secretary of State.

Y. A. WOODWARD,
Assistant Secretary of State.

Personally appeared A. J. Brien, who, being duly sworn, deposes and says, that on Thursday, the fourteenth of November, instant, at about 3 or 4 P. M., in company with F. J. Herron, James Longstreet, William Roy, Timothy Kelly and F. Garret and others, I went to the building known as the Mechanics' Institute, on Dryades street, between Canal and Common, entered the building and the office of the Secretary of State. General F. J. Herron had the key of the office in his pocket, and with the key opened the door. All of the above named persons, including affiant, General Herron at the head, entered the office and remained in said room some twenty minutes or more, and in or about the building some hour or more. No one was there who opposed our entering the room, and no one was in the room on our entering. In a very few minutes quite a crowd entered, among them quite a number of police officers. After quite a prolonged conversation between General Herron and a police officer named George W. Wilder, the said Wilder stating that had charge of that office with orders to let no one enter that office, and especially General Herron, and especially after office hours, General Herron gave me the key of the office, which I have now and have retained ever since. When General Herron left, he went in company with the said George W. Wilder. General Herron directed Colonel William Roy take charge of the office as his Assistant Secretary of State, and directed him with his friends to remain in charge. Affiant and Colonel Roy, when we left the office, left it in charge of the Metropolitan Police, Colonel Roy locking the door, leaving no one inside. I have not been inside the Secretary of State's office since that time, but have been in the Mechanics' Institute building twice. The door was then locked, and some gentleman met me at the door and said there was no admittance. Who he was I do not know.

A. J. BRIEN,
WILLIAM ROY,
FRANCIS GARRETT.

Sworn to and subscribed before me, this eighteenth day of November, 1872.

THOMAS LYNNE,
Clerk of the Eighth District Court, Parish of Orleans.

A. K. Johnson, being duly sworn, deposes and says, that he fully corroborates the affidavit of A. J. Brien and William Roy, and in addition to the statements by them, he states that he was present when General Herron entered the office of Secretary of State with a key that I understood was the key of the office. No one was in the office. General Herron and some friends, named in the affidavit above, remained in the office some half hour. He locked and left Colonel Roy in charge. Neither Wharton, nor any person for him, claimed the office during my stay.

A. K. JOHNSON.

Sworn to and subscribed before me this eighteenth day of November, 1872.

THOMAS LYNNE,
Clerk of Eighth District Court, parish of Orleans.

A true copy.

ROBERT LYNNE, Deputy Clerk.

Filed November 19, 1872.

O. M. TENNISON, Deputy Clerk.

[Answers of H. C. Warmoth to interrogatories.]

Offered by defendants November 25, 1872.

N. B.—The New Orleans *Times* of November 20, 1872, published the law annexed to these answers.

United States Circuit Court, District of Louisiana, in equity.—William P. Kellogg vs. H. C. Warmoth, et als., No. 6830. Now comes Henry C. Warmoth, and for answer to the interrogatories propounded to him in the matter of the order of this honorable court requiring him to show cause why he should not be punished for contempt of the authority of this honorable court, says:

To the first interrogatory. He was served with a copy of the restraining order granted in this cause on the sixteenth November, 1872, at between 5 and 6 P. M.

To the second interrogatory he answers no.

To the third interrogatory he answers yes.

To the fourth interrogatory no, except as hereinafter mentioned.

To the fifth interrogatory no, except as hereinafter mentioned.

To the sixth interrogatory he answers no.

To the seventh interrogatory he answers no.

To the eighth interrogatory he answers no.

To the ninth interrogatory he answers no.

To the tenth interrogatory, as Governor of the State of Louisiana he issued commissions, to the following candidates for office at the election held fourth November, 1872:

William P. Harper, civil sheriff of the parish of Orleans, on the sixteenth instant, at about 6 P. M.

On the twentieth instant, at about ten P. M., he issued, as Governor aforesaid, commissions to the following persons:

Edmund Abell, Judge of the First District Court, parish of Orleans.

A. L. Tissot, Judge of the Second District Court for the parish of Orleans.

F. A. Monroe, Judge of the Third District Court for the parish of Orleans.

E. North Cullom, Judge of the Fifth District Court for the parish of Orleans.

A. Saucier, Judge of the Sixth District Court for the parish of Orleans.

T. Wharton Collens, Judge of the Seventh District Court for the parish of Orleans.

W. A. Elmore, Judge of the Eighth District Court for the parish of Orleans.

Isaac W. Patton, criminal sheriff for the parish of Orleans.

Frank Pace, clerk of the Second District Court for the parish of Orleans.

Thomas Duffy, clerk of the Fifth District Court for the parish of Orleans.

E. T. Manning, clerk of the Eighth District Court for the parish of Orleans.

H. N. Ogden, Attorney General of the State of Louisiana.

J. J. O'Brien, clerk of the Sixth District Court for the parish of Orleans.

John McPhelin, district attorney of the parish of Orleans, and other clerks of court of the parish of Orleans.

To the eleventh interrogatory. This interrogatory is answered in the foregoing answers. The commissions were issued on no evidence whatever except that the fact of the election of said officers was notorious.

To the twelfth interrogatory he answers no.

This respondent, by way of explanation to his answers of the fourth and fifth interrogatories, says that prior to any knowledge on his part of the restraining order, this respondent, as Governor of the State, had received, opened and submitted to the legal returning officers of said election, to wit: Jack Wharton, F. H. Hatch and Durant DaPonte, in conjunction with this respondent, the returns or statements of election received from many parishes in the State, and the same were in process of examination by clerks employed with the view of tabulation: that after he was served with the restraining order he remained perfectly passive. He is informed and believes said clerks went on with the work of tabulation, but without any direction from this respondent, in order to have the returns ready for submission to and examination by whatever officers should be decreed and held to be the legitimate returning officers of election. This respondent did not believe then, nor does he now suppose, that the restraining order was intended to direct him actively to interfere to arrest this mere clerical labor necessary to prepare the statements then received and opened for submission to the inspection of the legal returning officers, whoever they might be. If he has erred in this respect, it was ignorantly, and with no intention of violating the order of this honorable court.

This respondent further says that in the performance of his constitutional duty as chief executive of the State of Louisiana, he approved and signed, on the twentieth November, 1872, an act of the General Assembly of the State of Louisiana, a copy of which is hereto annexed, and made part hereof.

This respondent further says that he did not for a moment conceive that the restraining order inhibited him from exercising his constitutional functions as Governor of the State of Louisiana in the issue of commissions to any person whom he chose to commission as an officer of the State; such certainly is not the language of the order, and if the act of issuing commissions to the officers mentioned is considered by the court a violation of said restraining order, this respondent distinctly and absolutely disavows any intention to disregard said order, and says he was advised by counsel that the issue of said commissions by him, as Governor of the State, was not inhibited by the provisions of said order, which operated to restrain him only as a returning officer of elections in regard to matters connected with his duties as such returning officer.

H. C. WARMOTH.

Sworn to and subscribed before me this twenty-second November, 1872.

K. LOEW,
United States Commissioner.

[Act No. 98, approved November 20, 1872, already published, is filed here as a part of the defendant's answer.]

[Answers of F. H. Hatch to Interrogatories.]

F. H. Hatch, answers respectfully to all the foregoing interrogatories, that since the service upon him of the restraining order issued in this case, in fact since the filing of the bill of complaint, he has done nothing whatever as returning officer of elections, and he answers all said interrogatories in the negative.

F. H. HATCH.

Sworn to and subscribed before me, November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

[Answers of Jack Wharton to Interrogatories.]

Filed November 22, 1872.

Jack Wharton answers respectfully all the foregoing interrogatories, that since the issue of the restraining order or the filing of the bill of complaint in this court he has done nothing whatever as returning officer of elections, and he answers all said interrogatories in the negative.

JACK WHARTON.

Sworn to and subscribed before me November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

[Answers of Durant DaPonte to interrogatories.]

Filed November 22, 1872.

W. P. Kellogg vs. H. C. Warmoth et al. United States Circuit Court, No. 6830.

Durant DaPonte being duly sworn deposes and says:

In answer to interrogatory No. 1, it is not true as to myself, nor within my knowledge, as to any other defendant in this case.

In answer to interrogatory No. 2, I have not.

In answer to interrogatory No. 3, I have not.

In answer to interrogatory No. 4, I am not aware of the facts stated.

In answer to interrogatory No. 5, no.

DURANT DAPONTE.

Sworn to and subscribed before me November 22, 1872.

F. A. WOOLFLEY,
United States Commissioner.

[Order on F. H. Hatch and Jack Wharton to show cause, etc.]

Entered and filed November 23, 1872.

Circuit Court of the United States, District of Louisiana. No. ——. William P. Kellogg vs. H. C. Warmoth, et als.—And now comes the complainant herein by J. R. Beckwith, William H. Hunt and E. C. Billings, his solicitors, and on suggesting to the court that the said defendants, Jack Wharton and Frank H. Hatch, have failed to comply with the order of this honorable court, ordering and requiring them severally to true, full and complete answers make to the interrogatories filed and exhibited in this cause upon the rule and order requiring them to severally show cause why they should not severally be attached and punished for contempt of court, and it appearing their said several alleged answers are imperfect, partial, evasive and indefinite;

It is ordered that the said defendants, Jack Wharton and Frank H. Hatch, do, on or before 11 A. M., of Monday, the twenty-fifth day of November A. D. 1872, in writing, under their several respective corporal oaths, and according to the best of their several respective knowledge, information and belief, full, true and specific and unevasive answers make to each and every of said written interrogatories so filed and exhibited in this cause.

[Marshal's Return of Service.]

Received, November 23, 1872, by the United States marshal, and on the same day, month and year served a copy hereof on Jack Wharton and Frank H. Hatch by handing the same to each of them in this city, personally.

C. R. STEELE, Deputy Marshal.

[Answers of F. H. Hatch to Interrogatories.]

Filed November 25, 1872.

Now comes F. H. Hatch, and for more specific answers to the interrogatories propounded to him in the matter of the rule for contempt in this case, says:

To the first interrogatory, no.

To the second interrogatory, no.

To the third interrogatory, no.

To the fourth interrogatory, no.

The restraining order was not served on me until after the sixteenth of November, 1872, to wit: until the nineteenth of November, 1872, but I knew of its existence on the morning of the seventeenth of November, 1872.

F. H. HATCH.

Sworn to and subscribed before me, this twenty-fifth day of November, 1872.

F. B. VINOT,
United State Commissioner.

[Answer of Jack Wharton to Interrogatories.]

Filed November 25, 1872.

Now comes Jack Wharton, and for more specific answers to the interrogatories propounded to him in the matter of the rule for contempt in this case, says:

To the first interrogatory, no.

To the second interrogatory, no.

To the third interrogatory, no.

To the fourth interrogatory, no.

To the fifth interrogatory, no.

The restraining order was not served on me until after the sixteenth of November, 1872, but I knew of its existence an hour or so after it was served on Governor Warmoth, that is to say, about 8 or 9 P. M. on the sixteenth of November, 1872.

JACK WHARTON.

Sworn to and subscribed before me, this twenty-fifth day of November, 1872.

F. B. VINOT,
United States Commissioner.

Defendant's Answer.

William P. Kellogg vs. H. C. Warmoth et als., No. 6830.—In the Circuit Court of the United States for the Fifth Circuit and District of Louisiana. In Chancery.—The answer of Henry C. Warmoth, one of the defendants to the bill of complaint of William Pitt Kellogg, complainant.

This defendant reserving to himself all right of exception to the said bill of complaint, for answer thereto saith:

This defendant admits that there was a general election held on the fourth day of November, 1872, in the State of Louisiana, under the authority of the laws of the said State; that a Governor, Lieutenant Governor and others were to be, and were, voted for at said election; that the complainant and John McEnery were candidates for governor; that by the law of the State no person was qualified to vote as an elector until he had been registered in a list of persons entitled to vote at said election; that the provisions of the law of the State at that time relating to registering vested in this respondent, as Governor of the State of Louisiana, the appointment of the officers whose duty it was to register all such voters.

And this defendant further answering saith: That it is not true, as charged in said bill of complaint, that at all times since the complainant became a candidate for such election, this respondent, Governor of the State of Louisiana, has repeatedly avowed his intention to adopt all means in his power, and to so exercise unlawfully, and to extend his power and the power conferred on him by his position as Governor, as to unlawfully defeat the election of complainant; nor is it true that for the said purpose, in the appointment of supervisors of registration, he has selected persons for the office of supervisors or assistant supervisors of registration as to obtain persons pliable to his will, and who would concur with and aid him, respondent, in the execution of any unlawful plans and fraudulent devices: nor is it true that to that end, and for that purpose, this respondent did especially, or any otherwise, make it a condition precedent to the appointment of said officers that they should in all things, and by all unlawful means within their power, assist in the accomplishment of said ends.

That it is not true that one of the unlawful devices, plans and schemes of the respondent was through the instrumentality of the said registering officers, and with their aid, and by the pretended aid of laws of the State, to deprive a large number of the citizens of the State of Louisiana, in all respects lawfully entitled to the franchise, by refusing to register the said citizens upon the list of registered voters, by reason of their race, color and previous condition; nor is it true that in the execution of said scheme, or in the execution of any other scheme, a large number of citizens of the State, who are colored, and who had been in a former condition of servitude, were so refused registration on various frivolous and unlawful pretexts and pretenses, amounting to 10,000 votes, or any other number.

That it is not true, as charged in said bill, that this respondent adopted the means and devices aforesaid, or any other means or devices, for the purpose of depriving said voters of their right of franchise as aforesaid, with the intent thereby to prevent their ballots being cast for the complainant, and thereby to defeat complainant's election to the office of Governor.

And this defendant, further answering, saith: He knows not and has not been informed, save by the said complainant's bill, and can not set forth, as to his belief or otherwise, whether when the said supervisors of registration had completed the registration of the qualified electors of the State that they had succeeded in preventing the registration of a large, or any number of electors, as charged in said bill of complaint; nor that when persons so refused registration as aforesaid offered to deposit their ballots for the complainant in the ballot boxes at the places of election, they were refused the right to deposit said ballots; nor that the complainant is in possession of evidence of that fact, preserved under the provisions of the act of Congress of May 31, 1870, and the acts amendatory thereof; nor that there is in existence from 3000 to 5000 documents of the same character that have been in the same manner preserved, with the ballots attached to said affidavits and certificates, in which the complainant was included by name, as candidate for the office of Governor of the State of Louisiana; nor that the persons so offering to deposit said ballots were in each and every instance persons of color, and were refused the right of franchise on account of race and color.

And this defendant further answering saith, that is not true, as charged in said bill of complaint, that this respondent, combining and conspiring with the supervisors and assistant supervisors of registration by him appointed, has caused a dishonest, incorrect and false account of the votes cast in the several parishes of this State at said election. Nor is it true, as charged in said bill, that this respondent has falsified and caused false and untrue returns, and certificates of the result and canvass of the votes cast in the several parishes in this State at said election; nor that said count, canvass, and certificates are so false and untrue for the reason that a large number of the ballots deposited in the said ballot boxes at said election by persons of color have not been counted and considered, and the evidence thereof preserved and certified, so that the same may be canvassed by the returning officers for elections in this State; nor is it true that they were so suppressed, or that any ballots were suppressed and not counted and considered that were cast for and in favor of the complainant as Governor of this State, or that they were in all things sufficient to have elected the complainant to said office, and this respondent denies that he has any knowledge of any suppression of any votes whatever, or that he ever authorized, aided or abetted the suppression or false return of any votes cast at said election, or did any other unlawful act to defeat the election of the complainant.

This defendant, further answering, saith that it is true that the returns of the elections for the precincts of the State were, by the law as it stood, on the fourth of November, 1872, to be sent by mail, addressed to this respondent as Governor of the State of Louisiana; that the law as it then stood provided that the Governor, Lieutenant Governor, Secretary of State, John Lynch and T. C. Anderson, or a majority of them, should be the returning officers of all elections of the State, a majority of whom should constitute a quorum, and have power to make the returns of all elections; that in case of vacancy the same should be filled by the residue of the board; that within ten days of the election the returning board should meet to canvass and compile the statement of votes made by the supervisors, and make returns to the Secretary of State; that the Governor should at such meeting open, in the presence of said returning officers, the statements of the supervisors of registration, and that the returning officers should from said statements canvass and compile the returns of the elections in duplicate; that one copy of such returns should be filed 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, etc., of persons elected, etc., and said board was vested with full authority to examine the truthfulness of the returns, and reject or accept the same, should it appear that a sufficient number of the qualified electors entitled to vote at any poll or voting place, were refused the right of franchise unlawfully, so as to materially change the result of the election, and this defendant further says that the law on the subject of elections, under and by which the said board of returning officers was created and came into existence was repealed, and ceased to be the law of Louisiana, by an act of the Legislature of Louisiana, approved the twentieth day of November, 1872, which said act went into operation on the day of its passage, and the said returning board ceased then and thereby to exist.

And this defendant further answering saith: That it is not true, as charged in said bill of complaint, that the said board was reduced by the ineligibility of P. B. S. Pinchback and T. C. Anderson to this respondent as Governor, Francis J. Herron as Secretary of State, and John Lynch; and that said board so constituted, and being a majority of said board, did fill the vacancies therein by the election of Jacob Hawkins and James Longstreet, and that said board was properly organized to proceed to said canvass of said returns, and that they, the said Herron, Hawkins and Longstreet, were duly sworn according to law, and qualified to act as members of said board; but the fact is that the said Herron was not Secretary of State of the State of Louisiana at the time alleged, he having been removed from the temporary discharge of the duties of Secretary of State by the act of this respondent for good and sufficient cause thereto moving, the said Herron being a defaulter to the State of Louisiana, and incapable of holding office therein, as will appear by the proclamation thereof, now on file in this case, and Jack Wharton, one of the defendants in this suit, was then discharging the duties of Secretary of State, in possession of that office, that no election or selection of the said Hawkins or Longstreet, or either of them, as members of said board, was made in the presence of this respondent, nor were they, or either of them, voted for in his presence, or put to the vote as members of said board, and the said Herron, not being the Secretary of State of Louisiana, did not form one of a board to select or elect members of said returning board. And this respondent denies that said Herron, or Longstreet, or Hawkins was ever legally and properly organized and qualified as returning officer under any election law of Louisiana. This defendant further answering saith: That this respondent, as Governor of the State, Jack Wharton, as discharging the duties of Secretary of State, and John Lynch, composed the board of returning officers under the law of Louisiana, until that law was repealed: that under said law, as it then existed, the said members of said board met at New Orleans on the thirteenth day of November, 1872, and on the motion of this respondent, in the presence of said John Lynch, this respondent and said Jack Wharton, acting in their aforesaid capacities of Governor and Secretary of State, voted for the selection of F. H. Hatch and Durant DaPonte as members of said board, and they were then and there legally elected and qualified as members of said board; that after the election and qualification of said Hatch and DaPonte, in the presence of said John Lynch, the said Lynch withdrew from the said meeting and went off with said F. J. Herron, and they, the said Lynch and Herron, fraudulently, illegally, and improperly conspired with the said Jacob Hawkins, James Longstreet, and William P. Kellogg, the complainant, did set up a pretended board of returning officers, and claimed the right to act as such, contrary to law, and right, and justice, for the purpose of obtaining the returns from the several voting precincts in the State, with the view of altering, destroying, and rejecting the same so as to conceal the true result of said election, defeat the true intent of the voters of the State, by fraudulently declaring the election of the said Kellogg as Governor, and the election of others of their friends to other offices, and in furtherance of this conspiracy, and to defeat the ends of justice and the voice of the people, the said Lynch, styling himself as president, and the said Longstreet, styling himself one of the members of the board of returning officers, demanded of this respondent the returns from the various precincts of the State, and in the still further pursuance of the said conspiracy and fraud, the present suit was brought.

And this defendant further answering saith, that it is not true as charged in said bill of complaint that this respondent, "claiming to be in possession of the returns of a large number of the supervisors of registration, refused to open said statements of the supervisors of registration in the presence of the said returning officers, being influenced in said refusal, as your orator believes, by the fear that said returning board would make due and proper investigation of the truthfulness of said returns and statement, and that said scheme for excluding lawful ballots would be defeated, or that evidence of the frauds that had been committed, and of the fact that a large number of persons had at such election offered to vote, and had been denied the right to vote, contrary to the constitution and laws of Congress, would be discovered and preserved in such form that the same could be used, and of avail in any action or proceeding instituted by your orator to determine his right to the office of Governor of said State, but that the said Henry C. Warmoth made frivolous excuses for not discharging his said duty, and said board of returning officers adjourned until the next day without any further action, when, in order to cover up and conceal said frauds, and to prevent the proper legal canvass of said votes, the said defendant, Henry C. Warmoth, without any legal authority or color of law pretended to eject the said Francis J. Herron from the office of Secretary of State, and with force of arms attempted to take forcible possession of the records and archives of the office of Secretary of State into his custody, and without warrant or color of law pretended to appoint the said defendant, Jack Wharton, to the office of Secretary of State, and that the said Jack Wharton, willing to aid in such unlawful scheme, pretended to be Secretary of State, and as such a member of said returning board; that the said defendant Henry C. Warmoth, thereupon pretending that he had conferred the office of Secretary of State on said Wharton, combined with said Wharton, and they together pretend to have elected as members of said returning board the said defendants, Frank H. Hatch and Durant DaPonte, and that although they and all of them were well aware that all said actings and doings were in all respects fraudulent, and in violation of law, and that none of said defendants, except the said defendant, Warmoth, had any colorable right to proceed to the canvass of said statements, certificates or returns, and that he, the said Warmoth, had no right to open or submit the same to any persons other than the said Lynch, Hawkins, Longstreet and Herron, yet the said defendants, Warmoth, Wharton, Hatch and DaPonte, in order to aid in such schemes of fraud, pretend to be a lawful returning board: that the said defendant, Warmoth, as your orator is informed and believes, while refusing to open and deliver said statements, certificates and returns to said legal returning officers who were organized and in actual session, has in fact opened and submitted the same to said conspirators and intruders, excluding said lawful returning officers from any canvass; that your orator is informed and, therefore, avers the fact to be that it is the intention and deliberate plan of the said defendant aforesaid, pretending to act as returning board as aforesaid, to make such pretended canvass of said votes as shall affect an apparent defeat of your orator, and declare the said McEnery elected as Governor of said State: that to produce said result they will give effect to all such fraudulent certificates and returns as tend to produce such an effect, and tend to exclude from all consideration, count or canvass, all votes of persons of color that have been suppressed or prevented from being cast, and that it is their intention, by such frauds, to deliver to the pretended Secretary of State such certificate or return or pretended result of their canvass as will make it appear that your orator is defeated, and the said McEnery elected; and that while their canvass or return, as your orator is informed, would be perfectly void in law, yet the same would embarrass, hinder and delay him in the prosecution of legal proceedings in this honorable court to establish his rights to said office, to which he verily believes he is justly entitled, and to which he has been legally elected; that he is informed, and fears that it is the intention of the said pretended returning board, in furtherance of their said scheme, also to destroy all of said returns or certificates received from supervisors of registration, and thereby suppress and place beyond the reach of your orator evidence which will be important and indispensable in a prosecution of legal proceedings to establish his right to said office; that he verily believes that it is the intention of the said defendant, Warmoth, to place all said certificates and returns of supervisors beyond the reach or the regularly constituted board of returning officers, and thereby deprive your orator of any legal official canvass of said votes, and of the evidence that a just, honest and truthful canvass of said votes would furnish tending to show his right to said office of Governor."

The defendant answering, saith, that it is not true as charged in said bill of complaint, "that the said defendant, McEnery, is cognizant of said plans and schemes, and approves the same, and is willing to aid in its accomplishment, by pretending to believe that the result of such pretended canvass, if thereby it is made to appear that he has received a majority of the votes cast at said election, would confer on him the right to said office, and that your orator believes it is the intention of said defendants to make a sham and fraudulent return and count, declaring the said McEnery elected, and publish the same in the official journal of said State, the New Orleans REPUBLICAN, printed and issued by the said defendant, the New Orleans Republican Printing Company."

This defendant further answering saith, that it is not true as charged in said bill of complaint, that the complainant has reason to fear, and does fear, that the said defendants, pretending in the unwarranted manner aforesaid to act as a board of returning officers, will mutilate, alter and change said certificates in furtherance of their plan of fraud, and that the original certificates, returns and statements of the supervisors of registration are important and necessary, and should be preserved in order to determine whether the same have been changed, altered or tampered with or suppressed or considered, and in order that his right to said office of Governor may not be impaired, and by the destruction of evidence rendered impossible to be asserted by the proper action when the time for the institution of such action shall arise; but the said charge is groundless to the knowledge of the complainant, and made in furtherance of the conspiracy entered into and existing between the complainant, the said Lynch, Herron, Hawkins and Longstreet and their confederates in politics.

This defendant further answering saith, that it is not true, as charged in said bill of complaint, "that by the means aforesaid, and in the manner aforesaid, the said Henry C. Warmoth, Governor of said State, wholly and totally disregarding the laws thereof, and in defiance of law, and with the intent to destroy and overthrow the republican form of government in said State, has in fact directed the whole machinery of the State, and all of the officers therein under his control, with the purpose and intent of defeating a just and fair election, and an honest and true return thereof, in order to defeat your orator, well knowing that your orator, if a just and fair election had been had and held, and a true, honest and fair canvass of the votes cast at such election made, was legally elected to the office of Governor of said State; and the said Warmoth has endeavored, and is endeavoring, with the aid of all of said defendants, to suppress and destroy all evidence of such fraud so completely that the same may be of no avail to your orator in asserting his right to said office, that unless the said defendants are restrained by the order of this honorable court, and are permitted to continue in said unlawful acts, your orator fears that his means of legally establishing his right to said office of Governor will be placed beyond his reach and control long before the time when by law he can commence the proper judicial proceedings to determine and enforce his title and right to said office."

This defendant further answering saith, That it is not true, as charged in said bill of complaint, that the said complainant "verily believes the actings and doings of the said defendants, as herein set forth and complained of, are in all things unlawful, and are conceived and carried on by said defendants for the sole purpose of overthrowing and subverting the republican form of government, guaranteed to the State of Louisiana by the constitution of the United States. That said object is intended to be accomplished by depriving the said people of said State of the choice of its officers by fraudulently disregarding the right of the duly elected officers of said State of the right to administer the offices of said government, and substituting by fraud and false certificates, and evidences, and canvass, persons who have never been elected to positions of trust and office in said State, and to confirm said pretended title to office by destruction of the evidence of the actual vote cast at said election, and that your orator believes that unless your honors immediately allow, on the filing of this bill, a restraining order restraining the defendants, and each and every one of them, from doing the acts for which your orator herein prays they may be restrained, your orator fears that before the hearing and determination of a motion for an injunction the said defendants will have completed their unlawful scheme of fraud, and will have destroyed proof upon which your orator must rely to support his legal right to the office of Governor as aforesaid, and your orator will be defeated thereby," but the said charge is made in furtherance of the conspiracy between said complainants the said Lynch, Herron, Longstreet, Hawkins and their associates, for the purpose of getting possession of the election returns, and defeating the true vote of the people.

This defendant further answering saith, that he has answered every charge of the said bill of complaint with the true intent of admitting, explaining or denying the same according to the truth. And he now denies each and every charge or insinuation in the said bill of complaint that does or intends to charge him with fraud, or an improper design, or by an act or intention, by preconcert, prearrangement, concert, arrangement or design to deprive any legal voter of the State of Louisiana of the right to cast his vote for the candidate of his choice; he denies that he ever made an arrangement to control the registrars or assistant registrars, or commissioners of election, or any other person, to do any wrong of any kind in reference to said election, or the returns thereof. He denies that he appointed them with a view to defeat the election of the complainant, who was nominated for the office of Governor on the ——— day of July, 1872, and who, at the time of his nomination, and ever since, and now is, a Senator of the United States and ineligible to the office of Governor of this State. And this defendant denies that the complainant has any interest in the result of said election of the fourth of November, 1872, or can profit by the result of the same, and this defendant furthermore denies that this court has jurisdiction of the subject matter of this suit, or that it can render any judgment, order or decree in the premises. And this respondent furthermore denies that your honors have any right to investigate the question of whether the complainant has or has not been elected Governor of the State of Louisiana, in the manner and for the purposes set forth in said bill of complaint.

And the defendant further answering saith, that one George E. Bovee was duly elected Secretary of State of the State of Louisiana, at the general election held in the year 1868, was qualified, commissioned and took possession of said office. That in August, 1871, this respondent, for good and sufficient cause, suspended the said Bovee from the exercise of the functions of his office, and appointed and commissioned the said Francis J. Herron to discharge the duties of Secretary of State, and the said Herron is estopped from denying the right of this respondent to remove him from the performance of the duties of said office of Secretary of State of Louisiana; and this defendant denies all, and all manner of unlawful combination and confederacy wherewith he is charged by the said bill, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein, and hereby, well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf, most wrongfully sustained.

H. C. WARMOTH.

Semmes & Mott, of counsel.

H. C. Warmoth swears that the facts, statements and averments of the foregoing answer in chancery are true.

H. C. WARMOTH.

Sworn to and subscribed before me this twenty-fifth day of November, 1872.

F. A. WOOLFLEY,
United States Commissioner.

[Affidavit of Jack Wharton, F. H. Hatch and Durant DaPonte.]

Offered by defendants, November 25, 1872.

United States Circuit Court, District of Louisiana. William P. Kellogg vs. H. C. Warmoth. No. 6830.

Personally appeared Jack Wharton, F. H. Hatch and Durant DaPonte, defendants in the above entitled suit, who, being sworn, depose and say that it is not true, as charged in the bill of complaint filed in the said case, nor is it true in any way or sense whatever, that these deponents have been guilty of any combination or fraud, or that they have in any way illegally and improperly attempted or endeavored to defeat the election of the complainant, or to deprive any legal elector of the right to register or vote at the late election in Louisiana, nor have they, or either of them, attempted or endeavored to make any false count or return of the votes cast at said election, nor have they, or either of them, ever conspired with any person, or agreed to aid any person in making a false count or return of the votes cast at said election, nor have they, or either of them, conspired to reject any votes or returns of said election, with the design or intent of changing the result of said election, and when selected and elected as members of the board of returning officers, they severally accepted said membership with the intention to act honestly and truly in the discharge of their said duties.

F. H. HATCH,
JACK WHARTON,
DURANT DAPONTE.

Sworn to and subscribed before me, this twenty-fifth day of November, 1872.

F. B. VINOT,
United States Commissioner.

Sworn to and subscribed before me, this twenty-fifth November, 1872.

K. LOEW,
United States Commissioner.

Appendix.

EXHIBIT I.

Form of affidavit to be used whenever any person has been prevented from deposit-