Lexington Weekly Intelligencer.

VOL. 11. LEXINGTON, MISSOURI, SATURDAY, JANUARY 7, 1882. No. 44.

ATTORNEYS.

ALEX. GRAVES. J. D. SHEWALTER.

GRAVES & SHEWALTER,

ATTORNEYS-AT-LAW, Lexington, Mo., will practice in all the courts of the Sixth Judicial Circuit, and United States courts. Prompt attention given to collections. Office in the Kriehn Block. Jan8

R. A. HICKLIN,

ATTORNEY AT LAW. Will practice his profession in the courts of Lafayette and surrounding counties. Prompt attention given to all business entrusted to his care. Office over M. E. Keller's store, front room. [feb23y1]

A. F. ALEXANDER,

ATTORNEY AT LAW. Will practice in the Courts of Lafayette and adjoining counties. Will also attend promptly to the collection of claims, and to investigation of titles to real estate. Office over the Banking House of Wm. Morrison & Co. jan14-1y

GEORGE S. RATHBUN,

ATTORNEY AT LAW, Lexington, Mo. Will practice in all the courts of the Sixth Judicial Circuit, and United States courts. Prompt attention given to collections. Office in "Intelligencer Building," front room.

JOHN E. RYLAND. XENOPHON RYLAND, Notary Public.

RYLAND & RYLAND,

ATTORNEYS AT LAW, Lexington, Mo. Office over No. 67, Main street. Practice in all the Courts of Lafayette and adjacent counties, in the Supreme Court of the State and District Court of the United States. Prompt attention given to collections and all other business. jan14

THOS. J. DULING,

ATTORNEY-AT-LAW, Lexington, Mo., office with Alex. Graves, Esq., over Royle & New's Store. Will practice in all the courts of Lafayette and adjoining Counties, and in the State Supreme Court. Collections promptly made, Taxes paid for non-residents or others, Rents collected, &c. Patronage solicited. (jan10yr1)

HENRY C. WALLACE. WM. H. CHILES.

WALLACE & CHILES,

ATTORNEYS AND COUNSELLORS AT Law, Lexington, Mo. Office, front room over the "Lexington Savings' Bank," opposite the courthouse. Will practice in the courts of Lafayette and surrounding counties, and also in the Supreme court of the state of Missouri, and the U. S. Circuit and District courts for the Western District of Missouri.

MEDICAL.

DR. J. B. ALEXANDER,

PENSION SURGEON. Office room No. 9, up stairs, over the Express office. jan22-1y

DR. G. W. YOUNG,

PHYSICIAN AND SURGEON; office and residence on Oak (College) and South streets, Lexington, Missouri. feb1tf

DR. P. H. CHAMBERS,

PHYSICIAN & SURGEON, office opposite courthouse, over M. E. Keller's store. Residence: Southeast corner Main and College streets. jan17c-1y.

DENTIST.

J. F. HASSELL, D. D. S.—OFFICE OVER Kriehn & Meyer's Boot and Shoe store, Lexington, Missouri. July19

DR. J. W. MENG,

SURGEON DENTIST, office opposite the courthouse, up stairs, Lexington, Missouri.

BANKS.

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LEXINGTON, MO.

WILL do a general Banking business; buying and selling Bonds, Gold and Exchange. Deposits received, collections made and promptly remitted for at current rates of exchange. Liberal accommodations to regular customers.

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MISCELLANEOUS.

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J. D. CONNER, Licensed Auctioneer, will cry sales within reasonable distance of Lexington or in the city. apr9tf

R. TAYLOR. J. O. LESUEUR.

TAYLOR & LESUEUR.

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HAVE the only Complete Set of Abstract Books, Showing the Title to all Lands and Town Lots in Lafayette County. Abstracts made on short notice and on reasonable terms.

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au27y1 TAYLOR & LESUEUR.

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IT is the largest and best selected Stock ever brought to this city, and guarantees his work and fit equal to any Tailor in St. Louis or Kansas City. He has also a stock of

GENTS' NECKWEAR,
SHIRTS,
BUCK GLOVES,
GENUINE ALEXANDER KID GLOVES,
And all kinds of first class,
FURNISHING GOODS,

which he offers low for CASH. Give him a call One door west of P. C. Patterson, Lexington, Missouri. sep11tf

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WM. H. EWING & CO.,

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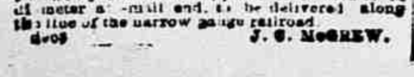

REPAIRING A SPECIALTY.

Franklin Street, Lexington, Mo. janly1

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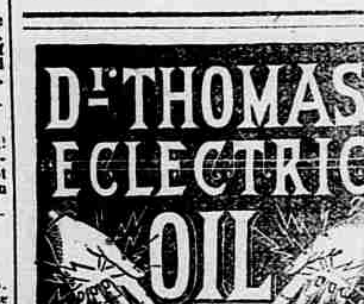
PROPOSALS to furnish me with 200 white oak poles suitable for telegraph poles. They must be twenty-four feet long, and four inches in diameter at small end, to be delivered along the line of the narrow gauge railroad.
dec6 J. C. McGREW.



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Very truly yours, ALBERT STORY.

Do not be deceived by remedies bearing a similar name; no other preparation is a substitute for this under any circumstances. july1m8eow

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INDORSED BY PHYSICIANS, CLERGYMEN, AND THE AFFLICTED EVERYWHERE.

THE GREATEST MEDICAL TRIUMPH OF THE AGE.

SYMPTOMS OF A TORPID LIVER.

Loss of appetite, Nausea, bowels costive, Pain in the Head, with a dull sensation in the back part, Pain under the shoulder-blade, fullness after eating, with a disinclination to exertion of body or mind, Irritability of temper, Low spirits, Loss of memory, with a feeling of having neglected some duty, weariness, Dizziness, Fluttering of the Heart, Dots before the eyes, Yellow Skin, Headache, Restlessness at night, highly colored Urine.

IF THESE WARNINGS ARE UNHEEDED, SERIOUS DISEASES WILL SOON BE DEVELOPED.

TUTT'S PILLS are especially adapted to such cases, one dose effects such a change of feeling as to astonish the sufferer.

They Increase the Appetite, and cause the body to Take on Flesh, thus the system is nourished, and by their Tonic Action on the Digestive Organs, Regular Stools are produced. Price 25 cents. 35 Murray St., N.Y.

TUTT'S HAIR DYE.

GRAY HAIR or WHISKERS changed to a GLOSSY BLACK by a single application of this DYE. It imparts a natural color, acts Instantaneously. Sold by Druggists, or sent by express on receipt of $1.

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feb5-1year

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FOR RESTORING GRAY HAIR TO ITS NATURAL VITALITY AND COLOR.

IT is a most agreeable dressing, which is at once harmless and effectual, for preserving the hair. It restores, with the gloss and freshness of youth, faded or gray, light, and red hair, to a rich brown, or deep black, as may be desired. By its use thin hair is thickened, and baldness often though not always cured. It checks falling of the hair immediately, and causes a new growth in all cases where the glands are not decayed; while to brashy, weak, or otherwise diseased hair, it imparts vitality and strength, and renders it pliable.

The VIGOR cleanses the scalp, cures and prevents the formation of dandruff; and, by its cooling, stimulating, and soothing properties, it heals most if not all of the humors and diseases peculiar to the scalp, keeping it cool, clean, and soft, under which conditions diseases of the scalp and hair are impossible.

As a Dressing for Ladies' Hair

The VIGOR is incomparable. It is colorless, contains neither oil nor dye, and will not soil white cambric. It imparts an agreeable and lasting perfume, and as an article for the toilet it is economical and unsurpassed in its excellence.

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SOLD BY ALL DRUGGISTS EVERYWHERE.

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Weekly Intelligencer.

OFFICIAL COUNTY PAPER.

ALEX. A. LESUEUR, - - - - EDITOR.
ETHAN ALLEN, - - BUSINESS MANAGER.
W. G. MUSGROVE, - - - - PUBLISHER.

Terms, $2 per Year, in Advance.

PACIFIC RAILROAD TIME TABLE.

LEAVE LEXINGTON.

Accommodation for St. Louis and the East	5:45 A. M.
Express and Mail for St Louis, East.	6:00 P. M.
ARRIVE.	
Express and Mail from St. Louis, East and South	8:40 A. M.
Accommodation from St. Louis, East and South	9:40 P. M.

C. BEN RUSSELL, Agent.

WABASH, ST. LOUIS AND PACIFIC.

LEAVE LEXINGTON

Trains for St. Louis, St. Jo and K. C.	6:30 A M
Trains for Kansas City West	6:10 P M
Trains for St. Louis and East	7:40 P M
ARRIVE AT LEXINGTON	
Trains from St. Louis and all points East and South	6:30 A M
From Kansas City and all points West	8:55 A M
From St. Louis and St. Jo	7:40 P M

N. G BISHOP, Agent.

MO. P. R. R.—K. C. & E. DIVISION—NARROW GAUGE.

LEAVE LEXINGTON FOR KANSAS CITY.

Passenger	5:35 A. M.
Freight and accommodation	1:00 P. M.
ARRIVE AT LEXINGTON.	
Passenger	6:40 P. M.
Freight and accommodation	11:00 A. M.

C. BEN. RUSSELL, Agent.

CHICAGO & ALTON R R.—AT HIGGINSVILLE.

GOING EAST.	
No. 47, Kansas City Mail	8:52 A. M.
No. 49, Kansas City Night Express	8:42 P. M.
No. 5, Denver Express	9:15 P. M.
No 101, Local Freight	12:05 P. M.
GOING WEST.	
No. 6, Denver Express	6:35 A. M.
No. 50, Kansas City Night Express	7:10 A. M.
No. 48, Kansas City Mail	7:33 P. M.
No. 102, Local Freight	10:35 A. M.

No. 49 will stop at Alma, Blackburn, Mt. Leonard, Marshall, Slater and Glasgow only. No. 6 will stop at Odessa and stations west of Bates City. No. 50 will stop at Mayview, Odessa, Bates City and Independence only. Nos. 47, 48, 49 and 50 daily. No. 6 daily, except Sunday and Monday. No. 5 daily, except Saturday and Sunday. Nos. 101 and 102 daily, except Sundays. All on Chicago time.

Through tickets for all principal points in United States and Canada for sale at lowest rates. Baggage checked through.

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TURNER-CLAGETT.

The Full Record, as Filed in the Circuit Court, of the Turner vs. Clagett Quo Warranto Case.

PETITION OF HENRY TURNER FOR WRIT OF QUO WARRANTO AGAINST CLAGETT.

STATE OF MISSOURI, } ss
COUNTY OF LAFAYETTE. }

The State of Missouri upon information of John S. Blackwell, Prosecuting Attorney for Lafayette county, Missouri, at the relation of Henry Turner, plaintiff.

against

Thomas B. Clagett, defendant.

In the Circuit Court of Lafayette county, State of Missouri, August term, A. D., 1881.

Now comes John S. Blackwell, prosecuting attorney of Lafayette county, in the state of Missouri, prosecuting for the state, and the said relator, Henry Turner, and informs the court that the said relator is a male white citizen of the United States, and of the state of Missouri, and is more than 21 years of age, and has been a citizen for more than ten years last past; that he now resides and for more than ten years last past has continuously resided in the city of Lexington, in Lafayette county, Missouri; that he has not, within the last five years, held any office of trust or profit under the government of the United States. Said relator states that he is not now, or has he ever been a defaulter to said city of Lexington or to the state of Missouri, or to any city or county thereof, and that he is now, and for ten years last past has been a legal voter in the said city of Lexington, and has been during all of said period, and now is legally eligible to any office in the city of Lexington, aforesaid.

Said relator further informs the court that by virtue of section 5 article II of the charter of the city of Lexington, enacted and approved by the General Assembly of Missouri, March 8th, 1845, it is provided among other things, that the annual election shall be held in said city on the first Tuesday of June of each year, at which election, and biennially thereafter, a city register, who shall be *ex-officio* treasurer of said city, shall be elected, who shall hold office for two years, and until his successor is elected and duly qualified, said office of register and treasurer is established by the charter of said city, in pursuance of such provision of the charter, and of the ordinance in regard to the elections, passed May 18, 1871, to enforce said charter provision, a general municipal election was held in said city on the first Tuesday in June, 1880, to elect officers for said city; said election was, in every respect, conducted as required by law, at said election, Thomas B. Clagett, and the relator, Henry Turger, were candidates for the office of register and *ex-officio* treasurer of the city of Lexington, and were voted for at said election for said office. Within five days after said election, the judges thereof did certify and return their respective poll-books to the register of the city of Lexington, as required by said ordinance concerning elections; and within five days thereafter, to wit: On the 7th day of June, 1880, the city council of said city, as required by said election ordinance, met to canvass said election returns, and declare who were elected. At said meeting a committee of four members of the city council, one from each ward, was appointed to canvass the said votes at said meeting, after a thorough canvass of the votes, the said committee reported that Henry Turner had received a majority of one vote over Thomas B. Clagett for city register and *ex-officio* treasurer, and then and there at said meeting, the city council directed the city register to issue a certificate of election to said Henry Turner, and said certificate was issued and delivered to said Turner, notifying [him] of his election to said office; and on the 7th day of June, 1880, said Turner was duly commissioned by the Hon. B. T. John, mayor of the city of Lexington, who is the legally authorized person to issue commissions to the city officers. At a called meeting of the city council of the city of Lexington, provided for by charter and ordinance, held on the 10th day of June, 1880, said Henry Turner presented to the city council of the city of Lexington, his bond as register and *ex-officio* treasurer of said city, in the sum of $40,000, which bond was then and there seen and approved by said council. Said relator states that by virtue of said election by the people, and his subsequent qualification by taking the oath and giving the bond required by law, he is now the legal register and *ex-officio* treasurer of the city of Lexington, aforesaid, and as such is entitled to all the honors, profits and emoluments appertaining to such office; said Henry Turner states that he was, and is, his own successor in the office of register and *ex-officio* treasurer, he having held the office for the two years next immediately preceding the said election in June, 1880, and was in office at the time of said election in June, 1880; said relator, Henry Turner, states that, notwithstanding the fact that he, said Turner, is the only legal register and *ex-officio* treasurer of the said city, the aforesaid Thomas B. Clagett, has unlawfully usurped, intruded into and now at the time of filing this information, unlawfully holds and discharges the duties of the office of register and *ex officio* treasurer of the city of Lexington, by attending the meetings of the city council and keeping a record of the proceedings, and by taking into his custody the moneys belonging to said city, by issuing licenses, and performing where he can all other acts pertaining to the duties of said office, and by receiving the profits and emoluments thereof, to the damage and prejudice of the state of Missouri, the city of Lexington, and to the relator herein.

Relator states that the public interest is suffering by having two (2) claimants to said office, that business is obstructed, and that the duties of said office are only partially performed by reason of the doubts in the minds of the people as to the right of Thomas B. Clagett to discharge the duties of said office.

Whereupon the said prosecuting attorney and said relator pray that a writ of *quo warranto* may be awarded against the said Thomas B. Clagett in this behalf, to show by what authority he claims to have, use and enjoy the office of register and *ex-officio* treasurer of the city of Lexington, and for all proper relief. J. S. BLACKWELL, Prosecuting Att'y. Lafayette co., Mo.

THE WRIT UPON CLAGETT.

The State of Missouri, to Thomas B. Clagett:

Whereas the State of Missouri upon information of John S. Blackwell, prosecuting attorney for Lafayette county, Missouri, at the relation of Henry Turner, hath filed in the circuit court of Lafayette county, Missouri, her information alleging among other things that you are unlawfully holding and discharging the duties of the office of register and ex-officio treasurer of the city of Lexington, and receiving the profits and emoluments thereof; We therefore, hereby command you, that, laying aside all excuses and pretenses whatsoever, you be and appear before the circuit court of said county on the first day of the next term thereof, to be holden at the court house in the city of Lexington, on the 5th day of December next to answer to us of such matters and things as shall then and there be exhibited against you on our behalf, and to show by what authority you claim to have use and enjoy the office of register and ex-officio treasurer of the city of Lexington, and further to do and receive all those things which our said court shall then and there order concerning you.

In witness whereof, I hereunto set my hand and the seal of said court at office, in Lexington, this September 15, A. D., 1881. FRANK TRIGG, Clerk, By C. B. DANIEL, D. C.

CLAGETT'S ANSWER.

The State of Missouri on Information of John S. Blackwell Prosecuting Attorney of Lafayette county, Missouri.

vs.

Thomas B. Clagett, Defendant and Respondent in the Circuit Court of Lafayette county, Missouri, at the relation of Henry Turner,

1. And now comes Thomas. B. Clagett, respondent herein, and saving all objections to the sufficiency of the information in this case, for his answer and return denies that the relator is not now, nor has been a defaulter to said city of Lexington, as alleged by the relator, denies that during all that time, to-wit; the last ten years, relator has been, and is now legally eligible to any office in the city of Lexington aforesaid; denies that the committee was appointed by the council to canvass the votes cast at said election, but alleges it was appointed to canvass the returns of the judges of election; denies that said committee reported that Henry Turner had received a majority of one vote over Thomas B. Clagett, but alleges that the committee made the report hereinafter set forth; denies that Henry Turner is in the manner and by the means, alleged by him or otherwise the legal register and *ex officio* treasurer of the city of Lexington; denies that he is entitled to all the honors, profits and emoluments of said office; denies that said Clagett usurps said office, but alleges that said Clagett is the only authorised register and treasurer of the city of Lexington; alleges that said Clagett is in possession of said office legally and of right; that he is entitled to discharge the duties and receive all the profits thereof; denies that business is obstructed, or that there are any doubts in the minds of the inhabitants, except the obstruction caused by relator by his illegal tyrannical and arbitrary act in attempting illegally to force himself into the said office, after and in the face of the decision of the city council, and the court hereinafter set forth.

2. And for further return the respondent says he is more than twenty-one years of age; that he is a citizen of the city of Lexington, residing in the same, and has so resided for forty years last past, and in fact possesses all the other prerequisites and qualifications to fill said office of register and *ex-officio* treasurer of said city; that at the election in June, 1880, for city officers, the respondent Thomas B. Clagett, and the relator, Henry Turner, were candidates for the office of register and *ex officio* treasurer of said city; that within five days after the election, to-wit; June, 1880, the city council met and appointed a committee of its members to canvass the returns of the judges of said election; that said committee reported that by the returns of the judges, 389 votes had been cast for Thomas B. Clagett, and 390 votes for Henry Turner, for the office of register and *ex officio* treasurer and that in the first ward of said city there was returned by the judges as shown by their returns, one more vote than had been cast, as shown by the poll-book for said ward. Respondent says that in making of said report the said Henry Turner was present and having in his possession the ballot-boxes, took from said ballot-box for the first ward and admitting that said one vote was in excess of the number of votes shown by the poll-book, and that it had been cast for him, and claimed that the same was legal, and asked the said committee and the city council to inspect said ballots in order to ascertain if said extra and illegal vote was in fact on the string of ballots. Respondent says that said ballot was illegal, and in fact fictitious and fraudulent, and that after it had been ascertained from the vote in other wards, that by the votes as cast, there were an equal number of votes for both respondent and relator, that said fraudulent and fictitious vote was added and counted for relator Turner, and the returns of the judges made to conform thereto fraudulently, so as to make it appear that relator had been elected to said office, and had one majority therefor, so that on the face of the returns as made by the judges there was an equal number of votes for said Clagett and Turner. Respondent states that at said election there was a large number of illegal, fraudulent, and in many instances fictitious votes cast, to-wit; about 75 for relator by persons who did not have the legal qualifications of voters at said election, and said votes were counted for relator, many of whom had been imported into said city from Kansas City, Wyandotte, Leavenworth and elsewhere, and many of whom voted under fictitious names, the partial list of whom, with the objections to each is hereinafter set forth. Respondent says that within twenty days after the canvass of said returns, and in fact on the 12th day of June, 1880, he served on the relator a notice in writing, notifying him that he would contest his right to such office of register and *ex-officio* treasurer of the city of Lexington, before the city council of said city, and would file his notice of said contest at the next meeting of the council, which notice was in addition to and a repetition of a notice previously served on the said Henry Turner, both of which notices particularly set forth the grounds of such contest, with the names of the illegal voters to whom objection was made, and the grounds of objection to each, that in pursuance of said notice respondent commenced such contest before the city council of the city of Lexington; that at the same time and place, and in pursuance of the terms of said notice, the relator Henry Turner, in person and by attorney, appeard before the said city council and filed and argued a motion to dismiss said contest for the reason that said council had no jurisdiction over the subject matter under the city charter, which motion was by the council overruled, and the council decided that it could (as in fact, it had the power under article II, section 8 of its charter) try said contest, which section declares whenever the election of any officer is contested the council shall determine the same by a majority vote of the members present, that the council proceeded to try said contest. Respondent states that relator neglected and refused to have and produce before the council the ballot-boxes, which were in his possession; that though respondent was able to prove that all votes alleged by him in said contest were illegal with few exceptions, and though in fact all of said votes were cast and counted for relator, yet respondent was not able to prove that fact without the said ballot-boxes and ballots, as the said council on the said trial refused to take any secondary evidence of how said votes were cast, unless it was the evidence of the party voting, as to how he voted, which in the nature of things it was impossible to produce; that relator absolutely refused to produce said ballots, and on the other hand hid and secreted the same when sent for; that the mayor of the city being the presiding officer of the council, and having been elected by the same fraudulent votes cast for relator, refused to take any steps to force the production of said ballots; that by the fraudulent and illegal conduct of said relator above respondent was prevented from proving before the council in said contest, that he was elected by a large majority; that respondent was by this means, and the act of relator, prevented from showing his election; that on the trial of said contest from the evidence before the council, and after respondent had offered evidence clearly proving a number of illegal votes the challenges to whom he had is afterwards withdraw, owing to the refusal of relator to produce the ballots as aforesaid, it, the council, declared a tie vote for said office; that no one had received a majority of the legal votes cast at the election on the first Tuesday in June, 1880, for the office of register and *ex officio* treasurer, and the council thereupon declared a vacancy in said office, and ordered a special election to fill the same, to be held on the 5th day of October, 1880, as they had the power to do by sections 6 and 9, article II, of the city charter, and directed the mayor to give proclamation and notice of said election. Respondent says the mayor gave said notice of said election as ordered; that the election was held on the 5th day of October, A. D. 1880, in pursuance thereof; that at the said election Thomas B. Clagett received a majority of the legal votes cast; that on the 11th day of October, 1880, the council met and appointed a committee to canvass the returns of the judges; that said committee reported that Thomas B. Clagett had received a majority of the votes cast, and was duly elected; that thereupon the council declared him elected and ordered a commission to be issued to him immediately as such register and *ex officio* treasurer of said city of Lexington; that said commission was issued; that thereupon the said Clagett qualified by taking the oath of office, giving bond in the sum of $40,000, which was approved, and being recognized by the council, he entered upon the discharge of his duties as register, and is now the legal register and *ex officio* treasurer of said city; whereupon respondent says that at the election held on the first Tuesday in June, 1880, as alleged by relator as well as on the 5th day of October, 1880, he was legally and lawfully elected to said office, and at both of said elections he received a majority of the votes cast thereat and thereby, by virtue of both of said elections he became and is now the legal register and *ex-officio* treasurer of said city; and that the certificate and commission set out by relator as issued to him, and the *prima facie* title, the same gave to him to said office up to the time said contest was decided, was during that time null and void and of no effect, for the reason that at the said election set out in the information, relator did not receive a majority of the legal votes cast.

3. Respondent says that relator has violated and broken the above provision of said charter, and has been and is now, and was at the date of said election a defaulter to the said city, in this; that in June, 1876, one Joseph B. Terry became the successor in the office of city register and *ex-officio* treasurer of relator Turner; that though ordered and required by the city council and the city ordinances and charter of the said city, to settle and to turn over to the said Joseph B. Terry all books, papers, records, city seal and other property belonging to the said city of Lexington; the said Henry Turner failed and neglected, and refused to so settle or to turn over to said Terry any books, papers, seal, records and other property in his hands as register and *ex officio* treasurer, whereby he became a defaulter to said city and ineligible to said office, or any other office under said city at the city election in June, 1880; that said defalcation is a matter of public record as shown by the proceedings and records of the city council, and public notice thereof was frequently given by the newspapers of said city, so that the same was a matter of public notoriety, and at said election in June, 1880, the citizens of Lexington had both actual and constructive notice that said Turner was not eligible to said office, so that all votes cast for him were not only illegal and void, but the only legal and valid votes were those cast for the respondent, who thereby by reason of the premises last aforesaid, was elected to said office of register and *ex-officio* treasurer of the said city, and is thereby the now legal register and *ex-officio* treasurer thereof.

4. And for a further and separate answer and return the respondent states that he is in possession of said office by virtue of the judgment and decision of the circuit court of Lafayette county, Missouri, which is unappealed from and unreversed; that respondent on the — day of December, 1880, filed his application for a mandamus against James M. Crowder, the city collector of the said city of Lexington, to compel him to pay over to the respondent as city treasurer all the city money in his hands; that in said suit the relator appeared, by permission of the court by council, and at his instance and request the court went into an examination of the rights of both the relator and respondent to said office, and as to who was the legal register and *ex officio* treasurer of said city; that upon such examination the court found and declared that respondent was the legal register and treasurer of said city, legally entitled to discharge all the duties of said office, and ordered that the revenue of the city be paid over to him, which has been done; wherefore respondent says that the said circuit court having gone into an examination of said question on the motion of relator as aforesaid, and having decided as aforesaid, and the revenue of the city having been paid to respondent under said judgment, relator, Turner, is estopped from denying that respondent Clagett, is the legal register and treasurer of said city, and said matter is *res adjudicata* between the parties hereto.

5. And for a further separate answer and return the respondent says that at the election held on the first Tuesday in June, 1880, under the charter for city officers; there were cast for the relator the following illegal and fraudulent votes, which were counted for relator, and are causes of objection set forth in the aforesaid notice of contest, given by respondent to relator, which said votes are illegal for the causes stated, and which respondent asks the court here to examine into, and are as follows, to-wit;

(2). Wm. Slaughter had not resided in the city sixty days, or any other time before said election, nor was the said Slaughter twenty-one years of age at the date of said election.

(3). Thomas Mallery for the reason that he has not lived in the city sixty days, or the state one year.

(4). Wesley Brice, for the reason that he has not lived in the city sixty days, or the state one year next before the election.

(5). Richard Mallery, for the reason that he has not resided sixty days in the city, or one year in the state next before the election.

(6). Andrew Martin, for the reason that he has not lived in the city sixty days, or in the state one year next before the election.

(7). William Ward, for the reason that he has not lived in the city sixty days, or in the state one year next before the election.

(8). Andrew Bush, for the reason that he has not lived in the city sixty days, or in the state one year next before the election.

(9). Albert Price, for the reason that he has not lived in the city sixty days, or the state one year next before the election.

(10). Andrew Wilson, for the reason that he has not lived in the city sixty days, or the state one year next before the election.

(11). Hale Turner, for the reason that he has not resided sixty days in the city, nor one year in the state next before the election.

(12). Chas. Davenport, for the reason that he has not resided in the city sixty days, or in the state one year next before the election.

(13). Edward Tracy, George Jones, Samuel Williams and Henry Williams, Henry Crump and Samuel Crump, for the reason that they, and each of them, have not resided in the city sixty days, or the state one year next before the election.

(14). Fletcher Walker, for the reason that he was not 21 years of age on the day of election, and had not resided in the city [sixty days] next before the election.

(15). Jinn Crawford, for the reason that he had been sentenced to and imprisoned in the penitentiary of Missouri.

(16). William Jones, alias William Webb, for the reason he has not resided sixty days in the city next before the election.

(17). Booth, voted under a fictitious name not known, had not lived in the city sixty days.

(18). Nathan Dowell, Wm. Sherman, T. G. Selleig, for the reason that they or either of them, had not resided in the city sixty days, or the state one year next before the election.

(19). James E. Parker, George Field, Henry Fields, Noah Stewart, for the reason that they have not lived in the city sixty days, or the state one year next before the election,

(20). Moses Field, for the reason he has not resided sixty days in the city next preceding the election.

(21). James Bush, for the reason that he has not lived in the city sixty days, or the state one year next preceding the election.

(23). Wm. M. Borden and Samuel Berryhill, not resided in the city sixty days, or the state one year next preceding the election.

Respondent asks the court to inquire into the right of said parties to vote at said election.

(24). John Luster, Jasper Berryhill, John T. Dwyer, Albert Smith, for the reason that they, nor either of them have resided in the city sixty days, or the state one year next before the election.

(25). R. H. Coates William Rowland and Nathan Meyers, for the reason that they, nor either of them have resided in the city sixty days, or in the state one whole year.

Jesse Earl, for the reason he voted for Turner, and the said vote was counted for Henry Turner.

William Lewis, for the reason he had not resided in the state of Missouri one year preceding the election.

Gus Marsh, for the reason that he had not resided in the city sixty days next preceding the election.

Wherefore the respondent asks that the court will look into and examine the qualifications of the above named parties to vote at said election, and that if found to be illegal, that said votes be deducted from said votes cast and returned at said election; that the court will further find and declare respondent the legal register and *ex-officio* treasurer of said city, and will order and require relator to turn over to him the city seal and the remaining books and papers in his hands belonging to said city, and that respondent may be discharged with his costs; and that the court will in said challenges proceed and try the contest for said office and inquire which of said parties were elected at said election, and will reject said illegal vote not cast in the return of the judges of the 1st ward, but not cast or embraced on the poll-books, and for all other relief; and that respondent have judgment that he is the legal register and treasurer of the city of Lexington, and entitled to discharge all the duties of said office.

THOS. B. CLAGETT.

Wallace & Chiles, and J. D. Shewalter, attorneys.

TURNER'S MOTION TO STRIKE OUT.

The State of Missouri on Information of John S. Blackwell, Prosecuting Attorney of Lafayette County, Missouri, Plaintiff,

Against

Thomas B. Clagett, Defendant, in the Circuit Court of Lafayette County, Missouri, December Term, A. D., 1881.

Now comes Henry Turner, the aforesaid relator, and for the reason herein specified moves the court to strike out the parts of the return and answer of Thomas B. Clagett heretofore filed in this cause, which parts moved to be stricken out are specially described as follows:

And that in the first ward of said city there was returned by the judges, as shown by their return, one more vote than had been cast as shown by the poll-book of said ward. Respondent says that on the making of said report the said Henry Turner was present, and having in his possession the ballot-boxes took from said ballot-box for the first ward the ballots, and admitting that said one vote was in excess of the number of votes shown by the poll-books and that it had been cast for him, and claimed that the same was legal, and asked the said committee and the city council to inspect said ballots in order to ascertain if said extra and illegal vote was in fact on the string of ballots. Respondent says that said ballot was illegal, and in fact fictitious and fraudulent, and that after it had been ascertained from the votes in the other wards that by the votes as cast there were an equal number of votes for both respondent and relator; that said fraudulent and fictitious vote was added and counted for relator, Turner, and the returns of the judges made to conform thereto, fraudulently, so as to make it appear that relator had been elected to said office and had one majority; therefore, respondent states that at said election there was a large number of illegal, fraudulent and in many instances fictitious votes cast (to-wit about 75) for relator by persons who did not have the legal qualifications of voters at said election, and said votes were counted for relator, many of whom had been imported into said city from Kansas City, Wyandotte, Leavenworth and elsewhere, and many of whom voted under fictitious names. The partial list of whom, with the objections to each, is hereafter set forth.

Respondent says that within twenty days after the canvass of said returns, and in fact on the twelth day of June, 1880, he served on the relator a notice in writing, notifying him that he would contest his right to such office of register and *ex officio* treasurer of the city of Lexington, before the city council of the said city of Lexington, and would file his notice of such contest on the next meeting of the council, which notice was in addition to and a repetition of a notice previously served on the said Henry Turner, both of which notices particularly set forth the grounds of said contest with the names of illegal vot[e]rs to whom objection was made, and the grounds of objection to each; that in pursuance of said notice respondent commenced said contest before the city council of the city of Lexington; that at the same time and place, and in pursuance of the terms of said notice the relator, Henry Turner, in person and by attorney, appeared before the said city council and filed and argued a motion to dismiss said council contest, for the reason that said council had no jurisdiction over the subject matter under the city charter, which motion was by the city council overruled, and the council decided that it could (as in fact it had the power under article II., section 8, of its charter) try said contest, which section declares:—"Whenever the election of any officer is contested the council shall determine the same by a majority vote of the members present;" that the council proceeded to try said contest.

Respondent states that relator neglected and refused to have and produce before the council the ballot boxes, which were in his possession; that though respondent was able to prove that all votes alleged by him in said contest were illegal with but few exceptions, and though in fact all of said votes were cast and counted for relator, yet respondent was not able to prove that fact without the said ballot boxes, as the council on the trial refused to take any secondary evidence of how said votes were cast, unless it was the evidence of the party voting as to how he voted, which, in the nature of things it was not possible to produce; that relator absolutely refused to produce said ballots, and on the other hand hid and secreted the same when sent for; that the mayor of the city being the presiding officer of the council, and having been elected by the same fraudulent votes cast for relator, refused to take any steps to force the production of said ballots; that by the fraudulent and illegal conduct of said relator above respondent was prevented from proving before the council in said contest that he was elected by a large majority; that respondent was by this means and the act of relator prevented from showing his election; that on the trial of said contest from the evidence before the council, and after respondent had offered evidence clearly proving a number of illegal votes, the challenges to whom he had to afterward withdraw, owing to the refusal of relator to produce the ballots as aforesaid; it, the council, declared a tie vote for said office; that no one had received a majority of the legal votes cast at the election on the first Tuesday in June, 1880, for the office of register and *ex officio* treasurer, and the council thereupon declared a vacancy in said office, and ordered a special election to fill the same, to be held on the fifth day of October, 1880, as they had the power to do so by sections 6 and 9, article II., of the city charter, and directed the mayor to give proclamation and notice of said election.

Respondent says that the mayor gave said notice of said election as ordered; that the election was held on the fifth day of October, 1880, in pursuance thereof; that at said election Thos. B. Clagett received a majority of the legal votes cast; that on the 11th day of October, 1880, the council met and appointed a committee to canvass the returns of the judges; that said committee reported Thos. B. Clagett had received a majority of the votes cast and was duly elected; that thereupon the council declared him elected, and ordered a commission to be issued to him immediately as such register and *ex-officio* treasurer of said city of Lexington; that said commission was issued; that thereupon the said Clagett qualified by taking the oath of office, giving bond in the sum of $40,000, which was approved, and being recognized by the council, he entered upon the discharge of his duties as register, and is now the legal register and *ex officio* treasurer of said city; whereupon respondent says that the election held on the first Tuesday in June, 1880, as alleged by relator, as well as on the fifth day of October, 1880, he was legally and lawfully elected to said office, and that at both of said elections he received a large majority of the legal votes cast thereat, and thereby, by virtue of both said elections he became, and is now, the legal register and treasurer of said city; and that the certificate and commission set out by relator as issued to him and the *prima facie* title the same gave him to said office up to the time said contest was decided, was, during that time, null and void and of no effect, for the reason that at said election set out in the information relator did not receive a majority of the legal votes cast at said election.

Relator asks that the above quoted part of respondent's return and answer be stricken out, because—

First—After the city council had met and canvassed the election return, and ascertained from the returns who was elected, the functions of the council in that behalf was fully performed, and the council could not go into an examination of the ballots and decide upon the qualification of electors.

Ordinances concerning elections—Revised Ordinances, page 102, section 5.

Second—Because it appears from the certificate and return of the judges of the election, as set forth in the respondent's return and answer, that Turner had 390 votes and Clagett 389, and from the returns Turner had a majority, yet the council, without the semblance of legal authority, threw out one vote in order to reduce Turner's vote to a level with Clagett's. The council then, on a trial of the election contest, declared a tie vote and ordered a new election. Turner having already been commissioned and then being in the discharge of his official duty as register. Even had there been a tie vote, really Turner would [have held] the office till his successor was elected and duly qualified, Turner having held the office for the previous term and being his own successor.

Third—Because the council had no power to try an election contest in this case. All the power ever possessed by the council to try contested [election] is contained in section 8, article 2, of the city charter, which reads as follows: "Whenever the election of any officer is contested the council shall dermine the same by a majority vote of the members present." That provision of the charter was abrogate by the last constitution of Missouri; and at the time the council assued jurisdiction of the election contest of Clagett against Turner the council had no jurisdiction over the subject matter of contested elections, nor over the person of Henry Turner, but the council, notwithstanding the fact that the returns show a majority for Turner, took jurisdiction of the matter, and instead of deciding for one or the other of the parties the council declared a tie vote and ordered a new election, which the council could not legally do. The only contingency in which the council can order a new election is when judges of the election shall certify to the council that two or more persons have received an equal number of votes; the council then shall order a new election immediately (Section 9, article II, city charter) In this case the judges of election never certified a tie vote between relator and respondent; and further, said matter moved to be stricken out is irrelvant and redundant.

Relator moves the court to strike out of respondent's return and answer the additional parts thereof herein quoted. Respondent says that relator has violated and broken the above provision of said charter, and has been, and is now, and was at the date of said election, a defaulter to the said city in this; that in June, 1876, one Joseph B. Terry, became the successor in the office of city register of relator Turner; that though ordered and required by the city council and the city ordinances and charter of said city to settle and to turn over to the said Joseph B. Terry all books, papers, records, city seal and other property belonging to the said city of Lexington, the said Henry Turner failed, neglected and refused to so settle or to turn over to said Terry any books, papers, seal, records and other property in his hands as register and *ex-officio* treasurer, whereby he became a defaulter to said city, and ineligible to said office or any other office under said city, at the city election in June, 1880; that said defalcation is a matter of public record, as shown by the proceedings and records of the city council, and public notice thereof was frequently given by the newspapers of said city so that the same was a matter of public notoriety, and at said election in June, 1880, the citizens of Lexington, had both actual and constructive notice that said Turner was not eligible to said office, so that all votes cast for him were not only illegal and void, but the only legal and valid votes were those cast for respondent who thereby, by reason of the premises last aforesaid, was elected to said office of register and *ex officio* treasurer of said city, and is thereby the now legal register and *ex officio* treasurer thereof.

Relator asks that the matter above quoted be stricken out of respondent's return and answer, for the reason that the return and answer fails to allege any facts that constitute relator a defaulter, as that term is defined by the city charter. Section 4 of article II, of the city charter, provides, "That any person shall be considered a defaulter who has refused or neglected, or may refuse or neglect for thirty days after demand made to account for and pay over to the party authorized to receive the same, any public money which may have come into his hands." There is no charge or allegation that relator failed to pay over any public money which may have come into his hands, and hence he is not a defaulter, and said matter is irrelevant and redundant. Relator moves the court to strike out from the respondent's return the additional and further parts hereinafter copied, as follows:

And for further and separate answer and return, the respondent states that he is in the possession of said office by virtue of the judgment and decision of the circuit court of Lafayette county, Missouri, which is unappealed from and unreversed; that respondent, on the — day of December, 1880, filed his application for a mandamus against James M. Crowder, the city collector of said city of Lexington, to compel [him] to pay to the respondent, as city treasurer, all the city money in his hands; that in said suit relator appeared by permission of court, by counsel and at his instance and request, the court went into an examination of the rights of both relator and respondent to said office, and to who was the legal register and *ex officio* treasurer of said city; and that upon such examination the court found and declared that respondent was the legal [register] and treasurer of said city, legally entitled to discharge all the duties of said office, and ordered that the revenues of the city be paid over to him, which has been done; wherefore respondent says the circuit court having gone into an examination of said on the motion of relator, as aforesaid, and the revenue of the city having been paid over to respondent under said judgment, relator Turner is estopped from denying that respondent Clagett is the legal register and treasurer of said city, and said matter is *res adjudicata* between the parties hereto.

Relator for the following reasons ask that said matter be stricken out of respondent's return.

The relator was not a party to the record in the case of the state on the relation of Clagett vs. Crowder; that was a simple mandamus proceeding by which Clagett sought to compel Crowder, the city collector, to pay over to him (Clagett) as *de facto* treasurer of said city, the revenue that Crowder had collected, the queston as to who was the legally elected register was not involved in the mandamus proceedings and could not be tried in that kind of action, and said matter is frivolous, irrelevant and redundant.

The relator further moves the court to strike out from respondent's return and answer all that part of respondent's return commencing at the last paragraph on page 11, on the 13th line thereof, with the words, "and for a further separate answer and return the respondent says that at the election, &c.," and running through the remainder of pages 11, 12, 13 and 14, and ending with the words, "the respondent asks the court to inquire into the right of said parties to vote at said election;" for the reason that the said part of the return last above indicated is irrelevant and redundant; and in a *quo warranto* proceeding the qualification of voters will not be inquired into or examined by the court; all of the facts of respondent's return moved to be stricken out are irrelevant and redundant, and constitute no sufficient return to the writ of *quo warranto*; wherefore for the reasons aforesaid, relator asks that the motion be sustained.

Geo. S. Rathbun, Alex. Graves and Walker & Field, attorneys for relator.

FINDING OF THE COURT.

Order of the court as of record regarding the motion of relator to strike out, &c.

The State of Missouri upon information of John S. Blackwell, Prosecuting Attorney for Lafayette county, Missouri, at the relation of Henry Turner.

vs.

Thomas B. Clagett.

Now at this day come the parties aforesaid, by their attorneys, and the said plaintiff's motion to strike out part of the return and answer of defendant to the information filed herein, is now taken up and submitted to the court, and being seen and fully heard, the court doth sustain said motion as to the third defense sought to be stricken out, which sets up defalcation in office, and doth also sustain said motion as to the fourth defense sought to be stricken out, which sets up a former adjudication by the circuit court in the mandamus case of Thomas B. Clagett against James M. Crowder; and the court doth overrule said motion, as to all the balance of the defenses sought to be stricken out of said return and answer, to which action of the court in overruling said motion in part plaintiff by his attorney, excepts and tenders to the court here his bill of exceptions which is allowed signed, sealed and ordered to be filed and made a part of the record.

TURNER'S EXCEPTIONS TO THE RULINGS.

The State of Missouri upon information of John S. Blackwell, Prosecuting Attorney for Lafayette county, at the relation of Henry Turner,

against

Thomas B. Clagett, respondent.

In the Circuit Court of Lafayette county, Missouri, December term, 1881.

Be it remembered, that on this the 22d day of December, 1881, at a regular term of said court, and during the progress of the said cause, the following proceedings were had, to-wit: The motion of the relator filed herein on the 8th day of December, 1881, to strike out the following parts of respondents return to said writ herein, to-wit:

* * * * * * * *

Coming on to be heard by the court, the court after considering the same, and being duly advised, doth sustain the same, in part as follows, to-wit:

* * * * * * * *

And the court doth order and adjudge that said motion be overruled as to the following parts and portions of said return moved to be stricken out, to-wit:

* * * * * * * *

To which action of the court in overruling said motion to strike out said parts of said return, and in refusing to sustain said motion thereto, the relator then and there at the time duly excepted and here tenders his bill of exceptions and asks that the same be by the court signed and sealed and made part of the record herein, which is done this 22d day of December, 1881.

[seal] JOHN P. STROTHER, Judge of Sixth Judicial Circuit.

DEMOCRACY VS. THE ISMS OF THE DAY.

[From the Marshall, Mo., Progress.]

Some few democrats, or rather ex-democrats — mostly those afflicted with the political dyspepsia brought on by unappeased hunger for office—will tell you in melancholy tones coming from the bottom of their empty stomachs, that the democratic party will be disorganized and some other party founded on its ruins.

Sad, if true, and about as true as the other hallucination in these men's minds—that they will be "grand moguls" in the new party that they are dreaming about. Such a man is a sort of political crank. His intellect is so impaired, and his political eyesight so dim that in the language of Bill Nye: "He don't know a street lamp from the New Jerusalem." You can't kill the democracy. It is a spirit, and don't need even bread and water to live on, or it would have been dead long ago. It is the spirit of the majority of the people of this country, and the organization is the body in which that spirit lives. It is impossible for the body to die with the spirit in it.

Men wonder at the vitality of the party that was forced out of office by the collision of sectional interests which brought on a civil war, and has had no representation in the ranks of the great army of office-holders for twenty years. And it is wonderful; so is the prevailing spirit which keeps alive any set of ideas in regard to government among the people for ages until they finally triumph. But wonderful or not, the spirit of democracy is shaping the political opinions of generation after generation in this country, and no matter what laws may be passed or official acts be done by men temporarily in power, the good work will still go on as silently and surely as the cornstalk grows in the cornfield.

EDITORIAL COURTESIES.

[From the Chicago Specimen.]

The amount of abuse heaped on each other by the newspapers of Chicago, during the past few months, would fill a volume, and serve as a reliable reference dictionary for choice epithets—a new edition of Billingsgate. The chief actors are the "large dailies," conducted by men of venerable and dignified appearance, who know better and whose sense of propriety should cause them to keep their private quarrels from before the public. We give a few of these choice gems of literature to show how fierce is the battle and how carefully the words are chosen. In one article we find such specimens as "beggarly old prevaricator," "the lying and dilapidated old concern," "wretched old humbug." In another "the unfortunate old person," "deliberate frauds and forgeries," "fraudulent old person," "forgery out of its own mouth," "an inflated old windbag newspaper concern." From another sober-sided concern we read "the impecunious and desperate newspaper concern which drags out a sickly existence." In another article "he is physically, mentally and morally a wreck," and so on to the end of the article. As many readers of the Specimen are of the editorial fraternity and may have occasion to say something concerning "that lantern-jawed thief who edits the Bungtown Herald," and may be short of choice epithets, we are very sure a new and fresh supply can be obtained by consulting the files of the "leading Chicago dailies."