NASHVILLE UNION AND AMERICAN.

ESTABLISHED MARCH 30, 1835. NASHVILLE, TENNESSEE, SUNDAY, NOVEMBER 29, 1868. NEW SERIES---NO. 81

TELEGRAPHIC.

WASHINGTON.

A Big Payment on the Public Debt.

The Proposed Settlement of the Alabama Claims.

Arrest of J. Augustus Marsh at Memphis.

Centre Point, Ark., Pillaged by Militia.

Citizens Outraged and Murdered.

Spain Decides Against Republicanism.

Garibaldi Coming to America.

First Day of the New Orleans Races.

WASHINGTON.

Legal Tender Notes called in Payment on the Public Debt, etc.

WASHINGTON, Nov. 28.—Under the recent circular from the Treasury department requiring financial agents to send in for redemption, certain descriptions of legal tender notes. A very large amount has been received. The Secretary of the Treasury in his financial report will show the expenditure on the public debt account of $848,500,000 which includes redemptions.

The Librarian of Congress has caused to be placed in the Rotunda of the Capitol, a statue of Alexander Hamilton, heroic size, executed in Italy, by Horatio Stone, of this city, under an order of Congress.

The Herald's Washington special says the terms of the proctocol now in the hands of President Johnson, are in general just as our Washington correspondent stated recently, except that the number of commissioners is to be four instead of three, two to be appointed by each side. Each one of the Alabama claims must be decided unanimously or referred to an arbitrator. The government considers this protocol is equivolent to a concession on the part of England that her conduct in recognizing the Rebels as belligerents shall be passed on in arbitration.

Judges Nelson and Blatchford have disagreed on legal points involved in the Rosenburg naturalization case, and the questions are to be submitted to the United States Supreme Court at the next term. Judge Nelson to-day granted an order requiring plaintiffs and defendants in the Erie case to show cause why, on Monday, the order of Judge Blatchford, appointing Jay Gould Receiver, should be vacated. Full argument will be had that day, while the Judge will also decide a motion to show cause why Aug. Belmont cannot be made a party to the suit in the United States Court.

NEW YORK.

Nominations for City Officers—Opinions of Mr. Boutwell, etc

NEW YORK, Nov. 28.—The Democratic Union Executive Committee, at Masonic Hall, last evening, nominated Frederick A. Conkling for Mayor, and Richard O'Gorman for Corporation Counsel, in place of Jno. Kelly and Abraham P. Lawrence, declined. The Constitutional Union Convention also nominated Mr. Conkling

Schuyler Colfax, Vice President elect, is now sojourning in this city. He spent Thanksgiving Day in Brooklyn, the guest of Benjamin W. Delamater. In the evening an entertainment was given in honor of the Speaker and his wife, in which a large number of prominent citizens assisted, and the gentleman received many congratulations on two happy events of his life, viz: His marriage with Miss Wade and his election to the Vice Presidency. Mr. Colfax will leave for Washington to-morrow.

A correspondent has had a conversation with Congressman Boutwell, who, in answer to inquiries, stated that he should advocate the exaction of more stringent measures of reconstruction in Virginia, Mississippi and Texas, than had been required from the other States. He believed that specie payment can be hastened only by advancing prosperity, and not by legislation. As to the suffrage question, he was of the opinion that Congress had the power to declare who may vote for Presidential Electors, Senators and Congressmen, if not the power to regulate the entire question of suffrage in the States.

Judge Cordoza has issued an injunction restraining Judge Davis from acting as Receiver at Erie, while the report as to Jay Gould seemed founded on the action of Judge Nelson, as before stated. Another report is that the Legislature will finally settle the whole matter by the passage of some new act. As the Legislature does not meet for some time, this report is at least premature. Quiet reigns at Erie headquarters, which were wide open today, and Mr. Gould, in reply to an inquiry, said everything was going on as usual and that he was attending to the business of the office—that Mr. Davis cannot act; he is so bound with stays, and in his (Gould's) opinion does not propose to act. Davis was in the office five minutes last week, but not since.

SCHENECTADY, N. Y., Nov. 28.—The ticket office of the New York Central railroad in this city, was broken into by burglars last night. The safe was opened with keys and about $3000 in money taken. There is no clue to the burglars.

PACIFIC RAILROAD.

The Work of Construction Goes Rapidly Forward.

ST. LOUIS, Nov. 28.—Senator Stewart and family, from Nevada, arrived at Salt Lake Thursday, en route for Washington, D. C. He represents the Central Pacific railroad completed 435 miles East of Sacramento, and a gap of only 400 miles between that road and the Union Pacific railroad.

NEW ORLEANS.

First Day of the Races.

NEW ORLEANS, Nov. 28.—There was a large attendance at the opening races today over Metaire Course. The stake was for all ages, dash of a mile and a half, to carry thirty pounds; purse $400. Bismarck beat Transit and Tom Green. Time 3:02½.

For the State Post Stake, three mile heats, $2,000 entrance, Alabama entered Bayonet; Missouri entered Sundown; Louisiana entered Gilroy. Bayonet won. The following is the summary: Bayonet 1-2-1; Gilroy 2 1-2; Sundown 3 3-3. Time 6:20, 6:24, 6:24½. Weather fine, cool and bracing; track very heavy. Prominent turf men were present from all sections, and the betting all one way—Bayonet being the favorite and Sundown second.

In the New Orleans District Court yesterday, the District Attorney informed the court that Chief Justice Chase had dispensed with the hot oath for jurors, and moved the same rule be adopted in the United States Court of Louisiana. Judge Durrell ordered the oath to be administered as required before the war.

RICHMOND

An Old Whisky Bill to be Paid.

RICHMOND, VA., Nov. 28.—The Richmond Circuit Court to-day gave judgment against the city for $15,000 worth of whisky, which was destroyed by order of the City Council on the night of the evacuation in 1865. About 3,000 barrels were destroyed, for all of which the city will have to pay.

GEORGIA.

Federal Troops to Preserve the Peace.

AUGUSTA, Nov. 28.—Gen. Sweeny, with two companies of the 10th Infantry arrived here this morning, and will remain until after the municipal election, next Wednesday.

ARKANSAS.

Clayton's Militia Sack a Town and Murder Its Citizens.

MEMPHIS, Nov. 28.—The Appeal's Arkansas correspondent says that on the 10th a body of two hundred men, claiming to be militia, entered the town of Center Point, Sevier county, and arrested all the inhabitants. They marched them into a open field and placed a guard over them, and then proceeded to sack the town, after which they left. Next day the citizens of the adjoining county flocked into town and a meeting was gotten up to express the sentiments of the people in regard to the outrage. While the meeting was progressing the same body of men dashed into the town and opened an indiscriminate fire upon the assembly, shooting down a number, and then arresting three of the oldest and best citizens, named Hester, Anderson and Gilbert, carried them out to a field and shot them. The band is still in possession of the town.

MEMPHIS.

Arrest of a New York Swindler—Departure of Troops for Texas, etc.

MEMPHIS, Nov. 28.—J. Augustus Marsh, late of the firm of Temple & Marsh, brokers in Wall street, for whom a reward was offered for alleged swindling in bonds, was arrested here this afternoon *en route* to Cuba. He is held to await the requisition of the Governor of New York. Fifteen thousand dollars in bonds were found on him.

Eight companies of the Twenty-ninth Infantry, under Gen. Wilcox, left this afternoon on the steamer Ruth for the frontier of Texas.

An affray took place this morning on Butler street between two negroes named Steve Grayson and Anderson Colbert, which resulted in the shooting and mortally wounding of Colbert. Grayson was arrested and lodged in jail.

FOREIGN.

PARIS, Nov. 28.—The Patrie says the Corps Legislatif will meet on the 4th of January next.

The publisher of the Celtic Progress newspaper has been fined 500 francs and sentenced to one month's imprisonment for publishing a list of subscriptions for the proposed monument to M. Bouder in the cemetery of Mount Martre.

The Patrie, of yesterday, says there is a large faction in Spain who favor the formation of a Triumvirate for five years.

VIENNA, Nov. 28.—An American vessel, with arms on board, designed for the use of the Wallachians, passed up the Danube a day or two since.

FLORENCE, Nov. 28.—Dispatches have been received announcing that Mount Ætna is in a state of eruption.

MADRID, Nov. 28.—There have been many Republican demonstrations throughout Spain within a few days.

FLORENCE, Nov. 28.—Quite a serious outbreak occurred at Bologna, and new troubles are feared. The disturbance originated through a refusal of the peasants to pay their taxes. Ten persons have been killed, and several badly wounded.

VIENNA, Nov. 28.—Reinforcemen have been sent to the Province of Belgrava to quell disorders there.

LONDON, Nov. 28.—A correspondent in the Pall Mall Gazette says Garibaldi is about to leave his home and emigrate to America. This conclusion has been arrived at in consequence of the reproaches of Mazzini and his friends, consequent on the General's failure in the Roman insurrection last year.

ENGLAND.

Honors to Minister Johnson—Mr. Disraeli Declines the Peerage.

LONDON, Nov. 28.—Great preparations are being made at Birmingham for the reception of Reverdy Johnson on Wednesday next. John Bright and others will speak on the occasion.

The dinner to Mr. Johnson which was contemplated by the Working Mens' Society of this city, has been abandoned.

Benjamin Disraeli declined the Peerage. His wife has been created Vis-countess of Beaconsfield.

LONDON, Nov. 28.—The press unite in commending Disraeli's refusal of the Peerage and its homage on his wife. The opposition journals also eulogize the career of the Premier.

SPAIN.

The Chances Against a Republican Form of Government.

MADRID, Nov. 28.—The government has declared that the popular sense of the country is antagonistical to the establishment of a republic, and that the Cortes soon to meet will surely propose a form of monarchy.

CUBA.

The War Against the Insurgents.

HAVANA, ov. 28.—The first battalion of volunteers leaves to-morrow for the seat of war. It is reported that the insurrectionists have burned the plantation of Col. Acosta, who commanded a battalion of volunteers. It is reported that Gen. Espedes, of the revolutionists, had three men executed who were caught robbing and committing incendiarism. Espedes, previous to the attack and repulse at Massalinino, recommended that the women and children should leave town. The confidence of the people and Capt. Gen. Lersundi in the speedy termination of the war, is increasing. Another battalion of volunteers will march to Haiquen during the coming week.

GRANT.

Interview with the President Elect—His Policy Foreshadowed.

WASHINGTON, Nov. 27.—The idea prevalent that Gen. Grant is always taciturn is quite erroneous. There are persons with whom he converses freely on politics as all other topics. To-day in an interview with a friend he said he thought the result of the election had a salutary effect on the country, and that already it was quieting down. He apprehended no trouble in the future, and believed the condition of the country will soon show improvement. He said he was desirous of peace, but that so far as he was concerned, the rights of all classes of people and communities should be respected. Also, referring incidentally to the fourteenth constitutional amendment, he said after next census, in accordance with its provisions, Kentucky and Maryland would suffer loss of representation if they refused to allow negroes the right of suffrage. "It will be a bitter pill for them," continued the General, "but I reckon they will have to stand it."

INCIDENT AND ACCIDENT.

NEW YORK, Nov 28.—The Times' Poughkeepsie dispatch says: It has been now ascertained that the victim of the recent mysterious roadside murder is Mrs. Smith, wife of Jacob Smith, of Wurtzborough, Sullivan county. He started from home on Saturday at one P. M. in a one horse wagon with his wife, proposing to take her to Olive, Ulster county, to visit her daughter, who he professed to her had been badly hurt and wished her immediate presence. He returned to Wurtzborough on Sunday, stating that the horse had given out and that he had sent his wife to his daughters by a chance ride and came back for the children to take them to the same place. He left again on Tuesday with the children. After he left his house it was entered by the citizens and it was found that he had carried off every thing in the house except one old trunk which was opened and in it was found a remnant of a piece of goods which is exactly similar to the dress found on the murdered woman. Since Smith left with the children nothing has been definitely heard of them. The children were those of his wife by a former husband.

WHEELING, Va., Nov. 28.—A steam boiler in Reid's soap factory exploded this morning, carrying away the south wall of the building and damaging adjoining property considerably. An employee named Cahill was instantly killed.

PHILADELPHIA, Nov. 28.—The auction store of Leeds & Co., on Arch street above Third, burned to-day. The building next door above, occupied by James Ogden as office of malleable iron works, was damaged by water.

NEWS OF THE DAY.

A Denver dispatch says that the city has been infested with desperate characters driven from the towns on the Pacific railroad by the vigilants.

On the night of the 23d a mob of twenty men took from the Denver jail a man named T. H. Musgrove, charged with horse-stealing, and hung him.

The *Dispatch* says one thousand bushels of California wheat have just been received by one of the mills at Richmond.

The Mitchell (Indiana) hub and spoke manufactory was consumed by fire Wednesday morning—a total loss; valued at $12,000; insured for $2,500.

The Methodist Book Concern, of Cincinnati, has purchased a fine stone front building on the north side of Fourth street, between Elm and Plum streets.

Thirty thousand barrels of corn have been shipped from Lexington, Ky., in the last two months to the distillers of Bourbon and Harrison counties.

The Union Pacific Railroad Company is now pushing the construction of temporary bridges across the Missouri River at Omaha, and will soon be able to move an enormous quantity of freight awaiting transportation West.

A spirit of discontent is declared to be spreading in Paris. It is said that the government, with suicidal zeal, presses and multiplies prosecutions for opinion's sake. It is noticeable that these telegrams come from London, as it is not likely they could be sent from Paris.

There is a growing interest manifested in the cultivation of tobacco in Northern Georgia. The climate and soil are found to be in no way inferior to that of Virginia, and some specimens manufactured at Clarksville will compare favorably with the best Lynchburg chewing tobacco.

Miss Knowles, of Mt. Vernon, Indiana a school-mistress, aged twenty-six, has recovered $3,000 damages of Mr. S. S. Dryden, of Kokomo, a widower, for breach of promise. As Mr. D. offered the prosecutrix $2,000 to settle the case without a trial, the Kokomo *Tribune* thinks the damage too high.

A Washington dispatch to New York says that the British Legation has at length produced a bill against the United States government as an offset to the Alabama claims, amounting to $45,000,000, being for damages alleged to have been sustained by British subjects in the South during the rebellion.

The Russian Legation in Washington deny the report that $2,000,000 of the Alaska purchase money was expended in securing the good will of Senators and Congressmen for the passage of the Appropriation Bill. Six millions of the purchase money has already been paid.

Leprosy is reported to be spreading at a fearful rate in the Sandwich Islands, and the government is urged to adopt severe measures, in order to check the disease, which is believed to have been introduced by the immigrants from China. This description of leprosy is considered contagious, and, unless its progress can be arrested, the Sandwich Islands, it is asserted, will in fifteen years' time be depopulated

A Washington special says: Severn Radical lobbyists, who have been arranging for material aid from the government to support their projects, have been bold enough to seek Grant's countenance and favor. It is honorable to him to record that they were dismissed with a stern rebuke.

At Portsmouth, New Hampshire, three tenements on Bridge street and a bowling alley and a building on Hanover street, were destroyed by fire on Wednesday morning. Several families were rendered homeless. The loss is $7,000, which is fully covered by insurance.

A terrible explosion occurred Thursday in the Arley Mine Colliery, near Wegan, England. Three hundred men were in the pit at the time, most, if not all, of whom have perished. Thirty-two bodies thus far have been recovered. Hundreds of relatives of the dead are gathered at the mouth of the pit, and the scene is heartrending.

Ex-King George of Hanover denies most emphatically that he intends to take his seat in the British House of Lords. He says he wants to get his throne back, and that he will never take any steps which might involve a forfeiture of his rights to the crown of Hanover.

A new "whisky" question has been raised. Rats, in violation of law, have eaten $200 worth of stamps off whisky barrels in a Dubuque distillery. A vigilant detective has reported the act, and the Commissioner's decision is wanted.

The War Department has issued an order that no permanent barracks, quarters, hospitals, storehouses, officers' stables, piers of wharves shall be erected, but by order of the Secretary of War, and according to the plan directed by him and no alteration shall be made in any public building without authority from the War Department.

A Washington dispatch says: Secretary McCulloch has nearly completed his annual report, and has fixed on his estimates of revenue to be raised for the next fiscal year at two hundred and fifty million of dollars. This estimate is one hundred and thirty-one millions less than that made for the present fiscal year.

The Columbia (S. C.) *Phœniz* says: "Gov. Scott will doubtless recommend, in his message (and the Legislature, it is presumed, will carry it out) to fund the interest on bonds due up to July last. It is understood that North Carolina, Georgia and Tennessee have made similar arrangements The incoming taxes will, he thinks, be sufficient to meet the interest accruing."

The Secretary of the Treasury has ordered collectors of internal revenue, in all cities where an assistant United States Treasurer or designated depository under the act of 1864 is located, to discontinue their deposits in national banks on the first of December, and thereafter to deposit only in the United States subtreasury.

The Supreme Court for New York city has recently decided that although in prize cases the United States Courts had asserted the right to treat the Rebels as belligerents, yet that civil contracts between parties North and South were not dissolved by the war, as the United States retained jurisdiction all over the country, and that a summons served during the rebellion upon a person in New Orleans would be sufficient to sustain a judgment against him as a party in a suit brought in the United States in New York.

Speaking of Gen. George H. Thomas' report on the condition of Tennessee affairs, the Chicago *Times* says: The report has nothing to say about the crimes of the Brownlow government. Correspondents of Radical newspapers have had much to say about the crimes of that government, and of its outrages upon the majority of the citizens of the State, but Gen. Thomas seems to be ignorant of them. There are portions of his report which read as if Anna Dickinson, or some other ill-informed, ranting fanatic had written them. There is a mixture of cant, malevolence, misrepresentation, and Jacobin bosh in the report, which is altogether discreditable to its author.

A Washington special of the 25th says: Great surprise is manifested over the appointment of G. B. Williams as Supervisor for Indiana, since it has transpired that his brother is now Collector of Internal Revenue in the Eighth District of that State, in which office he was deputy at the time of his appointment. The office was created to put a check on Collectors and other Revenue officers, and the impropriety of appointing one brother to supervise the other, is manifest, but Rings are fashionable, and the Indiana clique wants a share of the spoils.

CLEVELAND, Nov. 28.—The steamer Oaston is reported sunk in Lake Michigan, by the steamer Milwaukee, both of the Northern Transfer company's line. No lives lost. No particulars.

TENNESSEE LEGISLATURE.

SENATE.

NASHVILLE, Nov. 28, 1868.

Senate met at 10 o'clock A. M., Speaker Senter in the chair and seventeen members present.

By Mr. Keith, the following resolutions: WHEREAS, His Excellency, the Governor, died on the 13th of May last, previous to convening this General Assembly in extra session, appoint a new Board of Directors of the Penitentiary, and in his message expressly indicated the necessity of adopting measures for the adjustment of the unsettled condition of the affairs of the Penitentiary, and on account of some official failure the appointment of said Directors was not confirmed on the part of the Senate. Therefore

Resolved by the Senate of this General Assembly, That we most respectfully enquire whether the official information of said appointment has been sent to the Senate, and if not, that such information be furnished as it will enable this house to take immediate action for the adjustment of the long neglected difficulties hanging upon the interests of the State on account of that institution. Laid over under the rules.

By Mr. Garner: An act looking to the sale of the Nashville and Northwestern Railroad. This bill calls upon the company to make a full report in regard to the financial condition of the road, its indebtedness, amount of stock taken in, etc. It also provides that the road be sold to the highest bidder, and that the State is now ready to receive any proposition that the company may see fit to make. The bill proposes to purchase the stock together with the franchises of the road, provided that the State and company can agree upon prices. Passed first reading.

By Mr. Keith: An act for the protection of the school fund. The bill provides that when any person fails to pay taxes on land it shall be levied against him and authorizes the collector to advertise the land for sale at the Courthouse door in which the land lies. Passed first reading and referred to Committee on Common Schools.

On motion of Mr. Frierson, the vote rejecting House bill No. 136, was withdrawn for amendment.

On motion of Mr. Norman, House Joint Resolution No. 212, appointing a committee to settle with the Railroad Receivers, was taken from the table and adopted.

HOUSE BILLS ON THIRD READING.

No. 316; An act to incorporate the Granville Lodge No. 342 of Free and Accepted Masons. Passed.

No. 327: Bill to incorporate the Wardens and Vestrymen of Grace Church, at Memphis. Passed.

No. 340: To incorporate the Raleigh Mills and Manufacturing Company, also to incorporate the town of Raleigh, with a Mayor and five Aldermen. Passed.

No. 440: An act for the protection of Millers and persons going or sending to mill. Rejected.

HOUSE BILLS ON SECOND READING.

No. 270: An act to provide for the publication of decisions of the Supreme Court of Tennessee. Rejected.

No. 313: An act amendatory of an Act, compensating Justices and Jurors. Rejected.

No. 365: A bill to legalize the official acts of Isaac R. Reeder, Justice of the Peace for Robertson county. Rejected.

SENATE BILLS ON THIRD READING.

Bill No. 313: To incorporate the Knoxville Marble and Mining Company, to have capital stock of $50,000 with the privilege of increasing the sum to $500,000. Passed and ordered to be transmitted to the other House.

No. 303: An act to incorporate the Warren *Chronicle* Printing Company, to have a capital stock of $25,000.

Mr. Lindsley offered an amendment that the stockholders shall be responsible for all debts of the company. The bill was rejected.

No. 308: An act to surrender the McMinnville and Manchester railroad to the stockholders. The Judiciary Committee amended the bill by striking out the word "stockholders" and inserting "company."

Mr. Lindsley said: The Receiver of that road is the Receiver of another road. He has taken possession of that road and is running it for his own use. He is to charge himself and to say what shall be charged. There is nothing being paid over to the State. He is a contractor of the Southwestern railroad, and his hands are allowed to go over the road free of charge.

Mr. Parker made a few remarks in defense of the road and in reply to Senator Lindsley.

After some discussion from several other Senators, the bill was, on motion of Mr. Parker, made the special order for Monday week.

The Senate then adjourned until next Monday morning at 10 o'clock.

HOUSE.

The House was called to order at 10 A. M., Speaker Richards in the chair. Roll call was dispensed with, as the slim attendance showed that no *quorum was present*.

Mr. Faulkner obtained leave of absence until Tuesday next.

The Speaker announced the following special committees:

On Mr. Hammer's educational investigation resolution, Messrs. Hammer, Boson and Smith.

On Mr. Prosser's Blind Asylum resolution, Messrs. Prosser, White, of Greene, and Pitts.

NEW BILLS AND RESOLUTIONS.

By Mr. Waters: Resolution relative to the State Armory on College Hill, instructing the Treasurer to look after the same. Adopted under a suspension of the rules.

By Mr. Boson: Resolution that the Comptroller be requested to inform the House what changes, modifications or reductions may, with safety to the financial interest of the State, be made in the present Revenue Laws of the State. Adopted under a suspension of the rules.

By Mr. Inman, of Cocke: Joint resolution to adjourn sine die on the 14th proximo. Laid on the table by a vote of 52 ayes to 24 noes.

By Mr. Prosser: Bill to amend Section 5 of the Act of March 12, 1868, to establish a Board of Commissioners for Sumner county. The bill authorizes the Board to issue 6 per cent. coupon bonds, not exceeding $20,000, to fund the indebtedness of the county. Passed first reading and referred to Committee on Finance and Ways and Means.

By Mr. Kercheval: Bill increasing the fees of Attorneys-general, as follows: for each conviction for misdemeanor when defendant pays the cost, $10, for each conviction for felony, when defendant pays the costs, $20. Passed first reading and referred to Committee on Judiciary.

By Mr. Kercheval: Bill amending the Criminal Laws of the State, with regard to carrying and using deadly weapons. Passed first reading and referred to Committee on Judiciary.

By Mr. Hamilton, of Shelby: Bill to incorporate the Memphis Preserving Company. Passed first reading.

By Mr. Prosser: Joint resolution instructing the Comptroller to issue his warrant to Rhum & Bailey for $242, for German printing ordered by the House at the last session. Laid over under the rules.

STATE AID TO RAILROADS.

The resolution heretofore offered by Mr. Poston to the effect that all action on the "Omnibus Bill" be postponed until a Joint Select Committee thoroughly investigates the condition of the roads to which State aid has been granted, and the manner in which the bonds already loaned have been used, was reported back from the Committee on Internal Improvements, with the suggestion that no further action on the resolution was necessary, as Senate bill 322 (the Omnibus Bill) had already been fully examined and reported upon.

Mr. Poston moved to refer the resolution to the Committee on Finance and Ways and Means.

Mr. Cordell moved, in lieu, to refer it back to the Committee on Internal Improvements.

Mr. Poston moved to lay Mr. Cordell's motion on the table. The vote stood, ayes 24; noes 30. No quorum voting.

Adjourned to Monday at 10 A. M.

The Madrid correspondent of the London *Times* is lamenting the progress of Democratic principles in Spain.

THE FRANCHISE.

THE CONSTITUTIONALITY OF "THE ELECTIVE FRANCHISE LAW."

BY W. H. HUMPHREYS.

These acts or constitutional ordinances have been sanctioned by the constituted authorities and should be obeyed. The case of Ridley *vs.* Sherbrook, in which their validity has been affirmed by the Supreme Court of the State, has been taken to the Supreme Court of the United States on the ground that they violated the provisions of the Constitution of the United States. The question is therefore an open, pending question, and the subject of legitimate discussion.

In substance and effect these ordinances declare that no citizen of the State who has borne arms against the United States voluntarily "in the late rebellion" or given encouragement, aid, comfort, or counsel to the same, or who has accepted or sought office under the late Confederate States or under any insurrectionary State with intent to aid said rebellion, or who has voluntarily supported any government hostile to the United States by money, property, influence, persuasion, or in any manner whatever, shall have the right to vote in any election of public officers. These ordinances provide for a registration of all the voters of the State: they authorize the Governor to appoint a Registrar for each county empowered to give a certificate to each applicant, declaring the right of the person therein named to vote; they declare that no person shall be entitled to vote who does not obtain such certificate, and that the Registrar shall not issue such certificate to any person who does not file an affidavit with the Registrar denying that he has ever committed the political offenses or done the acts specified in the ordinances, and who does not also obtain and file with the Registrar the affidavits of "two unconditional Union men," that they verily believe the applicant has not been "guilty of the disqualification" set forth in these ordinances; they also provide that the Registrar shall hear testimony against the right of the applicant and award a certificate or reject the application according to the weight of the testimony.

These acts further provide that when it shall be made to appear that fraud or irregularity has intervened in the registration of voters in any county, the Governor may set aside the registration.

These ordinances, though by their terms they may be construed to embrace the whole past life of the applicant, yet specifically they embrace offenses committed or acts done in 1861, 1862, 1863 and 1864 in "the late rebellion." As they involve the rights of perhaps more than one hundred thousand citizens of the State, and the very existence of elective government, they deserve the earnest and dispassionate consideration of every person who values chartered rights and elective government.

The Constitution and laws of the State of Tennessee, prior to the late war, had declared the causes for which the citizens of the State could be deprived of the right of suffrage, and had established the mode of proceeding by which it could be done. The Constitution declares that no freeman should be taken or imprisoned or dissezied of his freehold, liberties or privileges, or exiled or outlawed, or in any manner destroyed or deprived of life, liberty or property, but by the judgment of his peers or the law of the land. This provision, extracted from the great English charter, is declared by an able commentator on the Constitution of the United States, to be no more than an amplification of the provision of the Constitution of the United States, which declares that no man shall be deprived of life, liberty or property but by the due process of law, that is, by the judgment of a court of competent jurisdiction acting under pre-existing law and according to the established forms of the Constitution. The Constitution provides, also, that the Legislature may pass laws to deprive persons convicted of infamous crimes of the right of suffrage. Under this provision of the Constitution the Legislature did enact that persons guilty of murder, larceny, perjury, arson, burglary, forgery, and of certain other specified felonies, should, on due conviction thereof, be deprived of the right to vote or to give evidence. It has been long established in England and in the United States that no other evidence can be introduced to exclude a person from giving evidence on the ground of the commission of a specific crime, than the record of his conviction of such crime. The court cannot arrest the progress of the trial on hand for the purpose of trying the witness of a crime which excluded him, and which was committed perhaps in another county. The court cannot arrest a trial for larceny to try the witness on a charge of perjury, without giving the witness the benefit of any constitutional forms and safeguards. It is upon the same ground that no voter can be excluded on the ground that he has been guilty of one of the felonies enumerated in the Code, without the production of the record of his conviction. If he could be excluded without the production of the record of his conviction, the register of voters, or the ministerial officer who holds the election, might be required to try the citizen claiming the right to vote, on the charge of murder, perjury, larceny, or other felonies specified in the statute, without the constitutional safeguards provided in criminal proceedings. The record of the conviction of the voter of any of the enumerated felonies, is conclusive that he has been lawfully deprived of the right to vote. There can be no other lawful evidence of the deprivation of the right to vote on the ground of commission of crime, than the sentence of a court of competent jurisdiction, organized under the Constitution, and any exclusion founded on crime without the production of the record of conviction is without the authority of law, and entitles the rejected voter to damages against the officer who excludes him.

A citizen who is deprived of the right to vote by the conviction and sentence of a constitutional court acting under pre-existing law, is deprived of his right "by due process of law," "by the law of the land" in the constitutional sense of the terms, and can never vote unless he be lawfully restored.

This forfeiture of constitutional rights, this disability, this disqualification, this punishment, is inflicted on persons duly convicted as before stated of certain enumerated felonies, but the statute does not embrace all felonies or any misdemeanor. It does not embrace treason or seditious libels, or seditious speeches. It does not embrace any of the political offenses or acts required to be denied and disproved by these "elective franchise acts." There was no statute of the State of Tennessee in force in the years 1861, 1862, 1863, 1864, which inflicted a forfeiture of the right to vote as a punishment for any of the offenses set forth in the acts of 1866-7, or as a punishment for the commission of any political offense against the United States. There was no act of Congress in 1861, '2, '3, or 1864, which authorized the infliction of such penalty on any of the offenses or acts set forth in the acts of 1866-7, by action of either State or Federal courts. No law of the State of Tennessee or act of Congress notified the citizens of the State in advance that if they bore arms against the United States, or sought office in any insurrectionary government against the United States, or aided the same, or gave counsel or encouragement to the same, or supported it by money, property or influence, or in any other manner, they should, on due conviction thereof be deprived of the right of suffrage. Neither the authority of the State or of the United States, had given that notification by duly promulgated law of the impending penalty which is the basis of all criminal responsibility. But after the war was at an end, after the great mass of those who had fought with most determined will against the United States, had laid down their arms and, proclaiming their anxiety for the preservation of law and order, and for the re-establishment of peaceful industry, had discouraged all irregular and lawless war, and all violation of the laws of the United States, after the courts of the United States were open in all the States, and offenders in all the States were subject to arrest and to trial, without the slightest resistance to the execution of the law, after the Chief Magistrate of the United States, had issued and they had accepted the benefit of a proclamation of amnesty, discharging them forever from all penalties, forfeitures and disabilities, which they may have incurred for and by reason of the commission of any political offense against the United States, and restoring them to any rights which they may have forfeited, then and not till then the constituted authorities of the State of Tennessee by retrospective oaths, established a state of political outlawry against perhaps a hundred thousand citizens of the State, not for offenses against the State, but for offences against the United States, which had been pardoned by the Executive of the United States.

Have the constituted authorities of the State the rightful jurisdiction to punish pardoned offenses against the United States by retrospective statutes or ordinances?

In tranquil times it would be declared with hardly a dissenting voice that all statutes and constitutional provisions which exiled or outlawed or in any manner destroyed any citizen, or which deprived him of his liberty by imprisonment, or of his estate or any part of it by forfeitures or fines, or which deprived him of the right to hold office under the government, to give evidence in the courts, to vote in public elections, to sue in the courts for injuries to his person, his property or his character, or which deprived him of any civil or political rights previously possessed and enjoyed, on the ground that he had committed offenses against the State, prior to the passage of such statutes or ordinances were prohibited by the Constitution of the United States as retrospective penal enactments or *ex post facto* laws. It is immaterial whether these statutes or ordinances proceed from an ordinary legislature or from the delegates of the people in convention assembled according to the requirements of a pre existing Constitution.

The Constitution of the United States declares that no State shall pass any *ex post facto* law or bill of attainder. No respectable authority has ever held that the word "State" did not embrace the people of the State in any capacity in which the people of the State might choose to organize themselves. If this were not so the delegates of the people in convention assembled, might grant titles of nobility, abrogate all contracts, and enact *ex post facto* laws and bills of attainder without restraint. The punishment of citizens by depriving them of their civil or political rights by constitutional provisions ordained for the punishment of offenses committed prior to the passage of such ordinances are of no more validity than an ordinary act of the legislature enacted under similar circumstances and for like purposes. The elective franchise act passed in 1866-7, for the deprivation of the citizen of rights for offenses committed or acts done in 1861, '2, '3 and '4 are therefore prohibited by the Constitution, whether they are legislative acts or constitutional provisions. But if such statutes were not retroactive in operation, if the offences set forth in these statutes were punishable by the express terms of statutes by deprivation of the right to vote and hold office, such acts would be void and of no legal validity because they would be acts of attainder. They would be acts of attainder because they would punish citizens for alleged crime without a trial by the judicial branch of the government. The whole work of deprivation for alleged crime has been accomplished by the law-ordaining department of the government, and by the executive department. The judicial branch of the government has been wholly excluded. So long as the prohibition in the Constitution, of bills of attainder stands, no citizen can be deprived of civil or political rights or privileges, or be otherwise punished on account of offenses committed without a constitutional trial by the judicial branch of the government. The "elective franchise acts" deprive the citizen of his rights on the ground of offenses committed in "the late rebellion" without a trial. These acts, therefore, are acts of attainder and prohibited by the Constitution of the United States.

The precedents of such enactments by the parliament of Englrnd from time to time in the progress of centuries, and the decisions of the Supreme Court of the United States almost from its foundation to the present time, amply sustain these positions. Some of them may be referred to, and first, as to parliamentary attainders.

In the twenty-eighth year of Henry the Eighth a bill of attainder was enacted against the "late Earl Kildare" and others. This special act declared that the "late Earl and his aiders, abetters, confederates and adherents in his traiterous acts and purposes, should be and stand attainted and convicted of high treason," and that the conviction should be as "strong and effectual against the adherents and confederates as if they had been specially named." It is possible that the punishment ordered to be executed by the judgment of parliament, might have been the same which would have been adjudged against them by the Court of King's bench, acting under existing laws for the punishment of treason, but this sentence of parliament was an act of attainder, because it was a special law made for the occasion, adjudging punishment without a regular trial by the court, to which should have been submitted the facts of the case and the law involved. If this judgment of parliament had been certified to the Court of King's bench for execution, and the adherents had been brought before that tribunal by *habeas corpus*, no indictment would have been filed against them, but they would have been asked if they had anything to say why the sentence of the law should not be executed upon them. The judgment of parliament left nothing to be tried by the Court of King's bench, but the fact of adherence to the Earl. Parliament usurped the jurisdiction of the judiciary.

In the thirteenth year of Charles the First the Earl of Strafford was brought before the House of Lords on a bill of attainder. He was tried, attainted and executed. A distinguished commentator on the laws of England states that he was attainted and executed "on a state of facts which by no previous law or adjudication had been or could be declared treason." The attainder was afterwards reversed; the reversing statute declaring that "all the proceedings in relation to the said attainder should be cancelled and taken off the file, or otherwise defaced and obliterated, to the intent that the same should not be visible to future ages, or be brought into example to the prejudice of any persons whatever." This nobleman, according to the commentator, perished by an *ex post facto* law and the proceeding by bill of attainder.

In the reign of Charles the Second, a member of Parliament (Sir John Coventry), made some remarks on the dissolute character of Charles. He was thereupon seized in the streets of London by some persons, who assaulted and wounded him in the face with the intent to disfigure him. The authors of the assault fled to the continent, and Parliament passed an act of attainder against them, adjudging that the offenders should return by a given day and surrender themselves for trial on pain of perpetual exile, and in case of failure, that they should stand attainted of felony, and suffer and forfeit accordingly. There was no law in existence to punish this assault in the manner it was adjudged to be punished by this act of Parliament. It was an *ex post facto* law and an act of attainder.

In the reign of William the Third, Sir John Fenwick was indicted for conspiring to assassinate King William and bring on a French invasion, but it was found impossible to convict him in the established courts, for the act of 7th William, just then enacted, required two witnesses to convict in cases of treason, and but one could be procured. The prosecution in the regular court was abandoned and a bill of attainder brought in Parliament. Each house allowed the introduction of much proof that was inadmissible in the courts. They allowed the introduction of proof of what the wife of the accused had said and done, and what had been given in evidence in another proceeding, to which Fenwick was not a party and at which he was not present. The act of 7th William, requiring two witnesses, was not complied with. The proof was insufficient to convict him of treason in the established courts of the kingdom. The counsel of Fenwick urged in vain that the statutes of England defined the crime of treason, established the proof required to convict in such cases and prescribed the mode of trial. They urged in vain that the accused was in the hands of the public authorities, subject to be proceeded against in the established courts, and that the great charter gave him a trial by a jury of his peers and the law of the land. "If these Parliamentary attainders come in fashion," said one of his counsel, "we shall not know what is treason, what is evidence, nor where or how we are to be tried." The bill of attainder was carried in the House of Lords by a majority of seven, and in the House of Commons the vote stood a hundred and eighty-nine for attainting him and one hundred and fifty-six against it. He perished on the scaffold. The historian Macauly says in regard to the attainder of Fenwick, that "however clearly political crime may have been defined by ancient laws, a man accused of it is not to be tried by a crowd of eager politicians of whom he can challenge none, even with cause; who have no judge to guide them; who are allowed to come in and go out as they chose; who hear as much or as little of the accusation or defense as they choose; who are exposed to every kind of corrupting influence during the investigation; who cheer one orator and cough down another; who are aroused from sleep to cry aye or no; and who are hurried from their suppers half drunk to divide. It was unjust and of evil example, not because it was a retrospective act, but because it was an act eminently judicial and performed by a body destitute of all judicial qualities."

The act of Parliament by the authority of which Fenwick suffered, was an act of attainder, because he was tried by Parliament and not by the established courts of the kingdom which had jurisdiction of the case, and it was a retrospective statute because it changed the rules of evidence in that case and punished the accused upon testimony upon which he could not have been convicted and punished at the time the alleged offense was committed. He was not guilty by the pre-existing law, but was adjudged guilty by special law made for the occasion and after the offense was committed. Another English historian declares that the attainder and execution of Fen