THE MEMPHIS DAILY APPEAL.

ESTABLISHED 1840. MEMPHIS, TENN., SUNDAY, JANUARY 4, 1880. VOL. XXXIX—NUMBER 4

INDICATIONS.

WASHINGTON, D. C., January 4—1 a.m.

For Tennessee and the Ohio valley, stationary or higher temperature and pressure, partly cloudy weather, southerly winds, possibly snow, in the western portions, but colder and westerly.

WEATHER OBSERVATIONS.

WAR DEP'T, SIGNAL SERVICE, U. S. ARMY, SATURDAY, January 3, 1880, 10:08 p.m.

Stations of Observation.	Bar.	Ther.	Wind. Dir.	Wind. Force.	Weather.
Chattanooga	30.19	54	S.E.	Gentle.	Cloudy
Knoxville	30.16	62	N.	Gentle.	Lt. rain
Nashville	30.21	62	S.	Fresh.	Clear.
Decatur	30.20	65	Lt.	Fresh.	Clear.
Chattanooga	30.20	62	SW.	Gentle.	Clear.
New Orleans	30.37	66	E.	Fresh.	Fair.
Shreveport	30.13	68	S.	Fresh.	Fair.
Vicksburg	30.26	62	S.	Fresh.	Clear.
Meridian	30.21	62	S.	Light.	Cloudy.

DARNEY, Private Signal Corps, U. S. A.

NEW PUBLICATIONS.

THE GRANDISSIMES. A Story of Creole Life. By George W. Cable, author of "Old Creole Days."

We are indebted to the publishers of *Scribner's Magazine* for advance sheets of the first seventeen chapters of this by far the best novel of the season. We have read them carefully, the more carefully and the more indeed than we had been able to give to any novel since we read Mrs. E. A. Moriwether's *Master of Red Leaf*, and we must confess to a degree of satisfaction as rare as its very high merits. No one who has ever resided New Orleans, or even enjoyed a winter—such a winter as Cable made a memory of—can fail of pleasurable memories—before the blight of war had come to disturb the even tenor of southern life, but will read this now passing through *Scribner's* with a thrilling skin to delight, for the author has wrought what the imagination cannot do force best of the ordinary run of humanity, he paints in words the picture has sometimes in vain conjured, and fixed them in indelible lines—he has seized with a magic hand, the fancies of which in vain sought glimpses, and covered pages with them. He imparts an air to the characters, young and old, white and black, from the ordinary sequence of events, and throws a glamor over the dry details of life in the Creole capital just then it was passing into the strong light of American life and manners. The field of life he has selected is large, and the variety of human types as many-hued as to character, race, speech and color as can be found anywhere in the world—peculiar only to New Orleans—yet he grasps them all, and with equal power, delicacy and truth, and with rare artistic certainty groups and distributes his groups with the force in effect of an artist who is sure of his purpose and his hand. No novel has ever issued from the south so complete as this—so worthy to take rank with the best. The author has caught the very body of the time of which he treats, and has stamped it whence it can never fade. He is not grand, or broad, or sweeping. He has not merely invented. He has done better; he has drawn upon the ever-living fountain of history, and rescued from its oblivion characters that will long live the very embodiment of the spirit of their age and time. Mr. Cable, with a power as rare as it is wonderful, is equally at home with the humble negro, the grand dame or the seigneur. The *patois* of the Creole and the "gibberish" of the quadroon or octoroon—the singular mixture of Creole-French and English, of negro lingo with Creole-French or English—all this he uses with equal facility and felicity, and has put upon these pages with the fidelity of a Dutch master, the nice details always challenging attention, while the whole impresses us as a striking *coup d'œil*, carrying us out of the present and into the past of nearly eighty years ago. *The Grandissimes* contains the plot and force of half a dozen strong plays. It is a smouldering fire of dramatic force that must bring the author to the stage, where his strong and beautiful characters can find personification. We very much regret that we cannot make extracts from the pages before us to verify the strong impression this work has made upon us. We must content ourselves by referring our readers to the magazine where the sketches first found place that were the precursors of this well-told story. We are very proud of this work of Mr. Cable. It is one that we would advise the ambitious slip-shop amateurs to take to their closets—a study for form and color, for characters and effects.

FATHER RYAN'S POEMS. Mobile: John L. Rapier & Co., 1879. Memphis: Wills & Wildberger, 317 Main street.

Who in the south does not know Father Ryan, the poet-priest? Who has not read his lyrics—those songs that aroused and reanimated the cause now dead and awakened the patriotism that rallied to the conquered banner? In the cottage and palace, in the log hut by lonely swamps, in the pleasant homes of growing cities, in the school-house of the young and the study of the old, the poetry words of the patriot poet have entered and left an undying echo. More than any other of our song-writers, Father Ryan has wedded his muse to the hopes and fears of the people he loves so well. He has been with them in all their moods—when elated by victory and depressed by defeat—and he gives expression to their hopes and fears in rhyme and rhythm so melodious that one sings as one reads, borne along by the stream of melody controlled by the master spirit who has so intimately identified himself with the cause and the people of the south. A manly, yet a graceful and sweet singer, Father Ryan has a sure place in the affections of the people of the south. His poems are familiar, yet, coming in a dress and fashion so worthy of them, as they do in this book, he will find a fresh welcome in every household in the southern States, from Potomac to the Rio Grande, from the ocean to the gulf.

LOCAL PARAGRAPHS.

—Yesterday was spring in midwinter.

—An electric light company has been organized for Memphis, and will be incorporated.

—The present is known as the "Week of Prayer." See programme of services in another column.

—The Ada Cavendish combination will leave for Cincinnati to-day, to open up a week's engagement.

—Among the large transactions in cotton yesterday was a sale of one thousand bales by Dillard, Coffin & Co.

—The Tennessee club will entertain their friends at a *musicale* in the club rooms on Tuesday evening next.

—The police arrested Charles Oberst last evening, on the charge of obtaining money under false pretenses.

—R. G. Dun & Co.'s commercial book will be out in a few days. It is the leading book of the kind now published.

—Incoming steamers have been detained in the river, owing to heavy fogs that have prevailing for several nights past.

—Three bird dogs, two of them setters, stolen at Hernando, Mississippi, yesterday morning. The police here are on the point.

—The attention of our business men is directed to the statement of the condition of the Union and Planters bank, published among the new advertisements on our first page. No more creditable exhibit can be made by any bank in the Union.

—The Ada Cavendish combination closed a successful engagement at the Theater last night, when *Much Ado About Nothing* was reproduced.

—At Beale street market last night J. J. Jay had a mare, bridle and saddle stolen by some unknown person. It was a yellow mare, and a fine-looking animal.

—The sale of seats for the Juvenile Pinafore Opera Troupe will commence at Hollenberg's to-morrow. Matinees will be given on Wednesday and Saturday.

—The legislative council will meet to-morrow afternoon at three o'clock, when the sewerage matter will be definitely settled with a view to the best interests of Memphis and her people.

—The colored school visitor, Edward Shaw, of the fifth ward, will be the *silhouette* of the next educational board of Memphis, which will go into office to-morrow night week.

—At the probate court, yesterday, Judge Eldridge appointed Mr. R. D. Frayer as administrator of H. G. Warriner's estate, and Mr. C. D. Hammond as administrator of Brandison Hammond's estate.

—Billy Lieben has received *Andrew's Almanac* for January, *Pleasant Hours, Lessing's Budget* for February. He also has all the pictorials for this week, and dailies of recent date. Give Billy a Sunday call.

—At a meeting of the Kit-Kat club, held last night, the following officers were elected for the ensuing year: President, Herbert Pettus; vice-president, C. C. Currier; secretary, R. G. Gantt; critic, F. M. Scruggs; treasurer, William Hunter; librarian, R. G. Brown.

—New reviews, new magazines, new Sealed papers, and the finest line of reading matter in the south. Dailies from Nashville to New York a specialty. Subscriptions at publisher's prices received for all publications, foreign or domestic, at Mansford's, 298 Main street.

—The marriage licenses issued yesterday by the county court clerk were as follows: *Colored*—Robert Biedee and Miss Fannie Hicks, Edward Hedle and Miss Rose Jones, James Anderson and Miss Malinda Yancy. *Whites*—John Miller and Mrs. Ruth Dean.

—The county quarterly court will meet tomorrow morning in the criminal court-room of the courthouse. A number of offices will have to be filled, many vacancies occurring. The report of the Taxing District officers for the past five months will be presented to the court.

—Last night a man was carried to the station-house and was given lodging. He gave his name as John M. Sommers, his age at sixty years and his occupation a steamboat captain. He said he had been assaulted and knocked down by three men, on Union street, and robbed of sixty dollars.

—Esquin Quigley disposed of the following cases yesterday: Henry Bell, colored, carrying a pistol, fine of fifty dollars imposed for Taxing District and bound over to appear at criminal court; John Stokes, colored, on warrant charging him with robbing Henry Macklin of twenty dollars on Christmas day, bound over to appear at the criminal court in the sum of two thousand dollars. Another negro, named Wright, who aided in robbing Macklin, was far escaped arrest.

—Yesterday at the criminal court a number of motions were heard and disposed of by Judge Hedges. Milton Boon, colored, who pleaded guilty to the murder of the old colored man, Jerry Thompson, at Germantown, was sentenced for life in the penitentiary; Henry Jones, carrying a pistol, fined fifty dollars and to sixty days imprisonment in the county workhouse; Peter Swingly, assault and battery, sentenced to sixty days imprisonment in the county workhouse; Sim Mathews, plead guilty of petit larceny, and was sentenced to one year's imprisonment in the penitentiary.

—Bell W. Eldridge, clerk of the United States circuit court, sold in front of the county court house, at noon yesterday, in case No. 229, equity, United States circuit court, P. C. Calhoun *et al.* *vs.* Paducah and Memphis railroad company, forty lots in the town of Kerrville, Shelby county, on the line of said railroad, pursuant to an order of court in said cause. The entire number of lots sold for the aggregate sum of five hundred and twenty-five dollars and fifty cents. Hon. Holmes Cummins was the principal purchaser of said lots, averaging twenty dollars in price with the exception of one lot, No. 8, which was sold to W. C. Hanna for the sum of fifty dollars. The bidding lacked any spirit, and the lots were sold at remarkably low figures.

PERSONALS.

WILLIAMS'S book-store has new diaries for 1880 and a large line of staple goods.

CAPTAIN ALEX MOSES, of the board of underwriters, New Orleans, is at the Peabody.

MAJOR C. W. KIDDER AND MR. JULIUS CAHN, of Miles's Juvenile Pinafore, are at the Peabody.

MR. BEL. W. ELDRIDGE, clerk of the United States circuit court, has returned from a visit to Dresden, Tennessee.

THE rooms of the Tennessee club will be open to the ladies on Tuesday next. Concert and promenade in the evening.

COLONEL JOHN T. EDMUNDS, of Hopkinsville, Kentucky, and Colonel Ex Norton, of New York, are at the Peabody.

COLONEL HOUSTON RUCKER, formerly of Virginia, but now connected with a big oil-works in New York, is in the city.

MRS. DWIGHT CLARKE, 99 Madison street, has one unfurnished room for rent, and would like to have a few young men day boarders.

ANOTHER new shipment of Steinway, Chickering and Hollenberg arrived yesterday. Those who failed to get one of the great bargains last week can now be supplied.

MRS. J. W. NELSON will teach a class in drawing or painting, from flat, cast or life model. Call this week at 167 Wellington street, or leave name with Dr. Nelson at 265 Main street.

MR. JOHN J. BARRY, of the river improvement corps, and in the employment of Major Benyaurd, returned to the city yesterday from the Tallahatchie and Coldwater rivers. His friends were pleased to greet him once again.

J. S. STANTON & Co., wholesale grocers and cotton factors, at 284 Front street, have a card in another column. The senior member of this firm has been in the cotton business for the past thirty years, and is known to all the people about Memphis as reliable and enterprising.

TRACY should feel flattered on account of the many compliments bestowed upon the style and taste displayed by him in setting up the exquisite programmes and dance-tablets used by the Memphis club at their grand entertainment New Year's eve. The like of the work was never before seen in Memphis.

In response to the notice through our columns, Mr. H. G. Hollenberg received orders from all points for pianos and organs, and sold so completely out of some styles as not to be able to fill further orders. This is an unprecedented fact in the annals of the music and piano trade, and shows there is life in the old town yet.

THE Ladies' aid society of the Second Presbyterian church will meet Monday evening at three o'clock, in the basement of the church, for the transaction of important business. Every member is requested to be present, and all the ladies of the congregation interested in church work. By order of the president,

MRS. E. C. GRAHAM.

As there will be a large number of the present brick cisterns condemned by the sanitary board as worthless, and in consequence a number of wooden tanks will be required, it would be well for the public to know where such tanks may be procured. M. H. Coover & Co., on Washington street, are prepared to furnish any quantity of tanks, of any size that may be wanted, on short notice and on reasonable terms. Give them a call.

Circuit Court—Hon. James O. Pierce, Judge.

Calendar for to-morrow: 6156, Battinghaus vs Laski; 6157, Pullen vs Calhoun; 6159, Stillman vs Schoonover; 6160, Bickford vs Southern oil works; 6162, Treadwell Bros. vs Hildebrand; 6163, M. Beezie vs Bland; 6166, Laski, agent, vs Garvis; 6168, Sherrod vs Southern oil works; 6168, Hilman Bros. vs Allison.

OPINION

By the Supreme Court of the State of Maine That Will Bring the Blush of Shame the Cheeks of Even the Thieves Who Steal the Presidency from Samuel J. Tilden—No Plea Will Justify the Defeat of the Will of the People—Popular Rights Must Be Respected.

BOSTON, January 3.—Special dispatches from Augusta say: "Rumors prevail in some of the counties that certificates of election have been issued in blanks, bearing the seal of the secretary of state, and even the Republican members who have been counted out. Appended to the certificates are the words: 'You will be protected.'

A DEMOCRAT RETURNS HIS CERTIFICATE.

FARMINGTON, ME., January 3.—Mr. Louis Voter, a Democrat, counted in by the fusionists as a representative, has returned his certificate to the governor, believing the reason given for the disfranchisement of Farmington is not sufficient to justify his acceptance of the position.

INTIMATIONS OF THE OPINIONS OF THE JUDGES.

AUGUSTA, January 3.—The opinion of the judges on the questions submitted by Governor Garcelon is expected to be promulgated at Bangor to-day. There are intimations that the opinion will be full and sweeping, covering most of the points at issue. The Republicans are highly elated, and are looking for a sweeping indorsement of the Republican position, and that it will give them control of the legislature beyond doubt. The opposition appear to be correspondingly depressed, though they cannot give any certain or substantial reason for the depression. They say the legislature will be duly and promptly organized Wednesday by the appearance of the certificated members, and legislation promptly proceed, notwithstanding the boast of the Republicans that a quorum would be present. Four fusion members have already indicated that they will not accept certificates. Eugene Hale and Stephen D. Lindsay, member of congress, came here this forenoon. Lindsey expresses the opinion that the counting out will not succeed, and that the members will do justice to those who have been deprived of their seats. It is known that no official orders were ever issued for the employment of an armed police force at the statehouse. Most of the State officials say they disapprove of the fact. A few members are here; more will come by the night train.

OFFICIAL TEXT OF THE COURT'S OPINION.

BANGOR, January 3.—The following is the official text of the unanimous opinion of the supreme judicial court, delivered, finished and signed this afternoon, in answer to the questions submitted by the governor:

BANGOR, January 3, 1880.

To the Honorable Alonzo Garcelon, Governor of the State of Maine:

We, the undersigned, justices of the supreme judicial court, have the honor to submit the following answers to questions propounded to us:

Question 1—When the Governor (late Governor) and council decide that there is a vacancy in any of which the representatives can be summoned to attend and take their seats in the legislature, is it their duty to order a new election, or is it competent for the house of representatives, if it shall appear that there was an election of such representatives in fact, to admit them to seats, though no return thereof was made and delivered into the office of the secretary of state?

Answer—No authority is given to the governor and council when there is no return to order a new election. When the seat of a representative has been vacated by death, resignation or otherwise, provision is made by revised statutes, c. 4, section 46, and c. 47, for the filling of existing vacancies. These provisions, whenever municipal officers therein mentioned by any means have knowledge of the death of a representative elect, or of a vacancy cause in any other way, it is their duty to order a new election. If it appears to the house of representatives that there was an election of representatives in fact they should admit them to their seats, though no return thereof was made to the secretary of state. The representative is not to be deprived of his rights because the municipal officers have neglected their duty.

Question 2.—Is it competent for the governor and council to allow the substitution of other evidence in place of the returned copies of such lists as are provided for in article 4, part 1, section 5 of the constitution, to enable them to determine what persons appear to be elected representatives to the legislature by a plurality of all the votes returned?

Answer.—This refers to the substitution authorized by the act of 1877, c. 212. The constitution calls for a return that is regular in its essential forms, and which truly represents the facts to be described by it, but much of the constitutional requirement is directory merely. It does not aim at depriving people of their right of suffrage or of representation for formal errors, but aims at avoiding such a result. Where the constitutional requirement has not been fully or has been imperfectly executed by the town officers, it is in aid of the constitutional provision to supply the omission or deficiency as nearly and as correctly as may be. Such is the purpose of the statute. It is competent for the governor and council to allow an erroneous return, or one that is informal or defective, to be aided and corrected by an attested copy of the record, as by statute provided. The object of the constitutional provisions respecting elections is to furnish as many safeguards as may be against the failure, either through fraud or mistake, correctly to ascertain and declare the will of the people as expressed in the choice of their officers and legislators. Hence the requirement that not only shall returns be made on the spot in open town meeting, but a record of the vote shall be made at same time and authenticated in like manner. If by accident or willful neglect, there is an error or omission in the return, what can be safer than to refer to the duplicate statement by record, to correct it? Thus the statute of 1877, c. 212, allows it to be done, and while the language is permissive, it falls within a well known legal rule—that where public rights are concerned, it shall be construed as mandatory, a command clothed in language of courtesy, so clothed because it could not be doubted that high and honorable officials would unhesitatingly avail themselves of all lawful means to declare the result of an election according to the actual fact, in obedience to the fundamental principles of popular government. The governor and council are bound by statute; it is mandatory upon them; it imposes a duty to the public that must be performed. Whether the act referred to contravenes the constitution, or whether clerical evidence to be received to show the intention of voters in casting their votes is another part of the statute which we are now called upon to consider. If unconstitutional in the latter respect, that would not affect the constitutionality of other separate and independent provisions.

Question 3—Is a return signed by less than a majority of the selectmen of a town or aldermen of a city valid, within the requirements of the same section?

Answer—To this question we answer, that while a town may legally elect seven selectmen, the well-known practice is to elect only three, and in such cases a return to be valid must be signed by a majority of them, because by no possibility can a less number constitute a legal quorum; but the rule is otherwise with respect to aldermen of cities. Most of our cities are required by law to have as many as seven aldermen, and none of them, we believe, has less than five. To constitute a quorum it is only necessary to have a majority of the whole number present, and when such a quorum is present a majority of the quorum may do business. Supposing the number to be seven, four would constitute a legal quorum, and three being a majority, that quorum could legally act, although the fourth should refuse to join them or should oppose their action. Consequently, if a return from a city having five or seven aldermen is signed by three of them, it may be a valid and legal return, because only four may have been present, and in such a case, three being a majority, those present could legally act, although the fourth should oppose their action and refuse to join them. When such a return is laid before the governor and council they cannot know, and they have no right to assume, that the return is not valid. It is the duty of the aldermen to be in session and examine the ward returns and to compare and declare the votes, and of the clerk to make a record thereof from that record, a certified copy of which is returned. The law presumes that a quorum of aldermen was present. The law with respect to quorum and majorities is correctly stated in 5 Dane's Abridgment, 150, and 1 Dillon on Municipal Corporations, sections 216 and 217. In the latter work it is said that bodies composed of a definite number act by majorities of those present, provided those present constitute a majority of the whole number, or to use Mr. Dane's illustration, if the body consists of twelve councilmen seven is the least number that can constitute a valid meeting, though four of the seven may act, and so far as we are aware the law is so stated in substance by all ancient and modern authorities. The rule applicable to such cases is similar to that which applies to our house of representatives. The whole number of representatives established by law is one hundred and fifty-one—a majority—that is, seventy-six members constitutes a quorum to do business. If there is actually that number present, and a majority of these (that is thirty-nine members) vote in the affirmative, the voted law can thereby be enacted or other business transacted. If less than seventy-six members are present, then no business can be done except to adjourn or compel the attendance of absent members. This is familiar, and illustrates the principle applicable to aldermen of cities, and shows how and why a return signed by less than a majority of the whole number may be, and so far as the government and its officers are concerned, is conclusively presumed to be valid. They have no right to go behind the returns.

Question 4—Is a return by the aldermen of a city, which does not give the number of votes cast for each person voted for as a member of the legislature, and does not show what number was voted for as such members in any one of the several wards of such city, a valid return within the requirements of the same section?

Answer.—We are not sure that we comprehend the full scope of this question, but our answer will meet all its supposed purposes. It is immaterial whether the aldermen returned to the governor or council a detailed vote of each ward separately, or whether they returned the result of all the votes of all the wards for each candidate together. Either mode is a satisfactory way of reaching the same result. The substance only is sought for in such matters. Nor is it a material matter that, instead of returning all the names of the persons voted for, there is a return of the votes as scattered; provided that, however, such votes may be added or subtracted. Some candidate or set of candidates appear to be chosen by a plurality of votes thrown. The governor and council cannot officially know, nor have they the right to ascertain, that the votes returned as scattering were not actual ballots, with the word scattering written thereon; nor is an election of candidates to be chosen by a plurality of votes to be defeated, because the whole number of votes or ballots may be stated erroneously or not stated at all. The constitution contains no such requirement, and the statutory provision requiring it is entirely unimportant and inapplicable to cases where a plurality of votes elects. It is a well settled rule of construction that where the general terms of the statute embrace several subjects, but are found to be practically applicable to some of the subjects, and not to others, it is to be construed as embracing those subjects only to which it is practically applicable.

Question 5—Are returns from towns or cities which are not attested by the town or city clerk valid within the same section?

Answer—Returns from towns and cities which are not attested by the town, plantation or city clerk are not valid. The attestation of the clerk is a prerequisite to any action of the governor and council in counting the votes. 68 Maine, 588. If, however, the clerk should be absent, a clerk *pro tem.* may be chosen or a deputy clerk may be appointed under the statute of 1879, c. 17, and amendment thereof. By the act of 1874, c. 159, the returns of such clerk *pro tem.* or deputy clerk are to have the same force and effect as if signed by the clerk.

Question 6.—Have the governor and council the right to reject returns of election of members of the legislature required by the same section from officers of towns, which were not made, signed or sealed up in open town-meeting?

Answer—The governor and council must act upon the returns forwarded to the secretary of state, if they purport to be made, signed and sealed up in open plantation or town meeting. They constitute the basis of action of the governor and council. No provision is found in the constitution or in any statute of this State, by virtue of which they would be authorized to receive evidence to negative the facts therein set forth. They, therefore, have no such power. The statement of the municipal officers is in that respect conclusive.

Question 7—Is a return of two persons purporting to be selectmen of a town, valid and sufficient evidence of the vote of the town, when it appears there were at the time of the meeting at which the election was held but two selectmen of that town.

Answer—When a majority of selectmen are absent from a meeting for election purposes, or being present neglect or refuse to act as such, and to do all the duties required of them, the voters at such meeting may choose so many selectmen *pro tem.* as are necessary to complete the number competent to do the duties, R. S. c. 4, section 20. In case of death or the removal of all the selectmen, two would be sufficient and competent to act. The inquiry is if the return would be valid when there should be but two selectmen at the time of the meeting at which the election was held. If the other selectmen had deceased prior to the meeting the survivors might act, and their action would be legal, but the canvassing board are to be governed by the returns. The evidence would not be admissible to prove the fact that there were but two selectmen of the town. The governor and council cannot officially know there are only two.

Question 8—Can a person who is not a citizen of the United States at the time he legally elected or constituted a selectman of a town?

Answer—A person not a citizen may be elected or constituted a selectman so that his official acts bind the town and are valid so far as it affects the public. Such a one would be an officer *de facto*, and clothed with apparent right. His acts would bind the town. Dane vs. Derby, 54 Maine, 95. An officer *de facto* is one who comes into the office by color of legal appointment or election. His acts in that capacity are as valid, as far as the public is concerned, as the acts of an officer *de jure*. His title cannot be inquired into collaterally. The People vs. Cook, 4 Selden, 95. "The precise definition of an officer *de facto*," observes Bigelow, C. J., in Gilmanton railroad company vs. the Grand Junction and depot company, Allen 557, "is one who comes in by the forms of law and acts under a commission or election, apparently valid, but in consequence of some illegality, incapacity, or want of qualification, is incapable of holding office. Indeed, there is entire unanimity of opinion on this subject in all the States of the Union, where this question has arisen, as well as in the courts of the United States; but the law of allegiance is not allowed to be proven." Law was determined in the French-ville case, 54 Maine, 589, where it was shown that the clerk was an alien who could neither read nor write the English language, and where almost every conceivable irregularity existed; yet evidence outside of the returns was held inadmissable, nor could such facts have any effect if it appeared in anything but the return itself.

Question 9—If the ballot has a distinguishing mark in the judgment of the governor and council such as would make it illegal under the statutes, have they authority to disregard it in their assessment of what persons appear to be elected, or is it their duty to order the officer who received the returns to the selectmen to correct by obliteration, and the legality referred to the governor and council for decision?

Answer—The presiding officer is the judge of whether the ballot is a distinguishing mark or figure, so that the rejected votes may procure the ballot if he chooses, to which no exception can be taken; but, if ballots have distinguishing marks, it is no part of the duty of the officers of the town to make any report or reference thereto. They should reject a ballot if offered. It is in violation of statutes. The statutes provide the manner of voting a ballot after it is received into the ballot-box. It is then to be counted. The governor and council have nothing to do with the question. Their duty is to count the vote, regardless of facts improperly set forth in their returns. They are nowhere constituted a tribunal, with judiciary authority to determine what shall constitute a distinguishing mark or figure, nor can they legally refuse to open and count the votes returned. (54 Maine, 90.) When a ballot has been once received in the ballot box, neither the selectmen or governor and council can refuse to count it.

Question 10—If the names of persons appear in the returns without any number or votes being stated carried out against them, either in words or figures, is it the duty of the governor and council to treat those persons as having the same number of votes as another person received for the same office, and where the name is placed first in the return, if ditto or similar dots under the figures or words stand for such other person's name?

Answer—Where ditto marks or dots are placed under figures or words of first candidates, the votes on the return should be counted. Where it appears by letters or figures in the first line and by ditto marks or dots in the following line that the same class of candidates received the same vote there can be no reasonable doubt that the intention was to express by ditto or similar abbreviation to "do," and dots or marks are used for the word ditto, are in common use and have a perfectly well defined meaning known to persons generally. That meaning should not be disregarded. We answer the question in the affirmative.

Question 11—Have the governor and council the legal right to decide what kind of evidence they will receive and what the mode of proceeding before them shall be to enable them to determine the genuineness of the returns required by the article and section of the constitution above mentioned?

Answer—We assume that the genuineness of the return referred to relates either to the signatures of the officers signing, or to the alterations of the returns. The governor and council have no power to reject the returns on either grounds, unless an objection in writing is presented to them setting forth that the signatures of such officers, or some one of them, are not genuine, or that the return has been altered after it was signed. Then notice thereof should be given to all persons interested, and where adjudicating upon facts, the governor and council should be governed by the admission of evidence given by the established rules of evidence. In accordance with the law of this State, the witnesses should be duly sworn, that they may be punishable for the crime of perjury, if they willfully or corruptly testify falsely. The governor and council have no right to reject returns for such cause, without giving the parties interested therein a fair opportunity to be heard. The genuineness of returns in these particulars is to be presumed, and this presumption continues until overcome by evidence procured as before said.

Question 12—If the governor and council have before them two lists of votes returned from the same town, differing materially from each other in the number of votes returned as cast for the same persons, but identical in all other respects, both having been duly received at the secretary's office, and they have no evidence to determine which is the true and genuine return, are they to treat either of them as valid?

Answer—When two lists of votes are returned to the office of secretary of state by the clerk of any city, town, or plantation, and both duly certified, the return first received at the office of the secretary must be the basis of action for the governor and council of the defective or not true copy of the record. It can be corrected or defects supplied only in accordance with the provisions of the statute relating thereto. This government rests upon the great constitutional axiom that all power is inherent in the people; it is a government of the people, by the people and for the people, and if administered in the spirit of its founders, it shall not perish from the earth. "Its constitution was formed," to use the apt expression of one whose memory is embalmed in the heart of his countrymen, "by the plain people, and the plain people must administer it." The ballot is the pride, as well as the protection, of all; it is the truest indication of the popular will. The official returns required from the municipal officers of the several plantations, towns and cities are and will be made by "plain people," and made, too, in a hurry and bustle, and in the excitement of an election they are not required to be written with the scrupulous nicety of the writing-master, or with the technical accuracy of a clerk in abatement; the sentences may be ungrammatical, the spelling may deviate from the recognized standard, but the returns are not brought to naught because the penmanship may be poor, the language ungrammatical, or the spelling erroneous. It is enough if the returns can be understood, and, understood, full effect should be given to their natural and obvious meaning. They are not to be strangled by idle technicalities, nor to their meaning to be distorted by carpings and captious criticism. When that meaning is ascertained there should be no hesitation in giving it full effect. The language of Justice Morton in Strong vs. Peter, 20 Pick., 484, is peculiarly appropriate to the subject under discussion. What he asks shall be the consequence of the omission by the selectmen or town clerk to perform any of these, their prescribed duties, and upon whom shall it fall for wilful neglect of duty? The officers would undoubtedly be liable to punishment, but shall the whole town be disfranchised by reason of the fraud or negligence of their officers? This would be punishing the innocent for the fraud of the guilty. It would be more just and more consistent with the genius and spirit of our institutions to inflict severe penalties upon misconduct, intentional or accidental, of officers. But to receive votes whenever they can be ascertained with reasonable certainty, if no return or any imperfect one can be received, let it be supplied or corrected by the original record, if any there be. Returns should be received with favor and construed with liberality, for, he adds, from men who usually are and necessarily must be employed to make them, great formality and nicety cannot be expected and should not be required. The general principle which governs is that while there should be strict compliance with the provisions of the statute, yet when they are merely directory of such strict compliance it is not essential to the validity of the proceedings, under such statute, unless it is declared to be therein. This is specially applicable when the rights of the public or of third persons are concerned. The dominant rule to give such construction to official acts of municipal officers as will best comport with the meaning and intention of the parties as derived from a fair and honest interpretation of the language used to sustain rather than to defeat the will of the people and disfranchise the citizens.

JOHN APPLETON,
CHARLES W. WALTON,
WM. G. BARROWS,
CHARLES DANFORTH,
JOHN A. PETERS,
ARTEMUS LIBBY,
JOSEPH W. SYMONDS.

MARRIED.

DURHAM—TURNER—In the Methodist church at Durhamville, Tennessee, on January 1, 1880, by Rev. T. C. Holmes, of this city, Mr. A. M. DURHAM and Miss MOLLIE G. TURNER, both of Durhamville, Tennessee.

LYNN—DANDRIDGE—At the residence of Rev. T. C. Holmes, No. 125 Fifth street, Chelsea, on January 1st, by Rev. Guilford Jones, D.D., Mr. J. S. LYNN and Miss NANNIE DANDRIDGE (niece of Mrs. Holmes) both of Shelby county, Tennessee.

FUNERAL NOTICE.

WELSH—The funeral notice of MICHAEL WELSH will take place from his late residence, No. 59 Concord street, this (SUNDAY) morning at 11 o'clock.

OBITUARY.

Captain LeRoy Fockman.

We are again prompted by a sense of duty and a high appreciation of a true and worthy character, to contribute a memorial due to the memory of the subject of our sketch, the late Captain LEROY FOLKMAN. We had known him from childhood; was the idol of a doting mother, when he claimed on her knee and learned from her his first prayer, and heard her maternal precepts, which a christian mother alone could teach. For his was one of them; and oh, if all that is good and noble within him hath its reward she greets her boy "over there," where she hath watched his coming to greet him when he came. His aged father, now near three score and ten, feels most his loss. He is seemingly alone; his "household fold," one by one, have gone before, till but two remain of his once happy flock. In the little grave yard by the river, all the graves are there of pain—the wife and children. We see him now bending under the burden of seventy seven winters, his heart again pierced by death's last arrow, over the grave of his poor LEROY. To the family of our young friend, what sorrow is theirs! The cup to them can hold no more. The decrees of God are inscrutable—yet desire while he has taken one who should for them be spared, the same hand holds the hopeless wind from them. They will mass him at home. Yes, miss him, for his foot-step on earth will never echo his tread at the threshold of home again. His little cot, the John Overton, will come and leave, her decks no more he'll walk; his voice in command no more not again. She will cross the river, but not hear that bell wild whistle, which once thrilled the hearts of his home when the last evening trip was made, hath no pleasure now; her anchor is cast and without him. They will mass him at home. Yes, miss him, for his foot-step on earth will never echo his tread at the threshold of home again. His little cot, the John Overton, will come and leave; her decks no more he'll walk; his voice in command no more not again. She will cross the river, but not hear that bell wild whistle, which once thrilled the hearts of his home when the last evening trip was made, hath no pleasure now; her anchor is cast and without him. They will mass him at home. He has made his last trip; he has rung his last bell, to cross a brighter and more beautiful river, "to rest 'neath the shades beyond." To his only sister, who gave him a sister's love, and who once said, "my brothers are all I could wish, kind, loving and generous to me; yes, all that a brother could be," we tender our heart's sympathy for her loss.

"Sorrow's brightest crown
Is remembering happier things."

To his only brother, at the helm alone, with no maternal hand to share his watch, to take the wheel with him mid storm or calm, what consolation can my humble pen present? What words tender in condolence.

At the helm alone he stands,
His watch he is keeping,
His eyes ever mark the shore,
For brother there is sleeping.

In this sad and sudden demise of the subject of our grieving memorial, that's removed by death's unrelenting hand, we are pained in this as we write his name—LeRoy is dead. On the morning of the 24th inst. he passed from earth away from the side of loving hearts, who knew him best, who loved him most. In the vigor of his manhood and usefulness he came, and his ambitious spirit took its flight to the bright realm of the blessed. His character is without a blemish; his young manhood free from vicious reproach; he leaves a legacy worthy of emulation, and of which his orphanage will link with maternal love amid sweetest memories of their father's name. Near the old homestead, close by the work of death is sleeping.

There is his grave, lay him down in his rest,
While memory weeps o'er the turf on his breast,
And the wild winds of winter each o'er him roam,
As own Arkansas where the Mississippi flows.

SIROM.

COTTAGE BY THE RIVER, December 25, 1879.

SPECIAL---FOR WHITE RIVER.

STEAMER HARD CASH will leave for the White river WEDNESDAY, January 7th, at 5 p.m., positively.

R. W. LIGHTBURNE, Agent.

SPECIAL---FOR CINCINNATI.

STEAMER ANDY BAUM will leave for Cincinnati on MONDAY, January 5, at 5 p.m.

R. W. LIGHTBURNE,
General Freight and Ticket Agent,
No. 7 Monroe St., opp. Peabody Hotel.

Starnberg & Lee

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50 butts Star Navy,
50 butts Horseshoe Navy,
All Sizes.
50 butts Golden Charm Twist,
50 butts Drummond's Hard and Soft Pr. Nat. Leaf,
2500 lbs Blackwell's Durham,
1000 lbs Duke of Durham,
1000 lbs Seal of North Carolina,
25 butts Calhoun Tobacco,
25 butts Bayard Tobacco,
25 butts Log Cabin,
25 butts B. F. Gravely,
25 butts Peabody Twist.

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The Mercantile Agency
R. G. DUN & CO.

IMPORTANT NOTICE.
Our Jan'y, 1880, Reference Book.

1st—It will be a Post Office Directory containing every Post Office and Money Order Post Office in the United States and Canada. This feature will not be found in any other single book.
2d—Every Railroad Station in the United States and Canada, with the railroads on which each is located.
3d—Also the Nearest Railroad Station to every Post Office that is not on a Railroad.
4th—The Delivering Express Company at every place, or at the nearest Railroad Station.
5th—The work will contain the names and locations of over sixty thousand places—a much larger number than any work of the kind in existence.
6th—It can, and will be adjusted to the shipping wants of every large business center, with minute and accurate directions for the SHIPPING OF FREIGHT, such as has never before been attempted.
7th—All of the Counties in the United States with the respective County Seats, and geographical position of each county in its State. In order to make this portion of the compilation more valuable, the Laws of each State as to the locality in which legal instruments, liens, etc., are registered, will be located under each State heading.

None of These Last Three Features Can be Found in any other Work.

For the benefit of Cashiers and Collection Clerks, information regarding the leading business men in each locality in the Reference Book will be indicated, also an Estimate of the Population of each town will be inserted.

R. J. NICHOLSON, Manager.

Vaults Emptied!

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J. G. SNEDECOR
ATTORNEY-AT-LAW,
NO. 41 MADISON ST., MEMPHIS

Ucuq.

REGULAR MEETING Wednesday evening, January 7th. INITIATIONS.

Masonic Notice.

ANGERONA LODGE, No. 168, will hold a stated communication to-morrow (MONDAY) night, January 5th, at 7 o'clock. Visiting brethren are fraternally invited.

By order W. R. KENDALL, W. M.
D. C. THAYER, Secretary.

KNIGHTS OF HONOR.

FOUNTAIN LODGE, No. 2383, OF H.—Will meet TUESDAY NIGHT, Jan. 6th, 7.30 o'clock, for installation of officers, at 298 Second street, just under old hall.

L. H. ESTES, JR., Vice Dictator.

NOTICE