

THE LOCAL NEWS.

ALEXANDRIA, VA.

LEGAL OPINION.

ALEXANDRIA, VA., Nov 9, 1861.

GENTLEMEN: In the absence of the Attorney of the Corporation, we have deemed it best to take counsel respecting the course which the corporate authorities should pursue in reference to an election advertised to be held in this city on the 20th inst., for members of the City Council and officers of the Corporation. You will please furnish us with your legal opinion in writing, at your earliest convenience.

W. B. PRICE, Mayor.

GEO. BRYAN, Pres't

Board of Aldermen.

Messrs. H. O. Claughton and I. Louis Kinzer.

To Messrs. Wm. B. Price, Mayor of the city of Alexandria, and George Bryan, President of the Board of Aldermen:

In compliance with your note of the 9th of November, 1861, requesting us to furnish you at our earliest convenience, in writing, our legal opinion of the election advertised to be held in this city on the 20th inst., for members of the City Council and officers of the Corporation, we submit the following as the result of the limited examination of the law, which we have been enabled to make in the short time afforded us for that purpose. We have no hesitation in advising you that such an election as that to which you refer, is entirely unauthorized by, and utterly null and void, in law. This will be clearly apparent upon an examination of the charter of the Corporation.

In the first place, we must observe that, by the act of 7th May, 1852, the people of Alexandria were granted the power of electing, on the first Tuesday in March, 1853, four persons from each ward to serve as members of the Common Council, and two from each ward to serve as members of the Board of Aldermen; and the Common Council and Board of Aldermen so elected together, and those thereafter to be elected, and their successors, are, by that act of the Legislature, made a body politic and corporate, by the name of "The City Council of Alexandria." The charter further provides that the authority of the Common Council shall continue one year from the day of their election, and until others are chosen and qualified in their stead, and the authority of the Board of Aldermen (after the first election) shall continue two years from the day of their election and until others are chosen and qualified in their stead; and that the day upon which these elections are to be held shall be the first Tuesday in March of every year. It is evident, then, that "the City Council," thus organized, is a Corporation. The election, then, of the members of Common Council and Board of Aldermen is a corporate election—not a Corporation election, but a corporate election. The Common Council and Aldermen are not officers of the Corporation—they are the Corporation itself. Now, it is a clearly established principle of law, that, if a corporate election be not made according to the charter, the charter will be forfeited, for all franchises are granted on condition that they shall be duly executed according to the grant. (See Angel & Ames Cor., section 778, and authorities cited.) Individuals elected as members of the City Council on any other day than the first Tuesday in March, have not been incorporated, and consequently cannot be "the City Council of Alexandria." If the people of Alexandria had made no election on the first Tuesday in March, 1853, but had made an election the very next day, yet the persons so elected would not have been "the City Council of Alexandria." And at no subsequent period can persons elected on any other day than that prescribed by the charter constitute "the City Council of Alexandria." The charter provides that vacancies may be filled from time to time by special elections, but this provision is a portion of the charter, and unless the right thus to fill vacancies had been specifically granted, the omission could not have been supplied, and the death, resignation or removal of all the members of the corporate body would have dissolved the Corporation. So far, then, as the election of the members of the City Council is concerned, that must take place on the first Tuesday in March, and persons elected at any other time cannot be "the City Council of Alexandria"—therefore the election of persons as such on the 20th inst. would be a nullity.

In reference to the officers of the Corporation, the law is equally plain, though the principle is not the same: Every charter either specifies particularly the day upon which the officers are to be elected, or provides that the Corporation itself may appoint the day. In this case, the charter provides that the first election, for Mayor

and other Corporation officers, shall take place on the first Tuesday in March, 1853, and annually thereafter on that day of each year. These officers are all elected for the term of 1 year. On the first Tuesday in March, 1861, the present incumbents were duly elected, and the term for which they were chosen has not yet expired, and, so far as we are informed, there is, at the present time, no vacancy in any of these offices. No lawful election can be held on the 20th inst. for persons to fill these offices—first, because there is no vacancy to be filled. It is essential to the valid election of a Corporation officer, that there be a vacancy at the time of the election, or, as the case may be, that the election be had in reference to a vacancy which, by the charter, will exist, at the time when the term of the person elected is to commence. There can be no election in reversion; and, according to this principle, if an election were now held by the people, and by death or resignation a vacancy should hereafter occur, the person chosen for the office so becoming vacant could not succeed to the vacancy. (Angel & Ames Cor., sec. 123.)

Secondly. No election is valid unless it be held on the "charter day," or day named in the charter as the day on which elections are to be held. Therefore this day must be fixed and certain. So absolute and inflexible is this rule of law, that, in a reported case, where the charter day was a moveable holiday, it was contended that, as this was not a day certain, an election on that day was not valid, and the court recognized the principle by deciding that this case came within it. (Angel & Ames Cor., sec. 124.)

Now the day fixed by the charter of this city for holding elections for the officers of the Corporation is certainly the first Tuesday in March of each year, and the Corporation itself has not the power to change the day of election. This can only be done by an amendment of the charter.

Thirdly. The right which the charter confers upon a Corporation to elect its own officers, as well as the right which each officer has to the enjoyment of the office during the term for which he has been duly elected, is a franchise conferred by the sovereign authority of the State—therefore to violate the charter of the Corporation by intruding persons into its offices, contrary to the provisions of the statute by which it was created, is an invasion of the sovereign prerogative, and a high offence against the State. (Angel & Ames Cor., sec. 737.)

We have thus briefly examined the law applicable to this case, which pronounces the election proposed to be held on the 20th inst. for members of the City Council, Mayor and other officers of the Corporation, illegal and void. But it may be that the law, as we have stated it, is recognized as unquestionable, and that, notwithstanding the fact that this election will be unlawful, it has been determined upon, for State reasons, although it involves the revocation of the charter of this city, by the destruction of one of its most essential attributes. To this exercise of power, utterly unwarranted and incalculably dangerous, we counsel an earnest and determined protest!

The circumstances of revolution by which we are surrounded cannot be urged as a justification of this proceeding, nor can the secession of the State of Virginia from the Federal Union be pleaded in extenuation of this monstrous violence to corporate rights; for, in the emphatic language of the highest authority, "the dismemberment of empire, it is well settled, causes no destruction to the civil rights of individuals or corporate bodies." (Angel & Ames Cor., sec. 767.)

No matter what political convulsions may shake the pillars of State, or shatter the forms of government—no matter through thrones should crumble into dust and republics burst into atoms—the chartered rights of corporate bodies are unaffected by these revolutions, and must survive them all! We do not pretend to say that the charter of a public corporation cannot, under any circumstances, be revoked or remodeled, but we do maintain that this can only be done by the Legislature which granted the charter; and further, that the Legislature can exercise this power only under such limitations as will protect the rights of property, and preserve to individuals such franchises as the charter grants them, and which they have not forfeited. (A. & A. Cor., sec. 767.)

In the days of despotism, "when by the theory of the British Constitution parliament was omnipotent, and an act of that body was effectual to the dissolution of a Corporation, it was claimed as an honor to the British nation that this power, restrained by public opinion, rested mainly in theory, and with one or two exceptions, was never exercised." And, when in later days, "a bill was introduced in parliament for the purpose of remodeling the Charter of the East India Company"—(which was essentially a public Corporation)—"it was opposed by Mr. Pitt and Lord Thurlow, not only as a dangerous violation of the Charter of the Company, but a total subversion of the law and constitution of the country, and Lord Thurlow declared, that it was an atrocious violation of private property, which cut every Englishman to the bone! The King might create, but he could not dissolve a corporation, and it is said to be a happy feature of the Constitution of the United States, that in this particular the power of the Legislatures of the different States resemble the

prerogative of the King, rather than that of the parliament of Great Britain. (A. & A. Cor. sec. 767.) Granting then that the legislature, may under certain circumstances dissolve a Corporation, or change its charter without its consent, yet it is clear that the Executive authority can never in any manner whatever interfere with corporate rights. Nor has the exercise of this power by the legislative department of Government ever been justified on reasons of state. In the reign of Charles the Second of England, when the King, in his progress towards absolute despotism, had trampled under foot the constitutional liberties of the people, the Corporation of London was the chief obstacle to the accomplishment of his purposes. In the exercise of corporate rights, the city of London elected officers who were opposed to the Crown, and for reasons of state, these officers were expelled from their places, and creatures of the Court, protected by a guard of train bands, were substituted in their stead. And for fear that the contest might be renewed at subsequent elections—the King and his servile parliament, determined to revoke the charter of the devoted city, and thereby in the language of Hume "to give the greatest wound to the legal constitution, which the most arbitrary monarch had ever been able to inflict." This Tory historian in referring to this act of despotism, remarks—"that it seems strange that the independent royalists, who never intended to make the crown absolute, should yet be so elated with the victory over their adversaries as to approve of a precedent which left no national privileges in security." "And every friend of liberty he continues—must admit, that the nation whose constitution was thus broken in the shock of faction, had a right, by every prudent expedient, to recover that security of which it had been so unhappily bereaved." Hume, History, new edition, pages 256 to 260.

And Sir William Blackstone speaking of this exercise of power by parliament says, "that the seizing of the charter of London gave just and great offence." Tuckers' Black. Book 1st, p. 159.

Again, during the reign of James the Second, the University of Oxford, in order to propitiate the favor, or to avert the wrath of the King, made solemn professions of passive obedience. Soon after this, the Presidency of one of the colleges of that Corporation became vacant, and for reasons of state, the King demanded that a miserable court favorite should be elected to that office. The fellows of the College made submissive application to the King for recalling his mandate. Before his answer was received, the day upon which, according to their statutes, they were obliged to make an election having arrived, they chose a president in every respect qualified for the office. For this act of contumacy they were cited before an ecclesiastical commission. The College, amongst other reasons, for not complying with the wishes of the King, represented that the presidents had ever been elective, and that having already made a regular election of president, they could not depose him from his office. These reasons availed them nothing, the president and non-complying fellows were expelled, and a man of prostitute character was put in the office; and Hume says that, "this act of violence, of all those committed during the reign of James, is the most illegal and arbitrary, and begat a universal discontent against the King's administration." Hume's History, new edition, p. 322-3. Reasons of state then cannot justify the violation of corporate rights.—The highest legal authority announces the principle, and the most universally received historian records the infamy of its violation, even when perpetrated by the party of which he was the partial apologist. Not only does he denounce the acts as arbitrary and despotic, but votary as he was of the principle of passive obedience, he declares, that under such provocations forbearance ceases to be a virtue, and resistance becomes an inalienable right. In these cases from history, there were state purposes to subserve, base as they were, while in this, there is not even this poor excuse. There, an end was to be gained which was deemed of great importance—here the outrage is perpetrated in the veriest wantonness without the possibility of any beneficial result!

One word in reference to the oaths which the officers of a Corporation are obliged to take, and we have done. According to the Charter of this Corporation, its officers are required to take an oath faithfully to discharge the duties of their respective offices, and no other. Nor can any oath be imposed, except by an amendment to the Charter. If the Corporation itself dared require any of its officers to take an oath not prescribed by the Charter, such an act would transcend the Charter, and incur a forfeiture. A. & A. Cor. sec. 348. The legislature by the despotic exercise of arbitrary power might by amending the Charter require officers there after elected to take an oath not prescribed by the original Charter, but it can no more require an officer to take an oath not prescribed when he was elected, than it could alter the qualifications or change the salaries of such officers during the terms for which they were elected. Nor can any power, whatever, legally require an officer of a Corporation to do any act during the time for which he has been elected, as a condition of his retaining his office, which he was not obliged to do, when he accepted the same. This would be to violate the constitutional provision which prohibits the imposing of the obligation of contracts. To do this would be to imitate the despotism of the Stuarts, and justly incur the obloquy which attaches to their memory. We have thus briefly reviewed the legal questions referred to in your note, and, in conclusion, can but express the hope, that better counsels may yet prevail, and that the record so monstrous

a violation of constitutional law and civil rights may never stain the history of a people whose boast it has been not only that they were free, but that they deserved to be so. Very respectfully, H. O. CLAUGHTON. November 14, 1861.

I concur with Mr. Claughton in his opinion as to the illegality of the proposed election, and unite with him in advising that each and every officer of the Corporation of Alexandria, if required by superior force to surrender the papers and property under their control, to protest against the right so exercised. I. LOUIS KINZER.

WOOD.

PRICE REDUCED.

OAK WOOD! OAK WOOD!! I AM AUTHORIZED to take orders for OAK WOOD, to be delivered at \$6.75 per cord. Call at Wise & Co's Coal Office, King street. nov 15-1m* B. T. PLUMMER, Agent.

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JOHN T. COOKE, CHEAP FAMILY GROCER, Corner of Prince and Pitt Streets, (OLD POST OFFICE CORNER.)

ALWAYS on hand a large and well selected stock of FAMILY GROCERIES, which will be sold on terms to suit the times. nov 5-1m

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NEW BACON.—A new lot of HAMS and BREAD PIES, just received, and for sale by [nov 11] JOHN T. COOKE.

MISCELLANEOUS.

ELECTION NOTICE.

IN OBEDIENCE to a writ of election from Francis H. Pierpont, Governor of Virginia, bearing date on the 12th day of October, 1861, the subscribers, Commissioners, to whom the said writ is directed, hereby give notice that, on Wednesday, the 20th day of November, 1861, an election will be held at the several places of voting in the county of Alexandria, for the following county officers—Sheriff, Commissioner of the Revenue, Clerk of the County Court, Attorney for the Commonwealth, four magistrates from each magisterial district, and county constables.

On the same day, and under the same authority, polls will be opened in each of the four wards of the city of Alexandria, for the election of the following city officers:—Mayor, Auditor, Collectors of Taxes, Measurers of Wood and Bark, Superintendent of Police, Superintendent of Gas, Measurers of Lumber, Clerk of the Market, four members of the Common Council, and two members of the Board of Aldermen from each ward.

HENRY MANSFIELD, LEWIS MCKENZIE, STEPHEN SHINN, WILLIAM ARNOLD, Special Commissioners.

nov8—note WANTED TO RENT, a HOUSE neatly furnished, in a good location. Address T. G. P., at the office of the Gazette. nov 12-4t*

A CARD.

DURING the suspension of my regular School Exercises, I am willing, for the sake of congenial employment, to receive a few students, to whom I will give thorough daily instruction in all the solid English branches, together with Composition, Book Keeping, Mathematics, and the Physical Sciences.

This will afford a rare opportunity for improvement, to such young men and youths, as desire the quiet, order, and refinement of a SELECT SCHOOL, together with the personal instruction of an experienced Teacher.

TERMS \$12.50 per quarter—Drawing \$2.50. No extra charges whatever. Hours of instruction from 9 A. M. to 1 P. M. Exercises to be commenced on the 2nd of December. 11 mo 7-1m CALEB S. HALLOWELL.

JOB PRINTING, HANDBILLS, CARDS, BILL HEADS, CIRCULARS, &c., neatly and expeditiously printed, on the lowest terms, at the Alexandria Gazette Office, near the corner of Prince and Fairfax streets. nov 6-1w

DR. MCCONNELL, DENTIST, FROM WASHINGTON, D. C.

WILL visit Alexandria on Wednesdays and Saturdays, professionally, each week. OFFICE—Corner of King and Washington streets, next door to the office of Judge C. Neale, lately occupied by Douglas F. Forrest. nov9-2w

I. LOUIS KINZER, ATTORNEY AT LAW, ALEXANDRIA, VA.

WILL ATTEND to the prosecution of Claims for damages sustained by citizens of Alexandria and vicinity, by the use and occupation or destruction of their property by the U. S. troops. oct 15-4w*

DRUGS, CHEMICALS, &c.

DRUGS, &c.—We have on hand, 125 oz. Quinine; 25 lbs Calomel; 25 lbs Blue Mass; 20 do. Turkey Opium; 10 do. Iodide Potash; 50 do. Refined Camphor; 4 oz. Sulphate Morphia; 25 lbs. Chloroform; 200 gals. Kerosene Oil; Also, Alcohol, Etherial Oil, Linseed Oil and Paints of all kinds. For sale by LEADBEATER & CO., 10mo30 colm Nos. 5 & 7 S. Fairfax street.

PORTLAND KEROSENE.

400 GALLONS of the above, which is universally acknowledged to be equal, if not superior, to any other, received and for sale at a reduced price. HENRY COOK & CO., nov9 Sarepta Hall, King street.

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LARD OIL, Machine Oil, Linsced, both raw and boiled, Etherial Oil; pure Neatsfoot Coal Oil, Train and Tanners' Oil, received and for sale by HENRY COOK & CO., Sarepta Hall.

BOOTS AND SHOES.

HENRY C. FIELD, BOOT AND SHOE MANUFACTURER, No. 74 King street, Alexandria, KEEPS on hand, and is prepared to manufacture BOOTS and SHOES of all kinds. MILITARY BOOTS or SHOES made at the shortest notice, and of the best material. Persons in want of a good article in his line, will do well to give him a call. oct 7