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L. 2. ST. FRANCISVILLE, LA., MARCH 30, 1878. NO. 40

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FELICIANA SENTINEL.

A DEMOCRATIC PAPER

OFFICIAL JOURNAL OF WEST FELICIANA

OFFICIAL JOURNAL CITY OF BAYOU SARA

PUBLISHED EVERY SATURDAY.

S. LAMBERT... PROPRIETOR

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St Francisville, Mar.. 30, '78.

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ANDERSON'S CASE.

There has been a good deal of criticism upon the decision given by the Supreme Court of Louisiana in the case of Thos. C. Anderson charged with forgery in altering a public record or with uttering it after being altered. We have been surprised to see some of these comments in the public print. We say surprised, because the judgment is not yet final. After the reading of opinions by the Supreme Court a certain length of time is given during which applications for rehearings may be made, and until that time has elapsed the judgments are under control of the court. Outside influences are, therefore, as improper at that period as previously. And particularly when this outside pressure is brought to bear in a sense adverse to clemency in criminal prosecutions, it would seem that inhumanity is added to indelicacy.

We do not, therefore, intend at this time to express an opinion upon the action of the Court, but we desire to give a sketch of certain principal portions of the decision and in language suited to popular comprehension, so that our readers may not be confused by technical expressions nor obliged to wade through the whole decision in order to master its real import.

The election law provides that the Returning Board, as it is generally called, shall meet in New Orleans soon after every election, and there receive the returns or statements of the votes cast at the different polls; that the President of the Board shall open these returns in the presence of the other members, and that thereupon the Board shall canvass and compile said returns. The returns which they shall thus receive, open and canvass, are the returns or statements of votes made by the three commissioners of elections who preside over every poll. These are called the *original* returns.

In addition to these original returns from each poll made by the commissioners of elections, the Board receives a consolidated statement of all the polls in each parish made out by the supervisor of registration of such parish; for the law makes it the duty of such supervisor to receive the returns from the commissioners of elections, compile a consolidated statement from them, and then send them together with his consolidated statement to the Returning Board.

In the Anderson case it was not charged in the information as amended that the *original* returns had been changed or tampered with, but that the "*consolidated* statement of votes, parish of Vernon, made by the supervisor of registration" had been altered, and, as so altered, published as true by Anderson.

The Court seems to incline to the opinion that there can be no such thing as forgery of the "*consolidated*" statement, in the legal sense of the term forgery A "forgery" in the criminal law is not every counterfeiting of another's signature or altering of words over another's signature. Though such an act may be a forgery in the moral law the criminal law does not take cognizance of it unless it can have some practical effect. It is as in the case of perjury. If one should swear before a crowd of men in the street, that the sun is down when they all see it shining, he would commit perjury in the moral, but not in the technical sense He could not be prosecuted for it. In the same way there may be forgeries of which the law does not take notice Thus if one should write out a pardon for a condemned criminal in this State, and sign Queen Victoria's name to it, probably no law officer would think of chassing it as a statuatory crime. It would be a thing totally without force or the possibility of effect.

The Court quotes a California decision to the effect that forgery cannot be predicated of an instrument which in itself is a *nudum pactum* or incapable of any effect. Of course, if there is no forgery, there is no uttering of it.

The Court applies that principle to the Anderson case in this way: The Returning Board must make its compilation and report from the *original* returns, and not from the register's *consolidated* statement. The law does not give a particle of authority to the consolidated statement, nor authorize the Board to utter and publish it or use it as a basis for anything. Therefore the *original* returns from the polls have potency and value, and the consolidated statement has none; therefore the *original* returns are susceptible of forgery, and the consolidated statement is not.

If this were adopted as final by the Court, it would follow that Anderson and the others, even though they had knowingly uttered and published the register's *consolidated* statement from Vernon parish, forged or altered, would not have committed any techical forgery or other crime, because they might just as well have manipulated some newspaper returns. But the Court finds it unnecessary to decide the point as will be seen from the following paragraph taken from its opinion:

It is unnecessary for us to say whether the consolidated returns of the supervisor of registration, without the clerk's certificate, is or is not a public record, susceptible of forgery. It is sufficient to remark that the paper offered in evidence is not the instrument the utterance of which as forged is charged upon the defendant.

In what respect the document offered in evidence differs from the instrument referred to in the amended information we are not told. The case goes off however on this ground—that the instrument alleged to have been tampered with was not offered in evidence on the trial—and on the following ground:

It was not charged in the pleadings that Anderson had uttered and published the forged document in an *official* capacity, while it was no legal offense unless done in such capacity. It is clear that if the editor of the *Picayune* or *Times* had made up a return of the election from forged documents, and uttered or published it, the act would have been entirely inoperative. No legal result would have followed, no claim to office could have been based on it, Mr. Anderson, in his individual capacity, was still less influential than either of those gentlemen would have been, and it was really a matter of supreme indifference to the public what returns Mr. Anderson should choose to publish on his personal responsibility. It was only in his official capacity that he could violate the law.

Without venturing an opinion of our own on the merits of a judgment which is not yet final, we must heartily applaud the very dignified and deeply excoriating rebuke which it administers to Messrs. Sherman, Mathews and others for their intemperate and impertinent interference in this case.—*N. O. Catholic Messenger.*

STATE VS. THOS. C. ANDERSON.

ATTORNEY GENERAL OGDEN'S APPLICATION FOR A REHEARING BEFORE THE SUPREME COURT.

No. 7072. State of Louisiana vs. J. Madison Wells et al.—Application for rehearing.

A clear sense of duty impels me to ask at your hands a reconsideration of the grounds upon which this case has been decided.

The principles of law involved are of the highest consequence, and I should greatly regret that any omission of effort upon my part should contribute to fix in the jurisprudence of the State an erroneous construction in relation thereto. My anxiety in regard to the fate of the prosecution in this particular case will be readily understood when your Honors reflect that the real contest here is for the protection of the purity of the ballot, not only in Louisiana, but in the United States. Too much has happened in the past few years to shake the foundations of our civil freedom, and I cannot but feel an especial anxiety, as a public officer, that in a case of such interest this court should rest its decision upon no principles of law in regard to the soundness of which there could be a serious question among candid, disinterested and enlightened jurists throughout the country.

The record upon which this decision has been rendered contains more than 500 pages of written matter. The counsel for the State had scarcely the time necessary to prepare for so important an argument as the case was fixed by preference with only three days notice. The argument occurred on Tuesday, and the decision of the court was read upon the following Monday.

Errors have crept into this decision no doubt both from the imperfection of the presentation made by the State and from the shortness of the period during which the court held the case under consideration. A conviction that you will be not only willing but anxious to correct those errors if I am able to make them apparent emboldens me to lay before you this application.

The constitution gives you an appellate jurisdiction in criminal cases only upon questions *purely of law*. You cannot try an issue of fact. Whether a particular document is or is not a record is in every case necessarily a question to be settled by evidence. Take the document under discussion and suppose that on its face it should not appear to be a record. would not *proof* that it has been offered and received in evidence, in a court of justice make it at once a public record and constitute its alteration a crime under the statute? Is not this too plain for discussion? This question is settled in the able opinion of Chief Justice Parker of the Supreme Court of Massachusetts. one of the very first jurists of this country and age. In the case of Breen vs. Woodbury, reported in 1st Pickering, 365, the question arose as to whether a particular instrument which was alleged to have been forged and altered, was or was not a record—just as that question has arisen here—and the court says:

"A record is conclusive evidence *but what is or is not a record is matter of evidence and may be proved like other facts; otherwise there would be no remedy.*"

It is evident that the judge's charge to the jury as to what constituted a record and the means by which they were to reach conclusion upon this point, *was the sole matter for review in this court.* If the charge upon that point was sufficient, the finding of the jury under it is beyond your reach, because it necessarily embraces an inquiry into the facts connected with the document. No better illustration of the importance of this principle could be found than that presented by this very case. The jury reached the conclusion that this paper was a record, not only from what appeared upon its face, but from the proof of several witnesses, that this particular document had been received by the board of returning officers as a record, acted upon by them as such, *falsified as such*, and finally carried into their compilations as such, and made, with other documents of the same kind, the basis of that gigantic fraud by which the voice of the people of this great country was hushed, and the will of four men enthroned at Washington. If a document formidable enough to accomplish all this evil is not a record, what is it?

It is useless to say that the forgery of these consolidated statements could cause no injury. That forgery did cause great and irreparable injury. It not only deprived individuals of rights, but it actually overthrew a government which had been elected by the people. All this the jury knew, but you could not know *as a court*, because, under the constitution, you cannot notice any matter of fact in a criminal case. And from all this it plainly appears that this court ought not to have interfered with the finding of the jury upon this point.

But assuming, for argument sake, that the court had a right to pass upon this question. The statute is, that any person who shall utter and publish as true any false, altered, forged or counterfeited record with intent to defraud any person shall, on conviction, etc.

The paper charged to have been altered or falsified is a paper which the supervisor of registration of every parish is required to make after each election in the State. This officer is charged to receive from the commissioners of election at the different polling places their certificates and returns. He is required to examine these papers and report the results of the election in the parish at large, in what is termed a consolidated statement in the act. The returns to him and his consolidated statement he is required to send to the Returning Board. The fact that this consolidated statement has been altered and falsified by the defendant has been established by the verdict of the jury. The question is whether this paper comes within the purview and scope of the statute?

At the common law, forgery consisted of the altering of a writing fraudulently to injure another, the purpose being to give to the writing an operation which, in truth, it ought not to have. At the common law the counterfeiting or altering of any authentic matter of a public nature was a forgery, because all public matter which the law requires to be authenticated, if falsified or counterfeited, is presumptively pernicious, and tends to the injury of the commonwealth. The instances put of such papers are certificates of holy orders, etc. A late case decides that a forged letter of recommendation for services as a schoolmaster is punishable under the law. Regina vs. Schorman, 24 L. and C. Y. 553.

The paper prepared by the supervisor of registration is a paper of public nature—directed to be made by the Legislature—to be certified by officers of the State and to be carefully sealed up with other papers and sent to other officers of the State who have duties to peform. This paper is evidence that the commissioners of election have transmitted to the supervisor returns as required by law. It is evidence that this officer within a short period has examined these returns and ascertained the results to which he certifies. If by any fraud or accident the commissioners' returns be falsified here is some check, and here is furnished some evidence of the fact. Any variance in this statement from that which the Returning Board might make would lead to inquiry and detection. *The case before the court illustrates the value of such a paper. The members of the Returning Board made a fraudulent return of the persons chosen in Vernon parish. To conceal their fraud they forged and falsified the supervisors statement.* I cannot understand the argument that pronounces a nullity an official paper which the statute directs shall be made and placed in the hands of public officers and being of no value or efficacy may be altered, forged and falsified with impunity. The paper would be admissible in any contest for office, among the candidates in Vernon parish. It might, with other evidence, overthrow the certificates of the Returning Board in favor of a candidate improperly returned or returned upon the forged or falsified certificates. Neither the returns by the commissioners, nor supervisor, nor the Returning Board, are conclusive. The contestant may go back to the ballots of the electors. But policy has dictated that in the process of the election there shall be separate and independent action of the commissioners, supervisors and Returning Board, and the argument that denies validity or value to the acts of either undermines legislative authority and overrides it. It is impossible to admit that if the forgery of certificates by the commissioners of election or the falsification of their figures be a crime under the statue, or if the falsification or forgery of the returns or figures of the Returning Board be a crime, that the forgery and falsification of the supervisor's consolidated statement and report is harmless or innocent. They are separate and distinct acts in the course of proceedings, all tending to the same result—the ascertainment of the result of the election—all of these are under authority, and each has some authority. The statute requires the acts to be manifested by official statements, and these official statements are records. The fact that they have this character establishes that any forgery, falsification or counterfeiting would be a crime.

A civil cause in one of the district courts is only prepared with the assistance of a great number of persons. There are citation, petition, plea, depositions, trial, judgment, execution. The falsification of any one of these authentic evidences in the progress of the cause would be forgery of a record. Of a writ, Commonwealth vs. Mycall, 2 Mass., 136. Of the petition or of an indictment, 3 Mad. 68; Hawk Pleas, chapter 70, section 2 and 3. Of a deposition, state vs. Kimball, 50 Maine, 409, of a *fieri facias*, 3 Chitty Cr. L. 1044.

The court in such cases infer fraud from the nature of the act done.

There are a great number of cases in which the forgery of papers is held to be fraudulent, when it was quite impossible that damage could result except in respect to unwary persons. The forgery of wills for persons who have not had existence—the acceptance of drafts in the name of a fictitious or non-existing firm. Regina vs. Avery, 8 C. and P., 596; Regina vs. Rodgers, ibid, 629.

Whether such papers were or how they could be an instrument of fraud was to be ascertained by the extrinsic circumstances. It is not sufficient to say that the supervisor's return was not the paper that the members of the Returning Board were to principally consider, or that it was not the best evidence. But the paper was used, and the paper was fraudulently altered and falsified that it might impose upon the public. The paper was successfully used. If this was used in connection with other papers to produce a fraudulent result in their count, and they returned upon its evidence and forged it for that purpose, it makes a case of forgery.

From the time of the decision in "Ward's case" (to be found in Lord Raymond's Reports, page 1461 (the rule was established that, at common law, *writings of every description—whether of a public or private nature, whether written or printed, whether of record under seal, or by parole, and whether invested with a* LEGAL CHARACTER *or not*—are equally subjects of forgery, being equally within the definition and mischief of the crime. See Burn's Just. tit. forgery; Forgery defined by Savage, Ch. J., in The People vs. Fitch, 1 Wend. Rep, 198; 2d volume Archibald Criminal Practice and Pleading, page 798 (edition of 1860.)

The question of fraudulent intent was a proper question for the jury. United States vs. Wilcox, 4th Blatch C. C. 355. I cannot well understand the position of the Court. If you had decided that the statute referred only to the forgery of a particular class of records, as for instance, records of courts, or had restricted its operation to any number of classes, exclusive of these election records, I could have understood better the ruling of the Court, although I cannot see how such a distinction could be properly

[Continued on fourth page.]