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THE ELECTION LAW

A HISTORY OF SUFFRAGE IN LOUISIANA SINCE RECONSTRUCTION.

NEW ORLEANS, November 21, 1876. General James A. Garfield.

DEAR SIR—One of the distinguished gentlemen from the Northern States who in company with several others had visited our State for the purpose of examining our laws on elections and the methods used in ascertaining and declaring the vote requested me to furnish an account of the origin and nature of our election laws.

Prior to 1870 the election laws of this State were similar to those of other States; the elections were held at regularly appointed polls, and the votes counted by a certain class of officers known as judges or inspectors of election.

These officers were clothed by law with the power of making returns. This power consisted, first, of official authority to receive the votes, then to count them, which counting involved the semi-judicial authority of accepting or rejecting votes, as they were legal or illegal, this power, of course, being limited by law, and the additional power of making the official certificates of the result of the vote technically called the return, this return being prima facie evidence of election.

The Louisiana law in all these respects, prior to 1870, conformed in general outline to the laws of other States. The last election held under this law was the election held in November, 1868. In 1870 the law was changed, and a wide departure taken in the methods of election and in the powers and duties of the respective officers of election from the old law of the State and from the laws of other States.

The most material change, however, and the one around which the other minor changes were grouped was this: In depriving the commissioners of election presiding at the several polls of the function and authority which such officers had previously exercised, of making the final and official count of the vote, and of making the certificate or return of the same, which constituted the prima facie evidence of election; then, in lessening the number of returning officers to five for the whole State, and investing these officers with the above named functions and authorities of returning officers; namely, those of making the final and official count, and the only certificate and return of election known to the law.

The law then went further, and invested these five returning officers with another power, namely, when in any section or precinct of the State the election had been nullified by wholesale violence, disturbance, riot or intimidation, or by wholesale fraud, the power to examine into the nature and extent of these acts of violence or fraud; and where they had been of such a nature and extent as to render the election null and void, so to declare, and to refuse to count the so-called votes, which had thus been made null and void.

In thus stating concisely the material change made in the law of election, by the legislation of 1870, I will proceed, to state briefly some of the principal facts in the history of the State, prior to the enacting of the law which led to this change. For a period of about five or six months prior to the election of 1868, this State was the theatre of much and widely extended violence, bloodshed and murder. Owing to many causes, probably those resulting from the war just closed, and from the dissatisfaction of a large class of people with the changes which had been wrought by the results of the war, the political opposition, during the canvass, to the Republican party took the shape of a secret and armed political society, known as the Knights of the White Camelia.

By the records of the legislative committee appointed in 1868, and of the congressional committee, known as the Stevenson committee, whose report was made to Congress in 1869, in which the ritual, constitution and history of this secret and armed political club were published, it will be seen that it had branches in almost every parish of the State of Louisiana. It will also be seen by reference to the report of the Stevenson committee, that there was a wide and extended terror throughout the State among Republicans, and especially colored people, and that the chief instrumentality of spreading this terror was this secret political organization.

By reference to the same report it will also be seen that planters and merchants throughout the State bound themselves in resolutions and in clubs to proscribe in business and in employment persons who voted against the Democratic party. By reference to the same authority it will be seen, by extracts from the different Democratic newspapers of the time in this State, that the Democratic press of the State in some cases advocated violence and bloodshed for political ends; in other cases covertly and secretly encouraged it, and in no case openly condemned it. Extracts from the New Orleans Times, New Orleans Picayune, New Orleans Crescent, New Orleans Commercial Bulletin, St. Martin Courier, Shreveport Times, Planters' Banner, Baton Rouge Democratic newspaper and Alexandria Democratic newspaper; and reference to the files of that year of these papers, will give abundant and astonishing proof as to the extent to which the newspaper press went in countenancing and encouraging bloodshed for political ends.

During that year, from September until November, five horrible massacres of colored people were perpetrated by the Democrats. On the twenty-eighth of September, 1868, in the parish of St. Landry, a

massacre occurred of colored people, which lasted from three to six days, and during which from 200 to 300 people were killed; between the twentieth and thirtieth of September, a similar massacre occurred in the parish of Bossier, which lasted from three to four days, during which over 200 colored people were killed; in the parish of Caddo, in the month of October, over forty colored people were killed; in the parish of Jefferson, in the month of October, forty persons were killed and wounded; in the parish of St. Bernard, in the month of October, another horrible massacre occurred, which lasted for three days, during which over 100 people were killed and wounded; in the parish of Orleans, in the months of September and October, two attacks were made upon Republican processions, during which about sixty persons were killed; in the parish of St. Mary, in October, 1868, the sheriff and parish judge, both Republicans, were publicly assassinated at their houses by an armed body of men in the town of Franklin; similar acts of violence, and other outrages were perpetrated upon colored and white Republicans in thirty-five parishes of the State, a record of which is contained in the legislative and congressional reports to which I have referred. The total summing up of the murders that took place for political reasons, in the months of September, October and November, 1868, as taken from official sources, is over 1000 persons.

By the official registration of that year, the following parishes had the number of Republican votes set opposite their names: Orleans 15,005; Avoyelles 1,238; East Baton Rouge 2,835; Bienville 1,347; Bossier 1,338; Caddo 2,894; Calcasieu 1,198; Caldwell 435; Claiborne 861; Claiborne 1,659; De Soto 1,686; Feliciana, East 1,674; Feliciana, West 1,689; Franklin 1,579; Jackson 459; Jefferson 3,562; Lafayette 745; St. Landry 1,211; Sabine 231; St. Bernard 679; St. Helena 674; St. Landry 3,689; St. Martin 1,605; St. Tammany 2,556; Union 661; Vermilion 283; Washington 243; Winn 43.

Now, in the presidential election held in November, 1868, the vote for Grant was, the same in parishes, as follows: Orleans 276; Avoyelles 520; Baton Rouge, East 1,247; Bienville 1; Bossier 1; Caddo 1; Calcasieu 1; Caldwell 1; Claiborne 150; Claiborne 28; De Soto none; Feliciana, West 1,136; Feliciana, East 644; Jackson none; Jefferson 672; Lafayette none; Morehouse 1; St. Bernard 1; St. Helena 136; St. Landry none; St. Landry 470; Union 1; Vermilion none; Washington none; Winn 43.

So that out of 47,923 registered Republican voters in the foregoing parishes, who had voted, in the spring previously, at the election held for the Republican candidate for Governor, only 5300 votes were cast for Grant. Out of nine of the above parishes, in which there were 11,604 registered Republican votes, only 19 were cast for Grant, being one and two in each parish, except one which gave nine. The table is given below:

Table with 2 columns: Parish Name, Republican vote registered, Republican vote for Grant, November, 1868.

Out of seven of the above parishes in which there were 7253 Republican registered votes, there was not one vote cast for Grant. The table is given below:

Table with 2 columns: Parish Name, Republican vote registered, Republican vote for Grant, November, 1868.

These parishes have since cast the following Republican vote. In 1870, for Graham, Auditor:

Table with 2 columns: Parish Name, Total.

In 1874 VOTE FOR DUBUCLET, TREASURER:

Table with 2 columns: Parish Name, Total.

The Republican registration for 1876 in those parishes is as follows:

Table with 2 columns: Parish Name, Total.

I have thus traced the history of these bulldozed parishes from 1868, and have shown that they had a registered colored vote of 59,737 in 1876, and a registered Republican vote of 47,923 in 1868, and that in all the years in which a peaceable election has been held in these parishes they have cast a uniform Republican vote of from 33,000 to 37,000, and yet that these same parishes in 1868 only gave Grant 5360 votes. This, taken in connection with the history of the events of 1868, of which I have given a brief recital, all of which is corroborated by official records, will establish conclusively and beyond all doubt in the mind of every candid person the facts which Republicans have charged; that the Republican vote of these parishes in 1868 was forcibly and violently suppressed by acts of bloodshed, murder and massacre.

These facts led to the election law of 1870, and it was to prevent the recurrence of similar acts that the law was intended. In this connection, and before passing on, and while I am engaged in tables, let me give the vote of fifteen bulldozed parishes in 1876. These parishes are East Baton Rouge, Bienville, Caldwell, Claiborne, East Feliciana, West Feliciana, Franklin, Jackson, Morehouse, Richland, Union, Washington and Winn.

Table with 2 columns: Parish Name, Total.

In 1870 the same parishes gave the following Republican vote:

Table with 2 columns: Parish Name, Total.

Thus we have seen that these fifteen parishes have a registered Republican vote of 17,726, and in peaceful years have cast a Republican vote of from 9300 to 12,500. And yet these same fifteen parishes under the reign of terror, caused by the Knights of the White Camelia in 1868, only cast 3935 Republican votes, as will be seen by the following table:

Table with 2 columns: Parish Name, Total.

And now these same fifteen parishes under the reign of terror in 1876 caused by the bulldozers, cast only 5768 Republican votes, as claimed by the Democrats, as will be seen by the following table:

Table with 2 columns: Parish Name, Total.

Is not the coincidence striking? Now, to bring out still more clearly the true disparity between the true Republican vote of these parishes and this pretended vote under a reign of murder, I add the following table taken from the official census of persons over the age of twenty-one in those parishes, made in 1875:

Table with 2 columns: Parish Name, Total.

By this same official return of the census of voters it is shown that the total number of white voters in the State is 84,167, and the total number of black voters is 104,192.

The disparity between the Republican vote in these parishes as shown by the registration and the election before that, for President in 1868, and as again shown by the registrations and elections subsequent to 1868, is something enormous. Taken in connection with the history of the times, as I have given it, the claim of the Republicans that this disparity was occasioned by overwhelming and wholesale violence, bloodshed and murder, and the intimidation resulting therefrom, seems to be clear and conclusive. In the Legislature of 1869 the question was raised and was considered how a lawful remedy could be best applied, which would prevent the occurrence of such a state of things.

The problem before the Legislature was this: In a state of things where secret political and semi-military associations, violent political feeling and the absence of the usual restraints of law and social order, could thus revolutionize by wholesale violence whole parishes, and make the elections held therein a mere mockery and farce, lacking every requisite of an election, what changes in the law should be made to counteract and remedy these wrongs?

The principle of law recognized in this country and in England, which governs elections, is this: The first essential element of an election is freedom of choice. The ticket voted is not the vote, nor is the ticket in the ballot box the vote. What constitutes the ticket in the ballot box is, the act of the voter in putting it in the box, at the lawfully appointed time, before the lawfully appointed officers for that purpose, and of his own free will and choice. Another principle of law well recognized is, that violence and force at an election renders such election null and void. That principle is well laid down and illustrated in Cushing's "Law and Practice of Legislative Assemblies," in which the authorities are numerously cited.

There was no question that in such a state of facts as had occurred in the parishes above named the election was an absolute nullity. There was no difficulty in declaring this. The problem was how and where to lodge the authority to legally ascertain this nullity before the returns were duly made and declared. In any ordinary condition of affairs, and in most of the States, the remedy could have been made by enlarging the jurisdiction of the ordinary returning officers. The returning officer of an election in the United States is neither an executive, nor a ministerial, nor a judicial officer. He is an officer whose duties and functions are peculiar to a government whose offices are filled by elections, and whose citizens on the days of election perform the high governmental function of voting. The voter on that day acts as a high and integral part of the government.

In this act he is performing his individual portion of a grave and tremendous governmental act. The returning officers on that day perform duties which are, some of them, ministerial, some of them executive, and some of them judicial in their qualities. There was nothing in the nature or extent of powers which might legally be imposed on returning officers which could have prevented the General Assembly from vesting the judges of election at the various polls with the powers necessary to have enabled them to have rejected votes openly and palpably presented under duress and coercion; and in case where an extensive conspiracy and wholesale terrorism should prevent a whole neighborhood or parish from voting at all, from clothing the returning officers with power to so certify the facts that an ordinary canvassing board could have rejected the pretended result of such election as a nullity. But the difficulty here met was this: The same violence and force which could intimidate and prevent whole neighborhoods and parishes from voting, would also, in the nature of the case, as it had done in practice, overcome and intimidate the local returning officers, so that they would not perform their duties, and thus, practically, the proposed remedy would be of no effect. It was for this reason, that the Legislature of 1869 and 1870, took away from the commissioners of election all the functions of returning officers and left them merely ministerial and clerical officers to perform certain intermediary acts in the election, between the first deposit of the votes and the final count of the same by the proper returning officers. And in order to remove the returning officers from the theatre of such scenes of violence and intimidation, and to place them in a position where they would be able in security and perfect freedom to exercise their duties, the Legislature took all these powers of making returns, of counting the votes and of declaring the result of elections, from these scattered local officers, and vested them wholly and completely in five persons to be chosen as directed by law, who were to be the sole returning officers for all elections in the State; and then to these five returning officers the Legislature gave the additional power, when assembled together, of receiving and determining evidence as to fraud, intimidation and violence which had nullified any election at any poll or in any parish; and where this had been sufficient under the law to render the election null at any poll, or at any number of polls, to ascertain this nullity, and when ascertained to declare it, and to carry it into effect by rejecting from the count the votes so made null and void.

This fundamental change in the number and authority of the returning officers, is the only feature in which the election law of Louisiana differs materially from those of other States. The other differences are merely those of details to carry out and enforce this feature. As a member of the Senate, in the General Assembly which enacted this law, and as chairman of the committee from which it was reported, it became my duty to prepare and draft the bill, which afterwards became a law. Act No. 100, approved March 16, 1870, is the law thus passed. It was written and drafted solely and exclusively by me, and under my direction. Of the original sections of the act, which embodied this distinctive feature, to which I have referred, which are sections one, five, twenty-nine, thirty, thirty-five, fifty-one, fifty-two, fifty-three, fifty-four, fifty-five and fifty-six, I was the author. This act was afterward amended and re-enacted in 1872, by act No. 93, approved November 20, 1872. Section one of this act is the same as in the original act; section five of the original act is section seven of the new act; section twenty-nine of the original act is section twenty-six of the new act; section thirty of the original act was repealed; section thirty-five of the original act is embodied in sections twenty-nine and one of the new act; sections fifty-one and fifty-two of the old act were embodied in sections fifty-six, fifty-seven and fifty-eight of the new act; section fifty-three of the old act is section forty-three of the new act; section fifty-four, altered and amended, is section two of the new act; section fifty-five of the old act is section three of the new act; section fifty-six of the old act is section forty-four of the new act. The only material change made by the new act, was the change in the manner by which these five returning officers should be selected. The principal theory of the act of 1872, and its distinctive features, are identical with those of the act of 1870. Act No. 19 of 1873, and act No. 7 of 1875, amended the act of 1872 somewhat in relation to the appointment of commissioners of election. The act of 1870 made the commissioners appointive by the supervisors of registration; the act of 1872 made them appointive by the police juries of the several parishes; and the acts of 1873 and 1875 again made them appointive by the supervisors of registration.

It will be seen that these five returning officers are neither a canvassing board nor a returning board; and therefore there is no analogy between their powers and functions and those of canvassing boards of other States. These five officers are the returning officers of the State for all elections. There are no returns and can be none, of any election but the returns which these officers make. In the eye of the law they are present at each poll. The commissioner who receives the vote and counts it, makes his sworn statement to them of that count. He is simply the intermediary functionary between the voter and these officers, who receive and count and return his vote. The commissioners make no returns; they have none of the judicial functions which belong to the returning officers; they simply receive and count the tickets, and make a sworn statement of their count to the returning officers. Their functions are exclusively clerical and ministerial. It is the returns of these five officers, and these alone, which, under the law, constitute the prima facie evidence of the result of the election. Their power to inquire into and determine the results of violence and intimidation where alleged, is not the power of counting out or counting in votes, but the power to decide whether alleged votes are votes or not; it is the power to examine into cases where an election has already been nullified by acts of violence and so forth, and if the nullity is proved according to law, to ascertain and declare that nullity. These powers do not differ in their nature and character from those vested in returning officers by the laws of other States; they differ only in the extent to which these powers may be exercised. That extent is enlarged by our law to meet the peculiar circumstances and exigencies of our political condition as I have above described it.

I will simply add that the question with regard to certain parishes of this State known as the bulldozed parishes, is not whether their votes shall be counted out or counted in; it is whether the tickets deposited in the ballot boxes in these parishes on the day of the election were votes or not votes. I believe that if a true and impartial history of the events which have occurred in any one of these parishes should be given, which should include an account of the secret or open armed political societies; which should include a history of the murders, whippings, assassinations, burnings and other acts of outrage and violence, traceable directly to political reasons, and committed for political objects; which should also include the evidence of the colored people of those parishes themselves as to attempts made to force them to join Democratic clubs and to vote the Democratic ticket, or to abstain from voting the Republican ticket; and which should also include a tabular statement of the census and registration and previous votes of these parishes, it will appear conclusively to every candid and impartial mind, that the occurrences of 1868 have been repeated in these parishes in 1876, and that in law and in fact there was no election at most of the polls in these parishes; and that the ballot boxes, instead of containing votes, contain simply the records of an organized, premeditated and deliberate system of violence and intimidation such as has no parallel in any other State of the Union, excepting those States where the difference in population and the political lines drawn between the populations are similar to those existing here.

I see in the Chicago Tribune of November 18 a supposed case stated in Louisiana. It is as follows: Let us see if we can bring home the existing state of things to the bulldozed parishes of Louisiana to the comprehension of our Democratic readers in this city. We premise that the colored men in the South are as nearly unanimously Republican as the Catholic Irish in the North. It requires fully as much persuasion to change a Southern negro into a Democrat as it would here in Chicago to change a Democratic Irishman into a Democrat. Suppose that about 3100 Democratic votes and 1100 Republican votes; of the former perhaps 3000 are Irish Catholics, and of the latter 1000 are Protestants. Suppose on the morning after the election it had been announced that Bridgeport had voted as follows: Hayes and the whole R-publican ticket, 1753; Tilden and the D-mocratic ticket, 1400; and 180 for Tilden, and 180 for Hayes. How would Perry H. Smith, General Cameron and Miles Kehoe, talk? What opinion would Captain Connet, Tom Foley, Mike Evans and the 238 R-publicans, who are as nearly unanimously Republican as the Catholic Irish in the North, have? They would say that the result of the election was a parallel case to what was done in Morehouse and Ouachita parishes against the Republicans. The registered vote in West Feliciana is 4673; the Democratic vote is 1733 for Tilden and 3 for Hayes, when every man in Louisiana knows there is a Republican majority in the parish of between 1000 and 3000. Suppose, furthermore, that the Irish sixth ward had been returned 500 majority for Hayes, the case would have been no worse than the return of 800 Democratic majority from West Feliciana instead of 1400 and 180 for Tilden and 180 for Hayes. 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