Orleans Republican.

AL JOURNAL OF THE UNITED STATES

AL JOURNAL OF NEW ORLEANS

AUCTION SALES.

Friday, February 23.

UNITED STATES MARSHAL, at 12 o'clock, n main entrance of the Customhouse, an est in six promissory notes.

CHAS. J. SPEAR, at 10:30 A. M. at No. 18 line street, contents and fixtures of a store.

DS, ELLISON & CO., at 12 o'clock, at the ol Chamber, City Hall, revenues of the markets.

Saturday, February 24.

GIRARDEY, at 12 o'clock, at the St. e Auction Exchange, a lot, with build- corner of Royal and Port streets; same Lamport, between Clouet and Louisa e; same on Marigny, between St. Claude Lamport streets; same on Customhouse, een Roman and Derbigny streets.

DE J. SPEAR, at 12 o'clock, at the Mer- e and Auctioneers' Exchange three lots, buildings, in square bounded by Galvez, Hospital and Barracks streets.

A O'CONNOR, at 12 o'clock, at the Mer- e and Auctioneers' Exchange, premises Dumaine street, with three squares and in the Sixth District; the Benson ation in the parish of Rapides; the Long in the same parish.

HARLE JOHN P. WOOD, at 12 o'clock, rehouse, No. 139 Julia street, household ure.

LOCAL INTELLIGENCE.

EN IN THE DOCK.—Jack Hartnett, ous burglar and desperado, who walked out of the central station e Boylan police took possession, ed a brutal murder in the dock of Municipal Police Court, Saturday. brought there from the Parish the Maria, and by some careless- a knife in his possession. A col- named Charles Hamilton having him of taking his tobacco, he him twice, once in the abdomen n in the back.

ST UNIVERSITY.—Principal J. A. e able to inform the public that he building is in ashes, this excel- stitution will not be suspended by The regular course of instruction resumed immediately, and tempo- arters provided till another build- ected.

BRIERS.—Heinrich Gehlberger, irty years old, shot himself to death the heart at his residence, No. 613 ation street. He had been em- A. A. Maginnis' oil factory, and bited mentral aberration on several lately. He leaves a wife and two

ce Lewis, three years old, shot while playing with a pistol.

City Hall, Saturday, the bid of for- ents, for ten wharf bonds, by E. ur, was accepted.

orts having allowed the private en a chance to do business lately, further immunity from loss in a of license. They would no doubt t up the public markets a while, ake things even.

unday spring shooting begun on est by two parties. One was un- s the course of the bullet. The r composed of James Foley and berty, and Mike Dermody, who ot to prevent the others from ach other, and both fired at him, wounding him in the right thigh. ice would have arrested the single er, Sunday night, if the corporal prevented them. The man was th several pistols, but no one know him.

named George Sykes was found night on the corner of Levee and fields streets with his throat cut, eak as to prevent medical assist- enty-three men were arrested at house near by as participants in t upon him.

about twelve o'clock as Thomas colored man, from Terrebonne, ng down Exchange alley with a illiam Moore, he was assaulted by white man who demanded to his politics were, and, without truck and cursed him in presence crowd. He appealed to one of beat. He was called to the levee shanties March 5. nan was accidentally drowned

convicts seem to be plentiful in na, judging from the police re-

E. Lee was forced to return to ane on one engine Sunday, the ad of the other having blown sburg. Seven men were killed ident.

Clarke had his arm broken by a Monday.

Warner, a sailor and ship car- ed about fifty-five, committed onday at No. 308 Old Levee hanging himself with his silkief. He had attempted to drown ent ten days before at the Sec- et ferry landing, but had been after jumping overboard. He from California a few months y once resided here, and left be- a son and two daughters. He rth a German, and a veteran of an war. Poverty and lack of the causes of his death.

a street car No. 58 run over a two years old near St. Andrew nday, while the driver was mak-

Jery, Untamed Democracy.

very night for the past week the Senators and Representatives ent at Washington, taking each other's hopes and fears. On ight, at Mr. Clymer's house, e Senators and Representatives resolution was offered proposing the commission, and it received ns. The following was finally

That the count of the electoral proceed without dilatory opposi- orderly execution of the act of reating the Electoral Commis- decision shall be received and in accordance with the pro- e said law; but this resolution ed with the solemn and earnest e Democratic party against the shameless violations of law, jus- th contained in the decisions of by which signed the same in the ridda and Louisiana.

ently, a proposition by Captain mber of Congress from Louisi- appropriations be withheld until ent is restored to Louisiana Carolina, was received with a pprobation."

ars ranged themselves as fol- resistance outright—Randall, McMahon, Poppleton, Willing f Kentucky. Submission, con- e recognition of Nicholls and Representatives Ellis, Hooker . Against any action—Brown of Kentucky.

bus, Ohio, dispatch announces wo out of sixty-three Demo- bers of the General Assembly s there to consult about the nation. A resolution was of- ting the Ohio delegates in Con- ose and by all lawful means to counting of the electoral vote March 4.

n to strike out the word "law- lated, only nine votes being n.

gby discussion the resolution s adopted by a vote of 26 yeas

adjournment of the general can- ten gentlemen who voted no ation held a caucus and unani- ted a resolution to send a tele- e Ohio delegation making the that the action of the caucus considered as an expression of tle members of the Assembly, e to any unnecessary delay in ount.

al consultation at Mr. Hewitt's ed in a determination that no was not dignified, manly and erat party should be adopted. r at Colonel Pelton's room ebels, whenever an interpretation would lead to consequences that are either absurd or hurtful to the public welfare, that inter-

THE ELECTORAL TRIBUNAL.

The Louisiana Case.

On Monday last the matter of the electoral vote of Louisiana being before the commission, and Mr. Carpenter and Mr. Trumbull having spoke in the Democratic interest, Mr. Stoughton followed with an argument on the Republican side of the question. He expressed his surprise at the objection that the certificate of Governor Kellogg was inoperative. It would be remembered that when the vote of Connecticut was counted, her Governor, Mr. Ingersoll, was a presidential elector at large, and that his certificate had been received without objection. Such objections were hardly suitable to the dignity of the occasion. It had also been objected to-day, and the objection had been urged with a good deal of zeal, that Governor Kellogg was not the Governor of Louisiana, and that Louisiana was governed by a military despotism. He supposed that that meant that a military force had been, on application of Governor Kellogg to the President, ordered to Louisiana for the purpose of suppressing insurrection. The learned counsel [Mr. Carpenter] was right, he supposed, in saying that without such aid the government of which Mr. Kellogg was the head would have been overturned. But counsel should have reflected that the very fact that Governor Kellogg had made such an application, and that it had been granted, was decisive evidence that he was the Governor of Louisiana. What was the offer here on the other side? It was that the commission should, by a search and scrutiny of many, if not all, the polls in Louisiana, ascertain what had been the vote of Louisiana at the last election. It was proposed that the commission should overrule and disregard and go behind the action of the final Returning Board of that State and hold it for naught. He said he would satisfy the commission beyond all question that the Returning Board, as constituted, had the power delegated to it by the statutes of Louisiana to determine the number of votes cast for electors, and power to certify it finally, so far as the authority of that State was concerned, and he would also satisfy the commission that the objection that a vacancy in the Electoral College could not be filled by the college itself, had no foundation whatever. It seemed to him that that the decision of the commission in the Florida case determined this entire question here raised as to the right of the commission to go behind the action of the Returning Board, and he could not perceive that any question—much less the main question—was now open to argument. He quoted against Mr. Trumbull's argument to-day from a report made by Senator Trumbull to the effect that neither the Senate nor the House, nor both houses jointly, have power under the constitution to canvass the votes of the electors, and that the mode and manner of choosing electors was left exclusively to the States. He also quoted on the same point a letter recently published from ex-Judge Church, of New York, whom he characterized as a great lawyer, an upright judge and even a pure politician. He went on to argue that the State corrects the frauds of its own officers and does not apply to Congress for the purpose, and that Congress would best perform its duty by discharging it within its authority, leaving these occasional frauds that are sometimes assumed, and sometimes offered to be proved, to be taken care of by the tribunals having jurisdiction over them. Congress might have the power but it did not have the right to disregard the highest legal authority of a State. The offer made on the other side would lead to proceedings endless in detail, harrassing in their very nature, incredible in unfold the public excitement, which was already seen gathering about the tribunal. Here were offers of evidence, inflamed to the last degree by their mode of statement, involving inquiries of the most extraordinary and painful character, leading to answers, leading to testimony in reply—testimony in justification of the Returning Board that would be endless and difficult of procurement. And all for what? To enable this tribunal to violate the supremacy of the State. He had heard more than one threat couched under shields of language and so framed that they might not quite reach in plain terms their mark, but he understood them, and they were unworthy of the circumstances under which the tribunal was formed, and quite unworthy of those who sought its jurisdiction. He proceeded to discuss the laws of Louisiana as to the power to fill vacancies in the Electoral College, and in reply to a question by Mr. Hoar, he said that the act of 1872 did not repeal the act of 1868 in that regard, he said that it did not touch it at all, and that it was an absurdity to hold that an express purpose of the constitution which had been carried out by Federal legislation, supplemented by State legislation, could be defeated by giving violent construction to a clause which had abundance of other matter to feed upon without being applied to the case of presidential electors.

Commissioner Hoar suggested to Mr. Stoughton that it was hardly worth while for him to spend time in the endeavor to satisfy the commission on that point.

Mr. Stoughton acted on the suggestion, and passed to other points. Coming in the course of his argument to the objection made to the Returning Board of Louisiana for not having filled the vacancy in the board, he said that the law on the subject was merely directory, and that a failure to obey the law did not interfere in any manner with the capacity or jurisdiction of the board. If two of the five members had been Democrats and had afterward changed their politics, would the board, he asked, cease to exist on that account? He stated the problem which had presented itself to be solved in Louisiana by the Democratic party as being that in forty parishes, about which there was no dispute, there was a Republican majority of 6057 voters, and that in the remaining seventeen parishes there were 29,323 colored voters registered and 16,253 white voters. How was that problem to be solved? The records of these parishes showed that the problem had been sought to be solved by bloody hands. In conclusion he said: "Talk to me about outrages, frauds and the disfranchisement of voters. There are two sides to the question, and if you sit here to go back and cancel the votes, you sit here to administer the laws of Louisiana, and you must administer them by learning who have been disfranchised, and what was the lawful vote of that State in harmony with her laws, and not in harmony with the will of a party."

Mr. Shellabarger, of counsel for the Republican side, next addressed the commission. He said the first question was what are the statutes enacted by Louisiana directing the appointment of electors, and what statutes were in force last year covering that matter? The commission, after careful examination, would be unanimous in the opinion that the act of 1872 did govern in 1876 during the presidential election, and that the revisory act of 1870, which provided for a canvass of the returns by the board and Governor, was repealed, and was not in force in 1876. For that provision which made the Governor the canvasser for the purposes of the election was inconsistent with the fifty-fourth section of the session act of 1870, which expressly provided a different tribunal for all the elections, including the Electoral College. It was also repealed by the repealing clause of the session act of 1870. This act of 1872 purports to supply the machinery for every public election in the State by its general terms and provisions—its scope. But, more conclusive than all in this fact, in section two it is expressly declared that the Returning Board shall be the returning board for all elections held in the State, and you have to simply disregard the express wording of the act, without any authority for so disregarding it, or else you have got to treat this law.

The question, then, is this: How can you preserve and keep in force that provision of the act of 1870, revising that of 1868, which provides for filling the Electoral College consistently with that which you have just been stating? I answer, first of all, that it is an exceedingly benign canon of interpretation that a law is never repealed by a new act unless either expressly done, or else the repugnance would be such that it would be impossible for the two acts to stand together, and in using this language I am but repeating the words of the Supreme Court of the United States as announced on many occasions. Another rule of interpretation is this: That in cases of doubtful meaning, whenever an interpretation would lead to consequences that are either absurd or hurtful to the public welfare, that interpretation will never be tolerated unless its escape is impossible. The next step is this: Is it possible to escape the conclusion that under the legislation of Louisiana, Louisiana was disfranchised? And I invite the gentlemen on the other side who may suppose this act is repealed, by which only the Electoral College can be filled, to show me some statute that forces upon you, either by direct provision or by any fair interpretation, the conclusion that Louisiana has been disfranchised in this process of legislation. There is nothing to repeal that section which provides for the filling of vacancies under the law of 1868 and 1870, except the repealing clause of the act of 1872, which says that "all other acts on the subject of election laws are hereby repealed." Is it possible for the act of 1870 to stand, consistent with that repealing clause? If it is, you are bound by your oath, and by all rules of interpretation, to let it stand; first, because you must not make it repealed by implication if you can help it; and second, because if you do make it work a repeal, you work a disfranchisement of the State. Another rule of interpretation is this—that where a statute has received what your Supreme Court calls a practical construction, and has been executed according to that practical construction, in every case of doubt the practical construction that has been given to the law is conclusive. The next question is: What was there left for doubt, debate, or dispute in regard to the question of the power of Governor Kellogg to certify this election? I want to add to Mr. Stoughton's admonition, by way of refreshing your memory, and will quote the words of the Supreme Court of the United States on that point, because they are so exactly opposite and conclusive that it seems to me to close forever, and to all intents and purposes, the discussion in regard to the question as to who was the rightful Governor of Louisiana, and who was entitled to make the certificate.

Mr. Commissioner Payne inquired of the counsel whether there were any provisions of the act of 1868 that the counsel claimed were not repealed by the repealing clause of 1872 except those named?

Mr. Shellabarger stated in reply that he had not gone over the law of 1870, or that of 1870 in all its parts, and could not, therefore, answer the question categorically. "But," he said, "I understand that an examination will result in finding that all the provisions of the act of 1868 are superseded, without exception, by the revision of 1870."

Mr. Commissioner Hoar said that the law of 1870 was a revision of the whole statute law, and contained provisions for the appointment of the presidential electors and how they shall certify their acts, etc.

Mr. Evarts said he would like to suggest to Mr. Commissioner Payne that there was a general election law of 1868, and an electoral law of 1868, which are two independent acts, found in the laws of the same year.

Mr. Shellabarger continued as follows:

Now, I take the language of the Supreme Court of the United States and apply it to these propositions. It is in these words: "It rests with Congress to decide what government is the established one in a State, and when the Senators and Representatives from a State are admitted into the councils of the Union the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority, and its decision is binding on every department of the government, and could not be questioned in any judicial tribunal." That language is absolute and conclusive of this whole question. Now, as to the ineligibility alleged to be wrong in the certain of these electors by the fact that some of them held State offices, I will make a familiar quotation from a speech made by Charles Pinckney on a bill that was pending in Congress in the year 1800, proposing to create a commission like this, and I want to show by it that it was not the design of the constitution to permit a State by any method to add to or subtract from the qualifications of the presidential electors. He says that it was the spirit to give to Congress no right of interference or control over the election of a President; that Congress could not object to any vote or say whether it was constitutionally given, but that was a matter left to the State Legislature, and with that alone rests the power to look into the matter. He says the disqualifications against any citizen being an elector are very few; they are that no officer of the United States shall be an elector, and that no member of Congress shall be an elector.

Mr. Commissioner Thurman inquired whether it would be unconstitutional for a State to require the elector to be a citizen of the State in which he resides.

Mr. Shellabarger said that in his judgment it would be.

Mr. Commissioner Thurman asked whether a State could choose an alien for elector or Senator?

Mr. Shellabarger replied that if there was any ineligibility on the part of an elector it must be such as the constitution of the United States has indicated. The constitution has not prohibited it; it has only made the two prohibitions already referred to. It was a long time doubted whether the States could appoint their electors by an act of the Legislature; but that was settled long ago that there was no limitation of the power of a State in regard to the method of appointment, but that there was a prohibition in regard to what the qualification of the elector should be. The next question is whether the Returning Board, as organized, was a legal board as to its members. It is said that because it had but four, when there ought to have been five, it was rendered incapable of action.

Mr. Shellabarger quoted several authorities, showing that this was not a defect in their action. In one of these cases it was shown that a board composed of ten persons, with power to fill a vacancy, did, by a vote of five of its members, remove a superintendent of schools at a time when there was an unfilled vacancy in the board, on the ground that a majority could act, and five was a majority of nine. This was a case where the facts were much like those we are dealing with. In the case quoted the number of persons were fixed by statute. There was a vacancy at the time of the action, and there was power to fill the vacancy in the board. It was also a case where they failed to fill the vacancy, and where, had they filled the vacancy, the vote by which the act was done, viz: five, would not have accomplished the removal. In this case the court was brought squarely to the question whether a board thus constituted could act. It is the exact case with which we are dealing.

In response to a question from Commissioner Abbott as to whether the board was and therefore the vacancy was a mere absence in the cases he had examined, the counsel replied that these cases were not so directly on all four with the case at bar as the case he had read, because in most of them the absence was not by reason of death so as to create an actual vacancy; but all the reasoning of the court, said he, is entirely in harmony with that question, to wit: That the public interest will not be impeded or stopped by absence, whether that absence is death or what not.

Commissioner Abbott—I put the question because I am quite sure there are respectable cases where court has held that a majority may act if the board is full, but the action of a majority will not bind.

Mr. Shellabarger—The provision is, in its very nature and by the necessities of the case, directory, and it does not go to the essential power of that. You must know that, from the very common sense of the case, because how are you to test whether a man is a Democrat or a Republican? How are you to find whether his politics changed yesterday or to-day, or whether they will to-morrow? It is most obvious, I submit, that there is a directory provision to be abided by and performed in good faith, and if there were no reason for its being omitted in this case then it is an act to be condemned, but it does not go to the jurisdiction of the party. Let me say, if you open this door I shall prove, if the gentlemen—and they seem to me to be of the very highest character—have not falsified to me, I will prove, if you compel me to go into this door, that we tendered again and again the filling of that vacancy, and it was refused by every man to whom the application was made, because they did not want to be mixed up with the troublesome affairs of Louisiana and the long labor, or some such reason as that. I only say that, in passing, to repudiate and repel these incessant inundations that we have in the way of denunciation, invective and declaration of fraud.

I now come to the next point that I have marked on this brief, and that is the proposition that my friend Senator Carpenter, seemed to attach some consequence to, though I do not know that any body else of his side has specially discussed it, and it is the proposition that these functions of the Returning Board are judicial in their nature; that they can not, under the constitution of Louisiana, be conferred, and hence this law goes by the board for that reason. Let me, in the first place, give you a reference in the case of the State vs. Huffty [?] eleventh annual report, which was decided in 1836. I quote that in order to get you away back of these unhealthy influences that are alleged to have pervaded this case since the rebellion. In all these cases which I give you the question of the validity of this law giving power to the Returning Board is involved, although, perhaps, in no one of them, certainly not in all of them, was the question directly and expressly made. But it was involved, and in each one of these cases it was decided that it is a valid law, and that the quasi-judicial powers that are conferred upon the Returning Board are entirely competent to be conferred by the constitution of Louisiana. Counsel also referred to Cooley's Constitutional Limitations (p. 623) in verification of what he had claimed, holding that, according to this authority, in every one of these cases there were special statutory tribunals, and, in most of them, they were not the courts. I come now to the real question in this case, and really the only question there is, and that one is decided by what you have just decided in the case of Florida, and that is, whether or not it is competent for you to go behind the action of the Returning Board of Louisiana for the purpose of finding out what happened in its exercise of the jurisdiction bestowed by statute. I will not restate what has been decided in Florida. I want to say that any intimation that when we deny the power of going behind the finding of the board we are thereby covering up frauds or seeking to escape something, is, I submit, unutterably unjust. It has not even the semblance of fairness in it. Why? I was surprised with my friend Stoughton at the loud denunciation in which our friend on the other side indulged yesterday. I say the language was not worthy of my friend. It is not surely worthy of this tribunal. Why do I say that? First of all, because it is beginning the whole question to say that you have a right to try the questions of fact that disclose this fraud in this tribunal. It is an insult to your intelligence to say that because as mere counters and mere ministerial officers, because you can not go into frauds that, therefore, it is an attempt to cover up fraud. Why look at it a moment in another light. This first argument of the gentlemen contains in itself a true *fide de se*. Its loud-mouthed was their declaration when they were talking about frauds in the Returning Board! What was that fraud? It was a fraud committed by them being mere ministerial officers, a fraud committed in usurping jurisdiction and going behind the returns from the precincts and counties and undertaking to throw out votes in violation of law. There was a case where fraud could not be inquired into according to your law. Stand up to it now and take its consequence. It is right, and it is right just because of what you put into your report in 1872, to wit: that the two houses combined have not the powers of a *quo warranto* court. You can not go behind the returns therefore. You can not talk to me about our position being one designed either by logic, law, or merit to shut out frauds. It ill-becomes our friend to talk to us about this being an attempt to put a man into the presidency of the United States by fraud. Then, in another case we find these gentlemen coming and saying, "Oh! Mr. Kellogg is the Governor of Louisiana, and therefore he is no elector; and then the next moment you have them coming forward and saying, "Oh! he is no officer at all; he is not the Governor of Louisiana, but McEnery is." To such strange positions gentlemen most eminent are driven, in this frantic endeavor to trample down or to escape from the familiar requirements of law.

Mr. Abbott—I would like to ask a question. What do you make of the provision that any person interested in the opposition by reason of being a candidate, shall be allowed a hearing on making application within the time allowed for forwarding the returns of said election? Can the essential right of persons interested in an office to be heard before the Returning Board be preserved if you regard this—if you regard this as merely directory and essential?

Mr. Shellabarger—I answer that, first by saying that this suggestion, addressed to the consideration of evidence, that it is a useful provision beyond all doubt. It is a proper provision to be obeyed, but, it being a mere question of suggestion, going to the convenience, it is not of essence. Because this is a political process; because it is a step in government as distinguished from a trial of private rights of citizens in courts; because it is that, therefore, in every such case you will find the law directory. Look at the reason of the thing. Is it possible that you are going to hold with that same violence that rendered it impossible to vote, and at the same time rendered it impossible for officers safely to make their affidavits in their returns that they can not do at another time? Beware before you come to such a conclusion. If you do it, you will have to do it in the face of the law.

I now conclude this argument by an allusion to what has been the weight and burden on the other side. It is in regard to this alleged outrage in the State of Louisiana. Why, gentlemen, do you shut your eyes to what is now, if not the saddest, certainly one of the saddest chapters in American history? By actual count, through the aid of General Sheridan, it is now set down as a part of your history that in this blighted and blasted State of Louisiana four thousand and odd citizens have been murdered—murdered by plan, murdered by system, by organization; murdered for the purpose of putting down the right of the black man to vote, and that thing has been going on and on through these dark and terrible years. It was my misfortune, gentlemen, to go once myself, in 1866, to this State, sent by the Congress of the United States, and I took the testimony of hundreds of men, and when I was taking it I literally sat with my feet in pools of human blood, shed in putting out the life government of the Union of Louisiana, and they did put it out—oh, right well and effectually. Gentlemen of America, you have written in the last fifteen years a grand history for your country in its general aspects. John Bright, of England, once said to me: "Sir, I have been a part of the British government now for thirty years. In that time we have conducted great affairs. We have extended the right of Englishmen to vote; we have abolished the rotten borough system; we have emancipated the Jews; we have elevated our colonies; we have extended the right of the children to be educated;" and so he went on in a grand catalogue, and concluded by saying: "Sir, notwithstanding what I have said about my country, I say to you that you have dwarfed," and he brought his hand down on the table with startling emphasis, "you have dwarfed all that we have done in the life of the British nation by what you have enacted in the last ten years of your life. You have saved the life of the last, the one republic of the earth, and you have put out of your constitution, and thereby ultimately out of the earth, the chattelization of the human soul." Was it not a grand tribute? Let me say to you now, if this career of yours as a nation, which began fifteen or twenty years ago in this direction by the election of Mr. Lincoln to the presidency, then by the putting out of the rebellion, then by the extinction of slavery, then by your amendment making all men equal before the law, then making all men vote—if this procession of yours as a nation, which is indeed like the procession of the gods whose every footfall marks a constellation and shakes from its sandals the star-dust of the heavens, is to end here by your turning back and abandoning to these murderers this land already deluged in blood for the purpose of disfranchisement, then, indeed, this career of yours will be like that French astronomer's described so magnificently by one of our most gifted men, who marched in search of the central sun of the universe until he found it, and then denied the existence of the God that made it, and walked back to perdition in the night of his own shadow. I then conclude this discussion by saying: Gentlemen of America—that is a higher designation than gentlemen of the commission—remember that there is on trial here tonight the question of whether these laws made in Louisiana in pursuance of that one hundred and third article of the constitution, enjoining it on her Legislature to make laws of protection of the rights of the freedmen to vote, are to be executed. If you fail to execute these laws you will have established your country in that place where we are taught from childhood the life of the country is to be found to reside—to wit, in the freedom and purity of the ballot box.

On Thursday Mr. Evarts addressed the commission, and spoke to the following effect:

The constitution has undertaken to determine that the State shall have the power to appoint electors as its Legislature may direct, and no authority or argument can disparage or overreach that right of the State. That right is in the State. It is not a gift from the Federal government, for there was no Federal government to give it. The State of Louisiana stands in this behalf as one of the original thirteen States stood. Whatever was the right of one of these thirteen States in the election of Washington is the right of Louisiana now in the election of a President, and therefore it is not to be measured as a gift. The government confers nothing upon the States; the government comes into existence by and through the States and their people, and the arrogation of authority is primary in the State, and is in the general government only by its allotment of the terms of the constitution; and there is therefore the same method of construction and interpretation in drawing the line and in maintaining its defenses in this matter of election of President as in all others. Whatever the Federal government has in this matter of election of a President, it has by force of terms in the constitution. Whatever the State has, it has upon the same terms.

Now it is not for me to repeat the arguments made by my learned associates so well, and by me so far as I could aid them in the general discussions which were presented under the Florida case. In that case, as in this, there were presented before this commission matters of consideration about which, as they were open entirely for your inspection, and necessarily form part of your determination, there was no question. I mean the papers that were opened by the President of the Senate according to the constitution, in the presence of the two houses of Congress. They are before you under the law of 1877 as they were before that assembly in that presence under the constitution without the law of 1877; and now the question as to what more is or can be before you is a question under the law of 1877 as interpreted under its own terms in the light of the constitution of the United States. It has passed beyond dispute. We did not dispute it in the Florida case. But if we are to receive the intimation of Mr. Justice Bradley it has passed beyond dispute in your own deliberations as receiving the concurrence of all, that you have the powers that the two houses have in the act and transaction of counting the votes and no other powers.

We insisted in the Florida case that one great consideration in determining what the powers of Congress were in this mere procedure, was what the nature of the proceeding was. Mr. Field, in behalf of the House of Representatives, proposed to you that you had at least the powers of a court on *quo warranto*. Mr. O'Conor, with that accuracy and precision that proceed from his statements, demanded the same authority; insisted that otherwise the correction of the frauds, the redress of violence, the curbing of the excess of authority, would be remediless, and yet in their nature being festering wounds in the body politic, would work its ruin. Those demands were made, those demands were answered; and now, without one particle of change in the law, the constitution, or the area of this debate, we are "told by the responsible representatives of the houses of Congress, through their objectors and by the eminent counsel that have put forward their positions, that you have no judicial power whatever, that we were quite right about that; there could not be any judicial power outside of a court inferior to the Supreme Court, the judges whereof were appointed by the President and confirmed by the Senate, and held office for life upon a stated compensation. Why might we not have been saved the formal discussion? If we are to enter upon this one with any great trust in its soundness or permanence, obedience to the rulings of this commission, as requiring this shifting of ground in our face, would be a respectable support for the maneuver; but I have not heard that given as a reason. The argument in the Florida case was abandoned, and an independent and inconsistent one proposed here.

Mr. Evarts then passed on to the consideration of the Democratic offers of proof. He said:

What, then, is the offer of proof? The first certificate contains in itself every certainty and every conclusive credential that the laws or the constitution of the United States, or the State of Louisiana, prescribed. This certificate also discloses a special state of facts concerning two of the electors who cast their votes. I mean Mr. Brewster and Mr. Levisee, who were voted for and elected, but did not appear at the meeting of the electors, and were thereupon re-elected and took their seats in the Electoral College. I do not need to discuss at all the second, or McEnery certificate. What proof, then, is offered? In the first place, the offers of proof do not seek any of them to disparage the truth of that certificate, nor to impeach the transaction which is shown to have taken place in the Electoral College. They are introducing, therefore, a foreign element of proof that is to separate the Governor's certificate from the things certified, or is to disparage the Governor's right to certify under the constitution of the United States. Other offers of proof expressly concede the addition of things, and plant themselves wholly upon something antecedent in the State's transaction to this action of the Governor, and this action in the State which produces the recorded result on which the Governor must certify.

When you come to their offers concerning the disqualification of Levisee and of Brewster you will observe that there is not the least proposition that on the sixth day of December, when these two men came into the office of elector by the choice of the Electoral College following the vacancy, they were under any disqualification whatever. It has been deliberately produced and made of record in that State that by the authority intrusted with the final act of evidence and certification these electors did receive a majority of the legal votes in the State of Louisiana. They say it was done *mala fide* and fraudulently, but it was then done. The act was consummated, and you are relieved, therefore, from any disturbance of this definite and limited proposition, of whether it is competent for the two houses of Congress to penetrate the action of a State and determine first whether it conforms to the real facts of the election as deducible through successive steps from the depositing of the votes in the ballot-boxes, and, secondly, whether they conformed to legal authority.

It is necessary for us, then, before we can approach definitely the consideration of whether any of this proof can be offered, to understand, at least, what the laws of Louisiana are; and it will follow, if we have any right here to consider the conformity of the action of the canvassing officers, or any of the subordinate functionaries in the election, or any of the voters themselves, to that law, that we should see, at least, upon what statute or statutory enactments those objectors seek to base their question of the action had in these separate departments of the transaction. The first of those acts is found on page 218 of the session laws of 1868, and is numbered 164. Its title is: "Relative to elections in the State of Louisiana, and to enforce article 103 of the constitution of the State." It is not any part of the law of 1868, but it is a reproduction of certain sections of the Revised Statutes passed in 1870. Commissioner Abbott said that counsel had suggested yesterday that the law of 1868 and the revision were precisely the same. During my argument I will show exactly how the matter stands. Now there is another law of 1868, the general election law to enforce article 103 of the constitution of the State. There is another entitled "Relative to presidential electors," that contains in its first section an attribution of the conduct of this election under the general election law, and says such elections shall be held and conducted in the manner and form provided by law for general State elections. Section thirty-two of the general election law of 1868 is as follows:

"That in every year in which an election shall be held for electors of President and Vice President of the United States, such elections shall be held on the Tuesday next after the first Monday in the month of November in accordance with the act of Congress of the United States, approved January 23, 1845, and such election shall be held and conducted in the manner and form provided by law for such elections."

Now, in this presidential electors' act there are two provisions which do bear on questions that we are to discuss as to the proper method of carrying on, certifying, and canvassing the election held last November, if they were in force, and I will ask your attention to them. I will first read section four, which is as follows:

"That immediately after the receipt of the return from each parish, or on the fourth Monday of November, if the returns should not sooner arrive, the Governor, in the presence of the Secretary of State, the Attorney General and district judge of the district in which the seat of government may be established, or any two of them, shall examine the returns and ascertain therefrom the seven persons who have been duly elected electors."

Then there are certain administrative provisions not important. Then the eighth section is as follows:

"That if any one or more of the electors chosen by the people shall fail from any cause whatever to attend at the appointed place, at the hour of 4 P. M. of the day prescribed for their meeting, it shall be the duty of the other electors immediately to proceed by authority to supply the vacancy or vacancies."

Now our learned and ingenious friend (Mr. Carpenter) argued that it was wholly immaterial to the practical result of this case whether you held that law was repealed or whether you held that it was in force. He said that if it was repealed so as to carry down the canvassing section, then section eight being carried down the power to fill vacancies did not exist, and two vacancies were therefore left in the College of Electors, which, as he said, would be enough for his purpose, and that is doubtless true as regards the latter proposition. But we are under no such limitation as that. By the subsequent laws the canvassing section was repealed, and by no subsequent laws was the rest of the electoral act affected. Now that is the proposition which at least liberates us and this commission from any confusion or from any resort to either of the horns of the dilemma. Why do we say this? There came about, in 1870, a revision of the statutes of the State of Louisiana—not a repeal, not a re-enactment, but a reduction of the laws that were already understood to be in force, and in regard to which the fiat of the Legislature was to be impressed upon them that they were the laws in force—a transaction entirely similar to that which took place in Congress in the production of the Revised Statutes under which we now act. On this point I will read from a book published in 1876.

Commissioner Bradley—I have the original publication, which the counsel can use if he chooses.

Mr. Evarts—I will be very glad to avail myself of the volume. In the first place there was a statute entitled "Elections." Then there comes, after the general provisions about elections granted under this consolidated table of elections, a statute concerning contested elections, which in terms is referred to as the statute of 1855, page 408. This contested election law is reprinted as a law already in existence.

Commissioner Thurman—Is counsel reading from the Revised Statutes?

Mr. Evarts—I am reading from the edition of 1875, which is the proper one.

Commissioner Thurman—Was that passed as one act?

Mr. Evarts—I understand that it was. Then we have another title in these Revised Statutes, separated 100 pages from the other, entitled "Presidential Electors" (on page 550), which begins by reciting the acts of Congress, and then in ten sections enumerates the provisions of that subject. Now, those two laws, being for our purposes the same as the laws of 1868, were in force when these Revised Statutes came into operation, unless by actual repeal. These were passed on the fourteenth of March, 1870, and on the sixteenth of March, 1870, a law was passed and is to be found in the first edition of this compilation. The title of this act is the same as that of the election act of 1868 in its general propositions to regulate elections and enforce article 103. Now, this act provides, at section fifty-four, that the Governor, Lieutenant Governor, Secretary of State, and John Lynch and T. C. Anderson, or a majority of them, shall be the returning officers for all elections in the State, and there is at section eighty-five—the final section of the act—the repealing clause, "that all laws or parts of laws contrary to the provisions of this act, and all laws relating to the same subject matter are hereby repealed, and this act shall take effect from and after its passage." Now, what went down under that repeal? In the first place, upon general principles, all of the Revised Statutes that came under the title of "elections" enforcing this provision, No. 103, and all parts of other laws that were within the purview of the conduct of elections held in that State, and no other parts of said laws, were repealed by that section. Now the election of 1872 was held under that law. Did anybody in Louisiana conceive that the Governor was to canvass? Some question was raised whether the act of 1872, which was passed of the twentieth of November to provide another Returning Board, was in operation, but the courts of the State, in the authorities that have been proposed for your honors' consideration by my learned associates, dispose of this question as to who were the returning board and the canvassing board—being one and the same thing, in November, 1872, prior to the twentieth of that month. Therefore, the whole operation of this act of 1870, in repeal of this or that portion of the independent acts, the general election acts and the presidential election act (which was not an act concerning their election, but concerning the discharge of their duties, giving them nothing but the statute apparatus), remained unvaried except the canvassing board. Now, whether the canvassing board of 1868 was the same or not, is not material. Now comes the act of 1872, which is reproduced.

Commissioner Bradley—Right there, if your attention has not been called to it, let me state that the digest of the statutes made immediately after the revision and publication in January, 1871, contains these two titles—the revision itself under the title of "Elections," and the title of presidential electors. The digest is made by John Ray, under the direction of the committee of revision, and in that digest, under the head of "Elections," he inserts the same title that the revision contains, with the exception of the Returning Board, which seems to indicate the impression of the profession at the time.

Mr. Evarts—I thank you for the reference.

Resuming, Mr. Evarts said: The Canvassing Board section of the act of 1868 was repealed by the act of 1870. Did any of these eminent learners who attended in New Orleans during the month of November suggest that Governor Kellogg ought to canvass these votes of presidential electors? But now the vice, the fault, the incurable wound of this election, they say, is that Governor Kellogg did not canvass.

Commissioner Morton inquired whether the digest from which counsel had been reading was to be submitted to the Legislature before it was to be in force.

Commissioner Bradley said it was submitted to the commission of revision of that session, he thought.

Mr. Evarts then said that while the laws of 1870 repealed the enactment of 1868 as to canvassing the vote, the original provision as to electors remained in force. He then discussed the subject of qualifications of electors, first deprecating any interference by Congress in the matter. He said:

Congress is not the judge of the qualifications of electors. If it was ever intended that Congress should be, why was not a provision for it inserted in the constitution? Our ancestors would not let the little finger of the Federal influence be inserted in the State election by having a Federal officer voted for at it; but it is now proposed to lay the thinkness of a man's loins on the said election by judging of the elections, qualifications and returns. It is gravely pretended here, not in terms, for the affronts of the proposition would affright the lawyer who made it, but on the basis of the offer of proof, they ask you to ascribe to the two houses of Congress, when assembled to count the vote with the Vice President in the chair, precisely the same powers, in their uncontrolled execution, that is attributed to the electors of members of Congress. Why did not the wise framers of the constitution indicate that Congress has this power if they believed in it, and how could they anticipate that the whole spirit and purpose of excluding Federal authority within the choice and execution and certification of the choice of electors should be perverted into the monstrous claim that an uncontrolled political authority rests in the two houses of Congress to sift, discard, discount and destroy the election and make such men electors as they choose, or annul the vote of the State when it will answer their purpose? If any further elucidation of my general views is needed I must respectfully ask attention to the reported argument of Mr. Matthews and myself in the Florida case.

I now come to the matter of the proof of it. How about these Federal disqualifications? We talked about that in the Florida case. It so happened that the principles alleged provisionally did not raise the case, but our propositions are unchanged. These electors have been elected, have acted, and they have been certified. It has been asserted that a man who may be ineligible can not be elected. You might as well say that the forbidden fruit could not be eaten because it was forbidden. The attention of the commission is called in passing to some decisions of the Supreme Court of Pennsylvania in regard to the power of a minority of a board to transact business, fill vacancies, etc.

Now, suppose that Levisee and Brewster were each of them ineligible. They are elected. They are in execution of the office, and the State is not to be prohibited in an execution that is satisfactory to itself by extraneous evidence, adduced at the moment of counting the votes, that the man was ineligible. Congress must give that consequence by some legislation and some mode of determining it, or it can not arise. But here these men [illegible] the election to fill a vacancy.

Well, the Oregon brief, contrived not only a double but a treble debt to pay, comes up again to prove that when an ineligible person is elected there has been no election. That is the reason of that supposition. There has been no election, and beyond that it is argued if