THE PRESIDENT MAKERS.

The Closing Argument in the Louisiana Case.

EVARTS ON PRESIDENTIAL ELECTORS.

Neither Federal Nor State Officers, but Electors.

THE POWERS OF THE COMMISSION.

Judge Campbell on the Election Machinery of the State.

HOW VOTERS WERE PROTECTED

Was the Board Legally Constituted and Did It Act in a Legal Manner?

A DECISION EXPECTED TO-DAY.

FROM OUR SPECIAL CORRESPONDENT.

WASHINGTON, Feb. 15, 1877.

Before the Electoral Commission to-day Mr. Evarts argued for the republicans "that the certification of electors by a State is final and not reviewable by Congress or any tribunal that Congress can create." He held that the federal government can confer nothing upon a State, since it came into existence by the consent of the States; that it has the right to create electors, and the general government has no right to inquire behind the fact, and that the only power that could have been delegated by Congress to the commission is the power to count without scrutinizing the electoral votes. Reviewing for a full hour the mutations of the Louisiana election laws of 1868, 1870 and 1873, he asserted that the act of 1868 provided both for a mode of choosing electors and a mode of canvassing the votes for them; that the act of 1870, while repealing the canvassing section of the act of 1868 did not repeal the other sections, and that the act now in force of 1872 by providing a mode of canvassing, forms, together with the unrepealed sections of the act of 1868, a complete election law legalizing the Returning Board. Next he took the broad ground in regard to the certification of the Louisiana electors,

First—That Kellogg, whom the opposing counsel had admitted to be Governor *de facto* in their printed offer of proof, had a right to make the certification.

Second—That the facts rendered to the Governor concerning the election warranted him in making it.

Also that the certificates of the alleged ineligible electors, Brewster, Surveyor General, and Levissee, Port Commissioner, formed a proper and lawful part of the recorded result. He held that the commission could not understand the real condition of Louisiana, and charging intimidation as an offset to the usurpation and illegal action charged, he said:—"The violence that ravishes or the fraud that secretly purloins the virtue and the rights of American citizens—which is the worst?"

THE INELIGIBILITY QUESTION.

In regard to the ineligibity of Brewster and Levissee he said that the constitution was not guilty of the folly of prescribing that a State should not elect to the office of elector an honored citizen who fills within its borders a place of public trust. The State has a right to decide for itself what electors it will choose; "to say that an ineligible man can't be elected is to say that the forbidden fruit couldn't be eaten. In respect to these two electors, they have been elected, and the State is not to be tripped up in a transaction satisfactory to itself by any extraneous evidence of the fact."

JUDGE CAMPBELL'S ARGUMENT.

Judge Campbell made a very close legal argument. He said that the President, being a federal officer, the political head of the whole people, and their creation, they have a right, through this tribunal, to inquire into his origin. "Where," he asked, "where else will every man in the United States be represented in the final decision?" The jurisdiction of the federal government over the the decision in this case is, he argued, absolute. The State received permission to appoint Presidential electors from the federal constitution; nay, it received a command to that effect. Each State, by the terms of the constitution, "shall," that is to say, is required to appoint Presidential electors. He introduced here a point which created an impression, the point that the count of electoral votes has more than once been proved to be by the sufferance of Congress, since Congress did use its power to reject the electoral vote of seven States for President on the ground that they were in rebellion. He remarked that the power in the States to appoint electors was a trust power returned to the States, and "not a bauble to be played with. If," he said, "the voice of a State, as uttered in the choosing of electors, be an uncertain voice, Congress can refuse to hear it. You must be assured that it is the State that speaks to you before you count its votes. The State's voice is not sure to be uttered by a corporation, a Returning Board."

He went on to show that unless Congress could remedy a fraud the people of Louisiana would be left without remedy at all against any, even the most atrocious and transparent, frauds of a Returning Board. Judge Campbell is one of the ablest lawyers of Louisiana, was formerly a judge of the Supreme Court of the United States, and is highly respected by the present Supreme Court judges. His statement, therefore, that under the Louisiana law the people had no remedy at all against fraud by the Returning Board, that neither the Legislature nor the Supreme Court could interfere to protect them, and that they must depend on Congress, attracted the attention of the commission and produced inquiries by several

Judge Strong asked was it in the power of the State of Louisiana, first to compel the Returning Board to canvass and return the votes on or before the twentieth of November last; and second, could the State create a new tribunal to try the case between two sets of contesting electors.

Judge Campbell—I think not, sir.

Judge Strong—Then you take the ground that the State has no jurisdiction over its own electors?

Judge Campbell—I say that, in my judgment, the State has power simply to choose its electors and to send their certificate to Congress, where the question of their validity is to be decided.

THE LAWS OF THE STATE.

Judge Campbell then proceeded to demonstrate by the laws of the State the following important facts:—

That the Election act of 1872 in Louisiana repealed all acts and parts of acts previous to it, and consequently wiped out the sections in the act of 1868 providing for a mode of election. Therefore, as the subsequent act of 1872 provided no method the Returning Board had no due warrant; that the Returning Board was required by its oaths to count the original returns made by the Commissioners of Election; but, instead of doing this, it accepted what a witness has called a "contabulated statement" by the Supervisor.

THE VACANCY QUESTION.

That the omission, more than that the refusal of the Returning Board to fill the vacancy which occurred, and which, in despite of the provision of the law under which it acted, providing that all political parties should be represented on it, acted throughout with four members of one political party only, vitiates all its proceedings.

This point is thought by not a few lawyers on and outside of the commission to be the most important point in the whole case on the side of Mr. Tilden, and it was emphasized to-day by the averment of Judge Campbell that repeated requests were made to the board to fill the vacancy, and that it constantly refused them. The law provides that in case of a vacancy by death or otherwise "then the vacancy shall be filled."

Judge Campbell offered to produce proof that the refusal of the Board to comply with this mandate was inspired by "the corrupt motive of escaping observation of its acts."

THE INTIMIDATION QUESTION.

Aside from the legal argument, the most interesting statement presented by Judge Campbell was a description of the state of affairs in Louisiana on the eve of the last election. He enumerated 7,000 officials, almost all republicans, and consisting of deputy marshals, special policemen and United States soldiers, who were deputed to watch the polls on election day throughout the State. This he accounted to be a sufficient protection of the polls, and he alleged, moreover, that neither the Commissioners of Election nor the Supervisors of Registration made any complaint of violence or intimidation at the polls on the eve of the election. However, 10,000 separate warrants of arrest were issued for 10,000 different men, comprising in part the best portion of the community of New Orleans. The affidavits for these arrests were made by two men, policemen in each Ward; the Commissioner who made out these papers, he said, brought in a bill for the preparation of those affidavits. But Judge Billings said:—"There is a gross fraud on the face of these papers, and I won't pay a dollar."

At the close of the argument Mr. Merrick asked leave to file a brief including points directly against the power of the Returning Board to canvass the votes, containing a decision by Mr. Justice Miller.

THE PROCEEDINGS TO-DAY.

At the conclusion of the session at half-past four, the commission took a recess for fifteen minutes. On reassembling it discussed for twenty minutes the preliminaries of its private session to-morrow, but decided upon no order of procedure. It will assemble at ten to-morrow and sit in private until four, during which interval it will consider the question of admission of evidence exclusively. At four it will open the doors to counsel and announce its decision whether it will take testimony or not. If it decides to hear evidence, then counsel will be summoned immediately and the rest of the case will be presented or thrown over for discussion on the ensuing day.

PROCEEDINGS OF THE COMMISSION.

WASHINGTON, Feb. 15, 1877.

The commission met at fifteen minutes past ten this morning, owing to the compromise vote last evening at the adjournment, when neither ten nor half-past ten would be accepted.

When Mr Evarts rose to speak the room seemed especially crowded, a great demand for admittance being made, and the number of ladies being considerably increased. Mr. Evarts addressed the commission as follows:—

SPEECH OF MR. EVARTS.

MR. PRESIDENT AND GENTLEMEN OF THE COMMISSION—The general subject of controversy before the commission is how this commission, under the powers conferred upon it and in the discharge of the duty confided to it by an act of Congress under which it is organized, shall advise the two houses of Congress in the discharge of their duty, under the constitution of the United States, in counting the votes for President and Vice President what votes shall be counted for the State of Louisiana. 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. It is not carved out of any fund of power or right that the federal government possessed, for the federal government had no general fund of power or right out of which it could cover a gift to the State. The State of Louisiana stands in this behalf as one of the original thirteen States stood. Whatever was the right of one of the original 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; not to be measured in its relation to any general fund of authority on the subject that the United States had and which it has limited, but as one of the conditions, one of the original limitations, one of the original distributions of power out of which and by which combined comes the government of the United States and exist the governments of the States as members of the Union.

This topic at once leads us to consider wherein the constitution of the United States has established and how it has distributed the authority of choosing a President of the United States; what part of it is administered and administrable as the action of the federal government; what part of it is administered and administrable as the part of the State action in the matter, and on the terms of the constitution is this demarkation to the drawn and adhered to; and in this regard, as well as in every other respect of power, are the maxims of the constitution, as to construction concerning the line drawn, to be observed as well as in every other. 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 defences 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; and then the tenth amendment applies, and the ninth applies—that there is to be no disparagement of the rights that are arrogated by the rights that are conferred, and that whatever is not conferred upon the federal government by this constitution and is not forbidden to the States is reserved to the States or to the people.

PROPOSITIONS IN THE FLORIDA CASE.

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. These general propositions were that the whole matter of creating the elector belonged to the State; the whole matter of ascertaining, accrediting and setting forward with credentials belonged to the State, so far as the text of the constitution read, and that, whatever the statute of 1792 had sought to prescribe in the matter of these credentials it was directory and for the convenience and instruction of the body that was to count the vote; that the elector was not an officer of the State; that in no very considerable sense could be created an officer of the United States; that he was an elector, having the right under the constitution of the United States to vote for President, and that he has a representative elector was to be measured only to discern whether he was deputized to act as an agent or whether he was accredited with the voting power to vote as an elector, having the suffrage in his hands. To say that he was a representative elector because he comes to be an elector in representation of and participation in the government of a State, amounts to nothing more than to say that you members of the two houses of Congress are representative legislators. You are representative legislators. You are legislators in a government resting on the will of the people and upon its communicated authority to you as representatives; but you are not deputized to derive your instructions and authority from a principal at home. You are representatives of the legislative authority lodged theoretically in the people and in the theory of representation possessed by you in the same plenary power that the people themselves would have exercised it.

It was then announced as our proposition that after the appointment of electors then the vote and title to vote and the exercise of the right and performance of the duty to vote on the part of the electors had come under the exclusive dominion of the federal constitution, the representation, so far as it entered into the creation of a title and the conferring of the authority having been exhausted. Now, in the Florida case as here, these declarations had their weight and were accepted or declined by the different members of the commission according to their estimate of the constitution and laws of their country. 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 a 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 by its own terms in the light of the constitution of the United States. It has passed beyond dispute.

POWERS OF THE COMMISSION.

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; not that you have the powers that the two houses of Congress together or separately have as the legislature of the country; not that you have any of the powers that either of them separately has in respect to what is accredited to either of them separately in the constitution outside of legislative power. You have no particle of any authority that is lodged in the two houses of Congress under any of the general grants of authority to them as the legislature, or to either of them separately, except what is granted by the constitution within the very terms of this article—that the transaction being completed in the States, they having forwarded their votes hither under such representations as brings them into the presence of the two houses of Congress, that their contents may be disclosed and acted upon; that whatever action thereupon proceeds by the two houses there met, or by the two houses separating in the discharge of, and in the continued exercise of the function of counting the votes, this is passed over to you that your advice may be given to them, as it would proceed out of their original, their independent deliberations and construction, if they had limited themselves to the conduct of the counting of the votes in the simple terms of the constitution, and they then proceed to count. They count the vote. Having made a law unto themselves, which they cannot transcend without its repeal, that this instruction, as to what votes ought to be counted under the constitution of the United States, they will act upon as determining what votes under the constitution ought to be counted unless their united judgment shall contravene this great authority they have given to you.

We insisted, therefore, in the Florida case, that one great consideration in determining what the powers of Congress were in this were procedure was what the nature of the proceedeng was, what the constitutional objects and solicitudes in providing for the transaction had indicated as the will of the people when they adopted the constitution of the United States, and that was met by very learned and very authoritative statements from eminent lawyers. 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 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 manœuvre; 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.

WHAT IS THE POWER?

Now what is the power? It is what is called a legislative power that is supposed to reside in this commission in determining how it should advise that the votes should be counted, it being a legislative power in the two houses. Now there are quite as many constitutional objections to a legislative power vested in this commission, or the legislative power resting in the two houses of Congress in the matter of counting the votes as there are to any other form or description of power. The legislative power of Congress, the great and principal power of government, is vested in those houses when they act in such concurrence as the constitution requires, but before any legislation can proceed from them there must be such submission of it to the approval of the President as the constitution requires before any legislation is effected. It is not, therefore, in that sense that our learned friends attribute a legislative power, either to the two houses of Congress or to you. It is in the sense of a political power, of political action, in a political transaction. Those are the limits which we had assigned to our argument in the Florida case as to the powers of the two houses—to wit, that in the transaction of an election which starts from the primary polling places and proceeds to the point of developing and accrediting an elector up to the scrutiny, so far as it is opened here, and the counting of the electoral votes, not of votes for electors, it was all a part in the series of movements that had for their purpose that transaction of a political act of bringing into office a President of the United States, and that the two houses of Congress, under the constitution as it reads, must discharge—when the President of the Senate opened the certificates—that duty on those certificates, unless by some prior legislative action of the Congress putting in execution, and thus interpreting some powers that they undertook; for in their construction of the constitution it provided by legal means for the exercise of it, and the terms of this act carefully observed that limitation, that this act was not to be interpreted as carrying any Congressional powers that were determined and created by the act, or any interpretation to be put upon it in its own terms, but that it was to carry such powers as were in the two houses as existing by previous law and as determinable by you. Therefore under the constitution and under existing law, as a primary consideration, then, as in the Florida case, it is to be determined—not as the abstract question that we ask Your Honors to consider—it is to be determined not what hypothetical proof might be received, but what proofs within the office are rightfully to be received and added to the elements and funds of proof which the paper opened by the President of the Senate themselves disclose.

THE OFFER OF PROOF.

What, then, is the offer of proof—not in its details, but in its principles? And what is the state of proof as presented in the certificates in aid or supplement or contradiction of which this proof *ali undi* is to be introduced? The first certificate contains in itself every certainty and every conclusive credential that the laws or the constitution of the United States or of 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. Levissee. The special state of facts was that, being among the electors that were voted for and that were covered by the Governor's certificate, when the Electoral College met they were not in attendance; that the State prescribed that their attendance should be waited for until four o'clock in the afternoon of the day; and that, in case of nonattendance, by itself and of itself alone, on the part of any person chosen or accredited by the action of the State authorities, the vacancy thus created should be filled by the acting electors; that at that moment, on that fact, the college of electors proceeded to choose the same men who thereafter on that title took their seats in the Electoral College and voted. Are they to be counted or discarded upon that showing, to wit: the entire showing of this certificate opened by the President of the Senate. Now, beyond that there is in this argument about evidence not any particular circumstance that I need to call attention to in regard to that first certificate, nor do I need, that I can see—certainly not in addition to the observations that have already been made—to discuss at all the second, or McEnery certificate. What proof, then, is offered? I now proceed to discuss it, as a matter of principle, as to its application and where its effect, if at all, is to be accepted.

In the first place the offers of proof do not seek, any of them, to disparage the the truth of that certificate—I mean its truth as made up of the elements of the Governor's certification of the fact in the State's action that he is to certify—nor to impeach the transaction which is shown to have taken place in the Electoral College. No proof offered touches that space in the transaction or the question of the Governor's right to certify, his right by being Governor to certify, or that the effect in the culminating and recorded result of the election in the State comports with the facts that he did not so certify, nor on the point that Brewster and Levissee came into the Electoral College on the transaction preserved in the minutes of the Electoral College and presented here. If we look at the offers of proof we see that at once so far from introducing, therefore, any 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, these offers of proof expressly concede that condition 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. In the first place we were saved any question and I think might have been saved any argument about Governor Kellogg's being a de facto Governor, filling the office and performing its duties, for they offered under their first head to prove that said Kellogg was Governor de facto of said State during all the months of November and December, 1876, and then, when you come to their offers concerning the disqualification of Levissee and of Brewster, found on the seventeenth page, you will observe that there is not the least proposition that on the 6th 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.

The proposition is—I read now from what is called here the fifth proposition—that on the 7th day of November A. D. Levissee, one of the pretended College of Electors of the State of Louisiana, was at the time of such election a Court Commissioner of the Circuit Court of the United States for the District of Louisiana, and for Brewster in the same way. The offer of proof then falls entirely short of disparaging his capacity to receive an election on the 6th day of December, and the proof is not offered to contradict the transaction by which he came in through the vote of the Electoral College, as displayed in the certificate.

Now, in regard to the substantive matters of proof so far from being obliged to rest on the proposition that there is no offer to intervene that proof between the recorded result of the election and the Governor's certificate of that result as producing these electors and no others, the offers of proof are affirmative in their proposition that that state of facts does exist, and is part of the things they are able and ready to prove. I ask attention to this principal offer of proof, which is as follows:—

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 *nulla 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, second, whether they conformed to legal authority.

Mr. Evarts here entered upon an extended, exhaustive and subtle elucidation of the laws of Louisiana, arguing from them that the power to canvass the vote lay in the Returning Board, who had in the recent election exercised only such powers as were conferred upon them by the statutes of Louisiana. In regard to the exercise of those powers in respect to the Presidential electors the government of the United States had no more authority than it had in regard to any other election in that State. In reference to the question of ineligibility, Mr. Evarts took the same position as in the Florida case, that legislation was necessary to enforce the constitutional prohibition, and that without this the duty for which the elector was created having been consummated there was no power in the two houses to go behind it.

LEGAL SUBTLETY.

He denied that an elector was either a federal or State officer, and in response to a question of Commissioner Thurman, said:—

He is certainly not a State officer. I think he is an elector or voter having qualifications, and his office is of the same kind as the office of the citizen who is an elector so called.

Mr. Evarts defended himself and those associated with him from the charge of endeavoring to cover up frauds which had been perpetrated by the Returning Board, and in eloquent terms referred to the violence and intimidation which he claimed had prevailed in the State, and closed his argument by a review of the offer of evidence by the democrats, which he argued the commission should not hear.

At the conclusion of Mr. Evarts' speech the commission took a recess for half an hour, and when it reassembled, at a quarter to two o'clock P. M., the President (Judge Clifford) announced the reception of the Senate resolution tendering the use of the Senate chamber to the commission in case they should hold an evening session, but no action was taken thereon. He also announced that the remaining counsel had two hours and thirty minutes time left for argument.

SPEECH OF JUDGE CAMPBELL.

Judge Campbell (a former Justice of the Supreme Court of the United States) then addressed the commission on behalf of the democratic objectors. He spoke substantially as follows:—We differ so fundamentally upon the principle of the generative process by which the electors of President and Vice President ever came into the constitution that I shall alter the arrangement of my argument and follow the arrangement pursued by the learned counsel who last addressed the Court. I do not understand that the election of President had its origin in any State constitution, or that it derived its existence from any reserve fund of power belonging to the States, but I contend that from first to last it is a power derived from the people of the United States and does not owe its birth to any State constitution. The constitution came into being by the ratification and acceptance of it by the States, and if the States had rejected it there would have been still a United States. The United States came into existence with the declaration of independence. In an opinion given by Chief Justice Chase, and which I regard as one of the most interesting opinions that ever came from the court, it is stated that during the Revolutionary period the government exercised all the powers of a sovereign government without much inquiry as to where its source of authority came from, and during the period of the Confederation they were still the Uited States under confederate articles. In other words "the historical Union was stronger than the Union formed by the federal compact." I say when they sent delegates to Philadelphia and organized and formed the articles which compose the federal constitution it was a proposition to the States to accept those articles and so form a Union. The people of the United States "on the face of this constitution" spoke with sovereign power when they came to the subject of the President. They said that the executive powers should be vested in the President of the United States of America, and when those words were accepted as law he was the President. When they came to speak of the manner of his appointment they said:—"Each State shall appoint," is required and commanded to appoint, "in such a manner as the Legislature thereof shall direct," electors for that purpose.

The language of the constitution is imperative; it is an absolute "shall appoint." Now what are the powers which the two houses of Congress have exercised in relation to this subject? Do the States come before you in the shape of sovereigns and claim of you "by any title superior to the constitution" that their votes shall be counted? Do they come here and tell your President of the Senate, "Count these votes at the peril of our displeasure?" That has not been their tone or temper when approaching this subject. To illustrate this, let me call your attention to the fact that both of the houses of Congress said to four of the original States after the recent civil war, "We will count no votes that may come from you;" and this was done in advance of the reception of any votes, and simply in vindication of their own authority. There were some chimerical governments existing in some of those States, and they did pretend to send electoral lists to the two houses, but they were discarded as being too trivial for any consideration. Suppose the Legislature of Virginia had sent her election lists in 1865 to vote for incumbents to the office at that time, and had demanded her right under the constitution to cast such votes, what would have been the answer? It would have been as haughty and proud as the demand. They would have been told, "You are no longer entitled to the benefits of this constitution, because you have attempted to abrogate it, and we will not count your vote or allow you even to come to the bar of our houses to present it;" and these two houses, speaking in that voice of authority for the whole people of the United States, which is vested in them for that purpose, it seems is now the poor, feeble, paltry, imbecile thing that cannot deal with the certificate of a fraudulent returning board. I am told again that no examination can be made into the authority of the State Legislature; that they have no separate authority to direct on that subject, and that is their reserved right, and we cannot touch it or impair it. They claim it as a gross usurpation if you venture to inquire into the acts of a Legislature. It is true that the State has the power to appoint and the Legislature to determine the manner and means of that appointment, but is not that a trust power? Is that power given for the benefit or gratification of a State merely? I say no. This commission has the power to look into every act of the Legislature, and if that Legislature contravenes the fundamental principles that lie at the foundation of American liberty they should reject the votes.

AN IMAGINARY ACT.

While the learned gentleman was speaking I drew up an imaginary act of the Legislature of Louisiana as an illustration of his argument; and, to enable me to put the case fairly before you, suppose, for instance, the State of Louisiana had passed such an act as this:—

Be it enacted that William Pitt Kellogg, J. Madison Wells and their associates are made a body corporate, with all the powers of a corporation, under the Civil Code of Louisiana, and there is granted to them the sole exclusive power, privilege and immunity to appoint in all the forms and at the times that may be designated in the act and statutes of the United States, electors for President and Vice President of the United States at each Presidential election under the constitution of the United States, which may be apportioned and allotted to the State of Louisiana, or which the State of Louisiana may be entitled to appoint, and from time to time the Legislature contracts to make such directions as may be necessary to make this grant effective, and the Governor shall grant all such certificates and commissions as may be necessary, and do all other acts in furtherance thereof.

What would be said to such an act as that? And yet it is not very far from the case before the Court. If electoral votes were presented by that corporation, with the seals and signatures required, is there a member of either House of Congress not a stockholder in the corporation who would for a moment hesitate to reject it with contumelious scorn? and the answer would be clear and unequivocal, and the judgment would be a just judgment. It is these United States now, thirty-eight in number, who are interested in the exercise of this power, for it is the election of their Chief Magistrate, who is charged with performing the most important acts that a nation can authorize. This Presidential appointment cannot go into the market as stock to be bought and sold. Although there may be millions in a Presidential election it must speak the voice of the State in its best feelings and intelligence, and if you see that certainly this cannot possibly be represented in the direction of the Legislature you will discard the directions. Now, then, having shown that the legislative directions must be conformable to the spirit of the constitution, it follows inevitably that the two houses of Congress must look into the nature and character of those directions. It is not an absolute or arbitrary power that is conferred upon the Legislature. They do not possess it in full sovereignty as the argument would seem to imply. They are responsible to the people of the United States as much as the Legislature is responsible to the people of the State. In this view, in my judgement, a perfectly justifiable and proper exercise of power was made in the case of Louisiana when her vote was rejected in 1865 by the two houses. There was a quarrel in the State between two returning boards, and, after investigation of the facts in the case the Senate announced the opinion in very clear language, and, as I conceive it, was perfectly legitimate in its conclusions, and determined they would not receive a return computed and collected in the manner in which that was done, even though the office had been accepted by the electors and the votes had been regularly returned. That case is parallel with the one before the court. The Returning Board was required by the act creating it and by the oaths of office of its members, to canvass and compile the original returns. That canvass was never made, and that compilation never took place; but another paper, called by one witness, I believe, a "contabulated" statement, was relied upon, and upon it they based their action.

The learned counsel who argued last is able to tell what sort of a creature an elector is. I am not sure from what he stated that in his conception an elector is even a human being. He need not be, he says, a citizen of the United States, or of a State. He is not an officer of the United States or an officer of a State. But I say that, after obtaining his appointment, he is not a creature of any State power, or subject to any State direction, because the State getting power to appoint from the constitution, the Legislature getting power to direct from the constitution, those directions become a part of this constitution, the power to direct being derived and being examinable by the superior authority. If conformable to the constitution the directions are the same as if they had been written in the constitution. He then becomes an elector in the manner and by the process directed by the constitution of the United States, and when he comes to perform his duty by casting his vote and sending lists of the same to the Congress of the United States, then at a certain date Congress meets and the votes are opened, and they are counted; the voices of the people are determined, and these voices have no uncertain sound. If they are not the full, clear and sonorous voices of the State coming to this assembly of the States on the one hand, and the assembly of the people on the other, they will not be recognized. They will not accept any one as representing a State clothed in a garment not suitable. But all the provisions of the constitution in this respect must be complied with. This being so, if it is doubtful, if it be uncertain, then the power, duty and obligation rests upon us to question it. Would the people of the United States agree that the persons chosen for electors should submit their claims as such electors to be determined by the thirty-eight different Supreme Courts or Circuit Courts of the United States? Would the judgment of any State court be accepted as such a judgment ought to be accepted—that is, in the fulness of a cordial reception? Would they consent that the gentlemen of this commission, or the two houses of Congress should look to the transcript of a record certified from a court, say in Florida or Colorado, to determine the result of an election? It is perfectly evident that no such acceptance could possibly be given.

Seventy-five or eighty years ago, in the infancy of the Republic, when the history of every State and the name of every prominent man was known to the whole country, the character of its tribunals were all ascertained, and there was entire confidence in them among all parties, and at that time possibly a State tribunal might have had some degree of authority. But here, where the whole breadth of the continent separates one State from another, and it is therefore difficult to be acquainted with the proceedings of each, it is impossible for a State to exercise such a power. Where, then, is it proper that such a power should be placed? I know the enormous difficulty on this point because of the partisanship and diversity of interest and jealousy existing in different parts of the country. But if the assembly of the States and the representatives of the people be unfit and incapable, where else are you to look for fitness and capacity coupled with power?

Judge Campbell drew a graphic picture of the election machinery of Louisiana, showing that under its workings the violence and intimidation of voters charged was impossible, and reviewed the statutes of the State to show how illegally and fraudulently the Returning Board had acted.

At the conclusion of Judge Campbell's speech, Mr. Merrick, of democratic counsel, asked leave to file a brief on the subject last referred to, and permission was granted.

The President (Justice Clifford) then announced that the discussion on the pending offer was concluded and that there would be no further public proceedings to-day; and then, at half-past four o'clock, the commission, after a short recess, went into secret session.

THE STRIKING ENGINEERS.

NEW MEN RUNNING TRAINS ON THE BOSTON AND MAINE ROAD—BOTH PARTIES CONFIDENT OF ULTIMATE SUCCESS.

[BY TELEGRAPH TO THE HERALD.]

BOSTON, Feb. 15, 1877.

The striking engineers and the authorities of the Boston and Maine Railroad are as defiant and unyielding as ever. To speak impartially of the situation, it must be stated that at this time the railroad company seems to have decidedly the best of it; but the strikers maintain that they will yet win, and that every man will be back again in his old place in the course of a few days. What few passenger trains the company have sent out to-day have been moved more promptly and regularly than at any time since the strike commenced, and an attempt has also been made to relieve the freight blockade. But this will be necessarily slow, even with a full complement of help. Several of the directors of the road met to-day and discussed the situation in an informal manner. There was but one opinion expressed in reference to the future course of the management, and that was to use every exertion in running the road for the accommodation of the travelling public and independent of the Brotherhood of Locomotive Engineers.

AGAINST THEIR BETTER JUDGMENT.

President White speaks kindly of his engineers, and believes that many of them were induced to join in the strike against their better judgment, their oath of allegiance to the Brotherhood preventing them from disobeying the orders emanating from the Grand Chief. He thought that they were, as a rule, the finest set of engineers in the employ of any road centring in Boston, and attributed the strike to the influence of Mr. Arthur, the Grand Chief of the Order.

Director Nichols also spoke kindly of the men, and stated that they had always, to the best of his knowledge, been well treated, and were held in high estimation by the managers of the road. But neither he nor his associates would allow of any dictation from their employés, and more than all from any one not in the employ of the road. The men had a right to protect themselves from injustice, but to his knowledge they had been fairly and honorably treated. The other directors present expressed similar views, and were unanimous and firm in the position they have taken. Several stockholders who were interviewed this afternoon also declared themselves in favor of the policy which the officials of the road have pursued.

THE STRIKERS UNDAUNTED.

The engineers are as confident as ever that they will carry the day, and to accomplish this end they assert that they will continue as quiet and peaceful as they have been since the differences commenced. Their only movements have been in the direction of buying off men whom the company have put in their places. Half a dozen have been secured away to-day, and the Brotherhood hope to get enough more to-morrow to interfere very seriously with the operating of the road. Chief Arthur has received offers of assistance from engineers all over the country, and letters of sympathy from citizens along the line of the road have poured in upon him by the score.

EXCITEMENT SUBSIDING.

The public excitement has somewhat subsided, but still there are an abundance of complaints on the part of those whose business has suffered on account of the strike, and there will undoubtedly be numerous suits for damages. Although everything is comparatively quiet now and the railroad officials apparently seem satisfied with the situation, it is idle to suppose that they can operate the road with the few inexperienced men who may remain loyal to them. The other Boston roads are not proffering the assistance that was anticipated, for if they should a strike would probably ensue on their own premises. It is generally conceded that this conflict will decide the life or death of the Brotherhood, and hence the result is watched with anxious interest.

THE POTTERY STRIKE.

TRENTON, N. J., Feb. 15, 1877.

There is no immediate prospect of an end to the difficulty between the boss potters of this city and their employés. To-day the former published a notice that all not at work on Saturday, the 17th, would be considered as discharged, and they were requested to remove their tools from the several works. This was signed by the American Crockery Company, East Trenton Pottery Company, Joseph H. Moore, William Young & Sons, Mercer Pottery Company, Caxon & Co., R. Millington, Ott & Brewer, City Pottery Company, Ashbury & Maddoc, Glasgow Pottery Company, Greenwood Pottery Company and Isaac Davis.

The operatives continue to hold out. There were no angry demonstrations this week.

PLASTERERS TO STRIKE.

The Brooklyn Society of Plasterers have adopted a resolution pledging themselves to strike for $2 50 a day on the second Monday of March next.

THE GREAT BANK ROBBERY.

MORE ARRESTS TO FOLLOW—THE LEADERS IN CUSTODY—TRACKED BY THEIR EFFORTS TO NEGOTIATE THE BONDS.

PHILADELPHIA, Feb. 15, 1877.

No outsider has, under any circumstances, been permitted to converse with Scott and Dunlap, the two professional burglars who were arrested in this city for complicity in the great Northampton bank robbery, and who now occupy a cell in "Moyamensing," as the county prison of Philadelphia is called. Officer Franklin, who made the arrest, received this afternoon the requisition of Governor Rice, of Massachusetts, for the prisoners. Accompanying the requisition are eight different complaints, based on as many affidavits from the president of the bank and others from whom the money and bonds were stolen. The prisoners, if they are tried on all these charges, will be sure to be sentenced to about forty years' imprisonment, in the opinion of Officer Franklin. The latter left for Harrisburg at five o'clock this evening, with the warrant of Governor Rice, to obtain the necessary papers from Governor Hartranft for the return of the prisoners to Massachusetts.

It is believed that the three men now under arrest are undoubtedly the leaders of the band that robbed the bank; moreover, that they are the men who control the money and securities stolen, and having secured these men the officer is sure that the arrest of the other four may be expected soon, and perhaps also the capture of the stolen bonds. These men have for five months been watched in New York, being traced through their efforts to negotiate the stolen securities, some of which are not salable in open market. There is no doubt they represent their confederates and control the stolen bonds, none of which have ever been returned. Their stay in New York was to treat for the return of the bonds, through a firm of lawyers. The negotiations appear to have failed, and on Tuesday morning Dunlap and Scott left New York with through tickets to Richmond. When captured here a small kit of light burglars' tools was found with their baggage.

CABINET MAKING AS A FINE ART.

GOSSIP ABOUT THE HAYES AND TILDEN PROGRAMMES—SOUTHERN WHIGS IN THE HAYES CABINET—CONKLING OR EVARTS FOR SECRETARY OF STATE.

PHILADELPHIA, Feb. 14, 1877.

This is a time when the noble guild of Cabinet makers is in its glory. The ship carpenters of the Electoral Commission have not yet decided upon the figurehead for the ship of State, but the Cabinet makers are already flinging their whole souls into arrangements, guesses, probabilities, speculations and rumors. Of course the two gentlemen, to one of whom it will fall in a few days to actually make a Cabinet as yet maintain an inscrutable silence. It would be highly improper in Mr. Hayes or Mr. Tilden to let even a whisper, or the least authentic hint, get abroad of what either would do or whom he would call to his inner council if he should become President. But the professional Cabinet makers all over the country are as busy and as happy as the enemy of mankind is said to be in a gale of wind; and their plans, speculations and guesses, for which only they and not their principals are responsible, are of a kind which at least afford glimpses of what many of the supporters of each candidate think he ought to do, or is likely to do, or what the political exigencies of the country and party may compel him to do.

The HERALD, which is the organ not of a party, but of the people and of the independent voters, and which cares for Presidents and Cabinets only as they may affect the welfare of the country, has taken the trouble to look into these various Cabinet speculations, and reports below what a political General Myer would call the "probabilities" on each side; and, as the republicans have secured Florida, we begin with the reports of the republican Cabinet makers. Here is a grand combination programme which unites the guesses and wishes of a number of Cabinet makers:—

Secretary of State	Roscoe Conkling.
	William M. Evarts.
Secretary of the Treasury	John M. Forbes.
	Edward Atkinson.
	Professor Francis Walker.
Secretary of War	Senator Sherman.
Secretary of the Navy	Eugene Hale.
Secretary of the Interior	A Southern whig.
Postmaster General	A Southern whig.
Attorney General	Senator Edmunds.
	Alphonso Taft.
	Judge Matthews.

The republican Cabinet makers have for some time accepted Mr. Evarts as the probable choice of Mr. Hayes for Secretary of State; but to the more astute of them it has occurred that New York's great Senator, Mr. Conkling, could hardly be ignored; and of late we hear it suggested that Mr. Evarts may be asked to take the English mission (to the disgust of Mr. Stoughton), in order to make way for Senator Conkling. There are others, however, who insist that while Mr. Evarts will go to England New York will have no place in a republican Cabinet, and that the Secretary of State will be a Western man—Mr. Ben Harrison, of Indiana, republican candidate for Governor, being hinted at by those who think this would be a concession to Senator Morton's "claims."

It is asserted among the Cabinet making fraternity that Governor Hayes has been making inquiries about several New England men, and that he means to select his Secretary of the Treasury from that section of the country. The names mentioned in the list above are those which are circulated among the quidnuncs. They are all for hard money and able men. Senator Sherman's is the only name we hear mentioned for the War Department; and that rising young statesman, Mr. Eugene Hale, who has been the spokesman of the Navy Department for some years in the House of Representatives, is supposed to be peculiarly eligible for a Cabinet place, because with him Mr. Hayes could pay off two debts at once, Mr. Hale being Mr. Blaine's next friend and Secretary Chandler's son-in-law. It will be remembered that President Grant wished some years ago to make Mr. Hale Postmaster General, but he declined the place. The general opinion of the Cabinet makers, we are told, leans to Judge Matthews as the most probable Attorney General. It is said that a President must consult more constantly with this officer than with any other of the Cabinet, and that he ought therefore to be his familiar friend. It is urged also that the present Attorney General would, if he were retained, have to swallow more bad law of his own mixing than might be agreeable to him. As to Senator Edmunds, his great ability as a lawyer mainly causes his name to be mentioned.

Two places in the Hayes Cabinet are, by general consent of the quidnuncs, reserved for Southern men, and Judge Settle, of North Carolina, is named for one of these, but only by those whose republicanism is of a different and more extreme kind from that which Mr. Hayes is supposed to favor. It is taken for granted that if Mr. Hayes becomes President one of his most cherished objects will be to form a real whig-republican party in the Southern States, and to do that, it is said, he will select for his Cabinet two Southern men who have not hitherto acted with the republican party; that he will choose them from States like Louisiana, South Carolina or Virginia, which have strong whig leanings, and that they will be influential whigs.

The list thus made is conspicuous for the absence of several prominent names, and here are the explanations we have heard about these. Of Mr. Bristow it is said that he represents only a huge quarrel, which no wise President would import into his administration. Of Mr. Schurz it is said that he does not seem to be wanted by anybody, and may be said therefore to represent nothing. Mr. Fenton, it is said, will be content with the Austrian Mission. Mr. Halstead, of Cincinnati, the inventor of the Southern war claims, is said to be booked for Paris. Mr. Kasson would not object to Spain, and may be sent to Switzerland. Mr. Galusha Grow would like a Cabinet place, but may go to Belgium. And here the confidences with the republican Cabinet makers come to an end.

Next come the gentlemen who are making Mr. Tilden's Cabinet for him. Their guesses, consolidated after the manner of the morning returns of an infantry company, look thus:—

Secretary of State	Charles Francis Adams.
	Senator Bayard.
Secretary of the Treasury	Senator Bayard.
	Governor Robinson.
	D. A. Wells.
Secretary of War	Senator Thurman.
	General McClellan
Secretary of the Navy	William R. Morrison.
Secretary of the Interior	L. Q. C. Lamar.
Postmaster General	Senator Gordon.
Attorney General	Lyman Trumbull.

If the result should give the election to Tilden and Wheeler it is said that Mr. Hendricks will accept the English mission. Further than this the democratic quidnuncs do not venture.

The HERALD, as the organ of the people, is less interested in the fortunes of politicians than in the welfare of the country. Scrutinizing these two lists we are gratified at their aspect. The country will be safe with either or any of these Cabinets. Both are made for hard money, for an honest and economical administration; with both the needed reforms are possible. With either we believe the break up of parties cannot be prevented. We do not place undue confidence in these guesses of the Cabinet makers; whoever becomes President will choose his own constitutional advisers. But that the opinion of shrewd politicians should turn toward such names as we have, after careful inquiry, been led to set down above, shows what they regard as probable, and is so far of importance, as it proves that their opinions make these names the most conspicuous and probable. The blanks in the Hayes list are, of course of pre-eminent importance. If he means to drop the carpet-baggers he will select for his Cabinet the Southern men of influence and character not concerned in any of the carpet-bag swindling in those States and able to draw a following after them of substantial citizens. All the political signs make it probable that if he should become President he will do this. The country is wearied and disgusted with such dirty work and such interminable fuss as the Chamberlains, Packards and Kelloggs make in the South. No administration can afford to countenance them, and we cannot doubt that as a wise politician Mr. Hayes would make new combinations in the South which would be for the advantage of his party as well as of the country.

AMERICAN BEEF FOR EUROPE.

The shipment of beef from the Jersey City abattoir to England this week has been so large that prices rose suddenly at the cattle market yesterday. The experiment of shipping live stock will be tried this week, and if it prove successful extensive and rapid importations of cattle from the West will be the result.