

THE CLARION.

VOL. XLVI.

JACKSON, MISSISSIPPI, WEDNESDAY, APRIL 18, 1883.

No. 16.

SENATOR SHERMAN says he will not candidate for the Republican nomination for Governor of Ohio.

SHIPMENTS of surplus whiskey for storage in foreign ports are being made evade payment of the internal revenue tax.

THE Democratic Convention of Georgia has nominated Hon. Henry D. McDaniel, of Atlanta, for governor. He served his State several terms in the Senate of Georgia.

ON account of the reported existence of yellow fever in Cuba and other South American islands, the National Board of Health has decided to establish quarantine stations on the Southern coast earlier than usual this year. It is proposed open the station at New Orleans on 1st prox., and those at other Southern ports not later than the 15th prox.

MEMPHIS AVALANCHE: We have in Tennessee a moderate railway regulation that will prove to be a blessing or a curse it shall be wisely or foolishly acted. If honest men of fair judgment and good business capacity be secured for railway commissioners the people's rights and interests will be secured while no embarrassing restrictions be placed upon the railways.

THE progress of the cotton crop in the United States is shown by the following figures:

2,409,063 bales
5,387,052 bales
3,011,995 bales
5,775,359 bales
6,800,000 bales

those States planters paid for ferries during the year 1879, \$11,076.

Falls county, Texas, a case of much interest has been on trial before United Commissioner Knox. Seventeen men are charged with illegal voting, and the vote being close, those men Asiatics voted made the difference in favor of certain candidates. Chinese were naturalized in 1874. The election laws of 1875 provide that white aliens shall be made citizens. As the Chinese were not guilty of intentional wrong in voting, they should be punished in this case. Their vote is denied on the claim that the laws of 1875 reached backward as well as forward, and that these Chinese are not citizens.

VALLEY PROGRESS: Some of the exchanges oppose the election of a popular vote, giving as a reason that it would be a hazardous experiment in many judicial districts to let judges on account of the low intelligence of a majority of the suffragans. Knowledge that we can't see any sense in this argument. If the suffragans in a judicial district are of a grade to elect the District Attorney, why not the judges? We can remember the good old days when the judges were elected by the people and the best legal talent in the State was always at their services, and they were to the position. The Progress party of electing the judges by popular vote.

Railroad News.

ANNUAL report of the Illinois Central Railway for 1882 shows \$8,905,213 earnings for the year, as against \$7,781,881 for 1881, an increase of \$1,123,332. Net earnings were \$3,660,769, an increase of \$3,227,181 in the year, an increase of \$433,588. The total receipts from all sources were \$3,988,332, an increase of \$3,988,332, in addition to the payment of two per cent. each during the year of \$1,271,451 was expended for interest. The net surplus of income given as \$155,451. The entire cost of the Illinois Central Railroad is \$125,000,000, as well as that from Cairo to St. Louis, is now laid with steel rails. A mileage of lines owned and operated is 190,865 miles.

FROM the St. Louis Globe-Democrat it is learned that the lower branch of the Legislature has passed a bill providing for the granting of special rates by the State for the transportation of heavy dam-aging cargo by shippers who are not liable for the same. Equal quantities of the same class, transported at the same point in the same direction, shall be charged equal amounts, and the collection of the same shall be made either directly or by means of a third party, and as prima facie evidence of extortion and unjust discrimination.

Railroad Economy—No. 8.

THE extravagant manner in which railroads are operated, the amount of which must be recouped from shippers in the rate of freight with the unjust discriminations that are not unfrequently allowed, have excited among the people against these so-called "inscrupulous and monopolizing corporations," a feeling of hostility, and it is no cause for surprise that, believing themselves outraged, they should resort to retaliatory measures. Wrong begets wrong. The people have made in many instances ill founded complaints and unjust demands, and when these were not acceded to have resorted to threats and sometimes secret violence. Their Representatives in the Legislature have been appealed to, and in many cases they have threatened; "hostile legislation" has been the result.

This feeling is not confined to our own State but exists throughout the country, and is agitating our State and National Councils. This state of things is adverse to the interests of the roads as well as the public.

The great motor for the unexampled progress of this most progressive age is the railroad. Without it we must not only stop in our onward march, but must fall behind in the great race for improvement, and this threatened "irrepressible contest" should cease. The roads have constitutional and chartered rights which must be respected, for they cannot be successfully operated without the protection of the sovereign power of the State on the one hand, and the hearty co-operation of the people through whose territory they operate, on the other.

The people also have rights and they must be respected. The Supreme Court of the United States has said that "where a party invests his capital in an enterprise in which the public has an interest, he yields to the public the right of control to the extent of that interest."

The roads are dependent upon the prosperity of the people for their revenue, and the people are to a great extent dependent upon the roads for their prosperity. There is a mutuality of interest and there should be in feeling. To accomplish this, thoughtful men suggested the appointment of a Board of Railroad Commissioners—who having no personal interest should represent the people. The plan has been adopted in a majority of the States and so far as I know, has worked successfully and to the satisfaction of all parties—but when proposed in our State it is objected to by some ultra railroad men, who regard the movement as hostile to their interests. In this they are mistaken. The intelligence of our people not only is not opposed to railroads, but on the contrary desire them and feel that our prosperity to a great extent depends upon them—but they desire to feel that their interest is represented, and that they will be protected not only from unnecessary and extravagant rates, but unfair and unjust discriminations. The advantage of an intelligent Board of Commissioners to the roads themselves can hardly be over-estimated, for while they represent the people, they stand between the people and the corporations. Railroads should desire such a Board:

1st. Because it creates a third party which stands between them and the people, and protects them from unreasonable complaints.

2d. Because through this third party they will learn the real wants of the people and be the better able to serve the people and benefit themselves.

3d. Because it gives them the benefit of the judgment of disinterested parties in relation to the conduct of their business—the inequalities and consequent injustice of their tariffs, which can certainly do them no harm and may be of great service.

4th. Because it protects them from unreasonable litigation by designing and unscrupulous men.

5th. Because it protects them from "hostile legislation," as the Legislature would not be likely to pass laws contrary to the recommendation of the Commissioners.

6th. Because through this Commission, they will be likely to hear of any wrong-doing by their employees and thus be able to protect themselves from greater wrong.

7th. Because it enables them to so conduct their business as to harmonize all conflicting interests and thereby secure the desired result.

Away then with the idea that a Board of Railroad Commissioners is appointed for any other purpose than the mutual interest of the roads and the public.

OSWEGO.

THE WICKED LITTLE GIRL.

[Boston Globe.]

"Ma's up-stairs changing her dress," said the freckle-faced little girl, tying her doll's bonnet strings, and casting her eye about for a tidy large enough to serve as a shawl for that double-jointed young person.

"Oh, your mother needn't dress up for me," replied the female agent of the missionary society, taking a self-satisfied view of herself in the mirror. "Run up and tell her to come down just as she is in her everyday clothes, and not to stand on ceremony."

"Oh, but she hasn't got on her everyday clothes. Ma was all dressed up in her new brown silk, 'cause she expected Miss Dimmond to-day. Miss Dimmond always comes over here to show off her nice things, and ma don't mean to get left. When ma saw you coming she said 'The Dickens!' and I guess she was mad about something. Ma said if you saw her new dress she'd have to hear all about the poor heathen, who don't have silk, and you'd ask her for money to buy hymn books to send 'em. Say, do the nigger ladies use hymn book leaves to do their hair up on and make it frizzy? Ma says she guesses that's all the good the books do 'em, if they ever get any books. I wish my doll was a heathen."

"Why, you wicked little girl; what do you want of a heathen doll?" inquired the missionary lady, taking a mental inventory of the new things in the parlor to get material for a homily on worldly extravagance.

"So folks would send her lots of nice things to wear and feel sorry to have her going about naked. Then she'd have hair to friz; and I want a doll with curly hair and eyes that roll up like Deacon Sliderback's when he says amen on Sunday. I ain't a wicked girl, either, 'cause Uncle Dick—you know Uncle Dick, he's been out West, and swears awful and smokes in the house—he says I'm a holy terror and he hopes I'll be an angel pretty soon. Ma'll be down in a minute, so you needn't take your cloak off. She said she'd box my ears if I asked you to. Ma's putting on that old dress she had last year, 'cause she didn't want you to think she was able to give much this time, and she needed a new muff worse than the Queen of Cannon Ball Islands needed religion. Uncle Dick says you oughter go to the islands, 'cause you'd be safe there, and the natts'd be sorry they were such sinners anybody would send you 'em. He says he never seen a heathen hungry enough to eat you, 'less 'was a blind one, an' you'd set a blind pagan's teeth on edge so he'd never hanker after any more missionary. Uncle Dick's awful funny, and makes pa and ma die laughing sometimes."

"Your Uncle Richard is a bad, depraved wretch, and ought to have remained out, where his style is appreciated. He sets a horrid example for little girls like you."

"Oh, I think he's nice. He showed me how to slide down the banisters, and he's teaching me to whistle when ma ain't round. That's a pretty cloak you've got, ain't it? Do you buy any good clothes with missionary money? Ma says you do."

Just then the freckle-faced little girl's ma came into the parlor and kissed the missionary lady on the cheek and said she was delighted to see her, and they proceeded to have a real sociable chat. The little girl's ma can't understand why a person who professes to be so charitable as the missionary agent does should go right over to Miss Dimmond's and say such ill-natured things as she did, and she thinks the missionary is a double-faced gossip.

THE governor of Tennessee has appointed as the Railroad Commission: Gen. Gordon for West, Col. J. H. Savage for Middle, and J. A. Turley for East Tennessee. Messrs. Gordon and Savage are lawyers, and Mr. Turley is a farmer. Gen. Gordon was formerly a civil engineer, and surveyed the route of the Nashville and Northwestern railway.

Vigorously at Work.

St. Louis Railway Register.]

The Illinois Central is vigorously at work on its Mississippi branches and large quantities of steel rails have been purchased for use on the new feeders.

So They Might.

Chickasaw Messenger.]

Hon. N. B. Crawford, of Chickasaw, says he is not a candidate for re-election to the Legislature, but we say the good people of Chickasaw might go farther and fare worse.

The Canadian Railway Commission.

New York Commercial Bulletin.]

It is the Canadians now that, through their boards of trade and other commercial bodies, are demanding a State Railway Commission to protect merchants and shippers from unjust discrimination and various other abuses; and, in the present state of public opinion there, we are inclined to think the demand will have to be complied with.

Roscoe Conkling for Tilden.

Concord People.]

Roscoe Conkling is reported as being anxious to see Samuel J. Tilden President. Had Mr. Conkling done his duty and lived up to his convictions six years ago last winter, Mr. Tilden would have been president.

Knavery is supple, and can bend, but honesty is firm and upright and yields not.—Colton.

SUPREME COURT REPORTS.

October Term, 1882.

REPORTED WEEKLY BY ROBT. SHOTWELL.

FOOTE, DISTRICT ATTORNEY,)
vs.
MYERS, SECRETARY OF STATE,)
CAMPBELL, C. J.,
Held—

The demurrer to the plea in the abatement, should have been sustained. The two actions are not the same. One is the suit of a private person instituted by himself, and subject to his control. The other is the petition of the District Attorney of the 9th Judicial District, in a matter affecting the public interest, and although it is in the name of the officer, when it should have been by the State on his relation, and although the name of Chalmers as relator is used, it being instituted by the District Attorney is the suit of the State, and is independent of the suit of Chalmers, although both may be intended and expected to inure to his benefit.

The judgment is reversed, the demurrer to the plea sustained.

MYERS, Secretary of State,)
vs.
CHALMERS,)
CAMPBELL, C. J.,
Held—

This is a petition by the appellee for a mandamus to compel the appellant to count for him 1472 votes cast for him in Tate county at the election held there for a representative in the Congress of the United States, on the 7th day of November, 1882, and to declare him elected. The first petition was filed before the count was made, and from the apprehension that the votes mentioned would not be counted for the petitioner. They were not so counted, but were counted for another, and the appellant declared Manning to have been elected, and thereupon, the Governor commissioned him. An amended petition was filed, and presented these facts, and such proceedings were had as resulted in a judgment of the Circuit Court as prayed in the petition, from which an appeal was taken.

That mandamus is the appropriate means to compel an officer charged with the duty to declare the result of an election is beyond dispute. That the office is such that the courts have nothing to do with a trial of the right to it is not an objection to the exercise of their power to compel the performance of duty by an officer with respect to the election.

The only difference in the cases is as to the circumstances under which the courts should interpose, and the relief they will afford. McCray on elections, Sec. 338, says, "We gather from all the authorities, the following rules:"

1. If the officers of election refuse or fail to act, mandamus will lie to compel them to discharge their duties as required by statute, but in such cases the writ will not as a general rule command such officers to certify that any particular person has been elected.

2. If there are two or more persons claiming the office, the writ will never issue to require such officers to declare either one elected, but only to command them to execute the duties and exercise the functions conferred upon them by law.

3. If it clearly appears that a particular person has received a majority of the votes cast, and that no question is made upon this point, perhaps mandamus may issue to compel such officers to certify the election of that person by name, although this is substantially the same thing as to order them to certify the result according to law, and therefore the latter form will always be found to be the best.

In section 337, this author says, "A few cases may be found in which the writ of mandamus has issued to the proper certifying or returning officer, commanding him to certify the election of a particular person by name, but this is believed to be an improper or at least an improvident use of the writ. It should be issued, if at all, simply to compel a return or certification of the result, as shown by the proper returns, but the court issuing the writ should not assume to determine, and in advance, who by such returns, is entitled to the office. As we have heretofore observed the proper use of this writ is to compel but not control action by the returning officers. If the person actually elected is not returned and certified to be elected his remedy is plain and it is desirable that all questions connected with counting the votes and declaring the result, should in the first instance remain with the officers of the election."

It is clear that where a ministerial officer refuses or fails to act in the performance of his duty as to the result of an election, he may be compelled to do so, and a number of cases hold that where he has acted, but wrongly, he will be compelled to act over and rightly. Of these are Florida, ex rel., Bisbee vs. State canvassers, 17 Florida, 29; Fuller vs. Hilliard, 29 Illinois, 412; Clark vs. McKenzie, 7 Bush, 523; O'Farrell vs. Colby, 2 Minn., 180. State, ex rel., Price vs. Lawrence, 3 Kansas 91.

The Secretary of State has no duty to perform as to elections, except to "sum up the whole number of votes given for each candidate, and to ascertain the person or persons having the greatest number of votes for each office, and shall declare such person or persons to be duly elected, and thereupon all persons chosen to any office at such election, shall be commissioned by the Governor." Code, 1880, section 141. The Secretary of State as to this duty is merely a ministerial

officer, and is amenable to the courts as such, and may be proceeded against by mandamus.

It is a fundamental principle never to grant the writ of mandamus, where, if issued, it would prove unavailing. High's Extraordinary Legal Remedies, section 14.

In this case the Secretary of State having declared Manning to be duly elected, and the Governor having commissioned him upon such declaration, we adopt the language of the Supreme Court of Mississippi in the similar case of Bland vs. Rodman, 43 Missouri, 256, and say, "The case has passed beyond any control of this court, and the only redress the relator has, if he considers himself aggrieved, is by a legal contest made in pursuance of law." In that case the writ was denied because the Secretary of State had certified to the Governor the result of the election and the Governor, acting on that, had commissioned another than the relator.

In People Ex. rel., Thompson vs. Cover, 50 Ill. page 100, mandamus was denied because another than the relator had been declared elected, and had been commissioned, and so in Sherburne vs. Horn, 45 Mich. 160.

The distinction between cases in which the final act of investing the person declared elected with the evidence of his election, had been done, and those in which it has not, is fully illustrated in the cases of Florida, Ex. rel., Bisbee vs. Board of County Canvassers, 17 Fla., 9, and same vs. Inspectors of Election, Id. 26, and same vs. Board of State Canvassers, Id. 29, and same vs. Drew, Governor, Id. In the first of these cases the Board of Canvassers of Alachua county was compelled to return the votes cast. In the second the inspectors of a precinct were commanded to make certain returns. In the third, the Board of State canvassers was required to assemble, and recount the votes and give a certificate of election to Bisbee, who then demanded of the Governor a commission, in accordance with this certificate. The Governor refused his demand on the ground that he had, on the former declaration of the result of the election, issued a commission to another in accordance with it. Bisbee applied for mandamus to compel the Governor to give him a commission, but the court refused it. In State vs. Governor, 1 Dutcher (25 N. J.) 331, the writ was refused when asked to require the Governor to issue a commission in opposition to the declaration of the result of the election as made to him by the officers charged with the duty of declaring the result, although it appeared that the decision of the board declaring the result was contrary to the truth of the case.

In State vs. Fletcher, Governor, 39 Mo., 339, the court refused to issue a mandamus to require the Governor to issue a commission, and to this effect are many other cases.

In O'Hara vs. Powell, 85 No. Car., 103, in which one had been a candidate for representative in Congress sought mandamus to compel the persons composing the Board of county canvassers of Edgecomb county to re-assemble and make a new and full recount, so as to include certain votes omitted in their former count, the court having assumed from the time elapsed that the State canvassers had acted on the returns made to them, and declared the result, and that commissions had been issued to those declared to have been elected, said: "The case has therefore proceeded so far that no judicial order in the action can change or affect the result." It could only result, the court further said, "in making two inconsistent determinations, and, perhaps, a third mandamus become necessary to compel the issuing of a second commission for the same office. In an election of a member of the general assembly or a representative of Congress, contesting claims to a seat must be tried before the body to which the certificate of election or commission accredits the person holding it, and the decision there made is final and irrevocable." That court after showing that no action it could take could disturb the person who had been commissioned as a Representative in Congress, or assist the petitioner in his contest before the House, refused to do the useless act of issuing the writ of mandamus, and dismissed the petition for it. That court conceded the propriety and utility of the writ, "while the political machinery in motion and the result undetermined," but as the matter was ended by the final act of the State officials in accrediting one as a Representative in the House of Representatives, it was remitted to that house to deal with, and dispose of all questions involved in the controversy. These cases rest upon sound principle, as we believe and command our approval. A commission issued by the Governor is irrevocable. He cannot revoke it, except in cases of his appointee, removable at his pleasure. Marbury vs. Madison, 1 Cranch 137. Ewing vs. Thompson, 43 Pa. 87.

It must stand until vacated and annulled by a body which has the right to investigate the facts of the election, and decide who is elected to the office. The statute requires the Secretary to sum up the votes cast, as shown by the returns made to him, and to declare the result to the Governor, who commissions. The Secretary of State is not required to issue any certificate or paper to the person elected. He simply declares the result and the Governor furnishes the credentials which accredit the person declared by the Secretary to have been elected. This constitutes the credentials spoken of by the act of Congress which directs the making up of a roll of the members of the House. Revised Statutes, U. S. § 31.

If we were to require the Secretary of State to make another declaration of the result of the election, it would be nugatory. It would not constitute the required credentials. If we were to command the Secretary to issue a certificate of any sort to the petitioner, we would require what no law requires of him in reference to the election.

If we assume that the Governor would deem it his duty to require a new declaration, enforced from the Secretary of State by the court, nothing still would be effected, because the Governor has no power to recall or vacate the commission heretofore issued. If we should declare that commission illegal and void, we would transcend our legitimate functions, and present our unseemly spectacle of a condemnation of the official act of the Chief Executive of the State in the performance of the duty imposed on him by the Constitution and laws of the State, with the Clerk of the House of Representatives of Congress primarily, and the House ultimately to sit in judgment on the act of this court in pronouncing the commission void. If the Governor should issue another commission, there would be two persons armed with credentials, under the great seal of Mississippi, suitors for recognition as the rightful claimants of an office which only one can hold.

The court will not do a vain thing. It will not act where it cannot adjudicate. It will not pronounce judgment to be disregarded. It may deal with subordinate ministerial officers, and compel them to perform duty, where its power is invoked under circumstances that enable it to render effective relief, but it has nothing to do with the contest between the petitioner and Manning in the present attitude of their controversy. We have not found a precedent for interference in such a state of case, and are not willing to make one.

Judgment reversed and petition dismissed.

SUPREME COURT DECISIONS.

REPORTED WEEKLY BY C. C. CAMPBELL.

Monday, April 16, 1883.

The following cases were Affirmed:

3938—Henry Coker vs. Lucy Coker.
4071—Wolf Aron vs. John Chaffe & Sons.
4074—E. J. Cox vs. J. M. Palmer, Trustee.
4259—M. Gusdofor and wife vs. R. Craig & Sons.
4274—D. W. Moore vs. J. R. Stevens.
4277—Isaac T. Hart vs. Forbes and Beck.
4282—F. A. Montgomery et al. vs. Wm. Evans and wife.
4294—Meridian Compress Co., vs. J. W. Fewell.
4300—C. S. North, Adm'r., vs. J. M. Bogle, Adm'r., etc.
4303—Jason Niles et al. vs. Winnifred Davis.

The following cases were Reversed and Remanded:

4057—M. E. Stroud et al. vs. S. W. Weems.
4065—John Gaddis vs. Jno. I. Palmer, Trustee.
4268—Cicero Heard vs. B. V. McGuffee.
4275—W. W. Goforth vs. State of Mississippi.
4276—W. L. Keira vs. Lloyd Warfield.
4311—Scharff Bros. vs. E. Zimmerman.

4185—H. S. Foote, District Attorney, vs. H. C. Myers. Reversed, the demurrer to plea sustained and remanded.

4247—J. R. Chalmers vs. H. C. Myers, Secretary State. Reversed and petition dismissed.

4295—Field, Morris and Fenner, vs. W. C. H. McKinney. Reversed and bill dismissed.

4302—J. C. Clarke, Supt. etc., vs. R. E. Tims. Reversed and judgment here.

IRON AGE, of Philadelphia, says: "Foreign capital is pouring into the South at an unprecedented rate. The holders of low interest bonds in Europe see the surety of great profit in careful investment in the newly-developing forests and mineral lands of that section."

The Missouri State Board of Health.

has endorsed the recommendations of the Sanitary Council held in this city. Thereby confirming that what the Avalanche truly says that there was never so great unanimity in sentiment upon any question in this valley as upon this of placing the quarantine business in charge of the National Board of Health.

"PROTECTION" is robbery under the forms of law.

A Prospective Candidate for the Presidency Interviewed.

INDIANAPOLIS, IND. — Ex-Senator McDonald, in an interview yesterday said: "I think that a tariff in excess of a revenue standard is not right. When we go beyond that it is simply taxing one man for the benefit of another. If I am a protected manufacturer and you a consumer, you pay a tribute to me not the government. The tariff is the leading national issue, because it lies at the foundation of our system of revenue, and it will continue to exist until it is settled on a constitutional basis of a tariff for revenue. Incidental expenses is a burden that necessarily goes with that mode of taxation. Aside from the burdens of Government, free trade is the true doctrine. Even protectionists admit that tariff should not be levied for protection merely."