NEW ORLEANS REPUBLICAN.

SINGLE COPIES: FIVE CENTS. | OFFICIAL JOURNAL OF THE STATE OF LOUISIANA. | TERMS: $12 PER ANNUM.

VOLUME VIII—NO. 196. | NEW ORLEANS, TUESDAY, NOVEMBER 24, 1874. | WHOLE NUMBER 2347.

AMUSEMENTS.

BIDWELL'S ACADEMY OF MUSIC.
Monday, November 23, for One Week Only.
WEDNESDAY AND SATURDAY MATINEE.
The Great Versatile Comedian and Vocalist
SAMUEL DEVERE,
In his thrilling sensational drama in four acts, written expressly for him, by McCluskey & Mack, entitled JUST IN TIME
New scenery appointments and mechanical effects.
Friday, November 27—Benefit—MR. DEVERE.
Monday, November 30—G. L. FOX'S PANTOMIME TROUPE. no22

OPERA HOUSE.......OPERA HOUSE
Tuesday, November 24, 1874,
LA FAVORITE,
Grand opera in four acts.
LES NOCES DE JEANNETTE,
no24 1t Opera in one act.

ST. CHARLES THEATRE.
BEN DeBAR..........Proprietor
HENRY W. MITCHELL..........Stage Manager
Engagement of the celebrated comedian and author, Mr. WYBERT REEVE and the talented actress, Miss ADELINE STANHOPE.
This Evening,
The thrilling drama of
FOSCO;
or,
THE WOMAN IN WHITE.
Count Fosco..........Mr. Wybert Reeve
Annie Catherick / Laura Fairlee..........Miss Adeline Stanhope
FRIDAY—Benefit of Mr. Wybert Reeve.
SATURDAY—Grand matinee at twelve o'clock.
Prices as usual. no24

VARIETIES THEATRE.
Director..........JOHN E. OWENS
Engagement of the distinguished tragedian
MR. JOHN McCULLOUGH.
Monday Evening and Wednesday Matinee,
VIRGINIUS.
Virginius..........MR. JOHN McCULLOUGH
Tuesday Evening,
OTHELLO.
Othello..........MR. JOHN McCULLOUGH
Wednesday Evening,
HAMLET.
Hamlet..........MR. JOHN McCULLOUGH
The casts of these great plays are the best ever offered in New Orleans.
In rehearsal—THE GLADIATOR. no22 4t

GLOBE THEATRE.
Corner Baronne and Perdido streets.
J. KITTREDGE..........Lessee and Manager
HARRY MACARTHY..........Stage Manager
J. B. VOGEL..........Leader of Orchestra
Monday Evening, November 23, and until further notice.
Second week of Miss Maggie Weston in her Character Impersonations; Miss Minnie Jackson, as the Rough Diamond; Harry Macarthy in his Sketches of Every Day Life; Johnny Taylor, in his Negro Eccentricities and Banjo Solos; W. H. Smith and songs of Old Erin; W. H. Trimble, Clog Dance.
First night of the new farce written by Harry Macarthy, entitled
LOVE AND POLITICS,
And first appearance of Mr. JOHN ENGLISH.
no22

GRAND OPENING BALL
AT
GRUNEWALD HALL.
Everybody should attend the Fancy Dress and Mask Ball of Mechanics' Fire Company No 6 next SATURDAY EVENING. no24 3t

GRAND OPENING BALL
AT
ST. PATRICK'S NEW HALL.
Grand Dress, Fancy Dress, Masquerade and Calico Ball,
To be given by the
ANCIENT ORDER OF HIBERNIANS,
Saturday Evening, December 19, 1874,
AT ST. PATRICK'S HALL.
COMMITTEE OF ARRANGEMENTS.
M Finnerty, W. J. Kelly, James Herron,
Dan Owens, A. O. Boyle, John Fitzpatrick.
Applications for invitations to be left at James Herron's, corner of Claiborne and Gravier streets; at Dan Owens', corner of Perdido and St. Charles streets; at P. Gannon's, corner of St. Louis and Villere streets; at Tom Gilmore's, corner of Mandeville and Victory streets, or H. M. O'Meallie's, corner of Magazine and Terpsichore streets.
Sealed proposals for sale of the bar, restaurant and hat room to be left with W. J. Kelly, corner of Common and Claiborne streets, and Dan Owens', corner of Perdido and St. Charles streets.
Tickets..........$2
no22 1d

COAL—COAL.

MOUNT CARBON COAL,
For Sale in lots of Ten Barrels.
Delivered to any part of the city at sixty-five cents per barrel.
WASHINGTON MORTON,
no22 3t No. 138 Gravier street.

CAUTION.

CAUTION TO THE PUBLIC.—LOST OR mislaid—a certain promissory note, dated New Orleans, March 5, 1874, drawn by F. Couvillion, for the sum of $390, with five per cent interest from date, and payable to the order of the undersigned in ninety days after date. The public is hereby notified not to purchase or negotiate said note as it is the property of the undersigned.
no21 24 del A. J. BACHERMIN.

FOR SALE.

FOR SALE.—A LARGE LOT OF YAWLS, different sizes, Anchors, Chains, Blocks, etc., low for cash. Apply to
SHICKLE, HARRISON & CO.,
United States Naval Station, Algiers.
Or address Postoffice Box 2729, New Orleans.
no21 1m eod

FOR RENT.

PLEASANT ROOMS, WITH OR WITH- out board, can be procured at No. 320 St. Charles street. Terms—moderate. oc30

FURNISHED ROOMS.—WITH OR WITHout board, in a desirable location, convenient to two lines of cars, No. 35 Rampart street, between Common and Canal streets. oc22

FOUND.

FOUND.—CAME TO MY RESIDENCE ON Octavia street, near St. Charles avenue, Sunday, October 22, two COWS, which the owner can have by proving property and paying expenses.
no24 3t J. O. SHAUNASSEY.

MISCELLANEOUS.

H. BONZANO,
CUSTOMHOUSE BROKER,
Office, No. 2 Clinton street,
Between Customhouse and Bienville streets, opposite the Customhouse,
no19 1m NEW ORLEANS.

STEAMER ELECTRIC SPARK.
Owners of goods lost per steamer Electric Spark, from New York, in 1864, are hereby notified that unless their claims are filed ANEW WITHOUT DELAY, they will be barred. Claims recovered with dispatch by
J. G. KUSTIS,
United States Commissioner,
no15 1m No. 35 Carondelet street.

P. A. MURRAY,
CISTERN MAKER,
No. 191 Magazine street, between Julia and St. Joseph streets.
(DIPLOMAS AWARDED IN 1872 AND 1873.)
Cisterns made to order and repaired. All work warranted. A lot of cisterns, from 1000 to 20,000 gallons, made of the best material and workmanship, kept constantly on hand and for sale at prices to suit the times. Orders promptly attended to.
mh16 1y

BUSINESS CHANGES.

DISSOLUTION OF COPARTNERSHIP. The firm of SAMUEL SMITH & CO. is this day dissolved by mutual consent.
Mr. CHARLES KILSHAW, at No. 156 Canal street, will attend to the liquidation of our unsettled business.
SAMUEL SMITH.
A. W. SMITH.
CHARLES KILSHAW.
New Orleans, May 19, 1874.
my20 1m jy5 19 au8 23 se6 20 oc4 18 no8 22 d

THE RETURNING BOARD.

The board was called to order yesterday at 11 A. M., by President Wells, and all the members being present the minutes of Saturday were read and adopted.

Mr. Arroyo asked for information in regard to the returns from DeSoto parish.

The secretary of the board informed that body that in compliance with its order he had addressed a letter to Mr. Behan, the assistant supervisor of DeSoto parish, at No. 14 Dryades street. The bearer of the letter was unable to find Mr. Behan, but he left the letter at No. 14 Dryades street for him. Upon further inquiry being made about the returns, supposed to be in the hands of Mr. Behan, and of his whereabouts, Mr. Arroyo said that he had been informed that Mr. Behan had been arrested by order of United States Commissioner Craig, and that the returns were in possession of that officer.

Mr. Cavanac said Mr. Behan refused to answer.

On motion the board then proceeded to consider the protests and pleadings made in regard to the returns from polls five and seven of the seventh ward. Before these matters were taken up, however, Mr. Ray, on the part of Republican counsel before the board, read a brief referring in general terms to all contests that may come before the board, to its powers, etc., to determine them, the legality of the board, etc.; all of which is intended to be an answer to the brief filed by Democratic counsel touching the same points.

On motion of Mr. Anderson, the brief submitted by Mr. Ray was received and ordered to be filed.

Mr. Zacharie then asked, and was granted permission to read the brief submitted by Democratic counsel.

In order that the public may have an opportunity of thoroughly knowing the arguments of counsel on both sides, together with the authorities cited by them in support of the positions taken by them, we have concluded to publish both briefs. The following is the

Argument of the committee on the part of the Conservative Democratic party on the law governing the Returning Board of the State of Louisiana.

This board being constituted under a special law of this State (act No. 98, statutes of 1873), its powers are to be construed in connection with the act of 1870 in so far as the latter does not conflict with the provisions of the former. State vs. Wharton, 25 A., 10. And both are to be interpreted and construed with reference to general principles and laws *in pari materia*, natural reason and law, as well as equity. C. C., art. 17 and 21. Elections are admittedly held for the purpose of ascertaining the will of the qualified voters in regard to individual candidates or measures, and the object of returning boards is to ascertain the results, compile the same, and make proper reports thereof. "The action of such boards is to be carefully confined to an examination of the papers before them, and a determination of the result therefrom in the light of such facts of public notoriety connected with the election as every one takes notice of, and which may enable them to apply such ballots as are in any respect imperfect to the proper candidates or offices for which they are intended, provided the intent is sufficiently indicated by the ballot in connection with such facts; so that extraneous evidence is not necessary for this purpose." Cooley's Constitutional Limitations, 623, and thirty cases in the various States there referred to. "The governing principle in all cases is to clearly ascertain the intention of the voters." State vs. Steers—Brightley's contested cases, 303. Such is the general law in regard to returning boards. In our own State the Supreme Court, in interpreting the present act, said: "No statute conferring upon the courts the power to try cases of contested elections or title to office authorizes them to revise the action of the Returning Board. If we were to assume that prerogative, we should have to go still further and revise the returns of the supervisors of elections, examine the right of voters to vote, and in short the courts would become, in regard to such cases, mere offices for counting, compiling and reporting election returns. The Legislature has seen proper to lodge the power to decide who has or who has not been elected in the Returning Board. It might have conferred that power upon the courts, but it did not. Whether the law be good or bad, it is our duty to obey its provisions and not to legislate." Bonner vs. Lynch, 25 Annual, 208. Such being the interpretation, by the highest judicial authority, of the statute, under which this board is constituted, is the law; and whether the powers thereby invested be judicial or ministerial, constitutional or unconstitutional, this is neither the time nor the place to investigate. It suffices that it is the law.

The question then arises how far the provisions of the law in regard to the returns are sacramental and how far directory; that is to say, how far a non compliance with particular forms will invalidate the election at any individual poll. Bearing in mind the principle that the object of an election is to get the sense of the qualified voters, and the duty of a returning board to obtain and compile the result of such votes when cast, the following extract from Cushing's work on Legislative Assemblies (sections 201, 202 and 203) will furnish the principle, if, indeed, it does not cover all the points of informality that may arise:

201. The duties of returning officers in conducting elections being prescribed by the statute laws of the several States it is obviously impossible to present anything more than the general rule as to how far a neglect or misconception of duty on their part will affect the validity of an election; and, herein, the leading principle sanctioned both by law and common sense, undoubtedly is this, that where the provisions of law whatever they may be are imperative or peremptory, any neglect of returning officers to observe them will render their proceedings void; but that where the law is merely directory, no neglect or mistake, or even improper conduct or irregularity on their part, will be fatal, though frequently made punishable by law, if in other respects, there has been a substantial and good election. Provisions of law, which are introduced only as affirmative propositions, are commonly, unless essential in their character, merely directory; but if accompanied also by negative words, or their equivalent, they are, of course, without regard to their character, always peremptory.

202 In the application of this principle much embarrassment will be prevented by keeping in view these two considerations: First, That it is the language, rather than the nature of a statutory provision, which makes it imperative or directory. Second, That whether a neglect of the requisitions of a directory statute will be fatal or not to the proceedings does not depend so much upon the nature of the neglect as upon its influence in producing the result of the election. Irregularities in the proceedings of returning officers, though not sufficient of themselves to authorize a presumption of fraud or corruption, are nevertheless always looked upon as strong corroborative circumstances.

203 The following cases are selected from a much greater number as examples of irregularities in the conduct of returning officers, in the observance of the requisitions of statutes, and which have been held to be merely directory statutes, and which have been considered as insufficient to invalidate elections, namely: Where the ballot-box was not locked, as required by law, but was only tied with tape, and was also placed in the custody of a person not authorized to have charge of it; where instead of "a box locked or otherwise secured," a gourd "carefully stopped and tied up in a handkerchief" was used; where there was an omission to give the notices required by law to two inconsiderable places within an election district; where the returning officers did not meet for the purpose of making their return until after the time appointed by law; where the poll clerks appointed by the sheriff were not sworn until after the election, or were not sworn at all; where the number of votes, being required by law to be set down in writing, was set down in figures; where the return of votes was unsealed instead of being sealed up, as required by law; where the votes were returned after the time prescribed by law; where the opening of the meeting was delayed for two hours beyond the time fixed; where the officers presiding at an election, in the belief that illegal votes had been received, stopped the balloting and commenced anew; where the warrant calling the meeting for an election did not specify the time when the poll would be opened; where the poll was not kept open each day the number of hours required by law. In all these cases, there being a substantial and good election, notwithstanding the irregularities complained of, the proceedings were not invalidated, the following cases being referred to in support of these points.

Heywood on County Elections, 511.
Colden vs. Sharpe; Clarke & Hall, 369.
Van Rensslaer vs. Van Allen; Clarke & Hall, 73.
Arnold vs. Lea; Clarke & Hall, 601.
Lyon vs. Smith, Clarke & Hall, 101; Orkney & Shetland, Frazer 1, 369; but see Seaford, Luders, 3, 3.
Case of David Bard, Clarke & Hall, 116.
Porterfield vs. McCoy, Clarke & Hall, 267.
Colchester, Pickerell 1, 503, 506, 507.
Easton vs. Scott, Clarke & Hall, 272
Mallary vs. Merrill, Clarke & Hall, 328.
Draper vs. Johnston, Clarke & Hall, 703.
Spaulding vs. Mead, Clarke & Hall, 157.
Standish, Cushing, S. & L., 82.
Chatham, Cushing, S. & L., 423.
West Boylston, Cushing, S. & L., 394.
Colchester, Pickerell 1, 506; Limerick, Perry & Knapp, 355.
Cochrane & Rowe, 288; Warwick, Cushing, S & L., 401.

The law is succinctly stated in regard to certificates, in the case previously cited from Brightley's leading cases on elections: "Although the vote might have been informally certified, that would make no difference; officers should look at substance and not at form. A literal compliance with the required form is not required in any case, if the spirit of the law be not violated; and the governing principle in all cases is to clearly ascertain the intention of the voters; if a defect existed in the certificate that might be supplied at any time, by the judges and clerks, whose duty it was to make the same before the vote was counted." Under these principles, then, section eight of the act of 1873, relating to qualification of the commissioners; section thirteen, in regard to list of votes; section forty-three, providing for the counting of the ballots, statement of votes, tally sheets and their disposition are directory only, and their non observance, as well as that of the others relating to mere forms, will not invalidate the election or the returns. Connected with other suspicious circumstances their violation might form a ground of presumption of fraud which it would be the duty of the board to investigate. But if the board be satisfied that the returns, certificates or statements be bona fide, and in substance correctly report the result of the election, then the non observance of form should not vitiate. In opposition to these declaratory clauses of the act we can refer to one which is sacramental and peremptory, and which has for its object not the ascertaining of the result of the election, but the setting of it aside on the ground of improper practices defeating the will of the voters; and here all the forms must be strictly complied with before the board can take cognizance of it. Section three is an example of the use of "negative words or their equivalent" spoken of by Cushing, the section using the words "exclude" in the sense that the board shall not count returns when protested in the form required by the act until investigated and satisfied of their fairness. Here form is sacramental, and there must be a literal compliance with the terms of the statute. We have seen that one of the duties of a Returning Board is "to apply such ballots as are in any respect imperfect to the proper candidates or offices for which they are intended, provided the intent is sufficiently indicated by the ballot in connection with such facts, so that extraneous evidence is not necessary for this purpose." Cooley, Constitutional Limitations, 623.

A few examples of cases decided will sufficiently illustrate the doctrine: "The name on the ballot should be clearly expressed, and ought to be given fully. Errors in spelling, however, will not defeat the ballot if the sound is the same, nor abreviations, if such are in common use and generally understood so that there can be no reasonable doubt of the intent. And it would seem that where a ballot which contains only the initials of the Christian name of the canditate ought to be sufficient, as it designates the person voted for with the same certainty which is commonly met with in contracts and other private writings, and the intention of the voter can not reasonably be open to any doubt." Cooley Con. Lim. 608.

In Attorney General vs. Ely, 4 Wis. 429, votes for M. D. Carpenter, M. T. Carpenter, and Carpenter, were counted for M. H. Carpenter, because the court said the intention of the voter, it is apparent, was to vote for M. H. Carpenter, he being the only person of that name who was a candidate for the office. 12 Wis. 551, 27 N. Y. 84. In 8 N. Y. 67, the court said that the Returning Board must take cognizance of such facts of general notoriety and held: "It seems to us that in every case where the name given on the ballot, though in some particulars imperfect, is not different from that of the candidate and facts of general notoriety leave no doubt in the minds of canvassers that it was intended for him, the canvassers should be at liberty to do what a jury would afterwards be compelled to do—count it for such candidate." This is the rule of common sense, and under it ballots for "Burk," "E. T. Burke," "T. E. Burke," "Higby," "L. J. Higby," or "Higbey," should be given to the candidate for whom they were obviously intended.

In these instances, as in the whole matter of the law of elections and returning officers, the well established principle is that no mere matters of form, no technicalities should be allowed to defeat the will of the people when once manifested by their votes. The substance, the intent, should be preserved at the expense of all forms. And only when it is sought to set aside the popular voice once expressed, is a tenacious adherence to form required. The duty of a returning officer is, in a word, to give voice and effect to every vote fairly cast by an intelligent view of the law, not stifle or suppress one, save on fraud duly certified according to law, and duly proved according to its requirements; never to increase the vote actually cast, and never to subtract from it, save by the rejection of such polls as are legally tainted with fraud. This is the province of the board.

Counsel on the other side will urge in vain that mere informalities will invalidate any election, so far as the Returning Board is concerned, and that the question will then become one for the courts. The Supreme Court of this State, in the case we have cited, only last year decided that it had not these powers of investigation, and that the Returning Board had. It is a shallow pretense to say that such informalities will necessitate a new election, and thus place it in the power of officers of election to forever defeat the will of the people, either by accidental or designed omission of any of the many complicated forms of procedure contained in the law. The bare mention of such a course of reasoning is sufficient to justly arouse the indignation of the people, as its adoption defeats an election now, and possibly forever, and ends republicanism in Louisiana.

All of which is respectfully submitted.
F. C. ZACHARIE,
FERGUS FUSELIER,
WILLIAM R. WHITAKER,
Of Counsel.

In answer to which Republican counsel submitted the following:

Brief of the counsel of the Republican party to the Returning Board stating the the reasons and argument for rejecting the returns from the city.

The disregard of the formalities required by law in conducting and making return of the election by the commissioners and assistant supervisors of election in the city of New Orleans, is so general, that a strict compliance, if there be any, is the exception, and the non compliance the general rule.

There are 118 polling places in the city. The lists of "the names of the persons voting," as required to be kept under section thirteen of the election law of 1873, was only returned to the Returning Board from four polling places. Under section thirteen of the election law of 1873, this list is required to be kept, and to be "signed and sworn to as correct by the commissioners immediately on closing the polls, and before leaving the place, and before opening the box." The lists returned were not sworn to, nor do they certify to the above requisites. We regard these lists as, essential requisites to a legal election. It is demanded by the law which says, section thirteen: "That it shall be the duty of the commissioners of election at each poll or voting place to keep a list of the names of the persons voting," etc., and section fourteen requiress that "in all cases the commissioners of election shall appoint one of their number to keep a record of the votes during the election, and whenever a vote is received the commissioner of election keeping the record shall call the name of the voter aloud, and mark the letter V opposite the name on the record." No other person than a commissioner can legally keep this record. This list of voters lies at the very foundation of a legal election. It is by it the returning board are to know how many votes were cast at each poll. It is to be sworn to as correct immediately on closing the polls and before opening the box; and to facilitate this, if no judge or justice of the peace is present, the oath may be administered by any voter. Section 13. This is to avoid ballot-box stuffing, and to prevent a greater number of votes being counted from the box than was east. It is to avoid fraud, and is essential.

But the Democratic counsel in attendance on the board say there is no law requiring this list of voters to be returned to the Returning Board. We submi, that under sections thirteen and forty-three of the election law of 1873, and particularly the last clause of section forty-three, requires these lists to be returned as part of the "memoranda and tally lists used in making the count and statement of votes," by the supervisors; but but if there be no express provision of the election law of 1873 requiring these lists of voters to be returned to the Returning Board, yet it is in the very nature of things they should be so returned, to enable the board to make proper returns of the election.

If the position taken by the Democratic counsel in their brief, published in the *Picayune* of the nineteenth instant, be correct, that the election law of 1870 is still in force, except in so far as it does not conflict with the act of 1873, this question is settled, for the act of 1870, sections eleven and fifty-three, expressly provide—the former, that the list of voters is to be delivered by the commissioners to the supervisor, and the latter, that the supervisor shall inclose "one copy of the list of persons voting at each poll" to the Returning Board.

The election law of 1873, section forty-three, requires "that immediately upon the closing of the polls on the day of election, the commissioners of election at each poll or voting place shall proceed to count the votes, as provided in section thirteen of this act, and after they shall have so counted the votes, and made a list of all the persons voted for, and the offices for which they were voted for, and the number of votes received by each, the number of ballots counted in the box, and the number rejected and the reasons therefor. Duplicates of such lists shall be made out, signed and sworn to by the commissioners of election of each poll, and such duplicate lists shall be delivered, one to the supervisor of registration of the parish and one to the Secretary of State, by one or all such commissioners in person, within twenty-four hours after the closing of the polls." Section thirteen provides that "the votes shall be counted by the commissioners at each voting place immediately after closing the election, without moving the boxes from the place where the votes were received, and the count must be done in the presence of any bystanders or citizens who may be present." There is no evidence in any of the city returns that these last formalities were observed. The above are the formalities required by law to be observed by the commissioners of election. How far have they been complied with?

First—For three polls the "list of names of persons voted for, and the offices for which they were voted for, and the number of votes received by each," etc., were not signed by the commissioners and the list of votes is not produced. This certainly is a fatal defect. There is no evidence, the commissioners not signing the statement of votes, that the election at these polls was legally or fairly conducted, and the failure to sign and swear to the statement of votes is strong presumption of fraud.

Second—The "list of names of persons voted for," etc., for five polls were sworn to more than twenty-four hours after the election and after the law required them to be delivered to the supervisors of election. This is an important formality to avoid false or manipulated returns. They should have been sworn to at the time the votes were counted.

Third—The "list of persons voted for," etc., for thirty-five polls purport to have been sworn to before assistant supervisors of election, or United States supervisors, or voters, none of whom are by any law authorized to administer oaths in such cases. Those returns then stand before the Board of Returning Officers the same as not being sworn to at all.

This is certainly a fatal defeat, as the object of the law, which was to secure a fair and impartial count under the sanction of an oath, which would subject the commissioners to the penalties of perjury if untrue, is entirely defeated by the failure to comply with this requisite. How can the board say that this was accidental when the law is so clear and the failure to comply with it so general?

Third—For five polls there was no "list of the names of persons voted for" etc., produced, nothing produced but tally sheets not signed or sworn to.

Such evidence, when the law is so explicit as to the forms required, is entirely inadmissable or insufficient on which to make a return; no argument on this point can make the position any stronger; if the mere tally sheet is all that is returned to this board, without showing the other essential papers were lost, certainly this board can not deem it sufficient evidence of the election on which to base a return.

Fourth—From thirteen polls the list of persons voted for, etc., were not pretended to be sworn to, nor were the tally sheets produced with them. There was, then, no legal evidence before the board that those lists represented the true state of the polls. Certainly no commissioner of election could have been so ignorant of his duty as to have omitted this requirement of the law. What guarantee against fraud do such returns afford? The natural presumption is that when so essential a requisite of the law has been so often omitted that it was because the list did not truly represent the fact.

We conceded great discretion to the Returning Board, in this matter, but we submit that the substantial forms of law must be complied with, in order to ascertain whether there has been a fair expression of opinion by the voters. The objects of the forms of law are to show that an election was held and that there was no fraud perpetrated.

Counsel on the Democratic side say that this board may disregard the irregularities, or the non-compliance with the forms of law, which characterize the city returns in this case; if so, what formality may they not disregard? If no list of voters is made out, signed and sworn to, as required by law, what evidence is there of the number of persons who voted? If no list of the names of the persons voted for and the number of votes received by each, is made, signed and sworn to, as required by law, what evidence is there of the persons voted for and the number of votes received by each. If there is no tally lists kept, as required by law, how is the Returning Board to count the votes received by each candidate? All these records and memoranda are absolutely necessary to enable the Returning Board to make proper returns of the election, and are required by law to be produced to them, and the absence of any of them destroys the chain of evidence which is essential to enable the board to make legal returns, and may properly arouse a suspicion of fraud unless the absent papers are accounted for, in which case its contents may possibly be supplied by other evidence; but where there is no evidence that such formalities were ever complied with by the commissioners, or evidence that they did not comply, the election so far as to that poll is void, and should be rejected.

I will call attention to the ground on which the Senate Committee on Privileges and Elections of the United States held that the returns of the election of 1872 by the Lynch Returning Board were not legal. It was that the legal returns required to be made by the supervisors of registration were not before that board, and that without them no legal returns could be made by the board. The same principle will apply to the city election, so far as the returns to the Returning Board are not in conformity to law, it is the same as though no returns had been submitted to the board.

It was held by the Senate committee that the Returning Board could not make legal returns based on any other evidence than the returns required by law to be made to them.

The argument of the attorneys for the Democratic party, that the Returning Board may make legal returns of the election, when the forms required by law to be observed in holding elections, have been omitted, leads to the conclusion, that if none of the forms have been complied with, that the board may get the evidence on which to predicate their return from other sources, which is in direct conflict with the decision of the United States Senate Committee above quoted. Then, if the returns must be predicated on the evidence of the formalities required by the election laws, must not all the essential forms be observed. If any can be omitted, which one?

The object of election laws is to ascertain the will of the voter and to avoid fraud, and since there has been such general and grave charges of fraud against the officers appointed to conduct elections in this State and former Returning Boards that it becomes the more necessary to require a strict compliance with the forms of law, as it is only by this that frauds can be avoided and detected, and when we see such universal disregard of the forms and safeguards thrown around elections by the election officers in this city, a suspicion of fraud in the conduct of the election naturally arises, and should cause the Returning Board to act strictly according to law, to avoid that which the law was intended to prevent, fraud at the election.

The general principles by which returning officers of elections should be governed are laid down in the authorities cited by the counsel of the Democratic party in their brief in this case, and are not here controverted, but it is to be observed that, as Cooley in his "Constitutional Limitations" observes, that those laws in each State vary so much that no general rule can be laid down to apply to all in detail.

The law of this State on the subject is perhaps different from that in any other State, and vests in the board greater powers than those in any other State, so the only safe guide for this board is to follow the law under which it was organized, and to carry it out in its true spirit and intention, that is, to ferret out and expose fraud in the election in any shape it may assume.

The Republican counsel in this case earnestly protest, that if the Returning Board should be compelled, in consequence of the almost universal disregard of the forms of law in conducting the election in this city, to make returns of the election in this city rather than declare there has been no legal election here, that this rule shall not be made to apply to the country parishes when a disregard of forms may justify the presumption of fraud in the conduct of the election and the returns to this board.

Respectfully submitted,
JOHN RAY.
CHARLES W. LOWELL.

Statement of the polls at which the forms of law were not complied with, and the particulars in which the forms of law were not complied with accompanying the brief of the Republican counsel before the Returning Board.

Polls from which no list of voters was returned: We only find that the list here referred to was returned in four cases, leaving 114 polls from which this list was not returned.

Polls from which the "list of the names of persons voted for, and the offices for which they were voted for, and the number of votes received by each," etc, were not signed by the commissioners: First ward—poll seven. Fourth ward—Poll three. Fifteenth ward—Poll two.

Polls from which the "list of the names of persons voted for," etc., were sworn to more than twenty-four hours after the election: Second ward—Polls three, four, five, eight and eleven.

Polls from which there were no lists of the persons voting nor of the persons voted for produced to the Returning Board, only the tally sheets unsworn to: Second ward—Poll twelve. Ninth ward—Poll eight. Eleventh ward—Poll one. Fifteenth ward—Polls two, four.

Polls from which "lists of the names of persons voted for," etc., were sworn to before the United States supervisors or supervisors of election, persons not authorized to administer oaths: Third ward—Polls two, four, five, nine, eleven, fourteen, fifteen. Fourth ward—Polls one, two, four, seven. Fifth ward—Poll four. Sixth ward—Polls one, three, four, five, six, seven. Ninth ward—Polls four, seven. Tenth ward—Polls one, two, three, six, seven. Eleventh ward—Polls two, three, five, six. Thirteenth ward—Polls two, three. Fifteenth ward—Polls four, five, six, seven.

Polls from which the list of persons voted for were not pretended to be sworn to: Third ward—Poll three. Fifth ward—Polls one, two, six, seven. Ninth ward—Poll five. Tenth ward—Polls eight, nine, three. Eleventh ward—Poll four, seven. Twelfth ward—Polls two, three.

Mr. Arroyo moved that a communication be addressed to the Secretary of State asking him to forward to the board the original papers filed in regard to polls five and seven in the seventh ward.

This motion was adopted. As the papers in regard to these polls that had been in the hands of the board could not be found, this step was deemed necessary in order to proceed with the work before the board.

The board then took up the protest signed by two commissioners asserting that very serious irregularities existed in the returns of poll seven, seventh ward. It was read, and the board proceeded to take testimony in the case.

Mr. Monette, one of the commissioners, was examined. He stated that he had been compelled to sign the returns, notwithstanding he knew them to be incorrect.

The returns from polls five and seven, filed in the Secretary of State's office, were then produced and compared with the returns before the board, and they were found to correspond.

The examination of Mr. Monett was then continued. He did not give his testimony in the clearest manner possible, but it went to show that there were serious irregularities caused by outside pressure—in other words, from the turbulent bearing of parties surrounding the poll on the day of election. He said that the written list of voters had disappeared, and that fact, taken in connection with other irregularities, had caused him to object to signing the returns, and that he was finally compelled to do it against his sense of right.

Mr. Lusto, another of the commissioners, was then examined. He testified to the loss of the written list of voters, and substantially to all that Mr. Monette had sworn to.

Mr. Hoelzhalb, another of the commissioners (Democratic), was then examined. He stated that in consequence of informalities in the statement of the votes at this poll, he had made out another at his home, which had been afterward accepted as correct and signed. This witness was asked if he could produce the original statement, and answered yes. He was asked to do so. He went home for the document.

On motion of Mr. Arroyo the board sent an order to the Superior Criminal Court for the ballot boxes of polls five and seven, seventh ward, in order to ascertain whether the lists of voters contained in said boxes corresponded with the lists before the board. While the board was waiting for these papers to determine the contests of returns from the above polls, it was determined to take up the returns from the parish of Jefferson and canvass them. This was concluded.

Mr. Hoelzhalb then produced the original statement of the vote for candidates at poll seven, seventh ward, and it was found to correspond with the one before the board.

Mr. Fitzpatrick, clerk of the Superior Criminal Court, brought in the ballot boxes from polls five and seven of the seventh ward. The ballot box of poll seven, seventh ward, was then opened, and the printed list of voters, which had been made to answer, in the absence of a written list of voters, as a guide to determine who had voted at that poll, was examined and compared with the tally list. They were found to agree, with a trifling exception, and, on motion of Mr. Anderson, the returns of poll seven were accepted as correct. The examination of the returns of poll five, seventh ward, was then continued. The ballot box of that poll was opened and the list of voters taken out and examined and compared with the tally list before the board, to ascertain whether they corresponded. It was discovered that there was but a difference of one vote between them, and, on motion, the returns of poll five, seventh ward, were ordered to be received as correct.

This ended the contests in the city returns, and the board at four o'clock took a recess until six in the evening. The result of the canvass of the returns of the city and parish of Orleans were ordered to be promulgated this morning.

The board convened at six o'clock, and the evening session was consumed in canvassing the returns from St. Charles and St. John parishes. After which the board adjourned to meet again this morning at eleven o'clock.

The returns of the parish of St. James having already been canvassed, the next parish in order, the way the board has proceeded, will be Ascension.

In the canvass of the returns of the first and second congressional districts Mr. Dubuclet is reported to have gained some 200 votes over the figures given by the Democratic returns.

The patience and careful attention the members of the Returning Board are giving to their tedious and arduous labors indicate their disposition to get through with them at as early a day as possible.

Sugar Samples by Mail.

Some thirty packages of sugar samples have been received at the Postoffice in this city by mail from New York. They are addressed to merchants here, but, under the Postoffice regulations and instructions from the department in Washington, can not be delivered. They are, consequently, held in the Postoffice here, while the matter has been referred to the department for instructions, as required by section eighty-seven of the Postoffice regulations. In this connection it is proper to publish the following letter on this subject:

POSTOFFICE DEPARTMENT,
Washington, D. C., October 30, 1874.
Postmaster, New Orleans, Louisiana:

SIR—In reply to your letter of the twenty-fourth instant I have to say that salt, sugar and flour, being from their nature liable to damage the contents of the mail bag in case of exposure to rain, water or dampness, are not mailable matter and can not be transmitted through the mails.

Very respectfully,
J. W. MARSHALL,
First Assistant Postmaster General.

Colored Representatives Elected.

So far, five colored men have been elected to the next Congress, and they are all of them new men. Two are from South Carolina, one from North Carolina, one from Alabama and one from Louisiana. One of the South Carolinians, Lee, is a Democrat, and was elected by a Democratic and bolting Republican constituency, and affords the novel spectacle of a colored man representing the Democracy of the Palmetto State in Congress.

Personal.

It is a pleasure to announce that our popular fellow-citizen, R. H. Shannon, Esq., is with us once again, having returned from the recreations of a tedious summer to his burdensome duties here. Mr. Shannon returns as local correspondent of the New York *Times*, and it is hoped will be able to keep that journal better informed on our affairs than some of the young men have succeeded in doing, who have tried their pens at it this summer and fall.

Attempt to Assassinate a Republican Sheriff.

An attempt was made on Saturday night last to assassinate the Republican sheriff of the parish of St. Mary, Captain Minos T. Gordy, who was once a gallant Confederate officer. Captain Gordy was called to the door, by a knocking upon the outside of his house, when a person, dressed in black, fired two shots at him, one of which took effect in his shoulder.

BY TELEGRAPH.

WASHINGTON.

Supreme Court Decision.

WASHINGTON, November 23.—Jackson et al. vs. the Vicksburg, Shreveport and Texas Railroad Company and others.—Appeal from the Circuit Court for the district of Louisiana. This was a proceeding to set aside a sale of the property of the railroad company made to the appellees joined with the company in the action, on the ground that it was in fraud of the rights of the stockholders, and was made to place the road unincumbered in the hands of a clique.

The court below sustained the sale, but this court reverses the decree, declaring the sale to have been fraudulent and void and ordering the reinstatement of the appellant's bill, which was dismissed below. Mr. Justice Strong delivered the opinion.

Resignation of Supervising Architect Mullett.

Messrs. Lochrane, Lickett, Hoge and Care, of Georgia, are at Willard's Hotel.

The resignation of Architect Mullett is the sensation to-day, and as it affects nearly every Southern city, the following from the *Critic* is telegraphed:

Architect Mullett resigned on Saturday. Quite a breeze was raised about the office of the Secretary of the Treasury just after office hours. It appears that Mr. A. B. Mullett, the supervising architect of the department, visited the Secretary's office for consultation, as is usual. In the course of the conversation the subject of disbursing funds for the payment of the hands in the cabinet-making department of Mr. Mullett's office was brought up and a difference of opinion was soon made manifest.

Mr. Mullett desired to control this matter agreeable to his own convictions of right, not so much because he cared particularly in this especial instance, but because the shop was a component part of an immense ramification, the disturbance of which would affect the whole machinery of which he had control.

The Secretary said that they had concluded that Mr. Mullet did not have the power in this matter, and that he could not be permitted to carry out his wishes in that particular.

Mr. Mullet—Mr. Secretary, I would tender my resignation, sir, before I would surrender my control in this matter.

The Secretary—I don't care a d—n if you do.

Mr. Mullett—I do tender my resignation now, Mr. Secretary.

The Secretary—I accept it at once, sir.

Mr. Mullett here retired to his office, but this morning he called on the Secretary and shook hands with him and said he would call on him again this afternoon, not having any ill feeling whatever in this matter.

A. K. Shepherd, who has a large contract under Mullett to fill, was at the treasury to-day endeavoring to have Mullett withdraw his resignation and amicably settle the matter with the Secretary.

It is now understood that the Secretary has tendered the vacant place to Mr. McArthur, of Philadelphia.

HURRICANE.

Heavy Storm About Nashville.

NASHVILLE, November 23.—A heavy storm has prevailed south and west of here for twenty-four hours.

Terrible Calamity at Tuscumbia—Property Destroyed, Lives Lost, Train Wrecked—Intense suffering the Result.

TUSCUMBIA, November 23.—A terrible storm occurred here last evening at six o'clock, destroying a third of the residences. Twelve persons were killed, and many others injured.

Mrs. William Winston, mother of late ex-Governor Winston; the wife and two children of Hon. J. B. Moore, Senator from this district; F. D. Hodgkins, Esq., editor of the *Chronicle*, his wife and four children, were killed.

The Catholic Church, the Dischler Female Institute, recently finished, many of the finest residences, both of the flouring mills, and the most substantial brick dwellings in town were destroyed. Many poor families are without homes. A bridge on the Memphis and Charleston railroad, near town, was also destroyed.

The Eastern bound train was precipitated into Spring creek, but fortunately no one was killed. The engineer was badly burned.

The mayor appeals to Huntsville, Louisiana, Nashville, Memphis, and adjoining towns, in the following terms: "Nearly half our town is in ruins. Twelve persons are killed and many wounded. Large numbers of families are entirely destitute. The tornado came from the southwest, passing northeast. Unless immediate aid can be extended to us, much suffering will be the result."

Additional.

MONTGOMERY, November 23.—Senator Moore was here, but left this morning for his desolated home in Montevallo. Two reported killed and twenty wounded.

It is rumored that the bride on the Memphis and Charleston railroad is wrecked, and that a passenger train plunged in the river, killing and wounding forty. The report needs confirmation. No further particulars.

Accident at Memphis—Telegraph Poles Blown Down.

MEMPHIS, November 23.—Yesterday afternoon C. W. Schulte, assistant cashier of the First National Bank, called at the residence of Colonel Livermore, of Shelby street, and while waiting for the servant to answer the bell, a gale sprung up, blowing down a large piece of cornice which struck him upon the head and shoulders, inflicting a dangerous wound, which it is feared may prove fatal.

The storms last night prostrated the telegraph lines East and West.

The Track of Destruction Moving Eastward.

WASHINGTON, November 23.—Hurricane at Trenton, New Jersey. Blowing a gale to-night.

Later—No Details—Wires Down.

Every effort to obtain details of the hurricane have failed. Wires prostrated.

The Track of the Storm.

CINCINNATI, November 23.—A storm of wind, last night about eleven o'clock, unroofed several houses in Covington and Newport, Kentucky, inflicting about $5000 damage but causing no personal injury or loss of life. Crossing the Ohio river it passed up the Little Miami valley with abated strength, unroofing only a few houses and prostrating fences.

FOREIGN.

Fog Impeding Travel.

LONDON, November 23.—A dense fog is prevailing, which makes travel by land and water dangerous. Several railroad accidents have been reported.

Torchlight Procession.

There is to be a torchlight procession in Manchester to-night, in commemoration of the Fenian martyrs who were executed in that city.

Gale in the Mediterranean.

ROME, November 23.—A heavy gale has prevailed in the Mediterranean, and several large vessels are reported ashore on the Calabrian coast. One American vessel, whose name is unknown, is a total wreck, and all on board except three have been lost.

Republican Candidates Elected.

PARIS, November 23.—The Republican candidates were generally successful in the municipal elections held at Lille, Valenciennes, St. Etienne, Dijon, Grenoble Havre, Cambria, Perigneaux, Angers and Limoges.

Forced to Resign.

The Minister of Public Instruction will probably be obliged to resign because he conferred the decoration of the Legion of

[CONTINUED ON FOURTH PAGE.]