none better could be stated than those that the Senator from Georgia has just stated. But how do we know he is ever to come back? The remark I made was that the Senate had no official notice whatever of the purpose of his leaving, and the record will show nothing upon that subject. We deal with records, and not with imagination or supposition. So we have got a record here which shows the absence of the President *pro tempore* of the Senate without anything to show why he is absent or when he is expected to return. Now, he may remain away as long as he chooses; no one has the right to control him in that matter; and from day to day, out of this District, in some State, he can designate an officer to preside, if he can designate one to-day. He can thus keep the Senate presided over by his sole will without consulting its judgment in the slightest particular from day to day as long as he pleases, if he can do it to-day. That is the whole amount of it.

Mr. MCMILLAN. The Senate can interfere by election at any time.

Mr. MORGAN. The Senate can interfere by an election at any time, and the Senate ought to interfere by an election in every case at the time, so as to have a man here who is stamped with the *imprimatur* of its approval for President of the United States in the event that that office also should become vacant by the absence of the President.

Mr. MCMILLAN. The Senate has already expressed itself in Rule 4.

Mr. MORGAN. Rule 4. There you see we differ again. There is room for construction there. That shows a state of doubt existing on all hands; but there could be no doubt if we had a President of the Senate sitting in the chair now who was chosen by this body.

Now, Mr. Secretary, I yield to the honorable Senator from Arkansas, [Mr. GARLAND,] but I wish to say that at some time during this debate I will submit the proposition to the Senate that we adjourn until Monday in order that this question may be avoided if we cannot now settle it.

Several SENATORS. Do it now.

Mr. MORGAN. The Senator from Arkansas desires to be heard; otherwise I would.

Mr. GARLAND. Mr. Secretary, the question presented here is not free from doubt by any means, and it is very important. The precedents that have been established heretofore were established without any objection; no point was made. It seems that there are two precedents, one by Vice-President Wheeler and the other by President *pro tempore* Thurman, but there is no doubt in my mind that these are designations that cannot be made in the absence of the Presiding Officer. I think the parliamentary law is very clear upon that subject, and I will detain the Senate a moment or two to read it. In Cushing's Law and Practice of Legislative Assemblies, section 313, speaking of just such emergencies as this, he says:

> But such substitution ought to be made as an official act, and when the presiding officer is himself in the chair of the assembly, or present in it, and cannot be made in his absence by letter or otherwise; if the presiding officer is unable to attend in person, at the commencement of the daily sitting of the assembly, his power of substitution no longer exists, and there is then occasion for the election of a temporary presiding officer.

And that statement, as clear as it is, refers to precedents some ten or dozen, in a note.

Mr. SHERMAN. I would like to have the Senator read that again. I could hardly hear a word.

The ACTING SECRETARY. Will the Senate please preserve order.

Mr. GARLAND. On the first point made, the case is perfectly clear according to this authority.

Mr. SHERMAN. I would like to have the authority read again.

Mr. HOAR. Will the Senator read Cushing's statement again?

Mr. GARLAND. I will with a great deal of pleasure, if I can get attention; but I do not want to read against the wind. In section 313 Cushing says:

> In most of the Legislative Assemblies of this country, it is also provided by a rule that the presiding officer, if a member, may substitute some other member to perform the duties of the chair in his place if he have occasion to be absent for a part or the whole of the then present sitting. * * *

As in our Rule 4.

> But such substitution ought to be made as an official act, and when the presiding officer is himself in the chair of the assembly, or present in it, and cannot be made in his absence by letter or otherwise; if the presiding officer is unable to attend, in person, at the commencement of the daily sitting of the assembly, his power of substitution no longer exists, and there is then occasion for the election of a temporary presiding officer.

That is perfectly clear, and it does not need any debate on that, and then he refers to ten or a dozen precedents in a note. The President *pro tempore* of the Senate being absent, we do not know whether from sickness or what cause, cannot designate a member by letter to take his place, and Cushing winds up with the statement that an occasion is then presented for the election of a temporary presiding officer. Now, if "election" is there used in the technical sense of the word, of course we must go into an election; but I apprehend that, construing by analogy, "election" as used there simply means the choice of a temporary presiding officer by some means or other; and as a means of solving this difficulty I offer this resolution as a substitute for that of the Senator from Massachusetts:

> That the designation of Hon. J. J. INGALLS by the President *pro tempore* of the Senate to preside over the Senate for this day be affirmed and approved by the Senate.

Mr. FERRY. I hope, Mr. Secretary, that will be agreed to.

Mr. GARLAND. I think, Mr. Secretary, that that will better solve this difficulty, which presents, according to the Senator from Alabama, a very serious question.

Mr. HALE. Why should not the Senator from Arkansas use the language exactly of the rule, not say selected or designated to preside over the Senate, but named "to perform the duties of the Chair until an adjournment." Is it not safer?

Mr. GARLAND. The language of the resolution is that Hon. J. J. INGALLS, designated by the President *pro tempore*, be declared——

Mr. HALE. Following that, why not use the language of the rule, "to perform the duties of the Chair until an adjournment?"

Mr. GARLAND. I am perfectly satisfied with that.

Mr. HALE. That seems to me to be safer than it is to term him Presiding Officer.

Mr. HOAR. Mr. Secretary, I desire to ask the Senator from Arkansas, with his leave, if his proposition does not directly contradict his statement of his own opinion and the authority of Cushing?

Mr. GARLAND. I think not.

Mr. HOAR. Because it affirms and approves, which seems to imply and affirm, that the original designation was right.

Mr. GARLAND. We affirm and approve it to the extent of selecting the Senator named by him; that is all.

Mr. HOAR. But the word "approved" is used.

Mr. GARLAND. The Senate has perfect control of this matter.

Mr. HOAR. The word "approved" goes further than that, in my judgment.

Mr. GARLAND. I am willing to accept any language that carries out the idea. The point I am after is this: I do not care to go into an election, technically speaking, because we shall be confronted to-morrow with the question, Who shall take the place of President *pro tempore* of the Senate when Judge DAVIS returns? I want to obviate that difficulty.

Mr. HOAR. I think I shall feel compelled, if the Senator leaves his resolution in that language, to insist that it lie over one day under the rule.

Mr. SHERMAN. Mr. Secretary, it does seem to me that the best way is to adopt the suggestion that has been made on both sides of the House to adjourn until Monday. The adoption of the resolution of the Senator from Arkansas is a choice by the Senate of a Presiding Officer for a time. If so, it deposes the present Presiding Officer, the gentleman we have regarded as our Presiding Officer, and compels the Senate to again act upon the question of his re-election. That would involve us in delay and doubt and dispute, perhaps. At any rate a great deal of time would be occupied. We shall only lose two or three hours by now taking the ordinary adjournment until Monday. I have no doubt that then the Presiding Officer will be here.

Several SENATORS. Make the motion.

Mr. SHERMAN. Mr. Secretary, I submit the motion that the Senate do now adjourn until Monday.

Mr. BUTLER. That was the motion I intended to make. I have no objection to the Senator from Ohio submitting it.

The ACTING SECRETARY. It is moved by the Senator from Ohio that the Senate do now adjourn until Monday next at twelve o'clock.

The motion was agreed to; and (at one o'clock and twelve minutes p. m.) the Senate adjourned till Monday next.

HOUSE OF REPRESENTATIVES.

FRIDAY, *June* 2, 1882.

The House met at eleven o'clock a. m. Prayer by the Chaplain, Rev. F. D. POWER.

The Journal of yesterday's proceedings was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, notified the House of the passage of the following bills, without amendment, namely:

A bill (H. R. No. 377) granting a pension to Frank Kitzmiller;

A bill (H. R. No. 662) authorizing a duplicate check in payment of pension to William A. Gardner, of Frederick County, Maryland, in lieu of one lost;

A bill (H. R. No. 800) granting a pension to Justus Beebe;

A bill (H. R. No. 1154) granting a pension to Edward Farr;

A bill (H. R. No. 1180) increasing the pension of George H. Blackman;

A bill (H. R. No. 1288) granting a pension to Mary Blowers;

A bill (H. R. No. 1373) granting a pension to James K. Sturtevant;

A bill (H. R. No. 1462) granting a pension to Lewis Blundin;

A bill (H. R. No. 2088) granting a pension to Caroline Chase;

A bill (H. R. No. 2260) granting a pension to Thomas J. Cofer;

A bill (H. R. No. 2442) granting a pension to Morton Stancliff;

A bill (H. R. No. 3000) granting a pension to Nathaniel J. Coffin;

A bill (H. R. No. 3071) for the relief of Charles H. Frank;

A bill (H. R. No. 3549) granting a pension to Mary C. Murray;

A bill (H. R. No. 3761) granting a pension to Lewis Lewis;

A bill (H. R. No. 4546) granting a pension to William H. Styles; and

A bill (H. R. No. 5998) for the relief of Prescilla Decatur Twiggs.

It further announced the passage of the following bills, with amendments in which concurrence was requested, namely:

A bill (H. R. No. 801) to increase the pension of Merritt Lewis;

A bill (H. R. No. 1020) granting an increase of pension to Albert G. Fifield;

A bill (H. R. No. 2021) granting an increase of pension to Lucien Kilbourne;

A bill (H. R. No. 2349) granting an increase of pension to George J. Webb;

A bill (H. R. No. 3248) granting a pension to William H. H. Anderson; and

A bill (H. R. No. 3277) for the relief of Josephus Hawley.

It further announced the passage of the following bills, in which concurrence was requested, namely:

A bill (S. No. 340) granting a pension to Erastus Crippen;

A bill (S. No. 570) granting an additional pension to Watson S. Bentley;

A bill (S. No. 654) granting an increase of pension to Rebecca Reynolds;

A bill (S. No. 1772) granting a pension to Isaiah Mitchell;

A bill (S. No. 1778) granting an increase of pension to Marian A. Mulligan;

A bill (S. No. 1852) granting a pension to Mrs. Florida G. Casey;

A bill (S. No. 121) to authorize the construction of a bridge across the Sainte Marie River; and

A bill (S. No. 126) to reimburse the Creek orphan fund.

PRINTING OF MEMORIAL ADDRESS—PRESIDENT GARFIELD.

The SPEAKER laid before the House a joint resolution of the Senate (S. R. No. 53) for printing the memorial address on the life and character of James A. Garfield, late President of the United States; which was referred to the Committee on Printing.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. ORTH, for twelve days, on account of important business.

ORDER OF BUSINESS.

Mr. RANDAL. I demand the regular order.

Mr. COX, of New York. I desire, if possible, to have consent to introduce two or three bills for reference only, as I want to go home.

The SPEAKER. The regular order is called for, and the Chair will be unable to entertain a request for unanimous consent. The regular order is the further consideration of the election case.

CONTESTED ELECTION—LOWE VS. WHEELER.

Mr. HAZELTON. Now, Mr. Speaker, I yield to my colleague on the committee, [Mr. THOMPSON, of Iowa,] who will make the opening address in this case.

The SPEAKER. The Chair will state to the gentleman from Wisconsin that ten minutes of his time was occupied last evening.

Mr. THOMPSON, of Iowa. Mr. Speaker, I trust that I shall not have to occupy all of the fifty minutes time remaining with the consideration of the questions presented by this case. It is only due to myself as it is probably due to all of the committee, as well as to the members of the sub-committee that had this matter specially in charge, to state that until last evening I was not aware of the fact that I was expected to say anything on this question to-day.

I do not come before the House, sir, asserting that I enter upon the consideration of this or of any other question involving politics, entirely free from prejudice. If I made such a declaration as that I do not presume the best friends I have on this floor would give me credit for telling the truth, and they would be right. In thirty years of an active life I have learned to detest the Democratic party as an organization, though loving many of its members as personal, warm, and good friends. While I have nothing to say in defense of the Committee on Elections of this House, for I think it requires none at my hands, still at the same time I trust I will here or elsewhere be prepared at all times to defend it against any thrusts which may be made, no matter what quarter they come from, on account of any bad conduct alleged against it, either intentional or otherwise, in any case which may be submitted to it for determination.

I must say, Mr. Speaker, that I was somewhat surprised when the gentleman from Alabama, the contestee in this case, who received the consent of the House last evening to make a statement, during the course of which he saw proper to make charges that the Committee on Elections or the sub-committee, which had the supervision of his case in hand, had failed to give him facilities or proper time for the presentation and proper hearing of his case. In justice to the sub-committee, and I trust that I will have the attention of the House while I make it, I desire simply to give a brief statement of all of the facts connected with the hearing of this case from the time it first came into the House, and what has been done by the sub-committee at the dictation and request of General Wheeler himself. And when the charge is made here that the sub-committee at any time refused to extend to him either courtesy or time even beyond the ordinary rules adopted by the committee in every other case that has been before it, I must show that the charge is without the shadow of a foundation, and that this case stands a sole exception to the violation of the rules set up by the committee for its own guidance in regard to time for hearing it, and has had more privileges in that respect than any one of the twenty-two contested-election cases that have been before that committee during this Congress.

The sub-committee to which this case was referred was composed of the gentleman from Wisconsin, Mr. HAZELTON, Mr. RANNEY, Mr. PAUL, Mr. BELTZHOOVER, and myself. On the 24th day of December last it was ordered that the testimony be opened in the presence of the parties themselves, and that it be taken to the Public Printer and printed for the use of the committee. Please remember the dates, because they are important elements in connection with the allegation made as to the action of the committee in this matter. The first case referred to the committee and the first in which the testimony was ordered to be printed was this one, and it was the first one in which the testimony was actually printed. That testimony, I say, was placed in the hands of the Public Printer on the 24th day of December last and within three days after the organization of the committee. I want further to say here, Mr. Speaker, without fear of contradiction, that every courtesy with reference to time, every request for delay was granted, so far as it could be granted; and further, that every motion looking to delay and every request for an extension of time came from the contestee himself.

When this order was made, on the 24th of December last for printing, it was delayed at the request of the gentleman from Alabama himself, the contestee in this case, until the 4th day of the following month, January. On the 5th of January and after obtaining this delay on his own motion from the 24th of December to the 4th of January, a further delay was made by reason of a dilatory motion interposed by the contestee to suppress certain depositions. And further delay was asked for and the motion filed to suppress further deposition on the 8th of January last, all by the contestee in this case himself.

Now this testimony was printed, published, and returned to that sub-committee on the 24th of February last, just exactly one month from the day it had been ordered to be printed. Ordinarily one-half of that time is all that is required by the Public Printer to return such papers complete. This testimony embraced two volumes, comprising nearly two thousand pages. Much of it is a reprint or repetition. A great deal of it is a repetition quite a number of times of the notice of contest and the reply of the contestee, and various depositions and notices to take depositions are duplicated and placed in the record unnecessarily.

But, as I have said, on the 24th day of February the testimony was already completed, printed, returned, and placed into the hands of the committee for action.

The contestant filed his brief on the 6th of March, just one week after that testimony was placed in the hands of the committee.

The contestee was then ordered to file his brief by the 21st of April. But, owing to matters that he stated to the committee, that time was extended until the 29th, when he was ordered to file his brief in the case. He failed again and asked more time, and the committee again indulged him with an extension until the 31st of March, when he again failed to file his brief. The argument then, owing to the fact that the attorney of Lowe, Mr. Shelby, was compelled to leave to go home to attend to business that he had in court, was had on the 29th.

On the 29th he commenced his argument with the understanding the contestee should have time to file his argument when requested or as soon as he could prepare it. On the 29th Mr. Shelby was heard before the committee. And on that day again, at the request of the contestee and at the request of his attorney, the time was extended until the 3d of April, all these extensions being under protest of the contestant all the time, his attorneys insisting from the very first day that his brief was filed that there should be no extension of time. But the committee, feeling there were good excuses given for the contestee, and that it was not merely for the purposes of delay, granted each and every extension of time that he requested at the hands of the committee. And I say that under the circumstances, when this had been continued for nearly three months and the committee had complacently listened to the application of the contestee for extension of time again and again, time after time which was asked for by no other one, and which was granted to no other one, I say a charge of bad treatment comes with bad grace from the contestee in this case under all the circumstances and at this time.

Finally, on the 1st day of May, the month that has just passed, after the committee had extended the time repeatedly time and again, always and ever at the request of the contestee and his attorneys, that brief was filed on the 1st day of May last. And, as my worthy colleague on the committee [Mr. HAZELTON] last evening stated, it has been added to and I have been notified that some thirty pages were printed in the last few days, which I say frankly I have not seen. When he would conclude I do not know, unless the committee had put a stop to it at some time or other.

And now if my Democratic friends on the other side say, and if the contestee himself says, that under the circumstances, when he has been granted three months' time for the purpose of preparing his case and having it heard and argued before the Committee on Elections, he has been unfairly treated, I think the charge is without proper foundation. And I want to say further that the gentle-

man's attorneys were given every minute of time they desired. We met there four different times, and sat for hours listening to the manuscript argument subsequently committed to print and filed with the committee. And the first time in the history of this case, notwithstanding it had dragged its slow length along for three months, the first time I heard any complaint on the part of the contestee that he had not been allowed sufficient time was last evening, when that complaint was made by the gentleman who has delayed the case on his own motion and for his own purpose, and what that purpose was he can best explain.

Mr. WHEELER. Will the gentleman allow me to say one word in personal explanation?

Mr. THOMPSON, of Iowa. Yes, sir.

Mr. WHEELER. It is true you allowed my counsel ninety minutes only. That was the arrangement as to time, and that is all I said last night.

Mr. THOMPSON, of Iowa. All that I know about that is that the very first time the counsel of the contestee was there we gave him an hour and a quarter, because Mr. Shelby had taken that time; and how long Judge Wilson occupied I really have forgotten.

Mr. WHEELER. The gentleman from Iowa mixes this with other cases. There was but one time my counsel spoke; Mr. Wilson first, followed by Mr. Paine, just an hour and a half. The gentleman from Iowa is mistaken in his recollection.

Mr. THOMPSON, of Iowa. What I have to say, and I repeat it, is simply this, that the contestee's attorneys——

Mr. KELLEY. I ask the gentleman from Iowa to yield to me for a moment.

Mr. THOMPSON, of Iowa. I yield to the gentleman.

Mr. KELLEY. It so happened that when I entered a car last evening I found my old friend and former associate on this floor, Hon. Jerry Wilson, who was of counsel in this case. I had just heard the statement of the gentleman from Wisconsin [Mr. HAZELTON] and referred to the fact that Mr. Wilson's name had been last upon our lips; when he went on to make a statement, not challenged by me, that he had had all the time that he required. That when retained he had stated that there was but one point in the case that he could argue—that of jurisdiction, his partner, Mr. Shellabarger, having discussed the other point or points in the Chalmers case; that all the time had been allowed him that the point he undertook to discuss required; and that he had heard of no complaint from his associate that he had not had all the time that he required and desired. This was a casual conversation in the car last evening, but it seems to me to have something of a bearing on the question that has attempted to be made one of mystery.

Mr. MORRISON. That is hearsay.

Mr. WHEELER. Let me say one word. What I said last night is on the record, and I do not think anybody can assert that one word there is not precisely the truth. I met Mr. Paine this morning and I alluded to the fact that it was stated he had all the time he wanted. He said: "General Wheeler, they cut me off in the middle of a sentence." I do not mean to argue the matter further, but what I say now is to prevent any aspersion upon what I stated last night. I made certain assertions, which are now in the RECORD, written down by the stenographers, and every word that I said I insist is precisely the truth. I do not wish to have it understood, however, in what I say, that I controvert what the gentleman from Iowa [Mr. THOMPSON] has stated. These statements can all be true, though appearing to conflict. Now, the gentleman from Iowa is a little mistaken about one thing. He is mistaken about those delays in January. I was not requested to examine the testimony until the last day of December, and any delays that were made after that were not made at my request. The testimony went to the Printer January 4, I think.

Mr. THOMPSON, of Iowa. You will admit that no delay was asked for on the part of Lowe?

Mr. WHEELER. Certainly not.

Mr. THOMPSON, of Iowa. Then it is as I have stated; that every delay was at the request of the contestee and his counsel. I trust there will be no misunderstanding between us, for I do not want to do the gentleman any injustice at all.

Mr. WHEELER. That is perfectly correct, and what I have stated is correct also.

Mr. THOMPSON, of Iowa. As my time is limited, and I do not wish to occupy even all that, I will hasten on. I disclaim any intention of converting any man to my side of this case. It is a fact which I may as well acknowledge now as at any other time, because it is the truth, that nothing I can say, nothing that any other man can say, though he should be one who rose from the dead, will alter or change a single vote in this House.

But when the opposition choose to take to their bosoms and indorse and uphold every wrong in this country in regard to elections, make them a part and parcel of their Democratic creed, I will make no appeal to them, I will find no fault with them. But when on the part of the Republicans at least I reject such things, give me the credit for believing that I am right, and that I despise all Democratic frauds, though they may have the support of the majority of that party in this House, even though that majority is composed of noble and whole-souled Democrats.

I wish to say here that I have no political prejudices, in this case at least. I have examined this record as carefully as I can, and I find charges and counter-charges, criminations and recriminations brought by the contestant and contestee, such as never have been equaled in any contested case in this House. When I find that they have gone to the extent that the record shows, the whole thing, when you reduce it to a point, amounts to an attempt to convince the members of this House, if possible, which of these two men in the last ten years has been the most forward in abusing, villifying, and traducing the Republican party.

The testimony in this contest, however, shows that Mr. Lowe, I trust for the best purpose in the world, because the civilization of the age demands a fair recognition of the right of every man to cast a free ballot and have it honestly counted as he cast it—the evidence shows that Mr. Lowe has joined the party which is opposed to bulldozing, the party that is opposed to robbing the ballot-box, opposed to ballot-box stuffing; he has come to the front and opposed the practices which have so long prevailed there; for, according to the testimony, if it is true and can be relied upon, even in the State of Alabama, and I say it openly and above board, there has not been a fair election from one end of the State to the other in the last fifteen years.

Mr. WHEELER. You do not refer to my election as not being fair?

Mr. THOMPSON, of Iowa. I say that if this testimony is true such is the case; I most assuredly say that it was not a fair election. Do not misunderstand me; I do not say that you had parcel or part in it. There is testimony here that connects you with some of these things, but I have laid that aside. Allow me to say before the House that in all these fraudulent transactions, in regard to all these wrong acts on the part of the inspectors of election, I believe none of them were ever done at your instance or request, or by your aid, advice, or counsel, so far as the evidence shows and I have been able to examine it. Outside of that I have no further concessions to make.

If the testimony is true there was a clear wrong done to more than one thousand of these voters in this district in their having been intentionally, wrongfully, and illegally disfranchised; voters who had cast their votes for William M. Lowe, and whose votes were not counted but were thrown out for the simple reason which I shall state; and in regard to that, I say there is not a scintilla of evidence in all these two volumes to contradict the assertion.

Over 600 votes were refused to be counted simply and solely because there was printed inside of the ticket, before the word "district," the numerals "1st," "2d," "3d," &c. Those tickets were thrown out by the inspectors and refused to be counted, and were not returned. I say that is above and beyond dispute, and there is not one line, word, or letter of evidence in all these two big volumes that contradicts that. That statement stands as an admitted fact on the record to-day.

It is true that the contestant claims that some seven hundred and odd votes of that character were rejected. When we come to examine the matter we find that there were some six hundred——

Mr. HORR. What is the proof that these votes were thrown out simply because those figures were on the ballots? What is the nature of the proof?

Mr. THOMPSON, of Iowa. I will show you before I get through.

Mr. HORR. Because I hold that a man who will throw out votes for that reason should be sent to the penitentiary.

Mr. WHEELER. That is the law.

Mr. HORR. Then the law is wrong.

Mr. THOMPSON, of Iowa. I might as well read it now as at any other time. I want to state the number of votes so thrown out as shown by the evidence beyond all peradventure. I will give each precinct, but I will not read all the testimony.

Mr. HORR. I only want to know the kind of testimony.

Mr. THOMPSON, of Iowa. I will not read it all, because life is too short for that, and we are too near the close of this session, I trust. I give a summary of the votes rejected on this gound:

	Votes.
Big Creek	7
Chickasaw	8
Courtland	65
Danville	42
Decatur	3
Elkmont	56
Falkville	97
Flint	76
Florence	4
Green Hill	22
Huntsville	61
Kash's	2
Madison	33
Meridianville (No. 1)	2
Owen's Cross-Roads	31
Poplar Ridge	41
Russellville	51
	601

In a few cases, although the evidence, if we take it exactly as it comes, tends to show additional votes rejected for identically the same reason, although the proof tended to show this conclusively to my mind, yet as it was not certain whether Mr. Lowe's name was upon those tickets, I have not included them in this summary, which makes the result as I have given it, 601 votes, which the inspectors

of elections rejected and refused to count, which they did not return even to the county supervisors, who had the authority to finally tabulate and make up the result of the vote.

There is another fact which I trust Democratic members of the House will not lose sight of—that the whole machinery of the election was in the hands of Mr. Wheeler's partisan friends. At many of the precincts his Democratic supporters refused to allow a Republican inspector to act or to be appointed. It is in evidence that a circular was sent out notifying inspectors of election that the law for the appointment of United States supervisors was invalid, and should be disregarded; that the United States supervisors had no business to touch a ballot or to interfere with the election in any way.

I repeat that in nearly every one of these precincts, from one end of the district to the other, the whole machinery of the election was in the hands of the partisan friends of the contestee, who refused to put upon the board any man selected by the friends of the contestant; who refused to select for that position any intelligent man, any man who could read and write, and in some cases appointed over the protest of Republicans men who could neither read nor write, and who, as they supposed, would not be able to detect fraud even if it was perpetrated.

Yet, with all the election machinery in the hands of Mr. Wheeler's friends, and after casting out these 601 votes, after throwing overboard more than 700 votes, after failing to count or return them, yet, in spite of all this, the fact must not be forgotten that this returning board, experienced as its members were, heartless as the evidence shows them to be, could figure only 43 majority for General Wheeler in that district, in spite of all these frauds which were recognized and which helped to swell the vote as returned for General Wheeler.

I did not suppose there was a man above ground who could beat an Alabama returning board in business of this kind; but it is left to the minority of the Committee on Elections to surpass them at their own game. [Laughter.] Turn to that minority report, and you will find that the minority of the committee have actually figured a majority for General Wheeler of 2,625. The returning boards, every one of them Democratic, composed of neighbors, friends, and partisans of the contestee, had not cheek enough to return a majority of more than 43; but the minority of this committee, having a better knowledge of arithmetic, come to the front, rush to victory and glory, with a majority of 2,625.

The testimony shows that as a party you have robbed these ballot-boxes; you have denied the manhood of electors who the law says are your equals and as much entitled to cast a vote and have it counted for the man of their choice as General Wheeler or any other honorable man in Alabama or elsewhere. I trust it will ever be a part of the duty and mission of the Republican party to insist that this right of a free ballot and an honest count shall not be abridged for a single moment, here or elsewhere, now or hereafter.

The gentleman from Michigan [Mr. HORR] asked me what evidence we had that this was true. I wish to call the attention of the House for a few minutes to the evidence. I am not going to take up time in reading it all, for there is too much of it. There are some three or four witnesses in fourteen different precincts, making over fifty witnesses, who have testified to substantially the same thing; so that when I read the evidence of one of them it will be sufficient. I refer the House to the evidence of Nicholas Davis, a Democrat, a Wheeler man—not a Republican, not a Greenbacker, not a partisan friend of Mr. Lowe, but a Democrat—who swears that he is an ardent friend of General Wheeler; that he was one of the inspectors, and that he voted for General Wheeler at that election. This is the testimony of Nicholas Davis:

Question. Did any person during the night of November 2 come to the door of the room in which the votes were counting to make suggestions as to what votes should be counted and what votes rejected?

Answer. Yes, sir; there were two gentlemen came there at the door that night about half past twelve o'clock at night.

Q. Who were they?

A. Captain Humes and Captain Brandon?

Now, Mr. Speaker, I want to say to the contestee here that I do not know the residence of these men; but I take it from the evidence they were not residents of that precinct, but were missionaries traveling over the country in the interest, as I believe, of the Democratic party to facilitate the spread of the yellow circular in evidence before the House.

Mr. WHEELER. They were residents of that town, and were prominent lawyers.

Mr. THOMPSON, of Iowa. Mr. Humes is a carpenter.

Mr. WHEELER. No; Mr. Humes is one of the most prominent lawyers in the United States.

Mr. THOMPSON, of Iowa. John D. Brandon, then, is the man?

Mr. WHEELER. He is a lawyer, too, of high standing.

Mr. THOMPSON, of Iowa. I will read what he says. If they were the vicegerents of Heaven, and came down to give their advice to men to act against the law, they should not have accepted it or acted upon it. These men were acting under oath with the law before them, and they were bound to know it. Because they acted on the advice of these gentlemen does not lessen their crime or do away with the fact in this case that they rejected votes which should have been counted for Mr. Lowe. I care not how respectable they are, I care not what standing they have, I do not care what professions they may make; they have for a wrong purpose given their advice to these men to act contrary to the law, and there is not a man who reads the evidence here who does not know it.

Question. Milton Humes?

Answer. Yes, sir.

Q. John D. Brandon?

A. Yes, sir.

Q. Both pronounced and ardent Democrats and Wheeler men, were they not?

A. Yes, sir.

Q. Whom did they ask for?

A. They asked for me first.

Q. Which one did you first see?

A. I saw them both together.

Q. What did they come to see you about?

A. I suppose they came in reference to the ballots that had been polled with numerals on them; at least that was what they talked about.

Q. What did they say to you?

A. They asked me what we had done about those ballots, and I told them we had done nothing as yet; that I thought McGehee was in favor of throwing them out on the ground that they were illegal, and that we had just about reached the thing then, just about reached those ballots, and about to decide it, and they advised me that the ballots were illegal, and to tell McGehee that they were; that that was the advice of the best lawyers in the country.

They advised McGehee, not that they were the best lawyers in the country, but that that was the advice of the best lawyers in the country as to the law, and that these inspectors should reject these ballots.

Now, what further? Do they give any reason for their illegal act? No, sir. I read from the testimony:

Question. They told you that?

Answer. Yes, sir; and that it was their opinion.

Q. Why did they say they were illegal?

A. On account of the figures on the side of the ticket.

Q. Did they give any other reasons for their illegality?

A. No, sir.

Q. Did they refer to the fact that tickets that had the words "State at large" as a reason for rejecting them?

A. No, sir.

Q. Did they confine their opinion as to their illegality to the fact that they had the numerals 1st, 2d, and 3d?

A. Yes, sir.

Q. Did they bring with them any statute?

A. No, sir.

Q. Did they refer you to any statute?

A. Yes, sir.

Q. Did they solicit that interview, or did you send for them?

A. They solicited the interview.

Q. Was not Captain Brandon a former chairman or officer in the Democratic party?

A. I think he was, sir.

Q. Did he not canvass for General Wheeler in the late race between him and Lowe?

A. I understood he did.

Q. Did Mr. Humes and Mr. Brandon interview the other inspectors?

A. Yes, sir.

Q. In your presence?

A. No, sir.

Q. Talked to them separately?

A. Yes, sir; I sent McGehee out when I went in.

Q. And Mr. Clark, was he talked to by them?

A. I don't know, sir, whether he was or not; I didn't see him talking to them.

Q. Mr. Clark is a carpenter, is he not?

A. Yes, sir.

Q. Didn't he have his rule on hand to measure the tickets during the count?

A. No, sir; not when we commenced the count.

Q. Did not he have a rule, and measure the tickets during the count?

A. Yes, sir.

Q. They were found to conform with the law in length and breadth?

A. Yes, sir.

Q. Mr. Davis, if you had been left to exercise your own judgment, and the lawyers that you refer to, that came and advised you upon the subject, had not come, would you have rejected or counted those votes?

A. I would have counted them.

Here is a Democrat in Alabama who says he knew he was to act honestly and upon his own personal convictions, but that when urged in the interest of his Democratic friends he trampled those convictions of right under his feet and accepted the advice of an outsider and committed a crime which would send him to the penitentiary, so that instead of standing as an honest citizen he should be doing some menial work in a striped dress in the penitentiary of Alabama if this evidence be true. Here comes the best part of it:

Q. You were acting, then, upon the advice given you in these conversations?

A. Yes, sir; because when the question first came up in the room that night I thought about the matter and examined it carefully, and I could not think of any reason in the world for throwing them out. McGehee had suggested that as a ground, and I could not think that that was a good ground, and so I just paid no more attention to the matter; and then before we got to those ballots again I saw Captain Brandon and Captain Humes, and they told me it was the advice of the best lawyers in the country, and that the ballots were being thrown out all over the district. Then I didn't like to set my judgment up against the judgment of everybody else. I would have liked to have the chance to throw them out.

This was about three hours after the election closed, and that district is composed of eight large counties. These men, the gentlemanly contestee informs me, lived in the same town and the same precinct, and yet within three hours after the polls had closed, before the count was made and the decision had been given as to these ballots, which had the numerals on them, these men who came here and upon whose advice the inspectors acted say to them, "Do this, because these same kind of tickets have been thrown out all over the district."

Mr. WHEELER. I can tell you how they knew it. The inspectors along the railroad telegraphed to know whether this was legal.

Mr. THOMPSON, of Iowa. It is only reasonable to presume, and it is a fact that I doubt not every body knows, that there must be districts there where there are no telegraphs within miles of the polling places.

Mr. WHEELER. Of course they could not know in the back counties and away from the telegraph lines; but there were none of them thrown out in the back counties.

Mr. THOMPSON, of Iowa. The testimony shows they were thrown out all over the district.

Mr. WHEELER. The gentleman is mistaken.

Mr. THOMPSON, of Iowa. And I am using the testimony now of a man who was a Democratic inspector, who, like Pontius Pilate when he first examined the Saviour could find no cause of complaint against him but when the cry of the rabble went up "Crucify him! crucify him!" had him nailed to the cross. This man, this Democratic inspector, very soon saw occasion to change his views, for he goes on a little further than that, and here is the best part of it. He says:

The ballots were being thrown out all over the district. Then I did not like to set my judgment up against the judgment of everybody else. I would have liked to have had the chance to throw them out.

Here is a Democrat, honest, but a Democrat all the same, who says he would have liked to have had the chance to throw them out. Did he act on the suggestion of anybody and throw them out? He was one of the inspectors of the election, remember.

But I wish I had time, Mr. Speaker, to call the attention of the House to the election laws of that State a little. I think, as I have already stated, that there are over fifty witnesses in the different precincts where this count was had who testify to this fact—and, before I go farther, there is a reason for this that I want now to call attention to. It is a fact in evidence that these inspectors of election took tickets which were cast at this very same election counted by the same men, and which contained numerals on them also, but which were not rejected, the only difference being that the numerals were not exactly in the same places or not the same, and Wheeler's name was on the ticket in place of Lowe. These ballots were counted.

Mr. WHEELER. You are mistaken, there is no such testimony. Please read the testimony. You will find there is no such evidence.

Mr. THOMPSON, of Iowa. I have already stated the testimony.

Mr. WHEELER. That is not there at all. You are mistaken.

Mr. THOMPSON, of Iowa. I know what I am talking about.

Mr. WHEELER. It is not in the record.

Mr. THOMPSON, of Iowa. When you have your own time show it to be otherwise than true, or let your friends show it.

Mr. WHEELER. It is not in the record, and you cannot show it. You can show what is in the record but you cannot, nor can anybody else, show what is not in it.

Mr. THOMPSON, of Iowa. Well, now, I will turn to the page of the record, as the gentleman is so positive about it; and I will show from testimony of the witnesses themselves in corroboration of what I have said, what they have sworn to. I find here on page 54 of the testimony that there were 125 tickets counted for Wheeler with the figures 47 and 8 on them—that is to say, for Representative in the Forty-seventh Congress and eighth district.

Mr. WHEELER. That is a very different ticket. There were no distinguishing marks upon those tickets.

Mr. THOMPSON, of Iowa. I am not saying that the tickets were exactly the same, or that they had the same figures, but that they were identical in any respect, but that there were 125 tickets counted at that polling place for you, and I do not mean to say that they were not counted correctly. I want to say now and here that you had a right to them; that you were rightfully and legally entitled to them; that there were no distinguishing marks upon them in any sense of the word. There was nothing on them to mislead the electors in casting them; but what I do claim is that when you undertake to pass judgment upon these tickets which had numerals on them, and were cast for Mr. Lowe, and reject them on the grounds that there were numerals, and that the numerals were distinguishing marks, then you must permit me to say that the same rule should apply to your own tickets and they should be rejected on the same ground.

Mr. WHEELER. The gentleman will not find that there were any tickets cast for me and counted which were in opposition to the statute; these figures, only one or two, were not in any sense distinguishing marks.

Mr. THOMPSON, of Iowa. Mr. Speaker, it does not matter whether it was one or fifty marks; if the ticket is of such a character as to be disallowed by the statute it should not be counted. But these figures can scarcely be claimed to be a distinguishing mark, such as would invalidate the ticket. If 48 and 7 on the one ticket did not invalidate it and it was held to be a good ticket, within the meaning of the statute, then I claim that the other tickets which had the numerals 1st, 2d, 3d, 4th, and so on, should also be held to be valid and are entitled to the same consideration. Of course, as I have said, the figures are not the same; but if the numeral is a distinguishing mark, or is a fraudulent mark, or is one that makes the ticket obnoxious to the statutes, it makes no difference whether it is one or fifty, any numeral that may be on it as a distinguishing mark, and if you exclude one you must exclude the other. That is plain and indisputable.

But I want to call attention now, Mr. Speaker, to another fact that is in evidence, and which gives emphasis I think to the testimony of this man Davis, when these two men came to his office at eleven o'clock that night, when the count was going on, that there was a perfect understanding all through the district that the question was to be made, (notwithstanding the fact that they knew it was illegal,) that these tickets were to be thrown out. I say, in corroboration of his testimony, that there was some such plan on foot and which was not to be given to the public until after the polls were closed, the ballots were cast and in the ballot-box; and in support of that I want to call your attention now to a circular that went out throughout that entire election district. The evidence shows that this circular was placed in the hands of Wheeler's partisans in every precinct, and this circular is in the following words: "Dear sir, as soon as the polls are closed." My Democratic friends have been teaching the country for years and years past that they are in favor of a fair election, an honest count, and full returns. If that be so, how do you account for the fact that this circular that I now want to call your attention to was put in circulation secretly, and that it was to be retained secretly until after the polls were closed and the ballots all in? But it speaks for itself. Here it is in full. I will read it:

DEAR SIR: As soon as the polls are closed inform the inspectors of the election that the Lowe tickets with Hancock electors on them are illegal. They contain the figures 1st, 2d, &c., designating the district. These are marks or figures which are prohibited by the election laws; see acts 1878-79, page 72; and all such tickets should be rejected when the votes are counted, after the polls are closed.

Now, remember it was not the election laws of the United States, nor the election laws governing the ballot or prescribing the kind of ballot that is to be cast for a Congressman, but the laws prescribing that for the election of State officers in the State of Alabama, and them only. That is what attention was called to, and the parties are notified that because of these numerals the ballots are illegal and cannot be counted.

And all such tickets should be rejected when the votes are counted after the polls are closed.

After the polls are closed! On the back of it was indorsed:

To be shown only to very discreet friends.

To be shown only to very discreet friends! The testimony fails to show who was the author of that circular. It fails to show who originated it. It fails to show by whom it was sent to the different precincts. But it does establish the fact beyond all question that in every precinct it went into it was placed in the hands of partisan friends of General Wheeler, and in no others, and that it was never used until after the time the polls closed and for the purpose of rejecting these specific votes. And then it had its mission and had done its work; and on account of it nearly 300 votes of that kind and character they failed to count and refused to return at all.

Now, then, let us read for a moment the election laws of Alabama, and see whether they had any right to do that. In the first place let me refer to our own statute, section 27 of the revision of 1873. It expressly provides what shall be the ballot at elections for representatives in Congress. I am speaking now of the laws of Congress, not of a law of the State of Alabama, which, when made in opposition to or in contravention of the Federal statute, is an absolute, unqualified nullity; and every man knows it; and I believe there is not a man on that side of the House who is prepared to-day to come forward and bellow about State rights and State sovereignty so as to override a Federal law. It expressly states the kind of a ballot which shall be used. And I undertake to say if the ballots had been printed on red paper or on white paper six inches long or a foot long, one inch in width or three inches in width, the only duty of the officers was to take them out and count them after ascertaining whose name was on the ballot for Congressman, irrespective of any law the State of Alabama could pass; because your own law makes this provision, and that is exactly what can be done under your law. They have no right under your law to reject a single ballot except when two or three are folded together. But the rest they must receive. They must be folded under your law, taken by one, passed to the other, and by him put into the box without unfolding or looking into it. And to claim that that was a mark or a designation to defraud is an absurdity. There is no law for it; and besides that the law of Congress fixes that, and the State law cannot amend, alter, or change it. And it has been so decided by the highest tribunal of this land.

I now wish to call attention—and I have to be rapid about it—to the case decided in the United States Reports, No. 100, 10 Otto, *Ex parte* Siebold, where this identical question came up before the Supreme Court of the United States, and Judge Bradley delivered the opinion; and it was an opinion in which each and every member on the Supreme bench coincided. I quote from it as follows:

The clause of the Constitution under which the power of Congress, as well as that of the State Legislatures, to regulate the election of Senators and Representatives arises is as follows: "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators."

You will find it in article 1, section 4, of the Constitution of the United States.

It seems to me that the natural sense of these words is the contrary of that assumed by the counsel of the petitioners. After first authorizing the States to pre-

scribe the regulations, it is added: "The Congress may at any time, by law, make or alter such regulations." "Make or alter;" what is the plain meaning of these words? If not under the prepossession of some abstract theory of the relations between the State and national governments, we should not have any difficulty in understanding them. There is no declaration that the regulations shall be made either wholly by the State Legislatures or wholly by Congress. If Congress does not interfere, of course they may be made wholly by the State; but if it chooses to interfere, there is nothing in the words to prevent its doing so, either wholly or partially. On the contrary, their necessary implication is that it may do either. It may either make the regulations or it may alter them. If it only alters, leaving, as manifest convenience requires, the general organization of the polls of the State, there results a necessary co-operation of the two governments in regulating the subject. But no repugnance in the system of regulations can arise thence; for the power of Congress over the subject is paramount. It may be exercised as and when Congress sees fit to exercise it. When exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them. This is implied in the power to "make or alter."

Congress has seen fit to establish beyond a doubt what the ballot shall consist of. And when that law of Congress is complied with, I undertake to say here, supported by the highest judicial decision in this country, that any State law which may be enacted that would in any manner, by line or letter, contravene or attempt to render null and void the Federal law is of itself unconstitutional and void. And I believe it is not seriously contended upon the other side of the House that such is the fact. If it is, I want to hear the argument. There is one other authority I desire to cite. McCrary, in discussing this matter, in section 402 of his work on the Law and Practice of Elections, refers to the same subject. He says:

In Commonwealth *vs.* Wallper the supreme court of Pennsylvania said:

"The engraving (on the ticket) might have several ill effects. In the first place it might be perceived by the inspectors even when the ticket was folded. This knowledge might possibly influence them in receiving or rejecting the vote.

* * * * * * *

"The supreme court of California has very recently had occasion to consider the force and effect of a statute regulating the size and form of ballots, the kind of paper to be used, the kind of type to be used in printing them, &c. The court held, and we think upon the soundest reason, that as to those things over which the voter has control the law is mandatory, and that as to such things as are not under his control, it should be held to be directory only."

The SPEAKER. The time of the gentleman has expired.

Mr. WHEELER. I ask that the gentleman be permitted further time to finish his remarks.

Mr. CONVERSE. I object.

Mr. THOMPSON, of Iowa. I thank the gentleman from Alabama kindly.

Mr. REED. I understand the gentleman from Iowa [Mr. THOMPSON] can finish in five minutes.

The SPEAKER. Objection is made by a gentleman on the right of the Chair.

Mr. THOMPSON, of Iowa. Who objects?

Mr. CONVERSE. I object. The gentleman would not allow us time to read the reports.

The SPEAKER. Objection being made, the Chair recognizes the gentleman from Texas [Mr. MILLS] as entitled to the floor.

Mr. MILLS. I will take the floor and yield five minutes of my time to the gentleman from Iowa.

Mr. THOMPSON, of Iowa. I thank the gentleman from Texas very kindly, and hope I may be permitted some time to reciprocate.

"The court held, and we think upon the soundest reason, that as to those things over which the voter has control"—

Mark that, "those things over which the voter has control;" those are the words.

"The court held that as to those things over which the voter has control, the law is mandatory, and that as to such things as are not under his control, it should be held to be directory only. The conclusion of the court was that the purpose and object of the statute was to secure the freedom and purity of elections, to place the elector above and beyond the reach of improper influences or restraint in casting his ballot, and that it should have such a reasonable construction as would tend to secure these important results. And so construing the statute, the court concludes that a ballot cast by an elector in good faith should not be rejected for failure to comply with the law in matters over which the elector had no control, such as the exact size of the ticket, the precise kind of paper, or the particular character of type or heading used. But if the elector willfully neglects to comply with requirements over which he has control, such as seeing that the ballot, when delivered to the election officers, is not so marked that it may be identified, the ballot should be rejected."

Now what I want to say is that I have read this authority not for the purpose of backing up the position I before took—that is, that the law of Congress regulating the matter of the ballot is absolutely supreme—but for the purpose of showing that even if the law of the State of Alabama regulated these things, and could be considered in reference to the ballot for a Congressman, in that case the reason of the law is that it should give way because it is a matter over which the elector had no control, for whatever mark was claimed to be upon the ballot was not there for the purpose of designating his ballot or carrying out any fraudulent intention. And whatever ballot may be found in the box, under section 2017 of the Revised Statutes it is the duty of the inspectors and supervisors to count it, whatever mark there may be on it, in whatever box it may be found, and returned to the county board.

Now I hold that this whole thing has been done in violation of the law. While I do not agree with my friend from Wisconsin [Mr. HAZELTON] that this is the most important contested-election case that was ever tried, it is just as important as any other case. This man was rightfully elected and has been illegally deprived of his seat. This case is upon an equal footing with all other election cases. If the evidence shows that one man received the certificate improperly while the other is entitled to his seat, let us rise above party feelings and prejudices, and like men demand and insist upon what the Constitution provides, that there shall be a free election, a fair vote, and an honest count.

You may sneer at the Republican party, if you please, my Democratic friends; but remember that all the rights that you enjoy to-day, the very flag whose shelter you sit under to-day, are the gifts of the Republican party to you. The mission of that party will not end until every man, high or low, rich or poor, black or white, shall have his constitutional rights under the law in Alabama as well as under the law in Iowa. [Applause.]

Mr. MILLS. Mr. Speaker, I approach the discussion of this question with a full sense of the obligation imposed upon me. I am perfectly conscious that I am not occupying the position of an advocate, nor am I permitted to entertain the prejudices of a partisan. I am here under the solemn sanctions of the oath imposed by the Constitution upon my conscience, and the conscience of every other member of the House, to hear the testimony, to weigh it in the balance of a just judgment, and rightly to determine the controversy submitted for our decision. The question is not which one of the contestants we would elect if we were the qualified electors, but which one of them has been chosen by a majority of the legal voters of the district, for no other has the right to exercise the elective franchise than he who is authorized by law.

Suffrage is not a right that is inherent in the citizen. It is not like the right to life, liberty, and property. These man inherits from his Maker. The right to go when he pleases and come when he pleases; to labor at whatever occupation he pleases; to think and act as he pleases, so long as he does not encroach upon his neighbor, are the natural and inherent rights of every citizen. But suffrage is a political privilege conferred upon the citizen in the political compact, and must be exercised in accordance with the terms of the law that grants it. Women and children are citizens, yet they cannot vote, because the law does not authorize it. Aliens, non-residents, and persons convicted of infamous crimes cannot vote, though they are entitled to all the protection of the laws for life, liberty, and property. If any number of votes of women or children or aliens or non-residents are found in the ballot-box they are not legal votes and have no power to elect. If such votes get into a ballot-box it is the duty of the officers of election to reject them.

The certificate of the governor of Alabama certifies that General Wheeler received 12,808 votes and Colonel Lowe 12,765 votes, giving the former a majority of 43 votes. Now I wish the attention of the House. This is a very serious matter. We are sitting here as judges. We have accepted a solemn trust. We must discharge the duty which we assumed when we entered this Hall and took upon ourselves the oath to support the Constitution, and that Constitution requires us to seat the Representative who is chosen by the qualified voters of his district. We should approach this question with an earnest determination to act justly. We should put off our shoes from our feet, for the ground whereon we stand is holy.

The majority of the committee say that 601 votes were thrown out by the canvassing officers of the precincts which were legal votes and which ought to have been counted for Colonel Lowe. If this be true and all the other votes are unquestioned, Colonel Lowe is elected and is entitled to be seated. If it is not true, General Wheeler is entitled to retain the seat which he holds by virtue of the certificate of the governor. Let us see what is the law on this subject. The laws of Alabama provide that—

The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed, or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen; and any ballot otherwise than described is illegal and must be rejected.

The ballots alleged to have been rejected had on them at the top "State at Large," "District Electors," and first district, second district, and so on for each of the eight districts for electors, and after them the name of Colonel Lowe for Congress. These words did not designate the office for which the candidate was intended. All the eight candidates were to be voted for throughout the State. No one was chosen for any district. And not being necessary to designate the office for which the person was intended to be chosen they were forbidden by law to be placed on the ticket. But the committee say that the statute is merely directory and the words do not render the ballot illegal.

Now, I challenge all the lawyers in this House to produce one solitary decision of any court of respectability in Christendom which maintains that where a statute directs a thing to be done in a particular way, and declares that it is illegal if done in any other way, that that statute is directory. The decisions are uniform that the law is imperative, that there is no discretion, and the act must be done precisely as the law requires, or everything done under it is illegal and void. What is the object of the law in being so direct, so positive, so particular in its specifications? Why has it forbidden every mark, character, letter, or embellishment beside the name on the ticket?

In our efforts to ascertain the intention of the Legislature we must look to the mischief they sought to remedy. The object they had in

view was to invest the ballot with perfect secrecy, so that the voter might exercise the invaluable privilege without being subjected to censure or incurring danger by reason of his vote. It was designed to prevent the usurpation of "bosses" and party tyrants. It was the design of the law that the ticket should be the same to every party and every person. To do this the statute had to be positive and specific in its provisions. This law is to be construed strictly, because it is intended to protect the freedom of the ballot, the peace of society, and the very stability of the Government. The people of Alabama so understood it, and to take a bond of fate they declared every departure from it invalidated the ballot. How can this be claimed to be a directory law? This was a new law in the State. It was enacted in 1879 under the new constitution. The rule laid down by Smith in his work on statutory and constitutional construction, section 667, says:

It is a general rule that if an affirmative statute which is introductive of a new law direct a thing to be done in a certain manner, that thing shall not, even although there is no negative words, be done in any other manner.

But in the new law there is nothing left to construction. There are negative words and in strong and vigorous English.

In Dwarris's work on Statutory Construction the author quotes with approbation the language of Mr. Justice Taunton:

I understand the distinction to be that a clause is directory when the provisions contain mere matter of direction and nothing more; but not so when they are followed by such words as are used here, namely, that anything done contrary to such provisions shall be null and void to all intents. These words give a direct, positive, and absolute prohibition. (Page 221.)

The law says that the ticket shall not be less than two inches wide, nor greater than two and a half inches in width. Is this directory? It says the ticket shall not be longer than seven inches nor shorter than five. Do the committee contend that these specific directions are merely directory, and that the ticket voted in violation of these requirements is legal when the statute says it is illegal? Would a ballot a foot long be legal? Would the Republican tissue ballot exhibited to the House the other day, about two and a half inches long, be legal? This ballot came from South Carolina, and it must be borne in mind that the tissue ballot is the product of Republican civilization and was imported into the South with the carpet-bag dynasty.

Here is another specimen of Republican tickets. Here is what they call in California "the tape-worm." As you will see, it is about three inches long and less than one-fourth of an inch wide. The names of the Republican ticket are printed on it in microscopic letters, crowded closely together. This is the ticket that the workmen at the Mare Island navy-yard were required to vote by their Government bosses. They were required to march like slaves to the ballot-box with this ticket between their fingers and thumb and held up so that it could be seen. There could be no scratching on this ticket. It had to be voted as given, and if any poor wretch dared to come to the box with any other, "Off with his head" would have been the ready order. This little tape-worm joker shows eloquently the passionate devotion of the Republican party to "a free ballot and a fair count." [Laughter and applause.]

Now, seeing that it was the object of the Legislature to prevent this gross wrong and protect the sacred right of suffrage by requiring the ticket to be of certain dimensions, do you tell me that it is directory merely, and the poor who are in the power of the rich, the weak who are in the power of the strong, may still be compelled to vote the tape-worm ticket? The statute requires that the poll shall be opened at six o'clock in the morning and closed at five o'clock in the evening. Would it be legal to open at six o'clock in the evening, keep open through the night, and close at five o'clock in the morning? Are all the numerous prescriptions of the statute thrown around the ballot-box to guard with vestal vigilance that right preservative of all rights among freemen mere directions which may be disregarded at pleasure? If the right of the voter is not guarded by the strictest adherence to the law, the election will soon degenerate into a farce in many localities.

In the last Congress this House decided, in the case of Yates *vs.* Martin, that ballots headed "Republican ticket," under a similar law in North Carolina, must be rejected. Mr. Field, of Massachusetts, was a member of the Committee on Elections. He made the report. He was a member of your party, was an able lawyer, and is now one of the supreme judges of Massachusetts.

The same question has been decided in Alabama, and under the very same law that we are now examining. The courts of Alabama have construed their own law, and this House ought to accept that construction. In this case of Plato *vs.* Domus the ballots challenged were headed "corporation tickets," and the court said, "These ballots had more than only the names of the persons for whom the elector intends to vote or the designation of the office, and must be rejected because illegal."

In the State of Pennsylvania the law is substantialy the same that it is in Alabama. At an election the persons who succeeded had on their tickets the engraving of an eagle. Judge Tilghman (in 3 Serg. and Rawle, 34) held the tickets to be illegal, and said that all ballots must be rejected "that have anything on them more than the names." Now, sir, we must decide this controversy just as we would if we were in court, by the known rules of law applied to the testimony. We must try the right to this seat just as we would the right to a horse. We are not to act in this case as Republicans and Democrats, but as judges. We are to put prejudice under our feet. We are for the time to subordinate the partisan to the fair and impartial arbitrator.

These are not idle words with me. I can proudly appeal to my record in election contests here. I have been tested on more occasions than one. When my party was sixty or seventy in the majority I have voted to seat your men when they were justly and legally entitled to it. I voted to seat two negro Republicans against two white Democrats, and surely no severer test could be presented to a Southern Democrat. Many of my Democratic colleagues on this side, Northern and Southern, have often voted to seat Republicans when they thought them elected. But I have rarely seen, and I cannot call to my mind now one single instance, where one gentleman on the other side ever voted against the report of the committee, no matter what the facts might be, when it proposed to turn out a Democrat and seat a Republican.

Mr. BUCKNER. Will the gentleman from Texas allow me to say here that in the ten years of services I have seen in this House, there never has been an instance on that side of the House that they voted against the report of their Committee on Elections except one, and I challenge denial of it; whereas this side has frequently given votes to sustain their reports.

Mr. HAZELTON. That simply shows that there can be reliance placed in our reports.

Mr. SPRINGER. Let me state one honorable exception was the case when General Butler voted to seat Mr. Dean, of Massachusetts.

Mr. MILLS. Well, at that time, he was not much of a Republican anyhow. They were kicking him out when he did that.

I have treated this 601 votes as if they were proven to have been thrown out by competent evidence. But I submit that we have no evidence of that fact that would be admitted in any court in the United States. The law of Alabama prescribes that when votes are rejected by the election officers, they shall put them up in separate packages, seal them up and mark them and return them to a designated custodian, to be by him safely kept, for the very purpose of being used in cases of contest. Here is record testimony. If any votes have been rejected they have been deposited away safely with the proper officer and were subject to the demand of Colonel Lowe. Why were they not produced? They were the best evidence.

It is a rule among all civilized people that the best evidence of a fact must always be produced when it is in existence. This rule is well known to my friend from Wisconsin, who quotes it in reference to another matter in his report. Now, why did the committee decline to have the record evidence? Why did they not obtain those ballots alleged to have been rejected and examine them, and let them show for themselves what they are? Perhaps an inspection of the record would show that there were not so many as 601. Perhaps there was something else in them and on them that was forbidden by law, and it might be suspected that they would not be good subjects for careful judicial examination.

If the contestant had been in any court in the land seeking to recover a horse instead of a seat in Congress, and there was record evidence of the title filed away in a designated office to be kept for that purpose, he would have been required to produce it, and all secondary evidence would have been excluded as fast as it would have been offered. There is no judge of any court of record in the United States that would not have excluded all your *ex parte* testimony, for the greater part of it was *ex parte* and the great mass of it was hearsay. The commissioner refused to allow General Wheeler's counsel to cross-examine a great number of the witnesses. I have not had time to examine all the testimony and do not speak from personal knowledge on this point; but it is so charged by General Wheeler and his counsel in their brief, and I have not seen it denied. It is also charged that there is no certificate by any officer to the depositions of these witnesses, and they number more than a hundred. If the statement is not true I call for a contradiction of it.

Is it possible that these charges can be true? Were you not guided by the principles of law in your investigation? You are lawyers. You know the well-known rules ordained in all civilized society for the ascertainment of truth and the protection of right. You occupy a high position in the country. You are before the eyes of an enlightened people, and you must respect their intelligence and their integrity. What explanation can you make for not producing that testimony which is the best and which the law required to be produced? What explanation have you to make for admitting that testimony that is the weakest and worst, and which the law forbade you to receive? What evidence have you that this large number of witnesses were ever sworn? Will you deny the fact that General Wheeler was refused permission to cross-examine them? If the facts set forth in the brief be true, and I do not state them from any knowledge of mine, you owe it to yourselves to remove this case back to your committee-room and have these statements investigated.

The committee further report that the boxes at Lanier's, where Wheeler got 133 votes and Lowe got 55, and Meridianville, where Wheeler got 57 votes and Lowe 47 votes, must be thrown out, and that Lowe is entitled to receive 128 votes at Lanier's and 55 votes at Meridianville, and Wheeler none! They proceed in a very singular manner to produce the desired result. How do they reach it? They throw out both boxes, I suppose, on the ground of fraud. Then they

proceed to ascertain how the vote was, and give Colonel Lowe 133, but could find no vote for Wheeler. Before the committee could throw these boxes out they must have tried first to purge them of any illegal votes, if any there were, and then count the legal votes for both candidates. If the box had been so disturbed either by force or fraud that it could not be purged, that the legal could not be distinguished from the illegal, then the whole box must be thrown out, and when it is thrown out the election at that point is a blank.

Neither side has a vote. By the return of the election officers Wheeler got at the two boxes 190 votes and Lowe 102. But by the mathematics of the committee Lowe gets 183 and Wheeler gets—none! Now, how can this be accounted for? The committee prove that there were 292 votes polled at these two places, that Lowe received 183. What became of the 109? Now, gentlemen, I am taking your case as you make it. I am taking every fact to be true as you claim it. I plant myself squarely on the ground as you have selected it, and I ask you, I implore you, tell me where are the 109? Are they lost? What did you do with them? The witnesses say there was a large vote polled at both boxes for Wheeler. Your own witnesses prove it. The vote polled by Wheeler was so large that Colonel Lowe's friends were astonished at it; they said so. Where are they? What did you do with them? And this is an exhibition of the purity of the ballot-box of which we have heard so much of late!

We were told to-day that it is the mission of the Republican party to secure a free ballot and a fair count. And this is the way that great mission is to be performed, is it? And you think you are maintaining the purity of the ballot-box when you disregard the record of the sworn officers and your own chosen supervisors, who stood by and saw the vote and the count from beginning to ending, and said it was fair, and then throw the boxes out, and then proceed to take testimony and give your man nearly twice as many as the election officers gave him, and give Wheeler none, when by the same evidence he proved his votes, too. Will you in your zeal for a free ballot and a fair count trample on the rights of those 109 legal voters and refuse to count them? And you have no explanation to make. You are as dumb as sheep before the shearers. You have no answer to make. But there is an answer; and that answer is that your judgment is the product of your own partisan prejudices. This is all there is of it, and there it must rest.

What were the facts about the Lanier box? The box was open early in the morning. The voting was free, full, and fair all day long; all the votes were in. Then the polls were closed. Hertzler, the supervisor, Colonel Lowe's friend and representative, went to one of the officers and indicated the place where the box should be placed till after supper, when the votes were to be counted. It was a side room of Lanier's store. Hertzler and the officer went together and placed the box securely in the room. Hertzler and other officers went to Lanier's and got supper, and after supper went and got the box and went to Lanier's parlor and got a table; Hertzler sitting on one side and examining the votes as they came out, and he says the voting was fair, the count was fair, but he did not think it counted out as it ought to have done. The other witnesses say the box was never tampered with or touched; but the committee were so enamored of a free ballot and a fair count that they threw it out.

At Meridianville Forbes was supervisor and Colonel Lowe's friend. The election officers counted out in Forbes's presence, while he was examining every ballot, and the result was 57 for Wheeler, 47 for Lowe. Forbes joined with the State officers in making that return. He said he was permitted to go where he pleased, sit where he pleased, and stand where he pleased. In fact he said he was treated very nicely. Forbes did not know that anything was wrong until he learned that his friend Colonel Lowe was beaten, and then he discovered that something was wrong, and he remembered that at one time he saw one of the judges of election, who had been sitting a long time in one position, change so as to rest that part of the man that had been on duty so long, and on this testimony the committee throw out Meridianville box, and then add 8 votes to Colonel Lowe's 47, making him 55 and Wheeler none—57 and 47 make 104. Where are the 49?

Tell me, you gentlemen who are so anxious to maintain a free ballot and a fair count, what did you do with the 49? In God's name, I beseech you, just gratify my curiosity and tell me. You threw the box away. You said it was so involved in fraud that the correct vote could not be ascertained, and yet you ascertained that 55 of them were for Lowe, and that there were 104 in all. Where are the 49? Mathematical demonstration would say they were cast for Wheeler; but what has mathematics to do with a free ballot and a fair count?

Now, gentlemen, tell us about the box at Courtland? Here Colonel Lowe got 419 and General Wheeler 111. Did you pursue the same course there that you did at Lanier's and Meridianville? No, sir. Wheeler charged that there was fraud there, and, worse than that, proved it. The election officers were friends of Colonel Lowe. After the voting was over they began to count, and counted till late at night, and found a mistake, they say; so they put all the tickets back in the box, and Harris, a friend of Colonel Lowe, took the open box with him to his room at the hotel, and kept it and slept with it. The mistake discovered in counting out, no doubt, was the uncomfortable fact that Wheeler was getting too many votes. At any rate, next morning they began again and continued to the end, and the result was—Lowe 419, Wheeler 111. Why was not this box thrown out? Here is testimony that the open box was taken to the private room of one of the friends of contestant and kept by him all night. And that is not all; General Wheeler proved by testimony that he received at least 232 votes there. Why did you not throw away the 419 votes of Colonel Lowe and count General Wheeler 232? That was the rule you adopted in the other cases, but you refused to disturb Lowe's vote, and you refused to give Wheeler the votes he proved he received. I will read some of the testimony. Henry Clay Jones—that ought to be a pretty good name, Jones is good and Henry Clay ought to be—Henry Clay Jones says he "got thirty-six colored men to vote for Garfield and Wheeler." Now, where are those thirty-six votes? Quintus Jones says he got seven colored men to vote the Garfield and Wheeler ticket. Isaac Jones says he got ten colored men to vote the Garfield and Wheeler ticket. Patrick Jones says he got seven colored men to vote the Garfield and Wheeler ticket. Ben. Jones says he got thirteen men to vote the Garfield and Wheeler ticket. Hurrah for the Joneses! Adding up the votes proven by all these witnesses it shows that General Wheeler got more than 232 votes at Courtland. I ask you, gentlemen, to tell the House why you did not give him credit for them as you did Colonel Lowe at Lanier's and Meridianville? Answer then to your own consciences why you did not. You stand by the officers' return at the box because it is on your side. You disregard the officers' return at the other boxes because they are against you. This box, the only one that was stuffed, was retained and upheld by the committee; the other two were not tampered with, and the proof was abundant, that they were not, and you excluded them; and all because you love a free ballot and a fair count. I ask you as honest and fair men, with that anxious desire which is everlastingly pressing upon your hearts, with that deep solicitude which is ever consuming your souls, how could you refuse to count the vote Wheeler proved at Courtland?

Mr. Speaker, I have heard a great deal about the purity of the ballot-box and a free ballot and a fair count; I have heard a great deal about the love of the Republican party for a free, fair election. In season and out of season they have proclaimed their fixed determination to see that every voter shall have the right to place in the ballot-box one unintimidated vote and have that vote fairly counted. When I contemplate the length, breadth, height, and depth of the love of that great party for a free ballot and a fair count; when I reflect how it has watched the ballot-box like a vestal virgin, till its life, like the vestal flame, "in holiness is wasting away;" when I see upon its forehead the pale cast of thought, and on its cheeks the deep furrows that corroding care has plowed as it has vexed its righteous soul from day to day to secure to every voter a free ballot and a fair count, I am lost and overwhelmed in the magnitude of the subject.

Who is there that does not remember the agonizing trials through which it has passed in the last few years? Who is there that can forget the sacrifices it has endured? Who can blot from his memory the sublime patience that it has exhibited in the hour of trial, when, as a vicarious sufferer, it was drinking the cup of atonement that the country, the object of its constant love, might be redeemed, regenerated, and disinthralled, and that every voter should have a free ballot and a fair count?

A few years ago the ballot-boxes of Louisiana, Florida, and South Carolina were seized by returning-board conspirators and a bold effort was made to cheat, wrong, and defraud the people of those States out of the local governments they had chosen, and all the people of the Union were in peril of losing their elected Chief Magistrate and the Administration which they had freely and fairly proclaimed through the ballot-box. It was a supreme moment, and with sublime faith and courage did the party of great moral ideas meet the emergency.

The Republican President sent Republican statesmen down to those States, accompanied by the Army of the United States, to see a fair count of the votes actually cast. Who can fail to remember how the Republican Administration scattered the outlaws that had seized the ballot-boxes and attempted to foist upon the American people the candidate whom they had defeated. Some of them were sent into distant banishment, one to Saint Petersburg, one to Vienna, one to Paris, and many of the lesser malefactors were confined for four years in the Departments at Washington. We all recall the result of that herculean effortto save the ballot-boxes from intimidation and violence, and with what triumph they placed the helm of State in the hands of Samuel J. Tilden, who had received more than a quarter of a million majority of the popular vote, a majority of the electoral votes, and a majority of all the States. Sir, time will fail me to do justice to the great subject. Life is too short and its flying hours are too exacting to allow me to enumerate all the instances where it has shown its devotion to a free ballot and a fair count. I run back in memory and hurriedly call before the mind the many instances of tenderness and devotion that I had read upon the pages of history, both sacred and profane, but I can find nothing with which I can compare it. I recall the heart-broken wail of the

old King of Judah, when his idol boy raised his hand in revolt against his father's government and threw down the gage of battle to his father's troops in the wood of Ephraim. How sad is the recital of a father's tender love for an idolized but erring child. The venerable old man stood in the gate of the city, and as his army passed out to the field he charged every officer from the general-in-chief to the sergeant of the guard to spare his child. He gazed into the distance toward the spot where the battle was raging, to catch the first glimpse of the courier, and press upon him the eager, anxious inquiry, Is my child safe? He did not ask whether victory had declared for the banner of the King of Judah or its revolted prince. He thought not of his state, his throne, or his person. His thoughts all the day long were for the safety of his son. Often through the long and laggard hours of that day did the hand that had swept the harp that soothed the distemper of Saul tremble with emotion, as he looked for the return of his child whom he was never to see again. Oft through that day did the kingly tear run down the shrunken cheek of age and fall upon his patriarchal beard. A messenger came to tell him that the rebel arms were overthrown. He bade him be silent and tell him of Absalom. "My son Absalom, is he safe?" the old man said. At last the fatal message was spoken. The cruel and ferocious Joab had slain his child, and the old man uncovered his head and bowed himself and wept. As the bright banners of Judah came dancing from the fields of victory, the shout of exultation died away among the troops when they saw their King with his head buried in his hands, with faltering step, moving toward his desolate home, and crying with a loud voice: "Oh, Absalom, Absalom! my son Absalom! Would God I had died for thee! Oh, Absalom! my son, my son!" But what did David know of the fathomless depths of the love of the Republican party for a free ballot and a fair count? David had other sons to console him, and to lighten his bosom of that perilous stuff that preyed upon the heart. But who is to console the Republican party when the little jokers and tape-worms fail to purify the ballot-box?

We are told in the book of inspiration that the children of Israel were carried away captive from their native land; that in the land of the stranger, whither they had been carried, they gathered by the river and sat down and wept when they remembered Zion. When the stranger required of them to sing the songs whose sweetness had made them renowned among all nations, they snapped their strings and hanged their songless harps on the willows and refused to sing the songs of Zion in a strange land, and turning their weeping eyes toward the temple and tombs of their fathers cried, "If I forget thee, O Jerusalem, * * * let my tongue cleave to the roof of my mouth." But we must remember that these people had never reached the civilization of this age. Neither the fathers that went down to Babylon behind the chariot wheels of the Assyrian king nor the children that came back and rebuilt the temple that had been razed to the ground by the invader had ever seen the wonderful product of Republican civilization, a little joker or a tape-worm. That supreme joy has been reserved to be revealed in these latter days to the party of great moral ideas whose earnest desire is to have God in the Constitution, the Bible in the school-room, and the "tape-worm" in the ballot-box.

I have read of that heroic German woman whose name Felicia Hemans has made immortal, who, standing by the wheel on which her husband, an innocent victim, was being broken, was besought by friends to forsake him lest she, too, should be condemned to the same cruel fate. We are told with what superhuman courage and constancy she defied every threat and spurned every entreaty, and every moment pressed more closely the evidences of her devotion upon the life-long object of her love, the idol of her woman's heart. When at length the dying husband added his entreaty that she would save herself and leave the object soon to be inanimate dust, she rose to her loftiest stature, and raising her hands in solemn invocation that Heaven would bear witness to her love and her constancy and courage, and looking up to the wheel where the lip was quivering and pale and the eye was growing dim and the life-current receding and feeble, she cried back her answer of wifely devotion:

> In thy dark prison house,
> In the terrific face of armed law,
> Yea, on the scaffold if it needs must be,
> I never will forsake thee.

But what was the love of Gertrude compared with the love of the great Republican party? Her devotion was but an exhibition of the love of woman. But the love of a free ballot and a fair count is a love that surpasseth the love of woman. Who that ever saw that love tested would doubt for a moment that the Republican party would stand in the face of all the wheels and racks of the inquisition and demand that every Republican, loyal, tried, and true, should have the unchallenged right to put one unintimidated tape-worm in the ballot-box and have it twice fairly counted?

A long while ago I read the beautiful narrative that Homer has given of that Trojan princess, who, standing upon the walls of ill-fated Ilion, saw in the same glance the ruin of her country and the death of her husband, its greatest defender. There is scarcely any thing of which the mind can conceive more tenderly touching, more sweetly sad than the melancholy lament of Andromache as she looked upon the dead body of Hector dragged in the dust behind the chariot-wheels of the conqueror. How piteously she portrays the desertion of friends that must follow the fall of her husband and the desolation of her country. How painfully sad is the picture she draws of the poverty that is to attend her widowhood and drive to beggary her orphan child. But, Mr. Speaker, Andromache never had a tape-worm and never saw a little joker. She had never heard of a ballot-box, and was a stranger to that sublime purity with which the Republican party have invested it.

If Andromache had lived till the present day, and had been at Meridianville, Alabama, on the day of election, and had seen the colored Republican club as it came from the lyceum in Coon Hollow, flushed with the excitement of the intellectual encounter over the question of the evening's debate, "Which is the most profitable to the country, money, women, or stocks?"—could she have seen them undergoing the inspection of wrists to prove to the bosses that no interdicted Democratic ballot was concealed in the sleeve; could she have seen them as they caught the cadenced step and advanced upon a pure ballot-box, holding their little jokers eighteen inches from their bodies to prevent them from getting a concealed Democratic ticket in their pockets, then indeed would she have wept for joy and exclaimed like Simeon of old, "Now, Lord, lettest thou thy servant depart in peace, for I have seen thy salvation. I have seen the blessed manifestation of the love of the Republican party for a free ballot and a fair count."

Mr. Speaker, when I remember how constantly, how faithfully, and how zealously the great Republican party labored for the purity of the ballot-box in Louisiana, Florida, and South Carolina in 1876; how they compelled the returning-boards to count the ballots that were cast for Samuel J. Tilden and proclaimed and inaugurated him President; how they compelled their committees to investigate the charges of forgery in the testimony produced by Mackey against Dibble; how they counted the votes that were proven for Wheeler at Meridianville, Lanier's, and Courtland; how they rejected the tape-worm ballots at the Mare Island navy-yard; how they voted to retain Finley in his seat when he had over a thousand majority of the vote "actually cast," I am persuaded that neither tribulation nor distress, nor persecution, nor famine, nor nakedness, nor peril, nor sword, nor death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature can separate them from the love of a free ballot and a fair count.

> Oh, for such love let rocks and hills
> Their lasting silence break;
> And all harmonious human tongues
> The patriot's praises speak.

Mr. HEWITT, of Alabama. As the gentleman from Texas is referring to the love of the Republican party for a free ballot and a fair count, let me remind him that the Republican party manifested their love by repealing all penalties under the election laws for illegal votes.

Mr. SPARKS. They did it in the interest of a free ballot and a fair count.

Mr. MILLS. Yes, and in Texas they passed a law "for the protection and purity of the ballot-box," and fixed heavy penalties against everybody who should destroy ballots except the Republican election officers appointed by a Republican governor.

I now come to the question of registration. It is in proof that 2,698 unregistered votes were cast in this contest. It is proved that over a thousand of them were cast for Colonel Lowe. If these votes were illegal the law requires that those proven to have been cast for each party must be deducted from his vote, and the remainder divided *pro rata* between them. If this were done General Wheeler would be elected by more than a thousand votes. So that if all the other illegal votes were given to Colonel Lowe, still he is not elected. The constitution of Alabama contains the following provision:

> The General Assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided no person shall vote at any election unless he shall have registered as required by law.

It further provided that all male citizens over twenty-one years old, and who had resided one year in the State, three months in the county, and thirty days in the precinct, should be qualified electors. The Legislature enacted a registration law and made specific directions for registering the qualified voters. It did not say that non-registered persons should not vote, and the committee say that therefore non-registered voters are legal voters. They contend that the constitution authorized the Legislature to pass a registration law, and whenever the Legislature enacted a law that affirmatively forbade non-registered persons from voting, then their votes would be illegal. They say the language in the constitution, "when it is so provided," means that whenever the Legislature says that a vote shall be illegal it shall be illegal. Why should the constitution make such a provision? If the constitution authorized the Legislature to make a registration law, and the act made such votes illegal, they were illegal without a constitutional declaration of that fact.

The Legislature of the State had the authority to enact the law without any grant in the constitution, in the absence of a prohibition. Then, why should the constitution declare that if the act of the Legislature made the vote illegal it should be illegal? Such a

construction is a barefaced absurdity; and one of the canons of construction says:

Every interpretation that leads to an absurdity ought to be rejected.

The reason that the Legislature did not in the registration act say that non-registered votes were illegal, was that the constitution had already said it and the Legislature had no discretion over it. The constitution intended to leave it to the discretion of the Legislature to pass the law or not as it thought best, but if it did pass one, then the organic law declared while it was in existence, all non-registered votes should be rejected. When it said the Legislature "may provide by law," it left the question to be decided by the Assembly, and when it said, "when it is so provided," it declared for itself the status of the voter.

To provide by law was to enact a law of registration, and so provided means a law so enacted. So is an adverb. It qualifies verbs, participles, adjectives, and other adverbs. It means provided, as before expressed. This is the evident intention of the framers of the constitution; and, as the books tell us, in construing an instrument the pole-star to which we must steer is the intention of the maker. This construction gives force and effect to the law and the constitution; the other negatives both. If the construction of the committee is right the law of Alabama is a dead letter, for every one may disregard it, and the declaration of the constitution that all such votes are illegal is a mere *brutum fulmen*.

Mr. JONES, of Texas. Will my colleague allow me?

Mr. MILLS. Yes, sir.

Mr. JONES, of Texas. The word "it" is used in that connection as a demonstrative, pointing to what is about to be stated, and does not refer to an antecedent.

Mr. MILLS. It demonstrates an absurdity, and that is the difficulty; it demonstrates what I say, and what I will repeat again. Where the constitution says that the Legislature may make a law, if the Legislature says that the vote is illegal, it is illegal. It is illegal without that constitutional declaration, and that is what it demonstrates. "It is so provided," means the law is so provided or enacted, as I have said before. "So" qualifies "provided," as first expressed.

Suppose my colleague were to sue me and charge that I had for a valuable consideration promised to pay him a sum of money and, having so promised, failed and refused to pay. What would so promised mean? It would mean promised in the manner before expressed. Therefore, when the constitution of Alabama says that the Legislature may provide an act of registration, and when it does so provide no person shall vote who is not registered it declares illegal and void all non-registered votes and leaves nothing for the Assembly to do.

Mr. HAZELTON. If your view is correct, and it may be, why did not the framers of the constitution say "it is provided," instead of leaving it any way in doubt as to the construction? Would not a convention want to make as important a condition as that so as to preclude all mistake, and say it is provided so and so, beyond all question?

Mr. MILLS. My friend from Wisconsin, who is an intelligent lawyer as well as statesman, will remember that when our fathers framed the Constitution of the United States, and after it had passed through the hands of such scholars as Madison and Hamilton, they would not submit it as their final work till they referred it to a committee on style. Now, you would have the convention of Alabama to submit their work to a committee on style.

Mr. HAZELTON. I do not mean that.

Mr. MILLS. It is a question of style you are talking about, and your criticism I do not think would have improved that. I want to recur for a moment to a point made by Colonel Lowe in his brief, and which has been quoted with approval by my friend from Wisconsin in his report.

The statute, as we have seen, declares that the ballot shall contain no mark, figure, letter, or character, except the name of the person voted for and the office for which he is to be chosen. It is contended that if that language is literally carried out, the name of the party could not be on the ticket, because it requires letters to constitute his name, and that Lowe cannot be spelled without the letter O. This is adopted by the committee as a strong argument, and it is as strong as any in their report. There never was a more perfect absurdity put in the report of any committee of this House. The law says the name of the candidate must go on the ticket, and the name of the office for which he is to be chosen, and nothing else. "Only" that and nothing more. Because the law forbids all other letters and clearly and specifically declares that the name shall go on the ballot, therefore the name shall not go on. And that is the argument of the committee. To state the argument is to answer it.

In the face of all the arguments and all the sophistries of the committee Wheeler stands before the country the chosen Representative of the legally qualified voters of the eighth Congressional district of the State of Alabama. And the world, the flesh, and the devil combined cannot deprive him of his right to the seat if this House shall render its decision in accordance with the law and the testimony and in accordance with the constitution and laws of the State of Alabama. [Applause.]

DEFICIENCY APPROPRIATION BILL.

Mr. HISCOCK, by unanimous consent, from the Committee on Appropriations, reported back, as a substitute for the deficiency bill, a bill (H. R. No. 6243) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1882, and for prior years, and for those certified as due by the accounting officer of the Treasury in accordance with section 4 of the act of June 14, 1878, heretofore paid from permanent appropriations, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

Mr. RANDALL. Strictly speaking that is not in order, but we hail with pleasure every evidence of activity on the part of the Appropriations Committee.

Mr. REED. Strictly speaking that speech of the gentleman from Pennsylvania is not in order.

Mr. RANDALL. There is great lack of order generally and great surplus of disorder here.

Mr. HISCOCK. I will say to the gentleman from Pennsylvania that he need have no apprehension nor need he give himself any trouble as to the Committee on Appropriations. This work will be always ready, the committee will be always vigilant, and when the proper time comes for the introduction of their bills they will be presented and attended to in a proper and vigilant manner.

Mr. TOWNSHEND, of Illinois. I desire to reserve all points of order upon the bill which has been presented.

The SPEAKER *pro tempore*, (Mr. DINGLEY in the chair.) The points of order will be reserved.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. CANNON, by unanimous consent, from the Committee on Appropriations, reported a bill (H. R. No. 6244) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1883, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

Mr. TOWNSHEND, of Illinois. Points of order are reserved also on that bill.

Mr. RANDALL. Points of order are reserved.

The SPEAKER *pro tempore*. The statement of the gentleman from Pennsylvania will be noted.

CONTESTED ELECTION—LOWE VS. WHEELER.

Mr. JONES, of Texas. I desire the attention of my colleague [Mr. MILLS] for a moment. I understand my colleague to object to the Hancock-Lowe ticket, as it is termed, upon the ground that the districts are numbered in numerals instead of letters of the English alphabet. Is that his position?

Mr. MILLS. My position is that the ballots should contain nothing but the names of the parties voted for and the designation of the offices to which they were to be chosen; that everything else must be excluded—all figures, marks, and embellishments beyond that.

Mr. JONES, of Texas. That was the ground taken by the Democratic party in the State of Alabama. That is the only ground upon which the right of the contestee in this case to a seat can be sustained; because, as was stated by my colleague, this is the turning point in this entire contention. If it be admitted that those tickets are illegal because of this designation of districts by numerals instead of letters of the English alphabet, why then the sitting member holds his seat by a legal majority of 43 votes. On the other hand, if it be held that such designation of districts is not obnoxious to the statute which forbids figures upon ballots, why then it follows that the contestant is elected by over 500 votes.

So, now, here we have the issue clearly and sharply defined. My colleague says that he is in favor of free elections and a fair count. He starts out with a broad proposition that the votes of the qualified electors should determine who shall represent the people of the United States in this Hall. I ask in all conscience what confidence can be placed in the sincerity of such professions of gentlemen who exert all their ingenuity to pick a flaw in every ballot that is presented against them. Gentlemen may profess to be in favor of a free election and a fair ballot until doomsday; but as long as the American people have any common sense or ordinary intelligence they will know just exactly how much importance to give to such pretensions.

I did not intend to argue this case. I do not intend to do so. The only point I wish to make is this: we know by experience how the Democratic party dodges everything. When it proposes to build up and establish banks it professes to oppose them. When it pretends to be opposed to a protective tariff it will adopt every method that will eventuate in the establishment of it. So in reference to elections. Just in proportion as they are heated and vociferous in loud and repeated professions of devotion to the right of the people to govern, just in that proportion we may suspect they have designs to circumvent and defeat the people in the exercise of the ballot.

Here, sir, is the issue; and I am glad my colleague has stated it. I have always regarded him as one of the most liberal on that side

of the House I was not prepared at all this morning—and when he began to speak I expected he would come out really on the side of the ballot—I was not prepared till this morning to believe that the entire Democratic party has made the elections, as it were, its party tenet, its principle, all in fact that they have left.

And now let us see how the issue is joined; that is all I wish to say; and it is in plain Saxon this: whether the honest voters of this country shall by their ballots choose their officers or whether the elections shall be determined by technical chicanery? There is all there is in it; there is the gist of the whole question. And I repeat here to-day what I have often said, as between technicalities and chicanery on the one side and the honest ballot on the other, I am on the side of the honest ballot and the genuine democracy of the country. I am in favor of a government by the people, and being in earnest in favor of such a government, instead of playing the part of an artful, cunning lawyer, finding fault with every effort and every mode by which the people seek to give force to and to express and emphasize their will, I reverse the rule and say, construe the laws as you would ascertain and give effect and efficacy to that will as really expressed.

Why, sir, according to the gentleman, my colleague, what would the right of suffrage be worth if hedged in and embraced all around and about with technicalities so numerous, so fine, so unintelligible, that there is not a lawyer in this country that could possibly pick up a ballot that some other lawyer may not pick a flaw in?

To be brief, and to sum up this whole question, there is the ticket. Shut your eyes to this case; go out of this Hall and get a dozen lawyers together and submit to them in the absence of all partisan considerations if there is any defect in that ticket, and I say, if they knew nothing about the party exigencies involved in this case, you would not find a lawyer, if you searched until doomsday, that would point out the slightest objection to it. I repeat it, the issue is distinctly made, and since it is made, all this about registration is so much lumber, so much material piled in, out of which to manufacture some pretense under which to hide. That is all. My object was to bring my colleague fairly to the issue; and are we not made to know to-day, and know of a truth, where the Democratic party stand—that they mean by any means, fair or foul, to rule this country if they possibly can.

Mr. ATHERTON. Not having voice enough to make myself heard, and not supposing I can be heard, I desire to send to the Clerk's desk the minority report, to have portions of it read. And I desire the consent of the House that those portions I have marked out shall appear in the RECORD without being read; that the portions which remain shall be read by the Clerk; the other portions, however, appearing in the RECORD.

The SPEAKER. In the absence of objection, it will be so ordered.

There was no objection.

Mr. ATHERTON. I send, then, to the Clerk's desk the minority report, and ask the Clerk to read the portions which are not stricken out.

The Clerk proceeded to read portions of the minority report, which in full is as follows:

William M. Lowe *vs.* Joseph Wheeler—Eighth Congressional district of Alabama.

Mr. BELTZHOOVER, from the Committee on Elections, submitted the following as the views of the minority:

The undersigned are not able to concur in the report of the majority of the committee. The evidence shows that the election was conducted with perfect fairness on the part of Wheeler and his supporters. Indeed, there is no pretense that there was unfairness anywhere except at Meridianville and Lanier's precinct, and the most extraordinary efforts on the part of Mr. Lowe and his attorneys utterly fail to prove any fraud or unfairness at these boxes.

The voluminous character of the record has precluded nearly all the members of the committee from giving it that thorough examination which is necessary to a perfect understanding of the case, and, as a consequence, the report of the majority contains errors, to a few of which we will refer.

First. The majority consider evidence introduced by Mr. Lowe which purports to prove matters which are not set up in the notice of contest, and refuse to consider evidence of matters proven by primary and uncontroverted evidence which are specifically set up and insisted upon in the answer of the contestee, these matters being such as the law required them to consider, and such as the majority of the committee have considered in other cases during this term of Congress.

Second. Evidence which the majority in this report say is good and sufficient to establish the allegations of Mr. Lowe, they in the same report say is insufficient to support the allegations of Mr. Wheeler.

Third. Certain witnesses give evidence regarding votes cast for both Mr. Lowe and Mr. Wheeler.

The evidence is precisely of the same character, the votes referred to are precisely of the same class, the evidence is given by the same witnesses, and in some cases it is given in the same breath and in answer to the same questions, and yet the majority of the committee count the votes for Mr. Lowe and refuse to count the votes which the proof shows were cast for Mr. Wheeler.

Worse than that, the report of the majority counts votes for Mr. Lowe upon statements of witnesses who swear they do not know anything of it personally, and they refuse to count votes for Mr. Wheeler, the rejection of which is positively proven.

For instance, Mr. Harraway swears he does not know personally that any Lowe ballots were rejected, but he swears that he does not know that a Wheeler ballot was rejected.

On this evidence the majority count four votes for Mr. Lowe and refuse to count any votes for Mr. Wheeler.

Mr. Hill, who was illegally examined in chief during the last ten days, when the law only allowed evidence in rebuttal, testified and admitted that his knowledge that 22 Lowe ballots were rejected was not based upon his actual knowledge, but it was based pretty much upon what a clerk told him. This illegal evidence was taken at an unlawful time, so that Mr. Wheeler could not take evidence to refute it, and yet the majority on such evidence count 22 votes for Mr. Lowe.

We observe six other instances where Mr. Lowe's witnesses testify that ballots cast for Mr. Wheeler were not counted, and yet the majority of the committee refuse to give Mr. Wheeler the benefit of their evidence, although their evidence is precisely the same as the best evidence which is relied upon by Mr. Lowe, and although in one instance alone this failure makes a loss of over 50 votes to Mr. Wheeler.

Fourth. The majority of the committee accept and consider in substantiation of Mr. Lowe's allegations testimony which is secondary in its character, which is contradicted by Mr. Lowe's own witnesses, and which uncontradicted proof shows has been altered and forged since it went into the hands of Mr. Lowe's agents or attorneys. Mr. Wheeler made a proper and seasonable motion to have the forged evidence stricken from the record, but the majority of the committee failed to strike said forged matter from the record.

Fifth. The majority of the committee refused or failed to deduct votes of unregistered voters who illegally voted for Mr. Lowe, giving two reasons therefor:

1. Because they say registration is not required in Alabama.
2. Because there is no evidence which establishes definitely and identically for whom they voted.

The first position was so untenable that it was not assented to by all the members of the committee who voted for the majority report; and we hereafter will show it to be entirely without foundation.

The second position is positively contradicted by the proofs. In the limited examination we have been able to give to this point we find the names of over 500 of these unregistered voters who the witnesses swear positively voted for William M. Lowe. Some of this evidence is given by Mr. Lowe's witnesses, and by Republicans who swear that they saw the voters hand their ballots to the inspectors with Mr. Lowe's name on said ballots.

This evidence is positive, unimpeached, and unquestioned.

Sixth. The majority of the committee refused or failed to deduct illegal votes of unregistered voters who voted for Mr. Lowe at Courtland and other precincts, where the proof shows there was no person registered "as required by law," and consequently there was no legal registration, and Mr. RANNEY, of the committee, gives as a reason for this action, and it is the only reason given, that "contestee does not set up a want of legal registration as vitiating the election at any precinct."

In making this statement Mr. RANNEY was mistaken.

The following allegations are contained in the answer of the contestee:

"Contestee alleges that at the following precincts of Lawrence County, viz, Courtland, Red Bank, &c., * * * 450 persons were allowed to vote, and did vote, for contestant, some of whom had no right to vote at the precincts where they cast their votes, and others who voted at said precincts were not legal voters, and had no right to vote at all."

And contestee also alleges that said persons who voted for contestant at said precincts "did not have a right to vote, for the reason that they had never been registered as required by law."

It is here shown that the allegations of Mr. Wheeler emphatically state there was no legal registration at Courtland, or that he uses the equivalent words that the persons who voted for contestant had "not been registered as required by law."

The deposition of the probate judge of Lawrence County proves that these allegations are correct, and that there was no legal registration at that precinct.

Under a similar registration law the majority of this Committee on Elections decided in the case of Bisbee *vs.* Finley that eight precincts in Brevard County should be rejected, and the proof in that case does not show that the registration in those precincts was as incomplete and illegal as it is shown in this case to have been at the precinct of Courtland.

It is shown by primary evidence that none of the voters at Courtland were registered as required by law, and that with regard to 189 of them there was no pretense at registration, and yet the majority count these illegal votes for Mr. Lowe.

Seventh. The majority of the committee refused or failed to deduct the illegal votes of non-resident persons who voted for Mr. Lowe, although the proof is positive and uncontradicted that such persons voted for Mr. Lowe, and that they were non-residents of Alabama, but residents of other States.

The witnesses give evidence regarding this matter similar to the following:

"John Wilson was not a resident of Alabama; he lives in Tennessee, and he never pretended to claim this as his home.

"Wesley Phillips was a non-resident of the State of Alabama; he lives in Tennessee.

"Squire Holsten was a non-resident of the State of Alabama; he lives in Georgia, and is an illegal voter.

"John O'Neal was a non-resident of the State of Alabama; claims his home in Georgia.

"Berry Blair was a non-resident of the State of Alabama; lives in Tennessee; was an illegal voter."

The witnesses also testified that all the non-residents whose names they gave voted for William M. Lowe, and all these names are found on the poll lists.

We could go on with these details, but space forbids.

It is evidence of this character which the majority of the committee says is "not sufficient." They also say: "His [Wheeler] proofs do not sustain his allegations."

It appears to us that Mr. Wheeler proved conclusively that minors voted for Mr. Lowe.

Mr. Lewis swears that Jack L. Armstead voted for Mr. Lowe; that he had known him for ten years, and when he first knew him he was not more than six or seven years old. He also swears that Berry Coager voted for Lowe; that he had known him for twelve years, and when he first knew him he was not more than six years old.

On page 894 of the record, contestee proved that James Chandler was only eighteen years old; also, page 899, that Robert Smith was only twenty years old, and that Ephraim Springer was only twenty years old. All of these persons the proof shows voted for Mr. Lowe.

This is the character of the uncontradicted evidence which Mr. Wheeler produces to show that minors voted for William M. Lowe.

Eighth. At Courtland precinct (the same place where the proof shows that there was no legal registration, and that 189 unregistered persons cast illegal votes for William M. Lowe) the preponderance of evidence decidedly shows that none of the inspectors were supporters of the party which sustained Mr. Wheeler, and Mr. Lowe's witnesses are compelled reluctantly to admit that they violated the law which required them to count the ballots immediately on the closing of the polls, and that they pretended to be occupied for nine hours in counting about 580 ballots, and then put the counted and uncounted ballots together in a rough box, and that one of their number took the box off and kept it until the next day, when a box was returned which contained some ballots which they counted in an illegal manner, and made a report that Mr. Lowe had received 419 votes, and that Mr. Wheeler had received 111 votes.

The proof also shows that this report was false, as the witnesses admit that Mr. Wheeler was polling a large vote—quite as large as that polled by Mr. Lowe—and some of the witnesses testified that he (Wheeler) polled two or three times as many votes as were counted for him.

Mr. Wheeler has proven, by uncontradicted and uncontroverted evidence of Republicans as well as Democrats, that over two hundred persons voted for him at that box.

Mr. Wheeler's allegation with regard to this poll conforms to the proof, and we conclude that the box should not be counted.

We respectfully submit that we have never seen a case where the integrity of a ballot-box was more emphatically and essentially impeached, and where justice called louder for action.

Ninth. On the other hand, we now look at the action of the majority of the committee regarding Meridianville box No. 2.

Mr. Lowe in his notice does not ask to have this box rejected, and therefore under the rules laid down by the committee regarding Wheeler's defense they could not reject it, but above and beyond this the proof shows that there was no violation of law at this box.

Mr. Forbes, Mr. Lowe's special friend, was present as supervisor, the votes were counted strictly as provided by law, and the supervisor and the inspectors made their respective reports, each stating that Wheeler received 57 and Lowe received 47 votes.

The proof shows that this vote was proportioned substantially the same as it was at the election three months previous when the vote for governor was: Cobb, Democrat, 42; Pickens, Opposition, 34.

The testimony of Mr. Trewhitt, Mr. Roper, and Mr. Hawk, who were officers of the election which we are now considering, and whom the proof shows to be gentlemen of high standing, shows that the vote was counted as it was cast, and that no fraud could possibly have been practiced at these polls.

The majority of the committee cite against the sworn report of officers, and against the evidence of men of high standing and character, the testimony of two colored men, of whom one is impeached by the direct testimony that his character is so bad that he is not worthy of belief under oath, and both are impeached by their own contradictions, and by credible testimony of other witnesses. But in addition to all this, the evidence of the contestant is not of a character to justify the committee in receiving it to prove that there was any fraud or unfairness at this box, and taking all the proof together it shows no ground for its rejection.

The record also shows that, during the ten days allowed by law for evidence to be taken for contestant in rebuttal, Mr. Lowe's attorneys served a false notice upon Mr. Wheeler, stating that they would take evidence of some fifty-five witnesses at or near Pleasant Hill.

This notice designated no definite place, and Mr. Wheeler caused a demand to be served upon them, asking for more specific information regarding the locality where the evidence would be taken.

This polite and proper request was not complied with.

Mr. Lowe's attorneys went to a place seven miles from Pleasant Hill and proceeded to take evidence *ex parte*.

After some twenty witnesses had been examined in this way, an attorney employed by Mr. Wheeler succeeded in hunting down this secret place of taking evidence; but even then, after finding the commissioner, he was positively refused the right to cross-examine witnesses.

Worse than that, the record shows that Mr. Lowe's attorney (a nephew of Mr. Lowe) wrote down the evidence himself, and wrote it falsely.

By such methods there have been produced 55 depositions, which purport to show that 55 men voted for Mr. Lowe.

Upon these illegal and fraudulently obtained and criminally conducted proceedings the majority of the committee count 55 votes for Mr. Lowe.

This box will be discussed more fully hereafter.

Tenth. At Lanier's box the evidence shows that it was impossible for any fraud to have been practiced by any one in the interest of Mr. Wheeler.

Mr. Lowe's friend swears they could not have counted the ballots in the shop where the election was held, and he swears that he "took charge of the box," and carried it to the store of Deputy United States Marshal Lanier, who was appointed to take charge of the election by Mr. Lowe's friend, Marshal Sloss.

The box remained locked up in the side room of Mr. Lanier's store for about an hour, and Mr. Lanier, who was a Republican, swears that no one could possibly have had access to it while it was there.

The majority of the committee, however, reject this box without a request to that effect in the contestant's notice, and then, still without a request, and without a particle of legal evidence, count for Mr. Lowe 128 votes, and give Mr. Wheeler none, although 142 votes were cast and counted for him, and Mr. Lowe's own witness swears that some 30 votes were cast for Mr. Wheeler.

We call attention to these things to show that the honorable gentlemen who compose the majority of the committee have been imposed upon by some one, as we feel they never would have made this report had the facts been understood by them.

The majority of the committee violate all precedent in counting 16 votes for Mr. Lowe at Kinlock box.

There is no return from this box, and there is no way of learning from the proof that there was any election held at said place.

Eleventh. The majority of the committee receive and consider as good evidence papers which are not depositions.

More than one hundred of these papers, which are called depositions, do not show that the witnesses were sworn. One hundred and fifty are without any pretense to a certificate of a commissioner, and several of them have no legal signature. Yet upon such fugitive papers the majority of the committee conclude to deprive a fellow-member of his seat in Congress.

The record shows that the vote, according to the official returns, was:

For Joseph Wheeler	12,808
For William M. Lowe	12,765
Majority for Joseph Wheeler	43

Mr. Wheeler's election is contested on the following grounds:

1. The contestant claims that 525 votes were cast for him, which he claims were illegally excluded from the canvass by the inspectors of election in fifteen different precincts, as follows:

Big Creek	7
Chickasaw	8
Courtland	65
Danville	42
Decatur	3
Elkmont	56
Falkville	97
Florence	4
Green Hill	22
Huntsville	61
Kash's	2
Madison	33
Meridianville (No. 1)	2
Owen's Cross-Roads	31
Poplar Ridge	41
Russellville	51
	525

2. Although the contestant does not demand it in his notice of contest, the majority of the committee reject, for his benefit, the returns of Lanier precinct, in Madison County, which gave the contestant 57 and the contestee 142 votes, and they give him 128 votes alleged to have been proven by the depositions of witnesses; the result being to deprive the contestee of 142 votes, and to add 71 to the votes of the contestant.

3. Although the contestant does not demand it in his notice of contest, the majority of the committee reject, for his benefit, the returns of Meridianville precinct No. 2, which gave the contestant 47 and the contestee 57 votes, and the majority of the committee give him 55 votes, alleged to have been proven by the testimony of witnesses, the result being to add 8 to the contestant's votes and to deprive the contestee of 57.

4. Although the contestant does not demand it in his notice of contest, the majority of the committee give him an addition of 10 to the votes officially returned for him from the precinct of Cave Spring.

5. Although the allegation in the notice of contest does not justify it, and although Mr. Lowe's proof on the point is secondary, and conflicting, and contradictory, and although the proof regarding Mr. Wheeler's votes at that poll are precisely the same as the proof regarding Mr. Lowe's votes, the majority of the committee count 76 votes for Mr. Lowe at Flint precinct, and they refuse to count any votes for Mr. Wheeler.

The return vote being changed in accordance with these claims, the following is presented as a statement of the result:

William M. Lowe	13,456
Joseph Wheeler	12,609
Majority for William M. Lowe	847

The contestee denies most of contestant's allegations, and on the other hand insists, in his answer to the notice of contest, that the following votes were illegally cast for the contestant, and demands their rejection by the House of Representatives:

1. Ballots illegal in form, including 1,294 ballots which are printed so as to be read as plainly on the back as on the face	3,028
2. Votes of unregistered persons, exclusive of those who voted at Courtland	1,200
3. Votes of non-residents	81
4. Votes of convicts	20
5. Votes of minors	16
Kinlock box	16
Courtland box No. 2 (contestant's majority)	308
	4,669

The contestee, accordingly, gives the following as a correct statement of the result:

Joseph Wheeler	12,808
Wm. M. Lowe	8,096
Majority for Joseph Wheeler	4,712

Mr. Wheeler also claims that the Greenbrier box, which gave Mr. Lowe a majority of 223, and Pleasant Site box, which gave Mr. Lowe 13 majority, and Frankfort, which gave Mr. Lowe a majority of 17, should not be counted. Mr. Wheeler alleges that the polls were under the control of Mr. Lowe's friends, and that they were not kept open as required by law, causing loss of many votes to contestee; and also, that at Greenbrier there was illegal voting for Mr. Lowe, and that the inspectors destroyed the poll lists, and by other means violated the law so as to deprive Mr. Wheeler of the means of proving the illegal votes which were cast at that box.

Mr. Wheeler also alleges that the entire vote of Madison County, which gave Mr. Lowe 676 majority, was illegally returned and should be rejected. Mr. Wheeler also alleges that Triana box, which gave Mr. Lowe 252 majority, was not kept open as required by law, whereby contestee lost many votes.

The several claims of the respective parties will be considered in their order.

II.

BALLOTS ILLEGAL IN FORM.

The contestant's claim that 525 ballots offered for him in a form described were illegally excluded by the inspectors of election is met by the contestee as follows:

1. The contestee insists that ballots of the form described were illegal, and ought to have been excluded by the inspectors.

2. He denies that any such ballots were, in fact, rejected, and asserts that the depositions by which the contestant attempts to prove their rejection are inadmissible, because they were not certified by the officer before whom they purport to have been taken, nor reduced to writing in his presence.

3. He sets up a counter-claim to the effect that 3,028 ballots canvassed for the contestant were illegal, because they contained the designations of eight offices unknown to the laws of Alabama, and that of these 3,028 ballots, 1,294 were illegal for the further reason that they were so printed that their contents were distinctly visible on the outside to the inspectors and bystanders when the ballots were folded.

1. In support of his position that the ballots in controversy were illegal and ought to have been rejected, the contestee urges the following considerations:

The ballots were in this form:

FOR ELECTORS FOR PRESIDENT AND VICE-PRESIDENT:

STATE AT LARGE.

JAMES M. PICKENS.
OLIVER S. BEERS.

DISTRICT ELECTORS.

1st District—C. C. McCALL.
2d District—J. B. TOWNSEND.
3d District—A. B. GRIFFIN.
4th District—HILLIARD M. JUDGE.
5th District—THEODORE NUNN.
6th District—J. B. SHIELDS.
7th District—H. R. McCOY.
8th District—JAMES H. COWAN.

FOR CONGRESS—EIGHTH DISTRICT.

WILLIAM M. LOWE.

The following ballot is in the form prescribed by the laws of Alabama. It is similar in form to 12,808 ballots cast for the contestee:

For Electors for President
and Vice President of
the United States.

GEORGE TURNER.

WILLARD WARNER.

LUTHER R. SMITH.

CHARLES W. BUCKLEY.

JOHN J. MARTIN

BENJAMIN S. TURNER.

DANIEL P. BOOTH.

WINFIELD S. BIRD.

NICHOLAS S. McAFEE.

JAMES S. CLARK.

For Representative in
Congress from the Eighth
Congressional District:

JOSEPH WHEELER.

Two of the offices designated on the illegal ballots are offices of Presidential electors for the State at large, and two of the candidates named are candidates for those offices. Eight of the offices designated are offices of district electors of President and Vice-President, for eight different districts in the State; and eight of the candidates named are candidates for those offices.

The Alabama statute declares that—

"The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed, or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen, and any ballot otherwise than described is illegal and must be rejected."

This law prescribes four distinct requirements for the ballot:

1. It must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon.
2. It must be not less than 2 nor more than 2½ inches wide, and not less than 5 nor more than 7 inches long.
3. It must contain only the names of the persons voted for and the designations of the offices for which they are "intended to be chosen."
4. The names of the candidates and the designations of the offices are to be written or printed, or partly written and partly printed.

If the Legislature had merely prescribed the form of the ballot, without declaring those cast in any other form to be illegal, or commanding their rejection, then, of course, it would be a question whether the requirement of the statute, that the ballot must contain only the names of the candidates and the designations of the offices, is directory or mandatory. And to the decision of that question such authorities as McKenzie *vs.* Braxton, Smith, 19, would be applicable. But when the law makes a ballot not cast in a prescribed form illegal and requires its rejection, there is no place for the question whether the statute is mandatory or directory. The ballot which is not in the prescribed form is illegal, and must be rejected, because the law in terms declares it to be illegal and commands its rejection.

The Legislature of Alabama, exercising a power expressly conferred by the Federal Constitution, had prescribed the mode of choosing Presidential electors as follows:

"On the day prescribed by this code there are to be elected, by general ticket, a number of electors for President and Vice-President of the United States equal to the number of Senators and Representatives in Congress to which this State is entitled at the time of such election."

Under this statutory provision there could be no choice of "district elector" for the "first district," or "second district," or for either of the other eight districts designated. The ballots in question each contained the designations of eight different offices unknown to the law; that is to say, the offices of district electors for the eight districts of the State. They were deposited in the ballot-boxes in violation of the requirement of the statute that the ballot shall contain only the names of the candidates and the designations of the offices.

It is submitted as an incontrovertible proposition that this statutory provision for the choice of Presidential electors makes the office of each and every Presidential elector an office for the State at large, and that the office of district elector is unknown to the law of Alabama. It is submitted as a second incontrovertible proposition that the ballots in question were ballots for two electors from the State at large and for eight district electors, one for each of eight districts. If these two propositions are correct, so also must be the conclusion that eight of the offices designated on these ballots are unknown to the laws of the State, and that the designation of these eight offices was a violation of that requirement which excludes from the face of the ballot everything except the names of the candidates and the designation of the offices voted for, and that, therefore, under the law, it was the duty of the inspectors to reject these ballots.

This would be all different in the State of Massachusetts. For the law of Massachusetts contains a provision unknown to the law of Alabama. It is that—

"The names of all the electors to be chosen shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each Congressional district into which the Commonwealth shall be then divided, and shall designate the Congressional district to which he belongs." (Pub. Stat. Mass., 1882, page 90.)

The effect of this statutory enactment is that two of the Massachusetts electors are chosen from the State at large, and the others, although chosen by the people of the whole State, are district electors, chosen not from the State at large, but from the several districts. In Massachusetts the ballots now under consideration would be in exact conformity with the requirements of the law; and a Massachusetts statute commanding the rejection of ballots containing designations of offices unknown to the law would not affect ballots like those alleged to have been rejected in this case.

For precisely the same reasons, ballots like these would be legal in the States of Iowa, Tennessee, Missouri, Virginia, and North Carolina.

If, then, the statutes of Massachusetts, Iowa, Tennessee, Missouri, Virginia, and North Carolina commanded the rejection of all ballots not fashioned in conformity with the requirements of law, they would not affect ballots like those alleged to have been rejected in the late election in Alabama, because such ballots would conform to the statutory requirements of those States.

The laws of Illinois, New York, South Carolina, Michigan, and Wisconsin, like that of Alabama, provide that the Presidential electors shall be chosen by "general ticket." The statutes of Mississippi and Nebraska provide that they shall be chosen from the "State at large." If the laws of these seven States provided, as do the laws of Alabama, that all ballots containing anything beyond the names of the candidates and the designations of the offices should be rejected, then ballots like those alleged to have been rejected, in the case now under consideration, would necessarily be rejected in those States. But no law, in either of those seven States, requires the rejection of ballots for the reason that they contain more than the names of the candidates and the designations of the offices. It follows, therefore, that in these seven States, as well as in the States of Massachusetts, Iowa, Tennessee, Missouri, and Virginia, these rejected Alabama ballots would have been good.

They would also have been good in all the other States of the Union except Alabama. For in none of the other States is there any statute requiring the Presidential electors to be chosen by general ticket or from the State at large. In all the other States the statutes provide that Presidential electors shall be chosen, but fail to determine whether they are to be chosen wholly from the State at large, or partly from electoral districts. They do not make illegal the offices of district electors, as does the law of Alabama. The case of Alabama therefore stands upon statutes peculiar to that State.

It is said that the objectionable matter on these ballots does not constitute figures, marks, rulings, characters, or embellishments, in the sense of the statute. Even if this be admitted for the sake of the argument, it does not meet the objection now under consideration, which is not that they were fashioned in violation of the clause of the statute prohibiting figures, marks, rulings, characters, and embellishments, but that they presented a violation of that clause which provides that the ballot shall contain only the names of the candidates and the designations of the offices.

But to ascertain whether these ballots did have distinguishing marks, let us refer to the evidence of the witnesses whom the contestant introduced, and by whom he claims to have proven the rejection of these ballots.

Mr. Hopkins, a witness for the contestant, testifies (see bottom of page 131 and top of page 132) that the ballots which he says were rejected could be identified from the outside when folded four times. His evidence is as follows:

"Question. When folded in four thicknesses, could you see at a distance of three feet that that ticket had something on it besides the names of the persons voted for and the offices for which they were to be chosen?

"Answer. Yes, sir; I could.

"Q. Please examine the ticket and see if it is the ticket that you made an exhibit to your deposition?

"A. Yes, sir; it is.

"Q. Please examine those three tickets folded, and say if they are not the kind of tickets that were rejected, and say if you cannot identify them from the outside when folded four times?

"A. These tickets are similar to the tickets that were rejected for being numbered, and I can designate them when the printing is folded inside and the ticket folded in four thicknesses."

These ballots are in evidence, and it will be observed that they are of the least objectionable class of Greenback ballots found in the record.

Ira G. Wood, a witness and supporter of Mr. Lowe, and an officer of the election, testifies as follows regarding the ballots which he says were rejected, (see Record, page 304, near bottom:)

"Question. Your eyesight is a little defective and infirm without your glasses?

"Answer. Yes, sir. I can read large print. I do not do it, however, without my spectacles, but I can.

"Q. Can you see the words first district on that ticket, (handing witness a ticket?)

"A. Yes, sir.

"Q. Can you see the words first district on it?

"A. Yes, sir.

"Q. Can you see the words first district on the back when folded with the printing inside?

"A. Well, I wouldn't know that unless my attention was called to it.

"Q. Could you read it if your attention was called to it?

"A. I suppose I could if my attention was called to it.

"Q. Can you, when the ticket is open, read the words first district without your glasses?

"A. Yes, sir.

"Q. When the ticket is closed now, with the printing inside, can you see by reading backwards, when your attention is called to it, the words first district; wouldn't you be willing to swear there was a D?

"A. Yes, sir."

If feeble old men could identify the ballots, when folded, which Mr. Lowe claims were rejected in the railroad towns, it is evident that it would have been impossible for such ballots as Mr. Lowe's witnesses put in evidence, and swear were used in Franklin County, to have escaped the scrutiny of the party managers.

The contestee, in his answer, denied the allegation of the contestant regarding the rejection of ballots, and the contestant has failed to prove by legal evidence that any ballots were rejected by the inspectors. We think that none of the evidence by which he attempts to prove these facts is legal. The witnesses merely give their recollection on the subject. Many of them made out returns one or more days after the election was over, and in many cases they admit that even these returns were made out from hearsay, and many of them show by their evidence that their entire knowledge on the subject is hearsay. For instance, on page 62 of the contestant's brief, he claims that 4 Lowe votes were rejected at Florence; but we think there is not a particle of proof to sustain this. He quotes the evidence of Judge Harraway, (page 908,) and Judge Harraway states that he knows nothing personally about it.

On the same page of his brief he claims that 22 Lowe votes were rejected at Green Hill. There is no legal evidence to sustain this. The witness on whom Mr. Lowe relies (William H. Hill) testifies, near bottom of page 1389, that he does not know that 22 ballots were rejected. He admits that immediately after the election he made an affidavit before Commissioner Bone that 15 ballots were rejected at that box; he admits that he knows nothing about it except what a man told him; there is no other proof regarding that box.

Again, Edward C. Lamb, page 150, testifies as follows:

"Question. Did you count these 42 ballots yourself?

"Answer. No, sir.

"Q. Then your knowledge—is it not true that your knowledge of there being 42 is simply hearsay?

"A. No, sir; I seen on their tally sheets.

"Q. And yet you swear that there were 42 votes rejected with Lowe's name on them, without ever seeing them, and without ever counting them?

"A. I seen them lying aside there when they were recounted.

"Q. Is it not true that you saw them all in a bunch?

"A. Yes, sir; when they were laying them down or counting them out.

"Q. Is it true that you examined every ballot, and saw it have on it the name of William M. Lowe?

"A. No, sir."

Such evidence as this proves nothing.

The law of Alabama (see Code, par. 288, printed page 1215 of the record in this case) provides that all rejected ballots shall be rolled up by the inspectors and labeled as rejected ballots, and that they shall be sealed up together with the other ballots, and securely fastened up in the box from which said ballots were taken when they were counted. The answer of the contestee distinctly alleged that where votes for William M. Lowe were discarded, it was so stated in the returns made by the inspectors. In no instance did the contestant put these returns in evidence, or give any reason for not doing so. Nor did he put the ballots which he claimed were rejected in evidence, nor does the record show that he gave any reason for not doing so.

Furthermore, not one of the forty-nine depositions was in any way certified by any commissioner.

None of the depositions have any certificate of any kind whatever.

It is provided in the Revised Statutes of the United States as follows:

"SEC. 127. All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify and carefully seal and immediately forward the same, by mail, addressed to the Clerk of the House of Representatives of the United States, Washington, D. C."

The notary who took the so-called depositions of the witnesses named above took, in all, the depositions of one hundred and seventy-seven witnesses, a part as testimony in chief and a part as testimony in rebuttal. He certified none of the one hundred and seventy-seven depositions, except those of J. H. Bone, W. M. Lowe, R. H. Lowe, and J. H. Sloss. His only certificate is that which (itself irregular and insufficient) is affixed to the deposition of W. M. Lowe, the contestant, on page 1263, wherein he certifies (irregularly) the depositions taken under "the notice to contestee." Under that notice, which is printed on page 1264, only the depositions of J. H. Bone, W. M. Lowe, R. H. Lowe, and J. H. Sloss were taken.

The only certificates in the entire record which refer to the contestant's testimony are as follows: Page 205, a certificate of Commissioner Thomas C. Barclay, reciting that it is the certificate to the deposition of James Jones, John Kibble, Alex. Jamar, and George Ragland, taken at Lanier's. It is dated January 26, 1881.

Page 293, the certificate of Commissioner A. C. Bentley, who certifies to the deposition of fifty-five witnesses, whose names he gives, and none of which are the names of any of these forty-nine witnesses. It is dated April 1, 1881.

On page 338 we find certificate of Commissioner Archibald W. Brooks, which mentions eleven witnesses, none of whom are included in the forty-nine referred to. It is dated May 12, 1881.

On page 402 is the certificate of Commissioner Amos R. Moody, which is attached to the deposition of seven witnesses, and it certifies to the depositions thereto attached, but none of the names are those of any of the forty-nine witnesses referred to. It is dated March 15, 1881.

On page 460 is the certificate of Commissioner E. P. Shackelford, attached to the deposition of W. W. Simmons, and on page 462 is the certificate of same commissioner, attached to deposition of Alex. Heflin. Both are dated March 11, 1881.

On page 1263 we find a certificate of Commissioner Robert W. Figg. It certifies to the depositions of the witnesses named in the notice to the contestee.

The certificate is dated March 16, 1881, and is attached to the deposition of William M. Lowe, and the notice also attached and referred to in the certificate contains only the names of James H. Bone, William M. Lowe, Richard H. Lowe, and Joseph H. Sloss. (See page 1264.)

The next certificate is that of Commissioner William T. Farley, on page 1361. It is dated March 28, 1881, and purports to be, and is, attached to the deposition of twelve witnesses, all of whom are mentioned in the certificate.

The last certificate is that of Commissioner Robert Andrews, on page 1399. It purports to be a certificate to nine witnesses, all of whom are named in the certificate.

There is no other certificate in the record, except those attached to the depositions of the contestee.

The only proof of the rejection of these votes is to be found in what are claimed to be the depositions of T. W. White, 37; W. L. Goodwin, 42; N. Davis, 47; T. B. Hopkins, 130; L. Bibb, 137; G. W. Maples, 140; W. L. Christian, 143; R. J. Wright, 148; E. C. Lamb, 150; N. Whittaker, 153; W. G. Smith, 370; A. Gandy, 373; H. A. Skeggs, 376; J. Y. Ferguson, 382; W. A. Pinkerton, 339; A. G. Smith, 343; A. C. Witty, 346; W. McCulley, 349; J. E. Seal, 394; D. N. Fike, 397; T. C. Walker, 404; W. J. Gibson, 496; W. W. Simmons, 496.

The contestee objected to these depositions at the commencement of the present session of Congress, on the ground that they were not certified according to law, and has persisted in that objection until the present time.

Again, none of these alleged depositions were reduced to writing in the presence of the notary.

The provision of the Revised Statutes of the United States is:

"SEC. 122. The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively."

The corresponding provision of the judiciary act of 1879 is in the following words:

"And every person deposing as aforesaid shall be carefully examined and cautioned and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition, or by the deponent in his presence."

The provision that the deposition must be reduced to writing in the presence of the officer is common to the contested-election law and the judiciary act of 1789. It is obvious, therefore, that decisions of the Federal courts on the provision of the judiciary act for the writing out of the deposition will be authorities in cases which may come before this committee under the corresponding provision of the statute relating to contested elections.

In Bell *vs.* Morrison, 1 Peters, 351, Judge Story, delivering the opinion of the court, held that, under section 30 of the judiciary act, a deposition is not admissible if it is not shown that the deposition was reduced to writing in presence of the magistrate.

The same doctrine is maintained by the following authorities: Edmondson *vs.* Barrett, 2 Cranch C. C., 228; Pettibone *vs.* Derringer, 4 Wash., 215; Rayner *vs.* Haynes, Hempst., 689; Cook *vs.* Burnley, 11 Wall., 659; Baylis *vs.* Cochran, 2 Johns., (N. Y.,) 416; Summers *vs.* McKim, 12 S. & R., 404; United States *vs.* Smith, 4 Day, 121; Railroad Company *vs.* Drew, 3 Woods C. Ct., 692; Beale *vs.* Thompson, 8 Cranch, 70; Shankriker *vs.* Reading, 4 McL., 240; United States *vs.* Price, 2 Wash. C. Ct., 356; Hunt *vs.* Larpin, 21 Iowa, 484; Williams *vs.* Chadbourne, 6 Cal., 539; Stone *vs.* Stillwell, 23 Ark., 444.

This objection applies to the forty-nine depositions which it is claimed were taken in Huntsville before R. W. Figg, esq., during the forty days allowed by law for contestant to take testimony in chief, and to one hundred and ten depositions which purport to have been taken at Lanier's during the period allowed by law for contestant to take evidence in rebuttal.

The record does not show that any of these so-called depositions were reduced to writing in the presence of the officer before whom they purport to have been taken.

On the contrary, the proof shows this was not done. The evidence, page 1116, shows that these so-called depositions were taken down in short-hand, and that they were afterward written out in long-hand in the absence of the officer, and page 1125 shows that important exhibits were attached to the depositions which the witnesses did not see.

The motions which are supported by affidavits should be sustained, and the forty-nine alleged depositions mentioned in said motions should be suppressed; the motion to suppress one hundred and ten alleged depositions taken at Lanier's should also be sustained, and those depositions should be suppressed.

The "Views of Mr. RANNEY" contain the following statement:

"The course pursued in this respect was manifestly irregular. But this becomes now immaterial and unimportant. The various motions made by the respective parties, as to striking out evidence, have been considered and denied, either as immaterial or not well grounded."

If this merely means that the decision of the case, on its merits, by the Committee on Elections, involves a decision of these questions of evidence, and that therefore the duties of the committee on the subject are ended, the statement is accurate enough. But if the meaning is, either that the committee has formally acted on these questions of evidence, or that action by the committee, however had, concludes the House of Representatives, so that these questions "have become immaterial and unimportant" in the House, the statement is wholly erroneous. The House is the judge on this point, as on all others involved in the case, and the materiality and importance of these questions in the House is not affected by the action of the committee.

(3.) We now proceed to the consideration of the counter-claim set up by the contestee, to the effect that 1,294 ballots cast for the contestant were illegal, not only because they contained the designations of eight offices unknown to the law, but, also, for the further reason that they were printed on such transparent paper, and with such ink and type, that the contents were visible to the inspectors and bystanders, on the outside of the folded ballots.

The statutory provision, as we have seen, is that unless the ballot is "without any figures, marks, rulings, characters, or embellishments thereon" it must be rejected. Whatever else may or may not be embraced in the meaning of the term "marks," as here used, that term evidently includes any device or combination of devices which will enable either the inspectors, when they receive a ballot and pass it from hand to hand for deposit in the ballot-box, or the near bystanders, to distinguish it from other ballots. In this sense the term "marks" may include several things or elements. It may apply to a star, cross, line, or circle, or to any other printed form, or to a series or number of forms, placed on the exterior of the ballot, so as to enable the inspectors or bystanders to distinguish it from others. The ballot would, in that case, be marked. It would not be, in the sense of the statute, "without marks." It would fall within the prohibitions of the statute.

But if, by the use of such paper and of such type and ink, on the face of the ballot, as to show the face, or a part of it, through the folded ballot, the inspectors and bystanders are enabled to distinguish it from others, then also the ballot is marked, in the sense of the statute, whether the words themselves are or are not legible on the outside of the folded ballot. It is enough if they are clearly visible, so that the ballot may be distinguished from ballots of a different kind.

The following are exact representatives of 1,294 ballots which are proved to have been cast for the contestant and counted for him, and are to be deducted from his vote. These ballots when folded are readily distinguishable by the inspectors and bystanders, not only from the ordinary legal ballot, the face of which is not visible through the paper on the reverse side, but also from each other.

[Here follow three tickets printed on tissue paper, the printing on which shows plainly through.]

These transparent ballots were used in mountain counties and precincts where the law was not well understood and where there was the least risk of detection and exposure of this cunning device for destroying the secrecy of the ballot. The following are the citations of testimony which show that 1,294 ballots of this kind were counted for the contestant at thirty-four different precincts in the district.

Page of record.	Name of witness.	Name of precinct or box.	Number illegal ballots cast for William M. Lowe.
399	R. H. Ransom	Waco	20
400	C. M. Taylor	Mountain Spring	4
401	W. M. Smith	Newburgh	38
401	P. Barker	Newburgh	-------
402	W. Burgess	Pleasant Site	60
740	A. J. Barker	Bellefont	71
742	J. F. Skelton	Hunt's Store	20
746	Robt. Skelton	Scottsboro'	157
749	F. M. Chandler	Berry's Store	85
751	N. H. Bridges	Bishop's	56
752	Wm. C. Hitch	Kirby's Mills	35
755	J. H. Young	Larkinsville	33
757	F. J. Robinson	Nashville	127
759	J. M. Reid	Collins	44
763	R. M. Seay	Hawk's Spring	38
767	J. J. Overdeer	Kash's	74
775	J. T. Gilbreath	Davis' Spring	38
807	J. H. Hundley	Mooresville	11
809	W. K. Rainey	Slough's	1
868	F. M. Reeves	Hartsell's	80
1002	J. Brown	Rock Creek	30
1004	W. C. McKenney	Wheeler's	36
1006	W. M. Turner	Cherokee	11
1017	John Askew	Saint's	50
1018	W. C. Summers	Saint's	-------
1024	Fox Delony	Leighton	3
1113	G. G. Wiggins	Hillsboro'	90
1130	O. H. Reid	Brickville	19
1132	J. M. Gray	Red Bank	10
1160	L. P. Landers	Landersville	30
	R. A. Neely	Landersville	-------
1162	M. S. Lindsey	Oakville	33
1166	W. H. Bridges	Mount Hope	154
1203	G. W. Ponder	Moulton	22
1348	O. H. P. Williams	Cherokee	36
1352	W. M. Turner	Cherokee	-------
			1,294

It is claimed that these ballots ought to be counted for Representative in Congress, if for no other candidate. This would be true if the statutory provision had been merely that such names of candidates and designations of offices as should be placed on the ballots in violation of the law should be rejected in the canvass. But such is not the provision of the statute. The statutory provision is that if the ballots are not in the form prescribed the ballots themselves shall be rejected.

It seems to us clear that these 1,294 ballots, which not only contained the designations of eight offices unknown to the law of Alabama but were also marked ballots, and, for that reason, peremptorily excluded by a mandatory law of that State, were illegally counted for Mr. Lowe, and are to be deducted from his vote.

The question here presented is a new question. It was not considered by the Committee on Elections in the Mississippi case of Lynch *vs.* Chalmers. The differences between the statutory provisions of Mississippi and Alabama, and between the ballots in the two cases, are such that a decision in one of the cases will not, necessarily, furnish a precedent for the other. The Mississippi statute is in the following words:

"All ballots shall be written or printed in black ink, with a space not less than one-fifth of an inch between each name, on plain, white printing news paper, not more than two and one-half nor less than two and one-fourth inches wide, without any device or mark by which one ticket may be known or designated from another, except the words at the head of the ticket; but this shall not prohibit the erasure, correction, or insertion of any name by pencil-mark or ink upon the face of the ballot; and a ticket different from that herein prescribed shall not be received or counted."

As we have seen, the Alabama provision is that—

"The ballot must be a plain piece of white paper, without any figures, marks, rulings, characters, or embellishments thereon, not less than two nor more than two and one-half inches wide, and not less than five nor more than seven inches long, on which must be written or printed, or partly written and partly printed, only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen; and any ballot otherwise than described is illegal and must be rejected."

The provisions of the Mississippi law applicable to the case of Lynch *vs.* Chalmers, are: (1) That the ballot shall be without any device or mark by which one ticket may be known or distinguished from another, except the words at the head of the ticket; and (2) that a ticket different from that prescribed shall not be received or counted. The provisions of the Alabama statute applicable to the case now on trial, are: (1) That the ballot must be without marks, and must contain only the names of the persons for whom the elector intends to vote, and the designations of the offices; and (2) that any ballot otherwise than as described is illegal and must be rejected. In the Mississippi case the grounds of objection to the ballots were that certain printer's dashes separated different headings of the ticket. In this case the grounds of objection are that the ballots contained the designations of eight offices unknown to the law, and that they were so marked by the use of peculiar paper, ink, and type, as to be readily distinguished from other ballots, even when folded. The differences between the two cases are too palpable to require or justify any comment.

What we have said is sufficient to show that these ballots are illegal; but there is other evidence in this case which makes their rejection still more imperative.

The evidence shows that Mr. Lowe's supporters used the marked ballots, together with violence and terrorism, to destroy secret voting.

The evidence shows clearly that the using of these ballots in the precincts where it is claimed they were rejected was for the unlawful purpose of preventing a secret ballot.

It is evident that with these ballots secrecy was impossible, and that such ballots could be identified in the hands of the voters.

It is certain that when voters are abused, terrorized, and ostracized for not voting as their leaders dictate, the weaker classes will hesitate before going to the polls with ballots different from those ordered by their leaders.

It was distinctly charged in the answer, and proved by over fifty witnesses, that the supporters of Mr. Lowe had unlawfully maintained a state of terrorism and alarm among the colored persons by threats of harm to their persons and property. (See record, pages 506, 893, 894, 895, 896, 898, 900, 902, 904, 959, 960, 961, 962, 963, 964, 966, 967, 969, 970, 999, 1000, 1001, 1002, 1020, 1021, 1022, 1023, 1024, 1025, 1066, 1068, 1070, 1072, 1075, 1076, 1079, 1081, 1082, 1085, 1089, 1091, 1093, 1095, 1098, 1102, 1109, 1111.)

This uncontradicted testimony of more than fifty witnesses, including men of all parties and of both colors, shows that by threats of bodily harm, by ostracism, and by fear and intimidation, Greenback leaders have absolutely destroyed freedom of election among the weaker class of colored persons in the eighth district of Alabama.

A colored man, page 1079, swears that if colored men had been left to their own choice nearly all would have voted the Garfield and Wheeler ticket. They would have so voted had it not been for the threats of the Greenback leaders, and this same character of evidence is found on pages 1067, 1068, 1071, 1073½, 1075½, 1081½, 1083½, 1085½, 1089½, 1092½, 1096, 1098, 1102½, 1110, 1112.

It is also in proof (see bottom of page 1095) that two colored men, Peter Walker and John Bell, attempted to become candidates for the legislature upon the Republican ticket, and these Greenback leaders drove them from the town and threatened to kill them.

Also, on this subject, see pages 1066, 1070½, 1073, 1075, 1079, 1085½, 1087½, 1089½ 1091½, 1092, 1096, 1098, 1102, 1109¾.

We might stop with the above, but in passing we will call the attention to the evidence of two of Mr. Lowe's witnesses, Wade Blankenship and William Wallace.

These men were party managers for Mr. Lowe. They testified that they required every man to carry his ballot at least a foot and a half from his body. (See bottom page 224.)

Wallace says, page 234½:

"I told it to every man. Now, I said, you hold your ticket so I can see it."

Wallace also testified, page 223½, as follows:

"Question. You thought it important to examine their wrist and see that there was nothing up their sleeves?

"Answer. Yes, sir; I did.

"Q. And you examined each one in this way?

"A. Yes, sir. I examined every one that voted the ticket.

"Q. You examined each one of the 156 colored men?

"A. Yes, sir; I did.

"Q. You examined their hands and sleeves to see that there could be no foul play?

"A. Well, I did not feel of their arms and sleeves, but I examined their wrists close before I gave them their ticket."

We think the evidence shows beyond question that the policy of the Greenback party was to prevent a secret ballot. Mr. Lowe's witnesses, supporters, and managers swear they examined the wrists of voters, and made them hold the ballot at least a foot and a half from the body to prevent the possibility of their escaping the surveillance of party managers.

This was the plan adopted with colored men, but in localities where possibly objections might be urged to so close inspection of underclothing, Mr. Lowe's managers adopted the plan of having the ballots marked so that they could without question identify the ballot in the hands of the voter.

We have examined the ballots, and cannot resist the conclusion that these ballots were issued to enable party managers to destroy the freedom and purity of the election, and to prevent secrecy of the ballot, and to place the voter under improper restraint or influence in casting his ballot.

More than a year prior to November 2, 1880, this law had been construed by an eminent judge of the State of Alabama. His decision was as follows:

Transcript.

THE STATE OF ALABAMA, *Cullman County:*

Before Hon. Louis Wyeth, judge of the fifth judicial court.

Charles Plato *vs.* Julius Damus, contest of election.

In this case Charles Plato contests the election of Julius Damus to the office of mayor of the town of Cullman, in the county of Cullman, claiming to have been elected to that office himself by a majority of the votes cast at the election held on the first Monday in April, 1879.

The respondent claims to hold the office under the certificate of election issued by the proper officers under the provisions of the "act of assembly to establish a new charter for the town of Cullman." (Pamphlet Laws of 1879, page 304, section 9.)

On examining and counting the votes it appears that fifty-four of them were cast for the contestant and twenty-seven for the respondent; of these fifty-four votes given for the contestant, fifty-two had printed on them at the top of the ballot the words "Corporation Ticket," and of the twenty-seven votes cast for respondent three had in like manner printed thereon the same words, and the question for me to decide is whether or not those words rendered the ticket on which they were printed illegal ballots and such as must be rejected.

The act approved February 12, 1879, Pamphlet Laws, pages 72, 73, requires that the ballot must be a plain piece of white paper without any figures, marks, rulings, characters, or embellishments thereon, * * * on which must be written or printed * * * only the names of the persons for whom the elector intends to vote, and must designate the office for which each person so named is intended by him to be chosen, and any ballot otherwise than described is illegal, and must be rejected.

The law under which the election now being considered was held, in section 4, Pamphlet Laws, 1879, page 305, declares "that the election provided for in this charter shall be regulated by the general State election law."

The judicial officer of the State has nothing to do with the propriety of a statute. If not void by reason of a constitutional inhibition, the judicial duty is limited to their construction and enforcement.

These ballots had more than *only* the names of the persons for whom the elector intends to vote, or the designation of the office, and must be rejected because illegal. Such is the mandate of law, and so I must declare it.

It is considered, adjudged, and ordered that the election of Julius Damus, as mayor of the town of Cullman, in the county of Cullman, be confirmed, and that the contestant pay the costs of this court.

LOUIS WYETH, *Judge, &c.*

JUNE 9, 1879.

THE STATE OF ALABAMA,
Cullman County:

I, Julius Damus, clerk of the circuit court of said county, hereby certify that the foregoing is a full and complete transcript of the decision of Hon. Louis Wyeth, judge of the fifth judicial circuit, from the records of said court in a cause decided by said judge, wherein Charles Plato was contestant and Julius Damus respondent.

And I further certify that the circuit courts of Alabama are courts of unlimited and appellate jurisdiction, and are the highest courts of the State of Alabama except the supreme court.

Given under my hand and seal of office this third day of January, 1882.

[SEAL—STAMP.] JULIUS DAMUS,
Clerk Circuit Court of Cullman County, Alabama.

The numerous authorities which the contestee cites in pages 14 to 85 of his brief conclusively show that Congress and the courts and all law-writers have uniformly held that, under such a law as that of Alabama, ballots like those now under consideration are illegal.

1st. The law of Mississippi provides that all ballots shall be "without any device or mark by which one ticket may be known or distinguished from another."

This leaves room for debate as to whether the marks on the ballots were marks by which one ticket may be known or distinguished from another.

The Alabama law provides that the ballot shall have "only the names of the persons for whom the elector intends to vote and the designations of the office;" therefore this law does not give latitude for debate on this question.

The Alabama law and Pennsylvania law (see page 21 of contestee's brief) stand alone in this, that they alone prohibit anything being on the ballots but the names of candidates and designations of the offices.

In the report of the case of Lynch *vs.* Chalmers the committee say, on page 11:

"It need, however, hardly be added that a line of carefully considered cases in the States in which such courts have undoubted jurisdiction, so far as they would apply in principle, would go a long way toward settling a disputed point of construction in any State election law. In fact it may be said that it would probably be the duty of Congress to follow the settled doctrine thus established."

On page 10:

"Where decisions have been made for a sufficient length of time by State tribunals, construing election laws, so that it may be presumed that the people of the State knew what such interpretations were, would furnish another good reason why Congress should adopt them in Congressional election cases."

And on page 12:

"Had the opinion been rendered before the election of 1880, or become one of the settled laws of Mississippi, we do not say but that it would have such weight with us that, though we might disagree with it in logic, we might feel compelled to follow it."

Now, certainly, the facts in this case bring it within the principles here expressed.

The decision of Judge Wyeth was rendered June 9, 1879, seventeen months before the election of November 2, 1880.

First. It was carefully considered.

Second. The court had undoubted jurisdiction.

Third. It had been made for a sufficient length of time; and above and beyond this, to use the language of Mr. Justice Curtis, 16 Howard, 279-287, quoted page 11 of Lynch report, it was "needful to the ascertainment of the right or title in question between the parties."

The committee in Lynch *vs.* Chalmers say:

"What we have here remarked does not, of course, apply to the marks or devices ordinarily used on tickets, such as spread eagles, portraits, and the like; those would be considered marks and devices of themselves, and not necessary in the ordinary mechanical art of printing. The use of the latter would be considered a violation of the statute in any aspect of the case, while the use of the former seems to us, in any view of the law, ought to be restricted to an intentional or manifest misuse."

We submit that this reasoning makes the Greenback ballots clearly obnoxious to the statute of Alabama.

The act amending section 274 is a remedial act. Sedgwick, page 309, says:

"The words of a remedial statute are to be construed largely and beneficially, so as to suppress the mischief and advance the remedy. It is by no means unusual in construing a remedial statute, it has been said, to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischiefs.

"Remedial statutes are liberally expounded in advancement of the object of the Legislature." (Blakeney *vs.* Blakeney, 6 Port., 109.)

"A remedial statute must be construed largely and beneficially, so as to suppress the mischief and advance the remedy." (Sprowl *vs.* Lawrence, 33 Ala., 674.)

Let us now see what was sought to be remedied by the amendment to section 274 of the code, approved February 12, 1879.

It is shown by the evidence, page 1237 of the record, that at elections prior to November 2, 1880, the Democrats used ballots substantially in form to the exhibits above, that is, the exhibits on pages 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, which have the words:

STATE AT LARGE.

District electors.

1st District—
2d District—
3d District—
4th District—
5th District—
6th District—
7th District—
8th District—

And one of which, page 1234, is almost precisely like the ballots which are rejected.

The evidence shows that at previous elections ballots were used substantially like the Weaver and Lowe and Hancock and Lowe ballots, and that the remedy sought was to prevent the use of the very ballots which the Greenback party insisted upon using.

The report of the majority even admits the correctness of our position on this subject.

We are to bear in mind these facts:

First. The election preceding and nearest to November 2, 1880, when such ballots were used, or could by any possibility have been used, was the election of November, 1876.

Second. The first Legislature of Alabama which was elected after the November Presidential election of 1876 proceeded to and did amend section 274 of the code, and did prohibit by the law they enacted the use of the very ballots which the contestant swears were used in November, 1876, and preceding elections.

This shows what was to be remedied.

We are also to remember—

Third. That Judge Wyeth construed the law on June 9, 1879, just as we construe it.

Fourth. That the contestant swears that the August, 1880, canvass was made mainly by attacking this law.

Fifth. That with all this before them, he and his party managers defied the law they had denounced, and printed ballots and placed in voters' hands ballots which were prohibited by the law of the State.

Sixth. That nearly one hundred witnesses in this case testify that the Greenback party compelled men to vote their ticket by threats and terrorism, and that forty witnesses (including men of both colors and all parties) swear that but for this system of terrorism exercised by the Greenback leaders at least half of the people who voted for contestant would have voted with the party which supported the contestee.

Considering all these things together, we see how necessary it was for contestant to have a ballot which could be distinguished by his party leaders, in order to keep the weaker classes in line and prevent them from secretly voting as they desired.

III.

LANIER'S PRECINCT, MADISON COUNTY.

The contestant, in his summary of the result of the election, rejects the official returns of Lanier's precinct, in Madison County, but at the same time counts for himself 128 votes, which he says he has proven by the depositions of witnesses. There would be no warrant of law for counting these 128 votes for the contestant, even if the fact were, as it is not, that he had successfully assailed the integrity of the returns, and had also proved by witnesses that those 128 votes were cast for him. For the law commands that the contestant shall, in his notice of contest, specify particularly the grounds on which he relies. But the notice of contest contains no allusion to any claim of these 128 votes. In truth the notice of contest does not clearly advise the contestee of any purpose, on the part of the contestant, to demand even the rejection of the Lanier returns. It embraces a charge framed in these words: "That there was fraud and ballot-box stuffing, or a false count, and the substitution of Wheeler ballots for Lowe ballots," at this precinct. It is a charge that one thing or another thing was done. That is no charge known to the law. Having made this alternative, and therefore futile charge, he fails to demand a rejection, or any other disposition of the returns. It is obvious, therefore, that under the pleadings the contestant cannot ask the House to reject these returns, or be permitted to appropriate these 128 votes.

The contestee denies that these votes are proved to have been cast for the contestant. In the first place, not one of the depositions offered to prove them is certified by the officer before whom they purport to have been taken, or by any other officer. This fact alone is a fatal objection. Furthermore the testimony offered to prove that the 128 votes in question were cast for the contestant is testimony in chief, and yet it was taken in violation of the law and against the protest of the contestee during the period fixed by the statute for taking rebutting proofs; and finally, the notary, at the instigation of the contestant, unlawfully refused to permit the contestee to cross-examine any of the one hundred and six witnesses, whose so-called depositions are printed on pages 1270 to 1333 of the record.

But these one hundred and twenty-eight depositions, lame and sickly as they are in point of competency, are, as to intrinsic character, in a still more disorderly and repulsive condition. The contestant asserts that they show that 128 votes were cast for him for Representative in Congress. But the fact is they only show that 17 votes were cast for him, whereas the returns themselves give him 56. Five of the one hundred and twenty-eight witnesses testify that they voted for William M. Lowe for President of the United States; twenty-eight testify that they did not know for what office Mr. Lowe was a candidate; seventy-seven testify they only knew by hearsay for whom they voted, and of these latter, twenty say that they did not see the faces of the tickets which they voted; and, finally, one of the one hundred and twenty-eight does not say that he voted at all at this precinct.

Let us first consider for a moment the contestant's Presidential canvass in this precinct. We shall have occasion to observe something of the quality and flavor of the proof by which he aims to impeach the precinct return.

Scip Shelby, 1290:

"Question. State all the persons you voted for, and the offices for which they were running.

"Answer. I didn't vote for any one but Mr. Lowe. Mr. Lowe was running for President.

"Q. State all the circumstances connected with the giving of the said ticket to you by the said Wallace Toney.

"A. He handed me the ticket and told me to put it in the box as he had given it to me.

"Q. State if it is not true that you do not know what ticket you voted, except from what Wallace Toney told you.

"A. It is true."

Tom Smith, 1299:

"Question. State all the names of the persons you voted for, and what offices they were candidates for, and when you voted.

"Answer. I voted for Mr. Lowe and Mr. Garfield; Mr. Lowe was running for President; I do not know what office Mr. Garfield was running for on the 2d November.

"Q. State what Wallace Toney said to you when he gave you the ticket.

"A. Handed me ticket and told me to not let it touch my body anywhere.

"Q. Was it open or folded?

"A. Folded.

"Q. State if it is not true that you don't know what ticket you voted, except from what Wallace Toney told you.

"A. It is true."

Charles Arnett, 1308:

"Question. State what time you voted last, who you voted for, and what offices they were running for.

"Answer. I voted last year; I don't know what month; I voted for Lowe for President."

Tom Abrams, 1318:

"Question. State the names of the persons you voted for, and the offices for which they were running.

"Answer. I voted for Mr. Lowe; he was running for the Presidency.

"Q. State if it is not true that you don't know who you voted for, except from hearsay; and can you read?

"A. It is true; I can't read."

Jere Lanier, 1325:

"Question. Whom did you vote for, and the offices for which they were running, and the last time you voted?

"Answer. I voted for Mr. William M. Lowe; I can't tell who else were running; Mr. Lowe was running for President; last November.

"Q. State if it is not true that you don't know what ticket you voted, except from hearsay.

"A. It is true."

It is not the right of the contestant to ask that votes cast for him as a candidate for the position of Chief Magistrate shall be counted as votes cast for Representative in Congress.

Let us now turn to the depositions of the voters who swear that they did not know for what office the contestant was a candidate.

Bill Owens, 1275:

"Question. State the names of all the persons you voted for on said day, and the offices for which they were running.

"Answer. I voted for William M. Lowe; I did not vote for any one else; I don't know what office he was running for.

"Q. Is it not true that you do not know what ticket you voted on said day, except from what Wallace told you?

"A. Yes, sir."

Ruben Lankford, 1276:

"Question. When was the last time you voted; for whom did you vote? Name all the persons you voted for, and the offices for which they were running.

"Answer. I voted in November; I voted for Mr. Lowe; I do not know any other names, nor what office Mr. Lowe was running for.

"Q. Do you know, except from what Wallace told you, what ticket you voted and who you voted for?

"A. No, sir.

"Q. Was your ticket open or folded when he gave it to you?

"A. Folded."

Nat Donegan, 1281:

"Question. Do you know what office Mr. Lowe was a candidate for?

"Answer. I don't know.

"Q. Please state if it is not true that aside from what Wallace Toney told you, you do not know what ticket you voted and for whom you voted on November 2, 1880?

"A. It is.

"Q. Can you read; and was that ticket open or folded when said Toney?

"A. Folded; cannot read."

Anthony Lipscomb, 1284:

"Question. Do you know what office Colonel Lowe was running for?

"Answer. No.

"Q. Would you recognize the ticket you voted that day?

"A. I have no knowledge except what I was told.

"Q. It is true, then, is it not, that you do not know of your own knowledge; that is to say, aside from what you were told by said Wallace Toney, what ticket you voted on said day, or who you voted for?

"A. Yes.

"Q. Was said ticket opened or folded?

"A. Folded."

William Mendum, 1287:

"Question. State the names of all the persons you voted for, and the offices for which they were candidates, and when you last voted.

"Answer. I voted for Garfield and Arthur and Willie Lowe. I don't know what offices they were running for. November 2, 1881.

"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you?

"A. It is true."

C. Anderson, 1287:

"Question. State the names of all the persons you voted for, and for what offices they were candidates, and when you last voted.

"Answer. No person but Mr. Lowe. I don't know what office he was running for. I voted in November, 1880.

"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you.

"A. It is true."

W. Weeden, 1288:

"Question. Who did you vote for, and when did you vote, and for what offices were the persons running for?

"Answer. I voted for Colonel Lowe; do not know what office he was running for; don't know anybody else that was running.

"Q. Is it not true that you do not know what ticket you voted, except what said Toney told you?

"A. It is true."

B. Lightfoot, 1289:
"Question. State the names and offices for whom you voted.
"Answer. Mr. Lowe was the only one. I don't know what office he was running for.
"Q. Is it true that you do not know what ticket you voted, except from what said Toney told you?
"A. It is true."
Cal. West, 1291:
"Question. State the names of all the persons you voted for and the offices for which they were candidates.
"Answer. I voted for Mr. Lowe; I don't know what he was running for.
"Q. Is it not true that you don't know what ticket you voted, except from what Wallace Toney told you?
"A. It is true."
Charles West, 1291:
"Question. State the names of all the persons you voted for on said day and the offices they were running for.
"Answer. I don't remember but two, Mr. Lowe and Garfield. Garfield was running for Congress, Lowe was running for the same.
"Q. Is it not true that you don't know what ticket you voted except what Wallace Toney told you?
"A. It is true."
Cagy Kelly, 1292:
"Question. State the names of the persons you voted for and the offices for which they were running.
"Answer. I voted for Mr. Lowe and nobody else. I don't know what office he was running for.
"Q. State if it is not true that you did not know what ticket you voted except what Wallace Toney told you.
"A. It is true."
R. Farley, 1293:
"Question. State all the names of the persons you voted for and the offices for which they were candidates.
"Answer. Mr. Lowe and Garfield, Greenbacker.
"Q. State if it is not true that you don't know what ticket you voted at the last election.
"A. It is true. I voted the ticket I got from Toney, and don't know what it was."
John Brown, 1294:
"Question. State the names of all the persons you voted for, and the offices for which they were running, and when you last voted.
"Answer. No one but Mr. Lowe that I know of; I don't know what office he was running for; I voted last in November, 1880.
"Q. State if it is not true that you don't know what ticket you voted for, except what Wallace Toney told you.
"A. It is true."
John Landman, 1294:
"Question. State the names of all the persons you voted for, and the offices for which they were running, and when you last voted.
"Answer. Lowe was one and Garfield; I don't know what offices they were running for.
"Q. Is it not true that you don't know what ticket you voted, except from what Wallace Toney told you?
"A. It is true."
R. Smith, 1295:
"Question. State all the names of the persons you voted for, and the offices for which they were candidates, and when you voted last.
"Answer. Lowe was one, and Garfield another. I don't know what offices they were running for; I voted in November.
"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you?
"A. It is true."
Tyson Moore, 1297:
"Question. State the names of all the persons you voted for, and the offices for which they were candidates, and when you last voted.
"Answer. William M. Lowe, Garfield and Arthur; Garfield was running for President; I don't know what Arthur or Lowe was running for; I voted in November.
"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you?
"A. It is true."
G. Chapman, 1301:
"Question. State the names of all the persons you voted for, and the offices for which they were candidates, and the last time you voted.
"Answer. I can't state the names of all I voted for; I voted for Mr. Lowe for one; I don't know what office he was running for."
G. Adams, 1306:
"Question. State the names of all the persons you voted for, and the offices for which they were candidates. What time did you vote?
"Answer. Mr. Lowe is the only one I can recollect. I don't know what office he was running for. I voted in November.
"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you?
"A. It is true."
Caleb Toney, 1307:
"In November I aimed to vote for William M. Lowe; I didn't read the names of all I voted for; I don't know the offices for which they were candidates.
"Question. Can you read?
"Answer. No, sir.
"Q. State if it is not true that you don't know what ticket you voted except from what Wallace Toney told you?
"A. It is true."
Wash. Lundy, 1308:
"Question. When did you vote; for whom did you vote? State the names of all the men you voted for and the offices for which they were candidates.
"Answer. I voted last year; I don't remember the month; I aimed to vote for Lowe; I don't remember the names of any except Mr. Lowe; I don't know what office he was running for.
"Q. Is it not true that you don't know what ticket you voted on November 2, 1880?
"A. It is."
Richard Toney, 1309:
"Question. State when you voted last, who you voted for, and for what offices they were running.
"Answer. November; I voted the ticket Wallace Toney gave me; I don't know what was on it."
Jim Lankford, 1313:
"Question. Is it not true that you don't know who you voted for?
"Answer. I know nothing except what I was told.
"Q. State the names of the persons you voted for and the offices for which they were runnning.
"A. I voted for Mr. Lowe. I don't know what office he was running for.
"Q. Can you read?
"A. No, sir."
Mingo Lanier, 1317:
"Question. State the names of all persons you voted for and the offices for which they were candidates.
"Answer. I just voted for Lowe; don't know what he was running for.
"Q. How do you know what kind of ticket it was?
"A. I don't know, because I could not read."
Abram Brown, 1322:
"Question. State who you voted for and the offices for which they were running.
"Answer. Mr. Lowe; I don't know what office he was running for.
"Q. How do you know who you were voting for?
"A. The man who handed it to me said it was a United States ticket.
"Q. Is it not true that you do not know what kind of a ticket you voted?
"A. It is true only so far as I was told."
Ben Lewis, 1327:
"Question. State who you voted for and the offices for which they were candidates, and when you voted last.
"Answer. I voted for Lowe; I don't know that I voted for any one else; I don't know what office he was running for; I don't know."
B. Eldridge, 1273:
"Question. State where you voted last, who you voted for, and for what offices they were running.
"Answer. November; Lowe; don't know for what offices they were running for."
"Q. Is it not true you do not know what ticket you voted except from what Wallace told you?
"A. It is."
Anthony Wilkins, 1277:
"Question. Do you know what office Colonel Lowe was running for, and whether anybody else was running on the ticket you voted?
"Answer. I do not know."
A. Echols, 1285:
"Question. Do you know what office Colonel Lowe was running for?
"Answer. I didn't know.
"Q. Would you recognize the ticket you voted on that day?
"A. Yes.
"Q. How would you know it?
"A. By the difference of the tickets.
"Q. Please tell me what that difference is.
"A. I judge by the leading man that gave me the ticket.
"Q. Was the said ticket handed to you folded or unfolded?
"A. Folded.
"Q. You don't know, then, from your own personal knowledge, what ticket it was he gave you and who you voted for?
"A. I know nothing but what was told me."

We submit that it is not the right of the contestant to demand that the votes of these men, who swear they do not know for what office he was a candidate, shall, on their testimony, be counted for him as Representative in Congress.

Next comes the procession of 77 colored Republicans who only knew by hearsay whether they voted for the Greenbacker Lowe or the Democrat Wheeler. The following is a statement of their names and of the pages on which their testimony is to be found. Twenty testify that their tickets were handed to them folded up, and they only knew their contents by hearsay, namely:

Fennell, 1264; Lanier, 1266; Fennell, 1268; Davis, 1270; Law, 1277; Holding, 1278; Horton, 1278; Johnson, 1279; Holding, 1279; Williams, 1280; Wiggins, 1281; Jones, 1282; Chapman, 1283; Holding, 1286; Lanier, 1309; Toney, 1309; Fennell, 1320; Rice, 1323; Taylor, 1333; Love, 1339.

Fifty-seven testify that they only knew by hearsay for whom they voted:

Holmes, 1269; Horton, 1271; Erwin, 1271; Ware, 1272; Toney, 1273; Mason, 1274; Gowens, 1274; Lanier, 1290; West, 1291; Walbridge, 1292; Farley, 1293; James, 1295; McVay, 1296; Holding, 1297; Slaughter, 1298; Jamar, 1299; Lundy, 1300; Thompson, 1300; Patton, 1301; Taylor, 1302; Johnson, 1303; Toney, 1304; Miller, 1306; Ragland, 1307; Martin, 1310; Hunter, 1311; Madkins, 1311; Caver, 1312; Watkins, 1313; Dandridge, 1314; Rodgers, 1314; Madkins, 1315; Kelly, 1315; Robinson, 1316; McDonald, 1316; Robertson, 1317; Beadle, 1318; Holding, 1319; Kelly, 1319; Jordan, 1321; Turner, 1322; Bond, 1323; Smith, 1323; Smith, 1324; Lanier, 1325; Tate, 1325; Kibble, 1326; Gladdis, 1327; Harbert, 1329; Clay, 1330; Kibble, 1331; McCrary, 1331; Scruggs, 1332; Jordan, 1333; Ragland, 1335; Wiggins, 1336; Toney, 1338.

The attempt to impeach the returns of Lanier's precinct, and to gather up for the contestant 128 votes by means of these depositions, is a failure. If the contestant had in his notice of contest laid a foundation for claiming and proving these votes; if he had in fact proved them; if his depositions had not been inadmissible because not certified; if they had not been rendered inadmissible by the refusal of the notary, on the motion of the contestant, to permit the contestee to cross-examine the witnesses, then the contestant might have some ground on which to stand. But instead of proving that 128 votes were cast for him, he has only proved that 17 were cast for him, that is to say, he has proved 39 less than the number (56) given him by the precinct returns. The result is that instead of sweeping away the entire returns and then gathering up for himself 128 votes outside of the returns, so as to make the vote of Lowe 128 and for Wheeler none, he has reduced his own vote from 56 to 17, leaving for Lowe 17 and Wheeler 142.

In support of his attack on these polls, the contestant asserts that the inspectors were all Democrats.

But the requirement of the statute is that the county judge shall appoint "three inspectors for each place of voting, two of whom shall be members of opposing political parties, if practicable." This relates only to the original appointments. There is a further provision for a selection, by the inspectors themselves, to fill a vacancy at the polls. But there is no requirement, express or implied, that, in filling such a vacancy, the inspectors shall look to a representation of opposing political parties on the board.

Now, the provision for the original appointments of these inspectors is not mandatory, but is merely directory. There is no provision that the election shall be void upon failure to comply with the requirement. The fact that the observance of the requirement is made to depend on the practicability of making such appointments, of which practicability the appointing power must of course be the judge, negatives its mandatory character. But then, aside from that, there is in the nature of the provision nothing to justify the rejection of a return for the reason that the county judge failed to give the opposing political parties representation on the board of inspectors.

Mr. McCrary correctly states the general rule, in sections 126 and 200, as follows:

"If, as in most cases, the statute simply provides that certain acts or things shall be done, within a particular time, or in a particular manner, and does not declare that their performance is essential to the validity of the election, then they will be regarded as mandatory if they do, and directory if they do not, affect the merits of the election.

"Unless a fair construction of the statute shows that the Legislature intended compliance with the provisions in relation to the manner to be essential to the validity of the proceedings, it is to be regarded as directory merely."

But then, whether the provision for the original appointment was, or was not, a mandatory requirement that the opposing political parties should be represented on the board, it is certain that the provision for filling vacancies at the polls embraces no requirement, direct or indirect, express or implied, that the vacancies shall be so filled as to secure representation to the opposing political parties on the board of inspectors.

So much for the law. Now for the fact. The fact is that Horton, the inspector against whom the complaint is aimed, had long been a Republican, and there is no proof showing or tending to show that he would not have voted for a Republican candidate for the office of Representative in Congress at this election if there had been such a candidate. The fact that he did not vote for the contestant affords not the slightest evidence that he was not a Republican.

It is true that the contestant's witness, Hertzler, says, on pages 178 and 180:

"Question. Did Frank Horton try to get people to vote the Democratic ticket?

"Answer. No, sir. Frank Horton, I thought, was a Republican, but from his actions I don't know he was anything; he just simply sat there and didn't say anything. I have only found out since that he was a Democrat.

"Q. How did you find out he was a Democrat since the election?

"A. I found out by my neighbors that Frank Horton was a Democrat.

"Q. Was it not generally understood before the election that he was a Republican?

"A. Before the election I didn't know him at all.

"Q. You are pretty well satisfied that the charge against Frank Horton is untrue?

"A. Yes, sir. The box was not tampered with while the election was going on.

"Q. Have you any information that would lead you to believe that Judge Richardson, or the sheriff of this county, or the clerk, had any intimation that Frank Horton was not a sound Republican?

"A. No, sir; I don't.

"Q. Have you any reason to believe, except the charges that other negroes bring against Frank Horton, that he is not a Republican?

"A. Well, I don't understand you; well, I have no reasons that he is not a Republican. He is a Democrat, is what they tell me. I know nothing but what they tell me."

But J. F. Lanier says, on page 561:

"Question. Is it true that all the inspectors here are avowed Democrats?

"Answer. I believe that Captain High and Mr. Baldridge are Democrats, but Frank Horton has acted with the Democrats in the last two elections, but always claims to be a Republican."

And on page 563 B. C. Lanier says:

"Question. What is your knowledge of Frank Horton's politics?

"Answer. That he is a Republican, but has acted with the Democrats in the last two elections."

It is also suggested, as a ground for the impeachment of these returns, that there were eleven more ballots than voters.

Now, the fact is that the ballot-box did contain 11 more tickets than the poll list contained names, and the inspectors deducted 9 from Wheeler's vote and 2 from Lowe's, because 9 Democratic tickets and 2 Republican tickets were folded. This is shown on page 197 of the record.

The law of Alabama does not authorize inspectors to destroy supernumerary ballots before counting out the votes cast for the several candidates. In this respect it differs from the laws of many other States. At the close of the polls the votes for the rejected candidates were therefore counted, and the statement of votes printed on pages 196 and 197 made out first. Afterward the number of votes was compared with the number of voters, and the supernumerary ballots were deducted from the vote of Lowe and Wheeler respectively. The proof of this is to be found on page 177 of the record.

The law requires the inspectors to send up the lists of votes and voters, duly certified. They obeyed the law in this case. The lists are printed on pages 196 and 197 of the record. They show that the voters' names aggregated 188, and that the votes in the box aggregated 199; that the excess of votes over voters was 11; that the votes in the box numbered 57 for Lowe and 142 for Wheeler; that they deducted 2 of the supernumerary ballots from Lowe's vote, and 9 from Wheeler's, and that the vote, so counted, stood: for Lowe, 55, and Wheeler, 133. But the county canvassers overlooked the last paragraph of this statement, and counted for Lowe 56, and for Wheeler 142. These facts deprive the contestant of one vote and the contestee of nine. But they have no other effect on the case.

The deposition of William Wallace, alias Wallace Toney, is offered to prove that 128 votes were cast for the contestant, and also to impeach the returns. His deposition is inadmissible, for the reasons which exclude the others. But he is himself impeached by W. F. Baldridge, on page 549, and by W. E. Jordan, on page 566. Baldridge's character is shown to be reliable by the contestant's witness, Hertzler, on page 179. The contestant afterward examined one hundred and twenty-six witnesses, and made no attempt to vindicate the character of Wallace.

In support of his attack on these returns the contestant also charges that there was delay in the opening of the polls and in the appearance of the registrar. Hertzler's assertions on this point are overwhelmingly answered by the contestee's witnesses, Baldridge, High, J. F. Lanier, D. C. Lanier, and Jordan.

J. Hertzler testifies, page 174:

"Question. Why were not the polls opened at that box sooner?

"Answer. They were not opened on account of the registrar not being there, and there was a difficulty among the inspectors as to the appointing a registrar. Mr. Baldridge, one of the inspectors, said that he wouldn't open the polls unless the registrar was there, while the others claimed that they could appoint a registrar; we had the code there, which read that if the assistant registrar wasn't there the inspectors could appoint a registrar who may qualify for that day, and that word Mr. Baldridge, the principal inspector, claimed that he didn't know that any one there could qualify; that that word meant—he held that word meant—that he would have to go before the justice of the peace or the registrar who was in Huntsville.

"Q. Is it not true that you endeavored to get the inspectors to open the polls before they did open them?

"A. Yes, sir; we tried to get the inspectors to appoint a registrar and qualify him until the registrar came that was appointed; that Mr. Baldridge objected to; said that it could not be done, and finally Mr. Burwell Lanier, sr., the returning officer, said that if Mr. Baldridge, or any of the inspectors, appointed a man, that he would be responsible; that it was right, and then Mr. Baldridge did appoint Mr. McDonnell and put him right to work, but he was not qualified at all.

W. F. Baldridge, 548:

"Question. State where you were on November 2, 1880; and if you held an office that day, please state it.

"Answer. I was at Lanier's precinct, Madison County; was one of the inspectors.

"Q. What time did the polls open, or what time were they opened?

"A. The polls were opened formally a few minutes after eight o'clock.

"Q. Were the polls opened by proclamation?

"A. They were.

"Q. Was there any delay in voting after the polls were opened?

"A. There was about two hours.

"Q. What caused the delay?

"A. The registrar was not there, and it became necessary to appoint one; and after examining the code of Alabama I found that a registrar could be appointed after ten o'clock. After consultation with the other inspectors we appointed one.

"Q. Who was appointed, and by whom was he appointed?

"A. After applying to, and requesting George Allen, William Allen, and John Jordan and others, including Frank Hertzler, I finally obtained the services of Archibald McDonald to act as registrar.

"Q. Did any one send for Wm. B. Matkins? If so, who sent for him and when did you send?

"A. William B. Matkins being the regular appointed registrar, and not being present, I did, about nine o'clock, send one Napoleon Powell to the residence of said Matkins to ascertain the reason of his non-attendance. He lives about two and a half miles from Lanier's.

"Q. Do you know why W. B. Matkins did not come to Lanier's when the polls opened?

"A. He informed me that he had gone to Pond beat the day before; that his horse got loose, and was unable to get home that night, was the reason for his non-attendance at the polls in time."

W. H. High, one of the inspectors, 554; J. F. Lanier, the United States deputy marshal, 559; B. C. Lanier, 563, and W. E. Jordan, 565, corroborate the statements of Baldridge.

The contestant, in further support of his attack on the integrity of the Lanier returns, charges that twisted ballots were voted, and that the box was removed and tampered with before the votes were counted.

It is true that the law of Alabama requires the inspectors to proceed with the precinct canvass as soon as the polls close. But the facts were that it was not practicable to make the precint canvass in the open blacksmith shop, where the election was held, for neither lights nor fire could be maintained in the shop. The inspectors were unable to secure the use of Lanier's store, which was the building nearest to the blacksmith shop, for the purpose of making the canvass, and they were unable to obtain the use of Lanier's house until after the family had taken supper.

Hertzler's statements on this point are completely met by Baldridge, High, Lanier, and Kibble.

W. F. Baldridge says, 548, 549, 551:

"Question. What kind of a house was the election held in?

"Answer. A blacksmith shop without any floor; the planks were put on upright and were secured so as to leave open cracks between them; the cracks have never been covered with strips; it has a large double door reaching from roof to ground. We could not have any light at all when the wind was stirring, and we could not have any fire on account of the smoke, there being no fireplace except the furnace used by the blacksmith; we tried in the morning to have fire, but had to let it go out.

"Q. Would it have been practicable or even possible for you to have counted out the ballots in that blacksmith's shop that night?

"A. It would not have been practicable or possible from the fact that we could not have light or fire, and it was cold, too cold to stay in there without fire.

"Q. Was there any other shelter which you could have obtained for holding the election than the place where you did hold it?

"A. There was not.

"Q. Did you count out the ballots at the most convenient place near the place where the election was held?

"A. Mr. B. C. Lanier's house was the most convenient place we could get, and he was the returning officer for said election.

"Q. Who were present when the ballots were counted out?

"A. John Hertzler, the supervisor; B. C. Lanier and James McDonald, clerks; W. E. Jordan, deputy sheriff; William M. High, Frank Horton, and myself, inspectors; and Aleck. Kelly, who was the only one present that was not an officer.

"Q. Who called out the votes?

"A. William M. High and myself.

"Q. State how you found the ballots in the box, and state whether or not you found any ballots rolled or twisted together.

"A. There were no ballots found in the box that were rolled or twisted together. There were in two or three instances two and three ballots together, not rolled or twisted, but in a condition as if they might have slipped together in the shaking the box. With one exception there were two ballots folded together that indicated they were voted together, and never more than three were found together.

"Q. State the position of the three ballots which you say you found together.

"A. They were folded separately, and might have slipped together in shaking the box.

"Q. Were the three ballots you refer to as being found together in such a condition that they would fall apart without unfolding them?

"A. Those that I took out could have done so.

"Q. Were or not any ballots found together making such a bulk that they could not easily have been passed through the hole in the box through which the ballots were passed as the voting took place?

"A. There were none.

"Q. You stated that you found two ballots in the box which were folded together. Please state what name was on these two tickets for Congress.

"A. The ballots to which I have referred were folded together closely three times, and they were Lowe ballots. There were other ballots that were folded so that they might have been voted together.

"Q. Whose name for Congress was on the other ballots you refer to as being in a condition indicating that they might or might not have been voted together?

"A. Wheeler's name was on them in two or three instances, and Wheeler's name was on the three ballots which I have named as being found together.

"Q. Do I understand you to say that the only instance when the votes were folded together so closely as to make it appear that they were certainly voted together was the instance you mention of the two Lowe ballots?

"A. It is because it was the only instance in which they could not have slipped together in the box. I refer to those that I took out myself. I took out probably more than half.

"Q. If such statement has been made, that there were found in the box six or seven ballots rolled or twisted together, please state if said statement was true or false.

"A. It is false."

W. M. High, 555, 556, 557, 558:

"Question. What kind of a house was the election held in?

"Answer. A blacksmith shop. It is a house constructed of planks set up endwise, running from roof to the ground, with good large cracks between the planks, with large folding-doors that extended from the roof to the ground—no floor, no place for fire, only a forge, and was very disagreeable.

"Q. Would it have been practicable or even possible for you to have counted out the ballots in that blacksmith shop that night?

"A. No, sir; I think not, from the fact that the wind was blowing, and we could not have kept a lamp or a candle burning during the time.

"Q. Was there any other shelter which you could have obtained for holding the election than the place where you did hold it?

"A. None that I know of.

"Q. When the polls closed why did you not immediately count out the ballots?

"A. Because we could not count them in the house in which we held the election and could get no other place until after supper.
"Q. What buildings are there in the vicinity of Lanier's voting place?
"A. The blacksmith shop in which the election was held; John F. Lanier's store, about fifty yards from the shop; Mr. Lanier's residence, about two hundred and seventy-five yards from the shop. These were the only buildings, except some cabins and out-houses and gin-house. The nearest other buildings are nearly a mile off, except a church, which is within one-half mile of the place.
"Q. What place did you succeed in getting in which to count out the ballots?
"A. Mr. Lanier's parlor.
"Q. How did you happen to go there?
"A. By invitation. Mr. Lanier proposed if we would take supper with him that we could use his parlor afterward in which to count out the votes.
"Q. Why did you not come back to the store to count out the ballots?
"A. Because Mr. John F. Lanier said that we had had the use of his storehouse all day, and it was unreasonable to ask it that night; the registrar had used it.
"Q. Was not Mr. Lanier's house the next nearest place where the votes could have been counted out?
"A. It was.
"Q. Where did you leave the ballot-box when you went to supper?
"A. In the back or side lock-room of Mr. John F. Lanier's store.
"Q. Who suggested your putting it there?
"A. Mr. Hertzler, I think.
"Q. Did you lock up the box in that room?
"A. I locked the door of the room after I put the box into it.
"Q. Who was with you when you locked the box in that room?
"A. Mr. Hertzler.
"Q. Did you go into the room to put the box into it?
"A. I did not; I reached in and set the box upon a barrel beside the door.
"Q. What did you then do?
"A. I locked the door, and soon after myself, Mr. Hertzler, B. C. Lanier, sr., J. S. McDonald, and, I think, B. C. Lanier, jr., and perhaps some others, went up to Mr. Lanier's to supper.
"Q. Who kept the key to the side room into which you put the ballot-box?
"A. I did.
"Q. What kind of a lock and door did the side room have; was it a substantially built door and a good lock, or what were they?
"A. It is a strong lock and door.
"Q. Was there any other way to get into that room except through that door?
"A. There was another door through which freight was passed into the room, and which fastened on the inside with a bar, and could not be entered from without, except being first opened on the inside.
"Q. Whom did you leave in the store when you went to the house?
"A. Mr. John F. Lanier and several negroes.
"Q. After supper, what did you do?
"A. Mr. Hertzler, myself, Mr. B. C. Lanier, sr., and others came down into the store together. I unlocked the door of the side room and took out the ballot-box, and we went back to the parlor and counted out the votes.
"Q. Did you find the ballot-box in precisely the same position as you left it?
"A. I did.
"Q. Do you think it possible that the ballot-box could have been tampered with while you was at supper?
"A. No, sir; I do not.
"Q. Do you know John F. Lanier?
"A. I do, sir.
"Q. What is his standing in this community?
"A. It is good.
"Q. From your knowledge of the character of John F. Lanier and his standing in this community, would you believe that he would be guilty of any dishonorable thing about elections?
"A. I would not.
"Q. State who went to Mr. Lanier's parlor with you.
"A. Mr. Hertzler, William F. Baldwin, Frank Horton, B. C. Lanier, jr.; J. S. McDonald, Walter Jordan, and Alex. Kelly. If there were any others, I don't remember them.
"Q. State who first opened the box after the polls were closed.
"A. Myself or Mr. Baldridge; I don't remember which.
"Q. Where was the box when it was opened?
"A. On a table in Mr. Lanier's parlor.
"Q. Who were present when the vote was counted?
"A. Wm. F. Baldridge, Frank Horton, John Hertzler, Walter Jordan, B. C. Lanier, jr.; J. S. McDonald, Alex. Kelly, and myself.
"Q. State how you found the ballots in the box, and state whether or not you found any ballots rolled or twisted together.
"A. The box, as I remember, was nearly full. I remember through the day that I had to shake the box several times to get the ballots in. They would accumulate under the hole in the center of the box, and I had to shake them down, and there were no ballots found rolled or twisted together. There were several bunches of tickets found together, but there was no bunch with more than three tickets together.
"Q. You speak of three tickets being together. Were they together in such a manner as to show that they were voted together, or were they together in such a manner as would indicate that they got together in shaking the box?
"A. There were two bunches that I am satisfied were voted together—three in one and two in the other. There were others that might have been voted or may have gotten together in the box.
"Q. Was there any other bunch of three tickets together as they came out of the box?
"A. My recollection is that there were two other bunches of three tickets that were together, but not folded together.
"Q. Did you at any time find six ballots together in the box, or did six ballots at any time come out of the box together?
"A. There were not six ballots found together in the box at any time. Six ballots did not come out at any time together.
"Q. Are you perfectly certain that in no case either six or seven ballots came out of the box together?
"A. I am perfectly certain that in no case either six or seven ballots came out of the box together.
"Q. Do you know whether or not there were windows in that room, or whether the door was barred on the inside?
"A. There are no windows to the room, and I tried the door from the outside. I pushed against it, and I could not open it."

J. F. Lanier, 559, 560, 561:

"Question. Where was the ballot-box put while the inspectors were eating supper?
"Answer. In the side room of the store.
"Q. What persons brought the box to your store?
"A. I don't know who brought it to the store. Captain High brought it in.
"Q. What did he do with it?
"A. He put it into the side room and locked the door.
"Q. What did he then do?
"A. He took the key and went out of the store.
"Q. How many keys are there to your side-room door?
"A. Only one.
"Q. Is there any way to get into that side room except through the door that Mr. High locked?
"A. There is another door to the room, fastened on the inside by a bar.
"Q. Was that door which was fastened on the inside fastened that night?
"A. It was.
"Q. Was it possible for any one to have entered your side room while the ballot-box was in there except by going through the door that Mr. High locked?
"A. Only by breaking the front door.
"Q. Did any one break down the front door?
"A. They did not.
"Q. You having testified that no one broke down the front door, please say now if by any possibility your side room could have been entered except through the door Mr. High locked while the ballot-box was in there without your detecting it?
"A. No, they could not.
"Q. How long did you stay in the store after Mr. High and the other gentlemen went to supper?
"A. About half an hour.
"Q. Did anybody go into the side room during that half hour?
"A. They did not.
"Q. Did you leave anybody in your store when you went to the house to supper?
"A. I did not.
"Q. What did you do with the key to your store when you went to supper?
"A. I put it into my pocket.
"Q. Did anybody go into your store while you was at supper?
"A. They did not.
"Q. When you returned to the store who was with you?
"A. Captain High, Captain Hertzler, J. S. McDonald, B. C. Lanier, jr., B. C. Lanier, sr., and others.
"Q. Who came in and got the box?
"A. Captain High.
"Q. Did you see him unlock the door of the side room?
"A. I did.
"Q. What is Alex. Kelly's politics?
"A. He is a Republican.
"Q. If any one has stated that while you were at supper on November 2, 1880, he saw two men go into your store by the door nearest to your father's house, was such statement true or false?
"A. I am satisfied that no one went into my store while I was at supper.
"Q. Did you send anybody to guard your store while you were at supper?
"A. I did.
"Q. State who it was, and what you told him to do?
"A. It was Henry Kibble, and I told him to go down and stay about the store until I came, that I forgot to take my money out of the drawer that night.
"Q. Did Henry Kibble go into the store?
"A. He did not.
"Q. Was Henry Kibble at the store when you came down?
"A. He was.
"Q. Did you refuse to permit the officers of election to count the ballots in your store? If so, why?
"A. I did not make a positive refusal. I told them that I suspended business during the day to assist the register, and that they were making an unreasonable request of me.
"Q. If you had suspended business during the day, from what source did the money which you left in the drawer, and that you sent Henry Kibble down to look after?
"A. From sales on days previous to that.
"Q. You stated that the door opening out of the side room, which is fastened by a bar inside, was fastened while the ballot-box was in there. Have you any special reasons for remembering that that door was fastened at that particular time, or do you state it because you habitually keep it fastened?
"A. My reason is this: I had gone in there a short while before the box was put in that day and shut and fastened the door, and no one had gone in there from that time till the ballot-box was put in, nor until the next day."

H. Kibble, 569:

"Question. State your name, age, occupation, and where you lived on November 2, 1880.
"Answer. Henry Kibble; about fifty years; house and farm hand; I lived with B. C. Lanier, right here.
"Q. Did you see J. F. Lanier about supper time on the night of the election?
"A. I did.
"Q. Did he tell you to do anything?
"A. He told me just about supper time, in the yard, if I could get the chance to come to the store and set upon the fence until he could come from his supper, and to hail him when he did come, so that he might know that I had been here.
"Q. What did you do?
"A. I did come down to the fence near the corner of the store and staid there until John F. Lanier came there.
"Q. How long after J. F. Lanier told you to go to the store did you go to the store?
"A. I come right off.
"Q. How far from the store was you when he told you to go to the store?
"A. About two hundred yards.
"Q. Did anybody go into the store while you was there?
"A. No, sir.
"Q. Are you certain about that?
"A. Yes, sir.
"Did you hear any noise in the store or see any light in the store while you was there?
"A. I did not."

One explanation of the large vote cast for the contestee at this precinct is that many colored Republicans, having no Republican candidate for Congress, preferred the contestee to the contestant. This is shown by the proofs.

J. Hertzler, a witness for contestant, 183, 188:

"Question. I believe you stated yesterday that while the election was going on a crowd of colored men came up and voted, and that it was rumored or stated that the leader of these colored men had sold out, did you not?
"Answer. I so understood the next day.
"Q. You mean, do you not, by selling out, that this colored man had gone back upon the Republican party?
"A. That is what I understood; that in that way this majority was brought about.
"Q. Then on the next day after the election you understood that this majority was brought about by a colored man inducing an entire club to vote the Democratic ticket?
"A. Yes, sir.
"Q. Isn't it true, Mr. Hertzler, that you would think, from your knowledge of colored men, that they would disposed to secrete the fact of having voted the Democratic ticket if they had been censured for it?

"A. Well, I expect they would, likely.
"Q. It is true, too, of your knowledge of the colored men, that very many of them have a very imperfect idea of the sanctity of an oath?
"A. Yes, sir."
P. McDaniel, a witness for contestant, 212:
"Question. It is true, is it not, that any colored man who wanted to change his ticket could do so as he passed through the little room before he got to the polls?
"Answer. After he entered the door, why, if he saw cause to change and was mean enough, he could change right in the presence of the officers there; he didn't change in our presence, though, where we could see.
"Q. You say, then, if he was mean enough to do it he could change after he got in the room?
"A. After he entered the door.
"Q. And when they got in that room most of them staid some five minutes, did they not?
"A. Yes, sir.
"Q. It is true, is it not, that some colored men voted the Democratic ticket, and one or two admit it, and the other men who voted the Democratic ticket are apt to deny it?
"A. Well, I don't know, sir, of any one that we gave tickets voted the Democratic ticket, and if they did it is not known to the general run of colored people. Any one that voted the Democratic ticket the officers know could not have voted after they entered the room without changing inside the door.
"Q. Is it not true that there is a good deal of feeling expressed by the colored men down there about men who vote the Democratic ticket and then conceal it?
"A. Yes, sir.
"Q. Is it not true that women have actually threatened to leave their husbands because they were suspected of voting the Democratic ticket?
"A. Yes, sir; I have heard of the like.
"Q. Is it not true that in those clubs there has been a good deal of talk, and among the members of those clubs a good deal of talk about men of the colored race who were understood to have voted the Democratic ticket and concealed it?
"A. Yes, sir.
"Q. Don't you think some of them are sorry for it?
"A. I don't know. A man that is mean enough to do anything of that kind I can't tell hardly when he is sorry."
W. Wallace, a witness for contestant, 222, 223:
"Question. Were these men who said they would hold their tickets a foot and a half from their body who had been suspected of voting the Democratic ticket on the sly?
"Answer. They were men who voted the Democratic ticket in August.
"Q. And they had been censured by the other colored men for deserting their race in August, had not they?
"A. What do you mean by censured? Yes, sir; they had been laughed at. I don't know that they had rated them in any way, though they had been laughed at.
"Q. Then, to fully understand the matter, the men who held out the tickets a foot and a half from the body were men who voted the Democratic ticket in August, and they did it—that is, they held out their tickets in November to show you that they voted the Republican ticket in November?
"A. They done that to prove that they were true Republicans; that is, all men did.
"Q. Did every man take his ticket in his left hand or right hand?
"A. In his right hand.
"Q. Did you examine his hand and sleeve to see that there was no other ticket there?
"A. Well, they would open their hand. I did not examine their sleeve, but their coat was so short I could see their wrist and see there was nothing else in their hand.
"Q. You thought it important to examine their wrist and see that there was nothing up their sleeves?
"A. Yes, sir; I did.
"Q. And you examined each one in this way?
"A. Yes, sir; I examined every one that voted the ticket.
"Q. You examined each one of the 156 colored men?
"A. Yes, sir; I did.
"Q. You examined their hands and sleeves to see that there could be no foul play?
"A. Well, I did not feel of their arms and sleeves, but I examined their wrists close before I gave them their ticket.
"Q. You did all this because you had very little confidence in these men?
"A. I had confidence in them, but I did it to be satisfied in my own mind that they did vote the Republican ticket.
"Q. If the Democratic ticket they had had been rolled up very close they could have secreted it so you could not see it, could not he?
"A. Every man held his hand open and showed me that he had no ticket before he asked for mine."
A. McCalley, 506:
"Question. State your name, occupation, and if you are a colored man.
"Answer. Alfred McCalley; forty-seven years of age; occupation, minister of the gospel and a farmer; colored man.
"Q. State if you was a delegate to the Democratic convention held in Decatur last August which nominated a candidate to represent this district in Congress.
"A. I was.
"Q. What other colored men, if any, from this county were delegates to that convention?
"A. W. H. Councill and Anderson Critz.
"Q. Were there many colored men who were earnestly advocating the Democratic cause in the November election?
"A. There were.
"Q. About how many voted the Democratic ticket at Lanier's Store in the November election?
"A. I can't state the exact number, but think there were a good many.
"Q. Do you know of any acts of terrorism to prevent colored men from voting the Democratic ticket in the last November election or preceding thereto? If so, state what they are.
"A. I do. I know that colored men are generally ostracized if they vote the Democratic ticket. Essex Lewis was turned out of the Cumberland church because he voted the Democratic ticket, and I have been ostracized on that account. The elder of the church told me that neither Essex Lewis nor I should ever be received at his house again since we were going to vote the Democratic ticket. The pastor of the church invited me to assist him in administering sacrament at Poplar Hill. I went to do so. After I had read a passage of Scripture and prayed and got up to announce my text a confusion ensued and many of the congregation departed, saying that they would not stay to hear a 'Democratic nigger' preach. This was since the election.
"Q. Please state if you went to Hartsell's to make a speech in September last in the interest of the Democratic party.
"A. I did.
"Q. Please state what occurred.
"A. I was asked what party I was advocating. I said the Democratic party. Then they would not permit me to speak.
"Q. Who was it that would not allow you to speak?
"A. The colored people.
"Q. Did you know who they were?
"A. I did not. I only know that there was a large portion of them who would not permit to speak.
"Q. Did they use any threats against you if you tried to speak?
"A. They did. They said if I got up to speak that they would mob me.
"Q. What did you do?
"A. I took the four o'clock train and returned to Huntsville.
"Q. Why do you think that a great many colored men voted the Democratic ticket at Lanier's Store in the November election?
"A. There are a great many colored men who favor the Democratic party, and will aways vote that ticket but for the ostracism and terrorism practiced by the Republicans or Greenbackers."

Another explanation of the result is that Lanier's precinct was carved out of Triana and Whitesburgh precincts after the August election and before the November election of 1880, and the aggregate Democratic majority at the two precincts in August was 169, whereas at the November election the aggregate result was a Democratic minority of 222. This shows not a Democratic gain, but a Democratic relative loss of 391 votes at the three precincts in November.

The vote in August stood as follows:

Precincts.	Democratic.	Opposition.
Triana	350	227
Whitesburgh	267	221
Total	617	448
Democratic majority		169

But the vote in November was:

Precincts.	Democratic.	Opposition.
Triana	84	336
Whitesburgh	175	223
Lanier's	133	55
Total	392	614
Democratic minority	222	

This is shown on pages 533, 534, and 535 of the record.

It appears, therefore, that the aggregate opposition vote was 111 greater at the Triana and Whitesburgh precincts in November than in August, while the aggregate Democratic vote in November, in all three precincts, was 225 less than at the two original precincts in August. And almost half of the aggregate Democratic votes cast in November in the three precincts were cast at the new precinct of Lanier.

A third explanation is, that three colored men, including Rev. Mr. McCally, were members of the convention which nominated Mr. Wheeler, and were influential workers for him.

Still another explanation is, that William Wallace, alias Wallace Toney, distributed Wheeler tickets. Wallace denies this. But Jordan swears to it on page 566. Wallace is impeached on pages 549–556; and not one of the numerous witnesses, afterward examined by the contestant, is called upon to sustain him.

IV.

MERIDIANVILLE, NO. 2.

The following is the conclusion of the committee respecting the election at this precinct:

"The returns being successfully impeached, contestant very properly relies upon the direct testimony of the voters themselves, which clearly entitles him to 55 votes at this box."

But the contestant did not specify, as one of the grounds of his contest, that he received 55 votes, or any other number of votes, at this precinct; nor did he advise the contestee in his notice of contest that he would attempt to prove such votes by witnesses. Nor did he demand the rejection of the precinct return. All he said was this:

"I am informed, and believe, and so charge the fact to be, that there was fraud and ballot-box stuffing or a false count at the precinct of Meridianville, (box No. 2,) in Madison County."

The grounds of this alternative charge, urged in argument, were (1) that the contestant received 18 votes less than the Garfield electors; (2,) that all the inspectors were Democrats; (3,) that 55 ballots were cast for the contestant, but only 47 counted for him; and (4) that one of the inspectors so inclined his person that the supervisor could not see the ballots when they were counted out at the close of the polls.

The circumstance that the contestant received 18 votes less than the Garfield electors would not seem to be a very serious element in the charge against the integrity of the returns. It is not surprising that he did not receive all the Republican votes at this precinct. In truth, it is rather amazing that he received any at all.

He had been a life-long Democrat, and while connected with the Democratic party had vilified the Republicans, and particularly the colored voters, with extraordinary virulence.

To the complaint that all the inspectors were Democrats the answer is obvious. In the first place, the law on this subject is not mandatory. In the next place, a Republican was appointed, but did not appear; and in his absence the inspectors made an appointment to fill the vacancy. There was no law requiring them to select a Republican in that case. They did, however, attempt to do so. But book-learning seemed to be at a discount among the contestant's supporters, and the attempt was a failure.

The charge that 55 ballots were cast for the contestant and only 47 counted for him, rests upon 55 so-called depositions offered by the contestant.

These depositions are inadmissible for the following reasons:

1. None of the depositions are certified as required by law.
2. They constitute testimony in chief, and were taken, in the face of the contestee's objections, during the last ten days of the time limited by law.
3. The notary refused to permit the contestee to cross-examine the witnesses.

To maintain the assertion that 55 votes were cast for the contestant, instead of 47, he depends largely on the testimony of a colored man named Wade Blanken-

ship. The following extract from his deposition, printed on pages 234, 235, and 241, will show the character of the witness on whom the contestant relies for the impeachment and overthrow of these polls.

"Question. Where did you hold that club-meeting before the election?

"Answer. On Jack Penny's place.

"Q. How many were present?

"A. I don't remember before the election; I don't remember how many was present, sir.

"Q. About how many?

"A. Well, at that meeting there was probably sixty-five or seventy men there.

"Q. You know that to be true, do you?

"A. Well, I don't know to be positive, but there was somewhere in the neighborhood of that.

"Q. Can you swear positively that there were sixty men present?

"A. I wouldn't swear at all about it; I was not acting as secretary of the meeting; I was there only as a speaker that night, and I paid no particular attention as to how many men were present.

"Q. Did you know the men that were present personally?

"A. Yes, sir; I knew every man in the house; I reckon there is none out there a stranger to me.

"Q. Can you swear there were fifty men?

"A. Yes, sir; I would do that, but I wouldn't want to swear that there were any designative number, simply from the fact that I don't know how many were there.

"Q. If you don't know how many were there, why did you swear there were sixty-five or seventy there?

"A. I say I did not swear that.

"Q. Then you don't understand that what you say here is swearing, do you?

"A. I understand that, of course, but I didn't speak definitely as to how many were there.

"Q. Can you swear that there were forty men there?

"A. I could do it, but I don't want to swear as to any designated number, general, as I first stated to you.

"Q. If you are certain there was forty there, why do you object to swearing there was forty there?

"A. Well, from the simple fact that I didn't count them; I just judged from the crowd sitting around that there was sixty-five or seventy men that were present.

"Q. What kind of a house was it?

"A. It was a box, (little,) probably sixteen by eighteen.

"Q. And they were all sitting down, were they?

"A. No, sir; they couldn't get seats to sit.

"Q. You think then it is probable there were sixty-five or seventy men in the room?

"A. Yes, sir.

"Q. Who occupies that house?

"A. Well, it has been occupied as a school-house for the last year.

"Q. Were there any tables in it?

"A. A small table there they used for the secretary of the club.

"Q. You are a good judge of numbers, are you not, of men?

"A. I don't know I have. I guess pretty well different times at a body of men.

"Q. Can you not swear there were thirty men there?

"A. I could do it, but I wouldn't do it from the simple fact that I didn't count the men, and I couldn't say positively—well I know there was that many.

"Q. If you know there was forty men there, why are you unwilling to swear there were thirty men there?

"A. Well, I gave you my reasons a few minutes ago.

"Q. Are you willing to swear there was twenty men there?

"A. Yes, sir; I would be willing to do it, though in the mean time I don't want to do it.

"Q. Would you swear there was fifteen men there?

"A. Yes, sir; I would, but I don't want to do it under the circumstances.

"Q. Would you swear there was ten men there?

"A. I would, but then I don't want to do it.

"Q. How many men did you see put in Lowe votes at that box?

"A. I don't know.

"Q. Did you see any men put in Lowe votes at that box?

"A. Yes, sir,

"Q. How many?

"A. I don't know, I told you.

"Q. Did you see ten (10) men put in Lowe votes at that box?

"A. I don't know.

"Q. Did you see five men put in Lowe votes at that box?

"A. I don't know, sir, the number. I know I saw men vote there, though.

"Q. Could you read the tickets in their hands as they voted?

"A. No, sir.

"Q. Could you read the ticket in any man's hand that he voted besides your own?

"A. No, sir; I don't think I saw a man vote an open ticket there."

The contestee has taken the trouble to impeach Blankenship, (page 517.) But this is wholly unnecessary. He possesses an imagination which a Falstaff might envy. He sees fifty-seven colored Republicans marching to the polls where only thirty are visible to other men. He sees sixty-five or seventy men assembled in a room which he says is sixteen by eighteen, which another says is fourteen feet square.

The testimony of Walter Blankenship, on page 290, shows what kind of evidence the rest of these witnesses would have furnished if the contestee had been permitted to cross-examine them. He says:

"Interrogatory 25. For what offices were the persons to be elected who were on the ticket besides the county officers?

"Answer. For our President and for our Senator.

"Int. 26. Who was to be elected President and who was to be elected Senator?

"A. Mr. Hancock and Mr. Garfield was running for President's seat, and Mr. Wheeler and Lowe for Senator.

"Int. 27. What other officers were voted for besides Senator and President?

"A. I was not particularly caring about the others, which one got it.

"Int. 28. You are perfectly certain, are you not, that Mr. Garfield's name for President and Mr. Lowe's name for Senator was on your ticket?

"A. I am certain it was, because I got it from a straight man.

"Int. 29. Is that the reason you know the above was on the ticket?

"A. Of course; I go by that; yes, sir."

KINLOCK BOX.

Page 1156. We find the following paper, upon which the board of Lawrence County counted 16 votes for William M. Lowe; Alexander Heflin was the returning officer of this county. There is not a particle of proof that any election was held at that place at all, and this paper is the only thing that indicates an election was held at

"KINLOCK BOX.

"We, the undersigned, judges and clerks, do certify that this is a true list of the voters polled at Kinlock, Lawrence County, Alabama:

"For President, State at Large:

"James M. Pickens, v, v, iiii.

"For Vice:

"Lawler S. Beers, v, v, iiii.

"District electors:

"1st District, C. C. McCall, v, v, iii.

"2 Dc., J. B. Townsend, v, v, iii.

"3 Dc., A. B. Griffin, v, v, iii.

"4 Dc., Hilliard M. Judge, v, v, iii.

"5 Dc., Theodore Nunn, v, v, iii.

"6 Dc., J. B. Shields, v, v, iii.

"7 Dc., H. R. McCoy, v, v, iii.

"For Congress, eighth dc.:

"Wm. M. Lowe, v, v, iii.

"For President and Vice:

"Geo. Turner, ii.

"Willard Wonern, ii.

"Luther R. Smith, ii.

"Charles W. Rully, ii.

"John J. Martin, ii.

"Benjamin S. Turner, ii.

"Daniel B. Booth, ii.

"Winfield S. Bird, ii.

"Nicholas S. McOffee, ii.

"Jame S. Clarke, ii.

"For Representative in Congress, from th

"Wm. M. Lowe, ii."

The above is the only return received from the Kinlock box.

The deposition of J. H. McDonald, page 1138½, shows that upon this return the county officials estimated 16 votes for William M. Lowe, and none for Joseph Wheeler.

It will require no argument or authority to show that these returns cannot be received, and that sixteen votes should be deducted from the votes returned for William M. Lowe from Lawrence County.

THE UNREGISTERED VOTE.

We now proceed to the consideration of that branch of this case which has relation to ballots that were illegal because the voters were not registered. The contestee gave notice to the contestant by his answer that he would insist upon the rejection of such ballots. By the constitution of Alabama the qualifications of voters are distinctly prescribed as follows: A residence of one year in the State, of three months in the county, and of thirty days in the precinct. See articles 8, page 142, of the Code of Alabama.

Section 5 of the same article is in the following language:

"The General Assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided no person shall vote at any election unless he shall have registered as required by law."

The Legislature of Alabama passed a registration law in which provision was made for a complete registration of the voters. The substance of this law is that the secretary of state appoints a registrar in each county, and the county registrar appoints an assistant for each voting precinct or ward in the county. This assistant makes a full registration list of the voters in his precinct or ward, returns it to the judge of probate of the county, and the judge of probate furnishes to the inspectors of the election certified lists for each precinct, and these certified lists constitute the registration lists evidencing who are entitled to vote. In making up this registration list the elector is required to make oath that he has the qualifications of a voter as prescribed by the constitution of Alabama above stated. The assistant registrars are required to be present on the day of election for the purpose of registering such persons as may not have registered prior to the election. The list of those registered on the day of the election is returned with the poll lists, &c., kept on the day of the election, to the county canvassers, and this list kept on the day of the election is filed with the judge of probate and becomes a part of the records of his office, and thus the registration lists are kept complete, and constantly show who are entitled to vote in the various precincts and wards of the county.

The contestee, as above stated, claims that a very large number of persons were permitted to vote in this district who had not been registered according to the provisions of this law, and the contestant endeavors to escape from this claim of the contestee, not by showing that the parties who voted were registered as the law requires, but by a construction of the constitution which we will here briefly state. The contestant claims that the provisions of the constitution above quoted only mean that a party shall not be permitted to vote when the act of the Legislature in distinct terms provides that he shall not be permitted to vote unless he has been registered. Or, in other words, he claims that notwithstanding the fact that the constitution provides as already quoted, and notwithstanding the fact that a registration law has been enacted, still the party is entitled to vote unless the statute of Alabama expressly provides that he shall not be permitted to vote excepting when he is registered.

Now, we respectfully submit that this is a perversion of the plain language of the constitutional provision. It will be observed that the language of the constitution is that "the General Assembly may, when necessary, provide by law, for registration, * * * and when it is so provided no person shall vote unless he shall have registered as required by law."

Now, what do these words, "so provided," refer to? Plainly to registration. That is to say, the General Assembly was authorized to provide by law for registration; to determine the mode and requisites of registration generally and particularly. The registration had reference to persons who were entitled under the constitution to vote. It has nothing whatever to do with the qualifications of the voter, because those qualifications are fixed by the constitution itself, and could not be interfered with by any act of the Legislature. And therefore the concluding words of this section are unmistakable in their meaning, "no person shall vote at any election unless he shall have registered as reqired by law;" and that meaning is that the constitution having fixed the qualifications of the voter, this registration law was intended to furnish the evidence of the right of the party to vote, to wit, his being registered as a voter according to the forms and requirements of this act of the Legislature. This act of the Legislature was provided for by the constitution, not to determine the qualifications of the voter, but to furnish the qualified voters with the evidence that they were qualified and entitled to cast their ballots, and the constitution simply provides, and no other rational meaning can be attributed to it, that registration, and that alone, shall be evidence of the fact that the party is a qualified voter, and therefore any person who is not registered is clearly an illegal voter under the constitution and laws of the State of Alabama. Registration is the act of the voter. If he fails to register it is his own fault, and he cannot complain, nor can any one else, if his right to vote is lost by reason of non-registration.

After a careful examination of the testimony in this case, we believe that it conclusively shows that not less than 2,400 persons voted in this district who were not registered, and that not less than 1,000 of them voted for the contestant.

We cannot here set out all the testimony on this subject, but submit a table, giving the precincts, the number of non-registered voters, names of witnesses, and pages of the record, for convenience of reference:

TABLE No. 2.—*Unregistered and illegal voters who are proven to have voted for William M. Lowe for Congress, November 2, 1880. These illegal voters comprise a part of the 12,665 votes which were returned for William M. Lowe.*

County.	Precinct.	Pages of record containing registration lists.	Pages on which poll list commences.	Number of voters not registered proven to have voted for William M. Lowe.	Names of witnesses who prove the illegality of these voters, or that they voted for William M. Lowe.
Jackson	Berry's Store	713–716	694	33	Robert F. Riddle and Robert F. Proctor, pp. 790, 792.
	Nashville	720–724	696	14	Frederick J. Robinson, p. 784.
	Carpenter's	700–703	690	3	Daniel D. Harris, p. 783.
	Hunt's Store	717–720	695	7	J. F. Skelton, p. 788.
	Hawk's Springs	708–710	692	4	Samuel Rorex, p. 778.
	Bishop's	724–728	697	12	D. V. Enochs, p. 781.
	Scottsborough	728–739	698	11	Robert S. Skelton and William B. Bridges, pp. 773, 774.
	Bellefonte	704–708	691	17	William P. Keith, p. 795.
	Davis's Springs	711–713	693	16	Alexander Moody, p. 794.
Madison	Meridianville No. 2	626–642	667	18	Each proven by the voter himself, 268, 279.
	Meridianville No. 1	626–642	665	89	A. J. Bentley, p. 513, and J. M. Robinson, p. 544.
	Whitesburgh	645–655	668	46	G. D. Miller, pp. 509, 510¾.
	Madison	610–625	659	28	Thomas B. Hopkins, pp. 511½, 512¾.
	Madison Cross Roads	584–592	658	12	N. P. Taylor, p. 570.
	Maysville	592–610	662	55	Thomas J. Taylor, p. 514.
	Cluttsville	571–584	656	22	William M. Douglass and G. W. Smith, pp. 540, 542.
Lawrence	Courtland No. 2	1142–1154	1139	189	Quintus Jones and John W. Battle, pp. 1081, 1127
	Brickville	1186	1182	18	Oliver H. Reid, p. 1131.
	Red Bank	1184–1186	1183	12	J. Milton Gray, p. 1132.
Lawrence	Moulton	1173–1177 1196	1177	16	W. J. Seamans and C. A. Crow, p. 1161. Jourdan White and D. C. White, p. 1158.
	Hampton's	1179–1182	1182	11	W. D. Burnett, p. 1159; W. T. McNutt and W. D. Johnson, p. 1166.
Limestone	Mooresville	826–831	803	180	John N. Martin, p. 815; Charles Hayward Jones, p. 848.
	Slough Beat	823–826	852	55	Robert Donnell, p. 819; Florentine Stewart, p. 820; Neil S. Marks, p. 817; Nathan B. Crenshaw, p. 849.
	Athens	831–835	842	16	Nathan B. Crenshaw, p. 849; Peter J. Crenshaw, p. 858.
	Shoal Ford	835–838	856	9	Franklin J. Pepper, p. 855.
Colbert	South Florence	420–427	441	36	James O. Murphy, John S. Jenkins, Samuel Hughley, James P. Murdock, Thomas Clem, W. P. Stradford, John W. Brabson, from pp. 1049 to 1053.
Lauderdale	Florence	921–924 939–944	911	39	Gilbert Jackson, William J. Kernachan, pp. 967, 969.
	Oakland	926–929 945–946	918	25	H. C. Hyde, p. 900.
	Center Star	938	916	12	B. Joiner, p. 962.
	Cave Springs	954, 955	910	22	Carver C. Hipp and E. G. Hendrix, pp. 964, 986.
				1,027	

It will be seen by reference to the testimony that in a very large proportion of the cases where persons voted who were not registered the testimony is direct and positive that these non-registered persons voted for the contestant; but if it be conceded that there is doubt as to who they voted for, then the rule of law as to dealing with such cases is as follows, (see McCrary on Elections, page 298, section 223, first edition:)

"In purging the polls of illegal votes, the general rule is that, unless it be shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidate having the largest number." (Shepherd *vs.* Gibbons, 2 Brewst., 128; McDaniel's case, 3 Penn., L. F., 310; Cushing's Election Cases, 583.)

Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each. Thus, we will suppose that John Doe and Richard Roe are competing candidates for an office, and that the official canvass shows:

	Votes.
For John Doe	625
For Richard Roe	575
Total vote	1,200
Majority for Doe	50

"But there is proof that 120 illegal votes were cast, and no proof as to the person for whom they were cast. The illegal vote is 10 per cent. of the returned vote, and hence each candidate loses 10 per cent. of the vote certified to him. By this rule John Doe will lose 62½ votes, and Richard Roe 57½ votes, and the result, as thus reached, is as follows:

	Votes.
Doe's certified vote	625
Deduct illegal votes	62½
Total vote	562½
Roe's certified vote	575
Deduct illegal votes	57½
Total vote	517½
Majority for Doe	45

Applying this principle, we here submit a table showing the number of votes cast for contestant and contestee at various precincts, the number of non-registered voters, and the *pro rata* of deductions from each party on account of the non-registered votes, and the pages of the record where the registration and the poll lists will be found, &c.:

TABLE No. 1.—*Table showing unregistered voters.*

County.	Precinct.	Pages of record containing registration list.	Pages of record, poll list.	Number of votes cast.		Number of voters not registered.	Number to be deducted from Lowe's vote.	Number to be deducted from Wheeler's vote.	Difference or total loss to Lowe.	Remarks.
				Wheeler.	Lowe.					
Jackson	No. 10, Bellefonte	704–708	691	44	130	56	42	14	28	The evidence of John B. Talley, probate judge, pages 689–690, shows that the registration lists are complete and correct.
	No. 13, Berry's Store	713–716	694	49	123	81	58	23	35	
	No. 15, Hunt's Store	717–720	695	24	32	26	15	11	4	
	No. 17, Nashville	720–724	696	35	132	86	68	18	50	
Madison	Cluttsville	571–584	656	166	222	61	35	26	9	The certificate under seal of William Richardson, probate judge, p. 656, shows that the registration lists of the precincts named are full and correct.
	Madison Cross-Roads	584–592	658	50	111	32	22	10	12	
	Madison	610–625	659	169	324	116	72	44	28	
	No. 1, Meridianville	626–642	665	123	360	169	126	43	83	
	Whitesburgh	645–655	668	175	223	113	64	49	15	
	Collier's	671–685	685	87	134	48	29	19	10	
	Triana	1218–1225	1215	84	336	275	206	69	137	
Limestone	Slough Beat	823–826	852	123	213	107	68	39	29	The evidence of John M. Townsend, probate judge, pp. 822, 823, shows that the registration lists of Mooresville, Slough Beat, Shoal Ford, and Athens are correct, full, and complete.
	Mooresville	826–831	803	90	619	215	189	26	163	
	Shoal Ford	835–838	856	74	101	22	13	9	4	

TABLE NO. 1.—*Table showing unregistered voters.*

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				Wheeler.	Lowe.					
Lauderdale..	Oakland	926–929 945–946	918	100	289	103	77	26	51	The evidence of William E. Harraway, probate judge, p. 905, shows that the registration lists which he gives are correct.
	Florence	921–924 939–944	911	252	406	280	173	107	66	
Colbert	Cherokee	428–436	439	124	134	59	31	28	3	
	Prides	414–415	442	44	63	14	8	6	2	
	Leighton	416–419	438	80	95	52	28	24	4	Probate judge certificate, p. 436.
	South Florence	420–427	441	13	165	38	35	3	32	
Lawrence	Courtland No. 1	1142–1154	1192	134	192	131	77	54	23	The evidence of J. H. McDonald, probate judge, p. 1138, shows that the registration lists in the record, pages 1142–1154, contain the list of registered voters of Courtland district.
	Courtland No. 2	1142–1154	1139	111	419	191	151	40	111	
	Mount Hope	1168–1171	1172	132	170	29	16	13	3	
	Landersville	1173–1177	1191	62	82	32	18	14	4	
	Hampton's	1179–1182	1182	24	43	21	13	8	5	
	Red Bank	1184–1186	1183	36	111	16	12	4	8	
	Avoca	1194–1196	1188	31	61	20	13	7	6	
	Wolf Spring	1194–1196	1187	25	112	42	34	6	28	
	Hillsborough	1196–1198	1189	164	228	261	151	110	41	
						2,698	1,846	852	994	

Now, making a calculation upon the basis of 2,400 non-registered voters, instead of 2,698, as shown by this table, and making the deductions *pro rata*, there would have to be deducted from the vote of the contestant 1,642, and from the vote of the contestee 758, and this of itself is more than sufficient to overcome all that is claimed by contestant. But we maintain the truth to be that in making this deduction on account of illegal ballots by reason of non-registration, there should first be deducted 1,000 at least, because the proof shows that that number voted for the contestant, and that in making the application of the *pro rata* rule, it should be confined to the remaining 1,400 votes, which the testimony does not show for whom the votes were cast; and making the application to this number, there would be deducted from the contestant, first 1,000, which were proven to have been cast for him, and second, 905, under the *pro rata* rule, making a deduction of 1,905 votes from his aggregate, and 495 from the aggregate of the contestee, and if we are correct in this, this alone is conclusive against the contestant in this case.

Another rule might be adopted, which is more favorable to contestant and which we have set out elaborately in our conclusion. It is urged by Mr. RANNEY, of the majority, who has submitted his "views," that the contestee cannot have advantage of this, for the reason, as he claims, that the evidence is not sufficient to show that these parties were not registered. To what special lists he applies his objections, his "views" do not inform us. He speaks of them generally and makes his objections equally generally. One of his objections is that "we have nothing to show what names were once on them and been dropped off or taken off by reason of death, disability, removals, or for other reasons."

We fail to see the pertinency of this objection. If a man had once been registered and had been taken off the list by reason of his death, or by reason of his removal, or by reason of having been convicted of some crime which disqualified him as a voter, he certainly would not be entitled to be on the registration list. He would not be a voter, and in making up the list for the use of the inspectors it could hardly be contended that the judge of probate would put upon the list which was to be the guide of the inspectors the names of persons who had thus ceased to be registered. Another objection he makes is that few of the lists are verified in the original by the certificate of the registrar. Another is that these papers that have been put in the record are not in the form prescribed, with appropriate headings, &c.; and he objects to the poll lists because some of them do not appear to have been certified by the inspectors, and for that reason claims that they have no verification or identification as genuine poll lists, and cannot be regarded as proofs; and he says that in three precincts of Limestone County no poll list appeared to have been returned at all, and the judges gave no certified copy of the same; but he adds that "the contestee has put in evidence three papers sworn to by one of the inspectors in each case as the poll list, and purporting to be signed by the three inspectors. But as they never sent them to the probate office as required by law, and no reason or explanation for the omission given, we do not regard them as proof or as worthy of credit."

Now, the answer to all this seems to us to be plain. First, as to those lists which he criticises on account of informality, which have been certified by the probate judge, the law requires, as we have seen, first, that the judge of probate shall furnish to the precinct inspectors the registration lists which are to be their guide in conducting the election. Next, it requires that the precinct registrar shall be present on the day of the election and register such persons as have not theretofore been registered; next, it requires this additional registration list to be sent up with the returns, in the same box in which the returns are sent; next, it requires that this additional registration list shall be filed with the probate judge, and thus we have in the office of the probate judge the very identical registration list which was used and made at that election. The probate judge is by law the custodian of this list, and whether that list was formal or informal in its construction, and whether the proper certificate was put upon it or not, can make no possible difference, so far as the point in controversy is concerned, because it is the list upon which the election was conducted. There was no other list, and the fact that the list may have been irregularly made up by the officers whose duty it was to make it, could not possibly render legal a vote that was cast by a party who was not registered even upon this informal registration list. There is no other way to prove what that list was than by the certificate of the judge of probate, except as we will hereinafter state. He was the custodian of the list, and his certified copy of that which appeared in his office as the list is all that the law requires.

To the objection that he has made, that some of the poll lists, to wit, in three precints in Limestone County, have not been properly proven, because they were presented in evidence by the inspector instead of the judge of probate, we think there is a conclusive answer in this: that the law of Alabama requires one poll list to be certified by the precinct managers and sent up with the returns, and another copy of the poll list to be kept by the inspector. Now, here are two records kept, one in the probate judge's office, and the other by one of the inspectors. And to either of these the contestee had the right to go for the purpose of procuring these poll lists, and either one of them is perfectly competent as testimony. In respect of the three precincts referred to, the contestee has seen fit to put in evidence the poll lists which the law requires to be kept by the inspector, and we entirely fail to see why that poll list is not entirely competent as evidence, just as competent as would be the poll list that was filed in the office of the judge of probate.

But the testimony of these inspectors and the integrity of these poll lists is attempted to be called in question, because it is said that from these precincts no poll list found its way into the office of the judge of probate. But the fact that these poll lists did not find lodgment in the office of the judge of probate, when it is proven by the testimony of the inspector who produces the poll list required by law to be kept by him that that was the poll list used at that election, then we submit that the fact that there is no list in the office of the judge of probate for such precinct is not upon any principle known to the law sufficient to defeat the direct evidence above referred to. As to these registration lists, therefore, the case stands thus: the contestee has furnished certified registration lists as they appear in the office of the judge of probate, and poll lists as to the precincts, except three in Limestone County, and as to these three he has taken the testimony of the inspectors in whose custody the poll lists were, and, in connection with their testimony, has produced the lists used in those precincts.

The objection taken to the poll lists furnished by the judge of probate because the certificate of the inspectors of the election does not appear thereon is untenable, we submit, for another reason. By an examination of the statutes, it will be seen that the inspectors are required to keep a "poll list." Then they are required to make a certificate on that "poll list," and the "poll list," as we have above stated, is to be filed in the office of the judge of probate. Now, the certificate of the precinct managers that is to be indorsed on the "poll list" is no part of the poll list itself. It is an identification or verification of the poll list, and when therefore the judge of probate certifies the "poll list," it is no part of his duty to certify the verification of the poll list, and the absence of this verification is therefore no evidence that the poll list was not duly verified by the certificate of the precinct managers.

But to all of these objections that are made to the sufficiency of this testimony we have another answer to make. The contestant was duly notified of these illegal votes, and that their rejection would be contended for in this contest. The contestee, in support of that, put in evidence these poll lists and registration lists, for the purpose of showing that persons whose names appeared on the poll lists did not appear on the registration lists, thus proving the illegality of these ballots. The contestant had ample opportunity afforded him to show that these parties were registered, if such had been the fact. Specific information was given him by means of these lists and by direct proof specifying names as to the persons claimed to be illegal voters, and in not a single instance has he proven or attempted to prove that these parties were registered as the law requires. If inferences are to be indulged in, in a case like this, as they are indulged in by the majority in reaching their conclusions, then the inference from these facts which we have just stated is irresistible, that what the contestee has asserted as to these voters is true. If it were not so, if these parties or any of them were registered, the contestant would undoubtedly have availed himself of the opportunity to make the proof by producing the necessary evidence, which must have been within his easy grasp, if the fact had been otherwise than as claimed by the contestee.

As above stated, conceding to the contestant all that he claims in regard to the matter of rejected ballots, the rejection of these non-registered voters, which we maintain is clearly commanded by the proofs in this case, must determine the case in favor of the contestee.

Mr. RANNEY, in his report of the majority, asserts that the registration lists which are placed in evidence are not legal registration lists, that is, they are not such registration lists as are required by law; and his report gives as a reason why this cannot be availed of by Mr. Wheeler, that "contestee does not set up a want of legal registration as vitiating the election in any precinct."

Upon this point the majority are mistaken. The allegations of contestee upon this point are as follows:

Contestee alleges that at the following precincts of Lawrence County, namely, Courtland, Red Bank, Avoca, Wolf Spring, Mount Hope, Kinlock, Landersville, Hampton's, Oakville, and Hillsboro', 450 persons were allowed to vote, and did vote, for contestant, some of whom had no right to vote at the precincts where they cast their votes, and others who voted at said precincts were not legal voters, and had no right to vote at all.

And contestee further alleges that these persons "did not have a right to vote, for the reason that they had never been registered as required by law."

The proof shows that there was no legal registration at any of these precincts, and therefore all these should be rejected from the count, because where there is no legal registration there cannot be legal voting.

This is unquestioned law, and was lately reaffirmed by the committee in the case of Finley *vs.* Bisbee.

In the Florida case the proof shows that the registration lists, so far as they went, were legal.

In this case the proof shows that there was no legal registration at all in the precincts of Lawrence County which we have mentioned, and it further shows that no part of the pretended registration of said precincts is legal registration.

The allegations of contestee that registration lists are not legal are more direct and positive than the allegation of contestant that ballots were rejected, and more direct and positive than the allegation of contestant regarding Lanier and Meridianville precincts.

COURTLAND BOX NO. 2.

In addition to the foregoing, however, we think it plain that under the law and the repeated decisions of the majority of this committee, Courtland box No. 2 must be rejected from the count. This precinct was returned for contestant 419, and for contestee 111. The law of Alabama requires that upon the closing of the polls the inspectors shall proceed immediately to count the ballots. Now, in the case of this precinct, upon the closing of the polls the inspectors proceeded with the count, and continued until about two o'clock the following morning. Then the suggestion was made by some one that a mistake had been made, and thereupon the ballots were all replaced in the box, and a Mr. Harris, one of the inspectors, who is described by one witness as an Independent voter, and whose politics are of doubtful complexion, at least, took that box, with the ballots in it, carried it away with him, and kept it until the next morning. There is absolutely no testimony proving or tending to prove that the ballots in that box remained the same during this interval.

THE CODE OF ALABAMA.

Section 285 says:

"It is the duty of all inspectors of elections in the election precincts, immediately on the closing of the polls, to count out the votes so polled."

The positive proof shows that at Courtland box No. 2 all the inspectors were Greenbackers or Independents, and the record shows that Mr. Lowe, in announcing himself as a candidate, called upon Greenbackers, Democrats, and Independents, and upon these alone, for support.

There is no positive proof that Mr. Harris was a Democrat, although Mr. Lowe's lawyers make a great effort to establish that fact, but it is positively proved that he had been an Independent voter, and had on four occasions arrayed himself against the Democratic party.

It shows that Joseph Wheeler received as many votes as Mr. Lowe, but that the inspectors violated the law, and that Wheeler ballots were abstracted therefrom and Lowe ballots substituted therefor.

The uncontroverted proof shows that there were but little over 500 ballots cast at that box, and that the inspectors pretended to be occupied counting these ballots from five o'clock in the evening until two o'clock the next morning.

That even after these nine hours' work the inspectors had not completed the count of the votes.

That they then put the ballots in a rough box, and that one of the inspectors took the ballots away from the voting place, kept them all night, and the next day the ballots were illegally counted and a return made, falsely stating that Wheeler had received 111 votes, and that Lowe had received 419 votes.

And the evidence further shows that in truth and in fact Wheeler received at least 200 votes at that box, and the proof tends to show that he received at least 250 votes.

We give below some of the evidence regarding this box.

Mr. Reynolds, a witness examined for William M. Lowe, testified as follows, page 443:

"Was United States supervisor of Courtland box No. 2 at election November 2, 1880."

And on page 444½ gave the following evidence:

"Question. Was the vote counted out according to law at your box?

"Answer. I suppose it was.

"Q. Did you see the vote counted out?

"A. I saw it; I was in there nearly all the time, and watched that.

"Q. State how it was counted.

"A. It was counted out like the votes are generally counted.

"Q. Is it not true that when the votes were pretty nearly counted out that the inspectors stopped counting the votes, poured all the tickets back in a rude box, and then dispersed, and did not return until the next day?

"A. Well, they did not get through counting out until next day.

"Q. Cannot you answer the question, Mr. Reynolds?

"A. I know they did not get through counting, and we had to go back next morning to finish counting.

"Q. Where were the ballots left during the night?

"A. Well, I think Mr. Harris taken them down to the hotel with him. He was one of the officers.

"Q. In what did he take them?

"A. He took them in the box—the box that they were put in.

"Q. What kind of a box?

"A. A ballot-box.

"Q. Was not it a common candle-box?

"A. Well, I didn't examine particularly about that; it was just a ballot-box, such as we generally had.

"Q. Did it have any lock to it?

"A. Well, I don't know; I did not examine it sufficiently to tell about that, whether it had a lock on it or not; but it ought to have had if it did not.

"Q. When they returned the next morning did they not pour all the votes out on the table?

"A. Well, they selected them out and put them at different places in different piles by themselves so they could get along and count them faster.

"Q. Were not all the ballots lying on the table at the same time?

"A. All of them?

"Q. Yes, sir.

"A. I don't think they were all out at one time.

"Q. Were not most of the ballots lying on the table at the same time?

"A. I think the majority of them were.

"Q. How many ballots were there?

"A. In all?

"Q. Yes, sir.

"A. I will have to make a calculation here. How many were there cast?

"Q. Yes, sir; at that box?

"A. Well, here it is, you can make the calculation.

"Q. Well, to give it roughly?

"A. Mr. Lowe got four hundred and forty-one, (441;) twenty-two (22) off left four hundred and nineteen, (419.) Twenty-two Greenback votes. Wheeler, one hundred and eleven. My recollection is that was the majority of the votes out on the table.

"Q. Is it not true that when the majority of the votes were lying on the table that they were sorted out in piles?

"A. Well, they sorted them so they could get along in counting. They sorted them out; that is the Democratic votes were sorted out, and the others by themselves.

"Q. Is it not true that they had pretty nearly counted out the vote the night before, before they stopped?

"A. No, sir; they lacked right smart of it.

"Q. How many hundred had they counted out, do you think?

"A. Well, I don't know; did not take any notice of that.

"Q. Did they commence in the morning where they left off, or did they commence at the beginning?

"A. They counted the whole thing over, my recollection is about it.

"Q. Were not people who were not election officers permitted to come into the room in the morning?

"A. Well, I was not there all the time, but I was there nearly all the time. There might one or two have come in.

"Q. Were not people permitted to come into the room during the night, after you left there?

"A. After we left there?

"Q. Yes, sir.

"A. I don't know. I was not there; I left when the box left.

"Q. Could not the room be easily entered?

"A. Well, I suppose it could; that room? Yes, sir. Don't think it had any lock to it. I suppose any one could get in there that wanted to. But then that was after we left, you know. I don't know whether any one went in or not. The votes were taken down to the hotel.

"Q. Was it not generally understood at that box that Joseph Wheeler was getting a large vote that day during the election?

"A. Well, I was not out much among the people; I was watching over the box, and did not go out but very little.

"Q. Did not the election officers report that that was so?

"A. The general opinion was that he was getting over the Democratic vote there.

"Q. Finally, on November 3, when the vote was counted out, was it not shown that Joseph Wheeler had but 111 votes?

"(Contestant objects to this question because he has answered it three times.)

"A. Yes, sir."

Walter W. Simmons, a supporter of and a witness summoned by William M. Lowe, testifies on January 4, 1881, page 452:

"Question. Did you have anything to do with holding of the Congressional election on November last?

"Answer. Yes, sir; I was supervisor at box number 2, Courtland precinct.

"Q. You made out that report two days after the election, did you not?

"A. I made it out the next morning after the polls were closed and put it in the office.

"Q. Did you not state, Mr. Simmons, two or three times during the day, that Joseph Wheeler was getting a large vote at your box?

"A. Yes, sir; I thought you were getting a larger vote than you really did get.

"Q. You state that the objection made to the ticket was that it had numerals?

"A. Yes, sir.

"Q. Were not those numerals something besides the names of the persons to be voted for and the offices to which they were to be chosen?

"(Contestant objects to this question, because it calls for the opinion of the witness.)

"A. I suppose it is something besides the names of the electors.

"Q. Is it not true, Mr. Simmons, that the inspectors commenced counting the vote, and that they then poured all the votes back in the box and dispersed for the night?

"A. Well, they counted until about two o'clock in the morning, I believe, and some of them discovered that they had made a mistake, and they just concluded they would bundle up, and commence and recount the whole box the next morning; Mr. Harris took the box, and went to the hotel that night and locked it up in the room with him, and met the next morning and finished counting.

"Q. Didn't some of the inspectors or clerks get sick?

"A. One of the clerks got sick—Mr. Branch.

"Q. When they met the next morning were you present to see them count?

"A. Yes, sir.

"Q. Is it not true that they poured all the ballots on the table and sorted them out?

"A. I think they did; some one suggested that they could get through quicker by counting them that way; they poured them on the table and sorted the tickets to get the Republican tickets to themselves and the Greenback tickets to themselves and the Hancock Democratic tickets to themselves.

"Q. Is it not true that this room where you held the election was an open room that people could enter at pleasure?

"A. Well, I suppose they could if they had tried; it was a pretty shabby old concern; doors were kept closed, I believe, all the time until they closed up.

"Q. You have been actively engaged in politics, have you not, in this last canvass?

"A. Yes, sir; I have taken a great interest in politics this last year.

"Q. You were a strong supporter of Colonel Lowe, were you not?

"A. Yes, sir.

"Q. Mr. Simmons, did or not the friends of General Wheeler make the same kind of efforts, so far as you know, to secure the colored vote that friends of Colonel Lowe did?

"A. I suppose they did.

"Q. No man's vote was refused because he was a colored man?

"A. Not that I know of.

"Q. You stated, I believe, Mr. Simmons, that the snspectors counted the vote until two o'clock at night?

"A. I think it was about two.

"Q. And then adjourned until the next morning; then they had another count?

"A. Yes, sir.

"Q. Were the votes that you say that were thrown out the same the night before that they were the next morning?

"A. Yes, sir.

"Q. The box you stated was taken away by a Mr. Harris and left in his custody between the count at night and the count the next morning?

"A. Yes, sir.

"Q. What were Mr. Harris's politics?

"A. Well, sir, he is a Democrat, I believe; always has been.

"Q. Was he a friend and supporter of General Wheeler?

"A. Yes, sir; I believe he was.

"Q. (By General Wheeler.) Don't you know he voted for Billy McDonald and for Houston?

"A. My opinion is that he voted for McDonald, but I don't know. My opinion is he voted for Houston for tax collector, too.

"Q. Both of those men were opponents to the Democratic party, were they not?

"A. Yes, sir.

"Q. Is not it your opinion that Mr. Harris voted for Mr. Houston three years ago, also?

"A. Yes, sir; it is.

"W. W. SIMMONS."

J. J. BEEMER, page 1128, testifies as follows:

"Question. Please state your name, age, where you live, and how long you have resided there.

"Answer. J. J. Beemer is my name; I am in my forty-first year; I live at Courtland all my life, except six years in Huntsville, when I was a boy, and the time I was absent in the war.

"Q. Please state who were appointed inspectors of the election held at box No. 2, in Courtland, on November 2, 1880, for member of Congress and Presidential electors, and state their politics.

"A. James Montgomery, an avowed Greenbacker; J. J. Beemer, an Independent voter; and John H. Harris, also an Independent voter.

"Q. Please state if you are well acquainted with the voters of Courtland precinct, and their political sentiments.

"A. I think I am well acquainted with the voters of the Courtland precinct and their political sentiments.

"Q. For whom was James Montgomery and M. M. Butcher for Congress?

"A. I know that James Montgomery was for Lowe, and my belief is that Butcher was also for Lowe.

* * * * * * *

"Q. Is it true or not that when you first counted out the ballots after the polls were closed a mistake was made in the count, and that you then adjourned over until next day, and that Mr. Harris took charge of the box until you met next morning?

"A. It is true."

In answer to another question, Mr. Beemer testified, page 1129:

"General Wheeler got between 75 and 100 white votes at that box, and the colored men who voted for him were known to be for him."

T. H. Jones, page 1087, testified:

"The politics of the inspectors at Courtland box No. 2, was as follows: One a Greenbacker, and the other two had been accustomed to vote split tickets."

The evidence shows that there were no ropes put up as required by law, and that the persons who were distributing Garfield and Wheeler tickets were, in most cases, close to the window and saw the men hand in their votes, and the proof is positive and uncontradicted that Garfield and Wheeler ballots were voted which were not counted.

Green Jones, pages 1065 and 1066, testifies that he was at Courtland box No. 2, all day November 2, 1880, working in the interest of Joseph Wheeler for Congress, and that he got twenty-five colored men to vote for General Wheeler on the Garfield and Arthur ticket. He testifies that he issued these twenty-five tickets, and saw them put the tickets in the hands of the inspectors; that a great many colored men voted that kind of ticket at that box that day; that there were a number of persons, both white and colored, working with the colored people to get them to vote the Garfield and Wheeler ticket that day.

T. N. Kirk swore that the colored men thought they had as good a right to vote for Wheeler as for Lowe, as long as both were on the Garfield ticket. (See pages 1067 and 1068.)

Kirk also swore that he voted for Wheeler, and got ten other colored men to vote for him also at Courtland box No. 2.

Joe Owens, page 1069, testifies as follows:

"I gave out seventeen tickets with the name of Joseph Wheeler on them, who promised to vote the ticket, and I think they all voted those tickets; but I know seven of them voted the Wheeler ticket for Congress at Courtland box No. 2, because I saw them vote the tickets which I gave them."

He testifies that all these men were colored men.

Robert Beard, page 1072, testified that he got three colored men to vote for Wheeler at boxes 1 and 2 at Courtland, and that he voted for Wheeler himself; that a great number of colored men voted the Wheeler ticket; and that a number of persons, both white and colored, were working to get them to vote for the Garfield and Wheeler ticket, and that the impression was that most of the colored men were voting that ticket.

Henry Clay Jones, page 1074, testifies that he got thirty-six colored men to vote the Garfield and Wheeler ticket at Courtland box No. 2, November 2, 1880, also that a great number of colored men voted that ticket that day; that this was a general impression, and that he knew it to be true because he saw them vote it.

James Brown, page 1077, testifies that he voted a Garfield and Wheeler ticket, and got another colored man to vote the same kind of ticket, and that he was a colored man.

Quintus Jones, page 1080, testified that he got seven colored men to vote the Garfield and Wheeler ticket.

Isaac Jones, page 1088, testified that he got ten colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland box No. 2 on November 2, 1880.

Shadrach Kirk, page 1090, testified that he got four colored men, including himself, to vote the Garfield and Wheeler ticket on November 2, 1880, and that most of the colored men were voting that ticket that day.

Patrick Jones, page 1092, testified that he was certain he got seven colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland on November 2, 1880.

Frank Clay, page 1095, testified that he got nine colored men, including himself, to vote the Garfield and Wheeler ticket at Courtland box No. 2.

Malachi Swope, a colored man, page 1098, testified that he voted the Garfield and Wheeler ticket.

Ben Jones, page 1108, testified that he got thirteen colored men to vote the Garfield and Wheeler ticket at Courtland box No. 2, on November 2, 1880.

Corodell Swoope, (colored,) page 1111, testified that he voted the Garfield and Wheeler ticket at Courtland on November 2, 1880.

The evidence of T. H. Jones, pages 1086 and 1087 of the record, is as follows:

"Question. Where were you on election day, November 2, 1880?

"Answer. At the Courtland box.

"Q. In whose interest did you work that day?

"A. I was working with the colored men to induce them to vote for Joseph Wheeler.

"Q. Please state how many tickets you gave out to colored men who promised to vote for Joseph Wheeler.

"A. I did not count them; I suppose fifty or sixty.

"Q. Are you satisfied that these fifty or sixty tickets were voted by colored men?

"A. I am satisfied these tickets were voted as well as a man could be satisfied with anything which happens in ordinary affairs of life. I was near the polls and gave out the tickets to colored men who promised to vote them, and saw many of them vote them at the polls; there were no ropes stretched, so we were enabled to go up close to the window where they put in the votes; those that I had doubts about I noticed that they voted the ticket I gave them; those that I had perfect confidence would vote the ticket I gave them I did not take pains to observe.

"Q. Have you a ticket similar to those you gave the colored men to vote? If so, please mark your initials upon it and make it an exhibit to your deposition.

"A. I have done so.

For Electors for President and Vice-Presiden the United States:

GEORGE TURNER.

WILLARD WARNER.

LUTHER R. MARTIN.

CHARLES W. BUCKLEY.

JOHN J. MARTIN.

BENJAMIN S. TURNER.

DANIEL B. BOOTH.

WINFIELD S. BIRD.

NICHOLAS S. M'AFEE.

JAMES S. CLARKE.

For Representative in Congress from the Eighth Congressional District:

JOSEPH WHEELER.

"Q. What were these tickets understood to be by the colored men?

"A. They were understood to be tickets with Garfield and Arthur electors, with the name of Joseph Wheeler on it for Congress; they all understood that in voting the ticket they were voting for Garfield and Arthur for President and Vice-President, and for Wheeler for Congress.

"Q. Was it or not at box No. 2 that these tickets were voted?

"A. The great bulk of them voted at box No. 2, but some few of them voted at box No. 1. I voted at box No. 1 late in the evening, when the voting was pretty much all over. I voted a Hancock ticket, with Wheeler on it for Congress.

"Q. State the names of all the inspectors at box No. 2.

"A. James Montgomery, John H. Harris, and J. J. Beemer.

"Q. State the politics.

"A. Montgomery is a Greenbacker, and the others have been accustomed to vote split tickets.

"Q. State the names of the inspectors at box No. 1 and their politics.

"A. When they commenced the inspectors were Samuel Ashton, a Republican; A. J. Morris, a Republican; and James Galey, a Greenbacker; but they changed and put in T. A. Tatham, a Democrat, in place of A. J. Morris, Republican, who, however, remained and acted as clerk.

"Q. Was there a Republican supervisor at box No. 1?

"A. Yes.

"Q. Was there a Democratic supervisor at box No. 1?

"A. No.

"Q. Please state what the general impression was when it was announced on November 3, the day after the election, that Joseph Wheeler had but one hundred and eleven votes counted for him at box No. 2.

"A. It was a matter of great surprise, as from the way the votes went in it was thought Wheeler votes would be two or three times as large as was counted for him.

"Q. Please state the politics of the party opposed to the Democratic party for the last nine years.

"A. In 1871 and 1872 the candidates for the Legislature and county officers called themselves Independents, and it was the same up to about 1877; then they assumed the name of Greenbackers. There have been no candidates for county officers for many years on square Republican principles, except Peter Walker and John Bell, who ran for the Legislature in 1878. At each President's election the Republican electors have been voted for in this county.

"Q. Please state what influences you understand have been and are brought to bear upon the colored people to induce them to vote for the Greenback and Independent candidates.

"A. The influence of fear and intimidation, to a very great extent, is brought to bear; they are taught that if they do not vote for these Greenback and Independent candidates, pursuant to the direction of their leaders, that the least punishment which would be inflicted upon them would be ostracization, and that they would be denounced by their colored associates as traitors to their race; they also have fear of bodily harm and harm to their property, unless they vote the ticket dictated by their leaders. In 1878 Peter Walker and John Bell tried to run for the Legislature on the Republican ticket, and Peter Walker particularly was so threatened and intimidated and abused that he was afraid to openly distribute his tickets. I was informed that he was so terror-stricken and alarmed that he was in great fear that his house would be burned and that he would be killed. Samuel Haynes, a very intelligent colored man, has just told me that the prevailing influence brought to bear upon the colored man to make him vote for the Greenback party, or some party opposed to the Democratic party, was the conviction and constant threats that they would be ostracized by their race unless they did so. He also said that no matter how beloved and popular a candidate might be, all his prospects would be blasted if he was in support of the Democratic party.

"Q. Do colored men when they vote the Democratic ticket want it kept a secret?

"A. Yes.

"THOS. H. JONES.

"Witness:

"JOS. F. HILL."

This conclusively shows that there was fraud at this box. It shows that Joseph Wheeler got at least 100 to 150 Garfield and Arthur votes.

The proof also shows that Wheeler received at least 75 to 100 white Democratic votes at that box.

There can be no question but that this box must be rejected.

The proof comes from the witnesses and friends of Colonel Lowe.

As some point was made regarding the politics of Mr. Harris, who constituted himself the custodian of this box, we have taken some trouble to review the sub-

ject, and we present the following summary of the evidence which bears on this subject:

Before proceeding to discuss this evidence we must remark that the proof shows that this evidence was all written down by a stenographer (who was employed by Mr. Lowe) and was afterward written out in long hand, when there was no notary public present.

Therefore, in justification to Mr. Reynolds and Mr. Harris, we may conclude that it was not written down as it was given.

In discussing the evidence we simply discuss what Mr. Lowe's lawyers and stenographer have placed in the record.

Mr. Lowe's witness, Mr. Reynolds, who the record shows to be very earnest for Lowe, who swore he lived in Courtland, which is forty-three miles from Huntsville, and who went there voluntarily, passing through parts of four counties, namely, Lawrence, Morgan, Limestone, and Madison, to testify as a witness for Mr. Lowe, when the law did not require him to leave his own county to give evidence, who puts in his evidence, page 446, the disgraceful Stevenson circular; who, when he saw how important it was to Lowe to prove the integrity of the box, testified, page 444⅓, in answer to Wheeler's first question, that the vote at that box was counted out according to law, and to the second question that he saw the count, and to the third question that it was counted as votes are generally counted.

Mr. Reynolds's own evidence shows that he knew that this statement was not correct. It shows that he knew that the vote was counted the next day, in violation of law, and that the manner of counting was in violation of law.

He knew there were what were called straight Republican tickets, straight Democratic tickets, and Garfield and Wheeler tickets.

He knew that to sort them out, and count as he finally admits they did, would be an injury to Wheeler.

He evades the fourth and fifth questions, and it was not till the sixth question came that he admitted the box was carried off by Mr. Harris.

Then follows a series of answers which appeared to be efforts to prevent the development of the fact that the box was without a lock.

At the bottom of page 445 he says he thought Mr. Harris was a Democrat, but the committee must remember that many witnesses who supported Colonel Lowe testify that they thought both they and Colonel Lowe were Democrats.

Richard H. Lowe swears, page 160, that he was a Democrat, and a supporter and admirer of Colonel Lowe, and anxious to see him elected; and further he says of Colonel Lowe, page 166, "I think he is a Jeffersonian Democrat," and on page 164⅔ he says Colonel Lowe claimed to be a Democrat of the old style—a Jefferson-ian-Jacksonian Democrat.

R. H. Lowe also swears, page 137½:

"I have heard Colonel Lowe declare that any one who said that he was a Republican was a liar.

"Question. You have heard him frequently declare that, have you not?

"Answer. I have heard him declare that; how frequently I cannot remember."

And on pages 166 to 172 of his deposition appear the manifestoes of Colonel Lowe, which certainly show extreme opposition to the principles advocated by the Republican party.

R. H. Lowe also exhibits Colonel Lowe's manifesto of September 20, 1880, in which he appeals for support to Greenbackers, Democrats, and Independents, and does not even ask Republicans to vote for him.

William C. Summers, a supporter of Lowe, a witness for Lowe, and an inspector of election, testifies, page 1353½, that he is a Jackson Democrat, and Colonel Lowe claimed to be a Democrat, and that he had read some speeches of Colonel Lowe, in which he claimed to be a Democrat, and heard his supporters talk so; and on page 1349½ O. H. P. Williams, a witness for Colonel Lowe, testified twice that Lowe in his speech abused the Republican party.

Mr. Milton also swears, page 320, he was a Democrat, and yet he was a worker for and voted for Colonel Lowe. He also swears that Deputy Marshal Stockton was a Democrat, but he also voted for Lowe, and he and two other Lowe men were appointed as United States marshals to control the election at Hunt's Store.

Even Hertzler tried to pass himself off as a supporter of Wheeler in the hope it would help out his false testimony about Lanier's, and help to throw out that box.

He swears, page 184½, in answer to the inquiry if he did not vote for Lowe: "No; I always vote the Democratic ticket." He afterward was compelled to admit that he voted for Lowe, but said he always considered Lowe as a Democrat.

This character of evidence, which runs through the record, shows that Lowe's lawyers tried to make it appear that all the election officers who called themselves Democrats were supporters of Wheeler, when the fact was frequently the contrary.

Such evidence as this shows what was meant by their Democracy.

There is not a particle of positive proof that Mr. Harris supported or voted for Wheeler.

It must be borne in mind that this evidence of Mr. Reynolds was written down in short-hand by Mr. Buell, the friend of Colonel Lowe; yet even with this, Mr. Reynolds informs us of his opinion of the character of the man who became the box custodian.

He says of him, bottom of page 445: "He might say he voted for one man, and then not do it."

Mr. Reynolds also says, page 445½:

"The general opinion was that he (Wheeler) was getting over the Democratic vote there."

The question, and what purports to be an answer to the question, found on bottom of page 447, is easily explained. Every lawyer who has examined witnesses knows that frequently when asked a question they repeat the question in an interrogative manner to be certain they understood the question correctly.

This is particularly the case with reluctant witnesses who are trying to make the best show possible for the party in whose interest they are being examined. This was eminently the case here. Mr. Reynolds repeated the question verbatim, and Mr. Lowe's friend, the stenographer, writes down Mr. Reynolds's question, omitting the interrogation mark, and thus makes it appear that it was his answer.

This could not be corrected, because no one but the stenographer could read the short-hand notes; and therefore no one but the stenographer could know with any certainty what was meant by his short-hand marks.

Mr. Simmons, a Republican and a Lowe man, and supervisor, and witness for Colonel Lowe, was more willing to admit that the box was carried off by one of the inspectors, and also says, page 453½, that the next day they sorted out the tickets into three piles: Republican tickets to themselves, Greenback tickets to themselves, and Hancock tickets to themselves.

This certainly impaired Wheeler's chances to get the Garfield tickets with his name on them counted for him.

When Wheeler heard this he felt it so keenly that he sent in his sworn protest against the counting of said box, which is found on bottom of page 1062.

Had the contestee known of the other irregularity would he not have included that in his protest?

Simmons mentions, page 455¾, three different elections where he states it as his opinion that Harris voted against the Democratic party.

On page 453½ he stated that he said two or three times during the day that Wheeler was getting a larger vote than he did get, and that he thought so too.

Now, Mr. Beemer swears positively, page 1128, that Harris was an Independent voter; and Mr. Jones swears, page 1087, that Mr. Harris was accustomed to vote split tickets. Also T. A. Tatham swears, page 1106, that John H. Harris, who acted as inspector at Courtland box No. 2, claimed to be an Independent voter.

He also says that Harris supported Sam Houston and W. B. McDonald and Alex. Heflin in opposition to the Democratic party, and it will be observed that this same Heflin swears, page 460, that he, too, was a Democrat, but admits that at the last election (namely, November 2, 1880,) he voted the Greenback ticket; he also admits he was elected sheriff on the Greenback ticket in August, 1880. (See pages 460⅞, 461½.)

Now, this man Heflin, after giving testimony against Wheeler which shows falsity on its face, tries to bolster it up by trying to create an inference that he was a Democrat. He was just as much a Democrat as men who supported him three months before when he ran as a Greenbacker for sheriff. This shows the object of Lowe's witnesses in calling the inspector a Democrat. They wished to create an impression that the Courtland box was not manipulated to the detriment of Wheeler.

Had Mr. Harris been put on the stand we cannot say what his evidence would have been. Mr. Reynolds says, "He might say he voted for one man and then not do it." Contestee could not have been expected to make Mr. Harris a witness.

The fact that the box was carried off in violation of law impeached it, and it was Mr. Lowe's duty to have shown that its integrity was maintained. Mr. Lowe's lawyers were fully informed in the commencement of the taking of testimony in chief that the box was carried off and kept all night unlocked. If it had been possible for Mr. Lowe to have procured evidence to sustain the integrity of the box it seems to us he would certainly have done so.

We respectfully submit that the evidence conclusively proves that Courtland box No. 2 was managed entirely by men who were at least not the friends and supporters of Wheeler.

Some may have been Hancock men, but certainly the evidence does not show they were Wheeler men.

When the ballots were partly counted out one of these men claimed they had made a mistake, and to correct this they put all the ballots in a rough box, and Mr. Harris carried the box to his room, kept it all night, returned with it the next morning, when, it appears from the evidence, the ballots were easily though illegally counted in a very short period, when a report was made showing 419 votes for Lowe and 111 votes for Wheeler.

Mr. Lowe's friends admit that these inspectors worked from five o'clock, the time the polls closed, until two o'clock next morning, and during those nine hours they claim they had counted less than 600 ballots.

These men wish the committee to believe that they acted with proper rapidity, and yet failed to count out 60 ballots an hour, when it is evident that all these ballots could have been easily counted out in two or, at most, three hours.

Above and beyond this, Mr. Lowe's witness, Mr. Simmons, page 453, swears that after counting nine hours they discovered they had made a mistake, and Mr. Lowe's other witness, Mr. Reynolds, swears, page 444, that after the nine hours they yet lacked right smart of completing the count.

Is it not clear that there was wrong connected with this box?

These ballots could have been easily counted out in two or three hours, and by seven or eight o'clock a correct report could have been completed, and yet we find these men at two o'clock in the morning had done nothing but count a part of the ballots, and the only result of these nine hours' work was the discovery that they had made a mistake.

The committee cannot see how it was possible these friends of Colonel Lowe discovered a mistake, when Mr. Reynolds says they lacked right smart of counting all the ballots.

Does it not show that all this dallying of nine hours gave an opportunity to corruptly tamper with the ballots?

Does it not show that the mistake discovered was that Wheeler had more ballots than some one wished him to have, and some one therefore found it necessary to secretly fix up the box to meet the requirements of Mr. Lowe's managers?

They did not have Wade Blankenship or William Wallace there to examine the wrists and sleeves of free Americans and compel them to vote for Mr. Lowe, and the evidence is conclusive that at least a hundred Democrats and at least a hundred Republicans voted for Wheeler.

The Wheeler ballots were in the box and the difficulty of changing them with five or six people present was staring them in the face.

We respectfully submit that there has never been stronger evidence before Congress assailing the integrity of a box than we have here presented.

If Mr. Reynolds had been a friend of Wheeler, would he have gone voluntarily 43 miles to testify for Mr. Lowe? Would he have resisted each effort to develop these facts, as his evidence shows he did? (See page 444.) His anxiety was so great that he swore, page 447⅞, that the votes were counted fairly. He says:

"I watched over it myself.

"I saw it was done well.

"I was in the house."

And then he afterwards admits this was not true, and he swears, top of page 448:

"I was not absent but a few minutes during the counting in the daytime in the last count."

And top of page 445 he says:

"Well, I was not there all the time, but I was there nearly all the time."

We could go on with this discussion, but the House will certainly admit that it requires nothing further to show that this box must be rejected.

The evidence that the ballots were tampered with at this poll is very much stronger than at "Arredonda poll," (case of Bisbee *vs.* Finley,) and we might add that it is stronger than any other case before this committee.

The violation of law by the inspectors is proven by Mr. Lowe's witnesses, and most of the evidence is given by Republicans.

It proves positively that there was palpable violation of the law and flagrant fraud at this box.

This fraud was distinctly charged in the answer to the notice of contest, and it was proved by the evidence of numerous witnesses, and not one word of the evidence is in any way controverted.

Harris was not called as a witness. Where he took the box; how he kept it; whether any person had access to it other than himself; whether he himself examined it, or did anything with it or with the ballots in it during these hours that it was away from its proper custody and not subject to proper supervision—as to all these things the evidence is a total blank, except as above alluded to and hereafter stated. The next morning Mr. Harris brought back what purported to be the box he took away with him, and the contents of that box, whatever they were, were counted, but we contend that the proof shows that the ballots did not remain the same, because the testimony proves that at that poll the contestee received at least 200 votes, whereas there was only returned for him 111, thus showing that the count as made did not correspond with the ballots as cast. We submit, therefore, that this box must be rejected, and this will deduct from the contestant 419 and from the contestee 111. Now, the box being rejected, as it certainly must be, then, according to all the rulings of the majority of the committee in other cases, and according to the plain law on this subject, the parties are remitted to the proof of the ballots actually cast for them respectively, and it being proved that the contestee received 200 votes at that poll, this number should be added to his aggregate vote.

Before concluding we feel it our duty to allude to the character of evidence which Mr. Lowe has presented to the Committee on Elections.

Evidence by deposition is in derogation of common law. It is only by virtue of statute that such evidence can be used in any judicial tribunals.

The supreme court of Pennsylvania, using the language which we find in every elementary work on evidence, said:

"The taking of testimony by deposition is at best but a very imperfect way of arriving at the truth; every precaution should therefore be taken to guard against abuses."

We approve of this expression, and think that evidence taken with disregard of the statutory requirement should not be received.

We have alluded to this subject in referring to the depositions taken at Lanier's, but we think it requires a more special attention.

The following are the provisions of the Revised Statutes of the United States material to the point now under consideration:

"SEC. 122. The officers shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively.

"SEC. 127. All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall when the taking of the same is completed and without unnecessary delay certify and carefully seal and immediately forward the same by mail addressed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia."

The corresponding provisions of the judiciary act of 1789 are in the following words:

"And every person deposing as aforesaid shall be carefully examined and cautioned and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the magistrate taking the deposition or by the deponent in his presence. And the depositions so taken shall be retained by such magistrate until he deliver the same with his own hand into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice, if any, given to the adverse party, be by him, the said magistrate, sealed up and directed to such court and remain under his seal until opened in court."

The provision that the deposition must be reduced to writing in the presence of the officer is common to the contested-election law and the judiciary act of 1789.

It is obvious, therefore, that decisions of the Federal courts on the provision of the judiciary act for the writing out of the deposition will be authorities in cases which may come before this committee under the corresponding provision of the statute relating to contested elections.

In Bell *vs.* Morrison, 1 Peters, 351, Judge Story, delivering the opinion of the court—

"Held, that under section 30 of the judiciary act a deposition is not admissible if it is not shown that the deposition was reduced to writing in presence of the magistrate."

In Edmonson *vs.* Barrett, 2 Cranch C. C., 228, the plaintiff's attorney offered in evidence on the trial the deposition of John Marshall, of Charleston, South Carolina, taken before the Hon. John Drayton, district judge of the United States. The certificate of the judge was in the following words:

"DISTRICT OF SOUTH CAROLINA, *ss:*

"On this 28th day of May, 1818, personally appeareth the under-named deponent, John Marshall, of Charleston, merchant, before me the subscriber, John Drayton, district judge of the district aforesaid, and being by me carefully examined, cautioned, and sworn in due form of law to testify the whole truth and nothing but the truth, relating to a certain civil cause, &c., &c., he maketh oath to the deposition above written, and subscribes the same in my presence, the said deposition being first reduced to writing by the deponent."

The attorney for the defendant objected to the deposition on the ground that the judge had not certified that it was reduced to writing in his presence, as required by section 30 of the judiciary act of 1879.

The attorney for the plaintiff contended that it was to be presumed to have been so written because the law required it.

But the court unanimously sustained the objection and rejected the deposition.

In the case of Pettibone *vs.* Derringer, 4 Wash., 215, tried in the circuit court of the United States for the third circuit at Philadelphia, in 1818, before Justice Washington, of the Supreme Court of the United States, and District Judge Peters, objection was made on the trial to the introduction of a deposition on the ground that the officer who took that deposition had not certified that it was reduced to writing by the witness in his presence. The court sustained the objection and held—

"That a deposition taken under the thirtieth section of the judiciary act cannot be used unless the judge certifies that it was reduced to writing either by himself or by the witness in his presence."

In the case of Rayner *vs.* Haynes, Hempst., 689, decided by the United States circuit court for the ninth circuit, in 1854, depositions offered by the attorneys for the defendant were objected to on the ground that the magistrate failed to state that the depositions were reduced to writing in his presence, and the objection was sustained by the court.

In the case of Cook *vs.* Burnley, 11 Wall., 657, when the defendant's case was reached in the course of the trial, the defendants offered to read a deposition taken under section 30 of the judiciary act. There was no certificate by the magistrate that he reduced the testimony to writing himself, or that it was done by the witness in his presence. The deposition was excluded by the district court. The Supreme Court of the United States said:

"There is no certificate by the magistrate that he reduced the testimony to writing himself, or that it was not done in his presence, which omission is fatal to the deposition."

In Baylis *vs.* Cochrane, 2 Johnson, (New York,) 416, Chief-Justice Kent, delivering the opinion of the court, said:

"The manner of executing the commission ought not to be left to inference, but should be plainly and explicitly stated. It would be an inconvenient precedent and might lead to great abuse to establish the validity of such a loose and informal system; matters which are essential to the due execution of the commission ought to be made to appear under the signature of the commissioners. Among these essential matters is the examination of the witness on oath by the commissioners, and the reducing of his examination to writing by them, or at their instance and under their care. We are accordingly of the opinion that the judgment of the court below ought to be affirmed."

While the particular facts in this New York case differ from the facts of the case now on trial, it is quite unnecessary to suggest the forcible application of the doctrine of that case to this.

The case of Summers *vs.* McKim (12 S. & R., 404) is a very strong authority on the point now under consideration. There was at the time no law in Pennsylvania requiring the deposition to be reduced to writing in the presence of the officer. There was no rule of court to that effect. The only regulation on the subject was a rule of court requiring the deposition to be taken before a justice. But Chief Justice Tilghman, delivering the opinion of the court, said:

"The third bill of exception contains two distinct points. The first point is on the admissibility of the deposition of George Leech; several exceptions were made to this evidence, but there was one which was decisive; and, as it involves a principle of great importance in practice, I am glad that an opportunity is offered to the court of settling it. This deposition was taken under a rule of court before a justice of the peace of Clearfield County, but it was drawn up in the city of Lancaster from the mouth of the witness by Mr. Hopkins, counsel for the defendant, and then sent to Clearfield County and sworn to there. Now, although the character of the counsel in the present instance puts him above all suspicion of unfair dealing, yet it would be a practice of most dangerous tendency if depositions so taken were to be admitted as evidence. The counsel of the party producing the witness is the last person who should be permitted to draw the deposition, because he will naturally be disposed to favor his client, and it is very easy for an artful man to make use of such expressions as may give a turn to the testimony very different from what the witness intended.

"I know that depositions are sometimes taken in this manner by consent of parties; and when the counsel on both sides are present the danger is not so great; but in the present case there was no consent, nor was the counsel of the plaintiffs present. The rule of court is that the deposition shall be taken before a justice; it ought, therefore, to be reduced to writing from the mouth of the witness in the presence of the justice, though it need not be drawn by him; and in case of difference of opinion in taking down the words of the witness, the justice should decide. In chancery, if the counsel of one of the parties draws the deposition before the witness goes before the commissioners, it will not be permitted to be read in evidence. (1 How. Ch., 360.) This certainly is a good rule; the taking of testimony by deposition is, at best, but a very imperfect way of arriving at the truth; every precaution should, therefore, be taken to guard against abuses. It is very clear to me that the mode in which the deposition of George Leech was taken is subject to great abuse, and should be put down at once. I am of opinion, therefore, that was very properly rejected."

See also the following cases: United States *vs.* Smith, 4 Day, 121; Railroad Co. *vs.* Drew, 3 Woods C. Ct., 692; Beale *vs.* Thompson, 8 Cranch, 70; Shankriker *vs.* Reading, 4 McL., 240; United States *vs.* Price, 2 Wash. C. Ct., 356; Hunt *vs.* Larpin, 21 Iowa, 484; Williams *vs.* Chadbourne, 6 Cal., 559; Stone *vs.* Stillwell, 23 Ark., 444.

The proof in this case shows:

First. That 49 depositions found on pages 34 to 266, and 302 to 452 of the record in this case have no certificates at all, and the proof shows that they were not written out in the presence of the commissioner before whom it is claimed they were taken.

Second. That exhibits were attached to some of these depositions which the witnesses did not see.

Third. That exhibits were attached to depositions which were not correct copies of records which they purport to represent.

Fourth. That a transcript from the probate judge of Morgan County was changed, and that matter was written upon said transcript after it reached the hands of Mr. Lowe or his agents or attorneys, and the matter written thereon was made the basis of an argument in contestant's brief.

Fifth. That a false exhibit was filed with the record and printed in the record following the deposition of Lowe Davis, which false exhibit was made the basis of an argument in contestant's brief.

Sixth. That the affidavits attached to the motion to suppress show that the certificate attached to the deposition of Mr. Lowe was not written out and attached to said deposition until several days after the date it purports to have been so written out and attached.

Seventh. That the so-called deposition of William Wallace, James Jones, John Kibble, Alexander Jamar, and 50 other witnesses were never legally signed.

Eighth. That the one hundred and ten so-called depositions found on pages 1264 to 1340 of the record are without any certificate whatever, and there is nothing in the record to show that any of the witnesses were sworn, or that any of the evidence was written down in the presence of any commissioner.

Ninth. That the so-called depositions taken before E. P. Shackleford are not certified under his seal as required by law.

Tenth. That one hundred and seventy-one so-called depositions which it is claimed were taken before R. W. Figg, esq., were not certified and sealed and forwarded by mail addressed to the Clerk of the House of Representatives.

The record shows that said so-called depositions reached the Clerk of the House of Representatives through a corporation called an express company. It shows they were in a box which was not sealed in any way whatever.

It also shows that many of said depositions remained out of the hands of the commissioner before whom it is claimed they were taken from two to three months before being so illegally transmitted to Congress.

Eleventh. The record also shows that depositions which were taken before A. W. Brooks, found on pages 331 to 338, were not taken at a time which the law allowed said depositions to be taken, and it further shows that, contrary to law, they were transmitted to the Clerk of the House of Representatives by a corporation called an express company, and not by mail as required by law.

Twelfth. The record shows that fifty witnesses, examined before A. J. Bentley, at Meridianville, were examined without giving contestee notice, as required by law.

That Mr. Lowe's attorneys gave contestee notice they would take said evidence at or near Pleasant Hill, and upon said notice they proceeded to and did take said evidence at Meridianville, six miles from Pleasant Hill.

That when the place of taking evidence was finally discovered by Mr. Wheeler's attorney, the commissioner refused to allow him to cross-examine some thirty witnesses who were examined after his arrival; and it further shows that Lowe Davis, the attorney for Mr. Lowe, wrote down the evidence, and in some cases wrote it down to convey a different and contrary meaning from that given by the witnesses, and the record shows that this illegally taken evidence was not certified as required by law, and that it was not transmitted to Congress as required by law.

The record also shows, after Mr. Wheeler had facilitated Mr. Lowe's attorneys in taking evidence by acknowledging service to their notices to take testimony, these same attorneys used most extraordinary and unwarranted means to embarrass and delay Mr. Wheeler in his efforts to take testimony, and that by such means they in some instances stopped the contestee in his efforts to take testimony.

Mr. Wheeler made and filed proper and seasonable motion to suppress these depositions, supporting by affidavits such allegations as were not apparent on the record.

We think the forty-nine depositions which purport to have been taken at Huntsville before R. W. Figg, esq., and the one hundred and ten which purport to have been taken before him at Lanier's, and the thirty which purport to have been taken before A. J. Bentley, at Meridianville, should be suppressed and not considered in this case.

CONCLUSION.

We now make the following summaries of the legal votes to which the contestant and contestee are respectively entitled under the law and the evidence.

With regard to the illegal ballots counted for Mr. Lowe we find that 1,294 are proven by the inspectors or officers of election at the thirty-two precincts where they were cast, which are fully cited in a table which is found on page 54 of this report.

These witnesses were under the laws of Alabama the custodians of these ballots, and in most cases they corroborate their recollections by counting the ballots in the presence of the commissioner, and they then take one or more of the ballots from the box and put them in evidence by attaching them to their depositions.

There is some proof that in addition to the 1,294 illegal ballots there were also counted for Mr. Lowe as many as 1,734 illegal Weaver and Lowe ballots, but as the

proof regarding these latter ballots is not as satisfactory as that regarding the former, we conclude to only consider the 1,294 proven by primary evidence.

KINLOCK BOX.

The proof on this box is so positive and uncontradicted that we do not think the House will hesitate to deduct 16 votes from Mr. Lowe.

UNREGISTERED VOTERS.

An examination of the record shows that over 3,000 person's names are found upon the poll lists in twenty-nine different precincts, which names are not found in the registration lists.

We also present a table, marked No. 2, by which we refer the House to direct and specific proof showing that 1,027 unregistered voters voted for Mr. Lowe.

Mr. Lowe was unable to and failed to prove that a single unregistered voter voted for Mr. Wheeler.

Table No. 2 gives pages in the record where the evidence is found, and also the name of at least one witness whose testimony is relied upon.

It is also shown by table No. 1 that at the twenty-nine polling places mentioned in said table 2,698 illegal unregistered persons voted.

But to do the contestant no injustice, we deduct 298 from the 2,698 unregistered voters, leaving 2,400 persons who voted at these twenty-nine precincts, and who were not registered.

At these twenty-nine polls Lowe had returned for him 5,630, and Wheeler had returned for him 2,625 votes.

Now, in the absence of proof for whom these illegal votes were cast the law says that one of three rules must be adopted:

1st. Either deduct all from him who had a majority at each poll.

2d. Or reject the poll.

3d. Or deduct the illegal votes *pro rata*.

The first rule would deduct 2,400 from the vote of William M. Lowe.

The second rule would deduct 5,630 from the vote of William M. Lowe and 2,625 from the vote of Joseph Wheeler, leaving 3,005 as the balance or total reduction of the vote of William M. Lowe.

By the third or *pro rata* rule there would be deducted from the vote of William M. Lowe 1,642, and from the vote of Joseph Wheeler 758, leaving the balance or net amount to be deducted from the vote of William M. Lowe at 884, which is the least possible deduction which can be made from the vote of William M. Lowe under either of these three rules.

To show that the *pro rata* rule does Mr. Lowe more than justice, we cite the House to table No. 2, which shows that 1,027 unregistered persons voted for him; and 541 of the persons included in table 2 are the same as those included in table No. 1.

For instance, at Courtland box No. 2 it is proved that 189 unregistered persons voted for William M. Lowe, and on the *pro rata* rule he is only charged with 111; therefore we are entitled to add 78 bad votes to the 994 (changed to 884) bad votes in table No. 1.

By adopting the same plan with regard to other boxes, we make out table No. 3.

Table No. 3.

Number of unregistered persons which are included in table No. 2, and who are proven to have voted for William M. Lowe, and who are not included in the 994 (changed to 884) persons referred to in table No. 1:

Precinct:	
Brickville	18
Courtland, No. 2	78
Whitesburgh	31
Meridianville, No. 2	18
Carpenter's	3
Red Bank	4
Hawk's Springs	4
Bishop's	12
Scottsborough	11
Davis's Springs	16
Maysville	55
Moulton	16
Athens	16
Centre Star	12
Cave Spring	22
Cluttsville	13
Meridianville, No. 1	89
Hampton's	6
Mooresville	17
Slough Beat	36
Shoal Ford	5
South Florence	4
	486

Table No. 2 includes several boxes which are not included in table No. 1, and we find that 486 unregistered men who are not included in table No. 1 voted for Mr. Lowe.

Now, adding these 486 votes in table No. 3 to the 884 obtained by the *pro rata* rule (see table No. 1) we find that the total number of unregistered votes which must be deducted from the vote of William M. Lowe amounts to 1,370.

We therefore conclude that according to the proof in this case, there should be deducted from the vote of William M. Lowe 1,370 illegal unregistered votes.

As we have concluded that Courtland box No. 2 should not be counted, and as 189 of these unregistered votes were cast at that box, we must deduct these 189 illegal votes from the 1,370, leaving 1,181 unregistered votes exclusive of Courtland box No. 2.

But to be still further certain and do the contestant full justice, we make a further arbitrary reduction of 81 votes, and we decide to deduct 1,100 illegal unregistered votes from the vote of William M. Lowe.

NON-RESIDENTS.

The proof shows that 81 non-residents of the State of Alabama voted for Mr. Lowe, and we think they should be deducted from the vote of William M. Lowe.

It is claimed by Mr. Lowe that the 9 votes which the inspectors at Lanier's deducted from Mr. Wheeler and the 2 votes which they deducted from him were not corrected by the county officers. This would make a difference of 7 votes against Mr. Wheeler.

The proof with regard to this matter is tainted by the fraudulent exhibit which appears following the deposition of Lowe Davis.

It is also claimed by Mr. Lowe that Flint precinct was not counted in the returns of Morgan County, and that this precinct gave him 17 majority; but the proof regarding this matter is contradictory, and is tainted by a forgery, which the affidavit of the probate judge shows was indorsed upon it after it went in the hands of Mr. Lowe or his attorneys.

If both these were allowed it would make a difference of 24 votes in favor of Mr. Lowe.

MINORS.

The proof shows that 16 minors voted for Mr. Lowe, and we think that number should be deducted from his vote.

SUMMARY NO. 1.

Votes returned for Mr. Wheeler			12,808
Votes returned for Mr. Lowe		12,765	
From which deduct votes cast for Mr. Lowe by persons who were not registered	1,100		
Deduct illegal ballots proved to have been cast and counted for Mr. Lowe	1,294		
Deduct non-residents proven to have voted for Mr. Lowe	70		
Deduct minors proven to have voted for Mr. Lowe	10		
Deduct Kinlock box, illegally returned for Mr. Lowe	16		
Deduct Courtland box No. 2 (Lowe's majority)	308		
		2,798	
Mr. Lowe's legal vote		9,967	9,967
Mr. Wheeler's majority			2,841

SUMMARY NO. 2.

Votes returned for Mr. Wheeler			12,808
Votes returned for Mr. Lowe		12,765	
From which deduct votes of unregistered persons by the McCrary or *pro rata* rule	884		
Deduct illegal ballots proved to have been cast and counted for Mr. Lowe	1,294		
Deduct non-residents proven to have voted for Mr. Lowe	70		
Deduct minors proven to have voted for Mr. Lowe	10		
Deduct Kinlock box, illegally returned for Mr. Lowe	16		
Deduct Courtland box No. 2 (Lowe's majority)	308		
		2,582	
Mr. Lowe's legal vote		10,183	10,183
Mr. Wheeler's majority			2,625

Now, if we deduct 7 votes from Mr. Wheeler at Laniers and add 17 votes to Mr. Lowe at Flint, it will make a difference in Mr. Lowe's favor of but 24 votes; and if we should give him all he asks, counting for him the 525 votes which he claims were rejected, and the votes he claims to have proven at Meridianville and Laniers, Mr. Wheeler's majority would still be nearly 2,000.

It seems to us there is no question but that under the rule adopted by the majority of this committee they should count for Mr. Wheeler the 200 votes which the proof positively shows were cast for him at Courtland box No. 2.

This would make Mr. Wheeler's majority 200 greater than shown by the tables.

We therefore recommend the adoption of the following resolutions:

Resolved, That Joseph Wheeler is entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

Resolved, That William M. Lowe is not entitled to a seat in this House as a Representative in the Forty-seventh Congress from the eighth Congressional district of Alabama.

[During the reading of the report,

Mr. ATHERTON said: I desire to suggest that I have not asked that this report be read as a mere matter of form. I want it read so that the House may have the benefit of a report prepared by my colleague on the committee, the gentleman from Pennsylvania, [Mr. BELTZHOOVER.] I ask the Clerk to read it loud enough to be heard, and I ask gentlemen on the other side, and on this side, to give it their attention.

It having been asserted, as I understand, that the charge that the ballots complained of by the contestee had been prepared in such a way as to be read as plainly from the back as from the front is not true in point of fact, for the purpose of showing that the report is correct in that particular I have had brought here the original evidence filed in the case, containing some of the ballots which were voted. I have them here for the purpose of showing that they were substantially as plainly read from the back as from the front.

Now, any one here can come forward and examine these ballots if he chooses. There are now on the other side, by actual count which I requested a page to make, twenty-six members of the Republican party, and about three of them are paying attention to a case they are to vote upon. Now I ask any one of those three to come forward and see what they are to vote upon as judges. They have not read the reports; they were not received until yesterday. I charge that not a half dozen men on that side of the House have ever read this report or any of the evidence in this case.

Mr. HOUSE. That makes no difference.

The Clerk proceeded with the reading of the report as above.]

Mr. ATHERTON. I regret that the reading of this valuable report, to which the minority of the committee at all events have given so much patient industry and consideration, should not have been listened to or considered by members on the other side of the House. I regret that gentlemen upon the other side having a duty devolving upon them have made no effort either to read the report prepared by the majority of the committee or even to hear the reading of the report prepared with so much care and attention by the minority of the committee. I regret that they have not endeavored to obtain correct information, so that if they vote against the sitting member they shall find that the *prima facie* case of the sitting member made by his credentials has been overcome.

It has been charged that the indifference of the Republicans in this case results from a peculiar state of facts; that there is an understanding and agreement between certain gentlemen upon the other side and the Republican party that each will assist the other, and it is not therefore necessary to examine——

Mr. JONES, of Texas. Will the gentleman yield——

Mr. ATHERTON. I do not.

Mr. JONES, of Texas. I want to know if you make that charge.

Mr. ATHERTON. I say it has been made.

Mr. JONES, of Texas. And I pronounce it to be false.

The SPEAKER *pro tempore*, (Mr. DINGLEY.) The gentleman from Ohio is entitled to the floor.

Mr. ATHERTON. Very well; I can assure you that the Republican paper of this city published this morning substantially charges it; and it is to that I desire to call the attention of the House. I say it was charged, and I also say that the Republican party in this House has acted as though it did not desire to be informed, but was willing to vote without any information upon this question. I make that charge.

Mr. JONES, of Texas. I understood you to charge——

Mr. ATHERTON. I say it has been charged, and I produce the proof, whatever it is, the Republican organ in this city.

Mr. JONES, of Texas. I understood you in this way——

The SPEAKER, *pro tempore*. Does the gentleman from Ohio yield?

Mr. ATHERTON. I do not.

Mr. JONES, of Texas. I understood you to charge that the Greenbackers and Republicans had made a bargain.

Mr. ATHERTON. I do not yield, and whatever the gentleman says when I do not yield to him I trust will not be taken out of my time.

Mr. JONES, of Texas. Very well.

Mr. ATHERTON. I say that the charge has been made. The charge being made, we come to the consideration of this case and nobody on that side gives any attention to it. The reports were not brought into the House so that anybody could have them to read, and the record is so immense that nobody will read it. And now when we come to the time that a final vote is to be taken, and the ax of decapitation is to fall upon the neck of a member of this House, nobody on that side of the House gives any attention to the report which has been read, so as to ascertain whether the facts justify their proposed action against the member or not. This morning's Republican of this city says:

Another case taken up. Bisbee is in and Finley out. And now Lowe is to have the seat wrongfully held by Wheeler. The Greenbackers and the Liberals have been steadfast and true during the pending parliamentary struggle. Now Republicans are upon their honor to see justice done Mr. Lowe.

Mr. HAZELTON. Only justice.

Mr. CONVERSE. What paper is that?

Mr. ATHERTON. It is the Republican of this city. "The Republicans are upon their honor" to vote for Mr. Lowe.

Mr. HAZELTON. "To see justice done;" that is what it said.

Mr. ATHERTON. We will see what justice in the Republican ranks means pretty soon. We have seen twenty-six members in the House during the reading of the minority report. When the time comes to vote upon the case we will see one hundred and fifty members come in here and record their votes to deprive the sitting member of the seat which he rightfully holds.

Mr. HORR. Mr. Speaker, I yield five minutes to the gentleman from Texas, [Mr. JONES.]

Mr. JONES, of Texas. Mr. Speaker, I shall occupy but a moment. I wish to say that the charge made through the Democratic press, and to which I understood the gentleman from Ohio [Mr. ATHERTON] to be alluding a little while ago, that the Greenbackers and Republicans have any bargain or "trade" or any understanding, implied or express, in reference to these election cases, is wholly without foundation. I want to state further that I did not know myself until the roll-call last night how my Greenback associates or colleagues would vote. We have no understanding about this matter; we never have had a conference about it. Every Greenbacker in this House votes upon his own judgment and his own conscience. I will say now in behalf of that party, if I may speak for it—at least I may speak for myself—that such a thing as a bargain or understanding has never been intimated, and there is not a Greenbacker on this floor capable of entertaining such a proposition.

Mr. ATHERTON. I was engaged when the gentleman from Texas began his remarks. Did he say that this charge was made by a Democratic paper?

Mr. JONES, of Texas. I understood that was the charge you were alluding to a while ago.

Mr. ATHERTON. I merely want to ask the gentleman whether he regards this paper from which I read, called the National Republican, as a Democratic paper.

Mr. JONES, of Texas. No; I had nothing to do with that, and did not allude to it. I stated what had been charged. I understood it to have been charged by the Democratic press; and I understood you this morning in substance to father it. That is what I meant.

Mr. ATHERTON. I mean to say—and this is all I have to say on the subject—that if any injustice has been done to the Greenbackers of this House by this paper it is done by the Republicans themselves, who make this charge in substance as I read it.

Mr. THOMPSON, of Iowa. Is that article evidence of any thing except an individual expression of opinion?

Mr. ATHERTON. It is just the kind of evidence on which you act in these cases.

Mr. HORR. Mr. Speaker, if I would permit myself, in an election case, to be governed by my feelings, my decision would be in the beginning against the contestant in this case. I sat here with him through the last Congress, and well remember that he almost invariably cast his votes with the gentlemen on the other side of the Chamber; that, as a rule on party questions, he went with the Democrats.

A MEMBER on the Democratic side. We never heard of it.

Mr. HORR. It is none the less true; and the RECORD will show it. He is also a professed National, and therefore he adds to the sins of the Bourbon the nonsense of the Greenbacker. [Laughter.]

Mr. BUCKNER. Will you allow me to ask you a question?

Mr. HORR. You may ask me ten if you wish.

Mr. BUCKNER. Do you not know that Colonel Lowe is in a transition state, going over to your party?

Mr. HORR. I know nothing of the kind; but, if it be true, let us rejoice at his increasing chances of getting to Heaven. I hardly know what the gentleman from Missouri means by transition state, but enough can be gathered from his statement to show us that the Colonel's face is turned toward the light. [Laughter.]

During my short political and public life I have never to my knowledge missed a chance of hitting a Greenbacker over the head whenever I could get at one, nor have I ever been accused of omitting an opportunity of that kind; and for this reason: I do not know a single theory which the Greenbackers believe that I believe. Their entire fabric seems to me to be founded upon error.

The notion that you can by statutory law create something out of nothing is to me simply absurd. Believing this as I do, it has always seemed to me to be my duty, on all occasions, to do what I could to leave as few Greenbackers in this world as is possible. Consequently, if I were to be governed by this feeling which springs up in my breast unbidden, I should vote against seating Mr. Lowe. But having examined the case with some care, and being convinced of this fact, that Lowe was actually elected, that he received a majority of the votes cast in the eighth Congressional district of Alabama, the moment that is proven, then it makes no difference about his politics, whether he is a Greenbacker or not. I am compelled by my sense of duty to cast my vote in favor of seating him.

It is no more than fair to myself to say that I do not profess to bring to the investigation of this case any powers as a technical lawyer. I have been a member of this body through only one Congress exclusive of the present session; but I have in that brief period come to distrust thoroughly two classes of men; first, that class of lawyers who prefer legal quibbles to logic, who try cases on technicalities instead of facts; second, that class of statesmen who think that parliamentary law and parliamentary quibbles are all there is of statesmanship. During the long contest which we have had here the past two weeks, and which is going on now, there have been wonderful exhibitions of both these classes of men. Let us take a glance at this work. First, the parliamentarians. I want you to go back with me for two weeks, and see if we can get at the tremendous intellectual power necessary to run a filibustering arrangement. [Laughter.]

I am sorry the gentleman from Pennsylvania, [Mr. RANDALL,] our old Speaker, is not in his seat, because necessarily in this connection I must compliment him somewhat for the immense ability he has shown in the recent contest. If I recollect aright on no occasion and during no day of that long fight has his intellect ever failed him. [Laughter.] He has on every occasion been able to rise to his feet and with all that force and energy so universal in his efforts to say, "Mr. Speaker, I move the House do now adjourn." [Laughter.] He may be with propriety styled the Napoleon of this great battle of the giants.

Immediately after him comes my friend from Kentucky, [Mr. BLACKBURN,] and I am sorry he is not in his seat, because I am compelled to name the great work done by him in this connection. He at once by a truly wonderful intellectual process moves an amendment to that motion to adjourn. He says, "I move that when the House adjourns to-day it adjourn to meet on Wednesday next." [Laughter.] And he does it in that sweet way of his, and no man can judge of that unless he has heard the beautiful sentences and the cadences so full of harmony with which he always addresses the House. It is like the murmuring of a rivulet. [Laughter and applause.] Now, there is nothing in nature which gives the impression of strength to a person so much as a feeling that there is in him—[here Mr. BLACKBURN entered and took his seat]—I am glad—[great laughter.]

Mr. BLACKBURN. Glad of what?

Mr. HORR. Glad the gentleman is now in his seat, because I was referring to him. [Laughter.]

Mr. BLACKBURN. I have this instant come in.

Mr. HORR. I stated my regrets in the start that you were not here, but I will go back. [Laughter.] I have been describing the wonderful parliamentary efforts of the past few days, and have called attention to the great ability of the gentleman from Pennsylvania, [Mr. RANDALL,] who has so successfully moved that the House do now adjourn, which exhibition of parliamentary knowledge and great skill as a leader had led me to call him the Napoleon of the wonderful exhibitions of statesmanship we have been having here for the past ten days. I had also called the attention of the House to the intellectual powers of the gentleman from Kentucky, which enabled him to add to that wonderful motion an amendment that when the House adjourns it adjourn to meet on Wednesday next. You see that amendment is what among parliamentary statesmen would

be called "complicated." [Laughter.] To be able not only to move that the House adjourn, but to add to it the brilliant thought that that adjournment be to a day fixed, definite—say Wednesday—that, you see, is really wonderful! [Laughter and applause.]

I had stated that he made this amendment in the beautiful language which ever flows from his lips, and with those wonderful undulations that never forsake him when addressing this House, [laughter and applause,] and I was just saying when you came in that there is nothing in nature which gives a man such a sense of power as the feeling that, way behind the splendid thing he is then doing, there is an immense reserve force. [Laughter and applause.] So it is with my friend from Kentucky. No matter what he talks about, I always have that feeling, that although his sentences and phrases remind one of the singing, rippling music of the woodland rivulet, and that while the flow is free, rapid, and even copious, still there is always coupled with that a feeling that if he should once raise the floodgates of his vocabulary we should have upon us the rushing, roaring torrents of Niagara. [Laughter and applause.] I will call him the Marshal Ney of this great contest. [Laughter.]

Then follows my friend from West Virginia, [Mr. KENNA,] whom I am sorry not to see in his seat. He has the bloom of youth on his brow and usually a look that painters always like to catch when attempting to paint the distinguished saints of the past. [Laughter and applause.] Though I am forced to admit that for two or three days past there has been a sad, serious, sort of mournful look on his countenance. [Laughter.] He comes in and adds another complication to this immense parliamentary struggle; he moves an amendment to the amendment of the gentleman from Kentucky, that when the House adjourns it adjourn to meet on Tuesday next, or some other day, always differing, and that is where the great exhibition of mental power comes in, [laughter,] always differing from the day fixed by the gentleman from Kentucky. [Laughter and applause.] There we have the three astounding propositions before us. Then comes the call of the yeas and nays, the vote by tellers, the call of the House; and so the day ends and no business has been possible. I am not a mechanic. Indeed from my boyhood up I could never take a jackknife and a stick and whittle the latter into the shape of anything that looked like any other thing that anybody else had ever made. [Laughter.]

Yet, sir, with all my lack of mechanical skill, I will take a contract to take an old-fashioned rat-trap, and, putting into it one extra spring, then I will so adjust it that when it is properly set it will furnish all the mental activity and intellectual acumen necessary to run a regular filibustering operation for three straight weeks, and never miss a single note. [Laughter and applause.] I will agree that it shall possess all the keenness of perception and all that "rising to great occasions" which have so distinguished the movements of the obstructionists here for the past ten days. [Laughter.] My rat-trap, I say, shall do it all.

But what next? We finally got through with the motions to adjourn. I am somehow unfortunate to-day in the absence of my friends, since the gentleman from Illinois [Mr. SPRINGER] is not in his seat. [Here Mr. SPRINGER entered the House.] [Laughter.] Well, after we all supposed the fight was over, he tosses his glove into the arena and with fixed lance comes dashing down the aisle to enter the lists. I brushed up my French history a little as I sat here and wondered to whom I could compare him. I have my friend from Pennsylvania [Mr. RANDALL] as the Napoleon of this wonderful struggle, my friend from Kentucky [Mr. BLACKBURN] as Marshal Ney, and my friend from West Virginia, [Mr. KENNA,] perhaps I might liken him to Marshal Milhaud or some other great French marshal; but who in the world am I to take for my friend from Illinois? [Laughter and applause.]

With that splendid dash, that quick activity, that religious enthusiasm, that always accompanies everything he undertakes, he threw himself into this great fight, and that, too, just after this masterly filibustering operation was over, as we all supposed; then he came in with all his wonderful and irresistible enthusiasm. At that critical moment, I say, just as we thought we were through with our troubles, and some of us had begun to feel that we approached the time when there should be "a rest for the weary," at that time the gentleman from Illinois came in with that vigorous motion of his to recommit and with those terrible appeals which he made from the decisions of the Chair. So I say I have been trying to find some one in French history with whom to compare him, some one that would do justice to the religious fervor, the enthusiasm, the almost inspiration which so much characterizes my friend from Illinois in his movements on this floor; and after mature reflection and going over the whole ground, I find that the only one of all those great military chieftains to whom I can in any manner liken him is Joan of Arc. [Great laughter and applause.] The fury and fervor of attack is really all there is in common between them.

Why, Mr. Speaker, if the gentleman from Illinois had come to me for advice—a thing, by the way, which, for some reason, he never does, why I know not—and had asked me as to what he had better do before he accepted that mission, and undertook to make that wonderful attack on the enemy, I should have said to him, if I had at that time been filled with this figure taken from the French history, as I now am, I say I should have said, "Why, Sister SPRINGER [laughter and applause]—no, I mean Brother SPRINGER—the tactics of Joan of Arc did very well at Jargeau and Patay, but they will not be worth a cent after Waterloo." [Great laughter.] The enthusiasm of that young maiden, her courage, her conscientious devotion, her frenzy, her supernatural zeal were powerful in 1429; but they would have availed nothing after Waterloo, and can be of no use now when the Napoleon of this contest is defeated, and is far on his way to St. Helena. [Applause.] It is too late in the centuries for such tactics to win, and of course the gentleman met only with failure.

Mr. Speaker, the whole contest on this occasion has tended to weaken my confidence in my friend from Illinois as a parliamentarian and to overthrow my high opinion of his parliamentary skill and knowledge, not to mention his wise statesmanship. There are some men among us who seem to assume that parliamentary wriggling and twisting is statesmanship; and I was only astounded before this proceeding was brought to a close that they were able to find a new member and to introduce a new factor into the contest. I have no doubt that it was a matter of grave concern to these managers as to whom they should trust with the final attempt. They got up, you remember, a lot of "whereases" and "whereases," [laughter and applause,] in the belly of each one of which there was nothing but misrepresentation and falsehood, such misrepresentations as would stagger any man of prudence and common honesty if he possessed a good memory. But listen; I state now that I was surprised when I heard them and could not help wondering how they had been able to succeed in getting anybody to present them. But if there is any one thing that our Democratic friends are more noted for than another it is for their ability to find among themselves such diversity of talent, such a multiplicity of peculiarities, that they can always select some one of their number who has just the quality and the ability to do any work they may have on hand.

They struck my friend from Maryland, [Mr. MCLANE;] and I am sorry that he, too, is out of his seat, because I do not wish to go back again and repeat should he come in. How did they know that he would be equal to this work? How did they know that he could be prevailed upon to present that string of abusive whereases and resolutions which ended up with an insult to every member on this side of the House because we had unanimously voted to sustain the Speaker in the very rulings which these resolutions condemned? Why, of course they understood the peculiar memory of the gentleman from Maryland; I have sometimes thought his memory reached clear back to Washington's administration. [Laughter and applause.] They recollected that only the other day he had with apparent sincerity made the wonderful announcement that John Quincy Adams was a Democrat; only a short time afterward he had stated that the Democrats of this country in the main had put down the rebellion. [Laughter and applause on the Republican side.] They undoubtedly said a man who can, with apparent sincerity, state both of these propositions must have the nerve and mettle to take charge of our "whereases," and so they gave them to him to present.

Only think of the sublime courage it must take to enable any man with an ordinary memory to make the statement publicly that our civil war was fought on the Union side mostly by Democratic soldiers; for that, to most of us, is a simple question of memory. Since the gentleman made that statement I have been thinking over the past a little. I had supposed that Seymour was a Democrat, and that the men who got up the riot to prevent the draft in New York City were Democrats. But if his statement be true, then I have all the time been mistaken in this. Those fellows that got up the riot must have been Republicans. This he would have us believe was the way of it: the Democrats were all off to the war, and the Republicans who, he says, got up the war and arranged for the draft, having sent every Democrat to the front and being at home themselves, turned rioters in order to prevent being sent to the war themselves. At least, that is the logic of his statements, and he seemed to believe it. And of course, that being the case, the Democrats were not to blame for that riot.

How was it in Indiana, where they had the "Knights of the Golden Circle?" They, too, must have been Republicans according to his philosophy. The Republicans were the men who got up the war, and old Governor Morton, you know, having sent every Democrat out of Indiana to fight, then the Republicans got up that "order" to prevent those Democrats from putting down the rebellion. [Laughter.] That is exactly what the statement of the gentleman from Maryland would lead us to believe. I submit that since that day we have never had the Democrats of this country under such control.

Now, I confess that this claim differs from all my recollections of the past, and reverses all my notions of the facts connected with that great contest, and I can conceive of no man who could have been persuaded to present to this House that tissue of misrepresentations included in those resolutions and whereases, except some one who has one of those comfortable memories that enables him thus to represent the great facts in history, right in the face of so many men now living who know the real facts in the case as well as the gentleman himself can pretend to.

But those whereases, under the prompt motion of the gentleman from Maine, [Mr. REED,] went onto the table, and there let them lie and fester in their own nastiness. Thus ended the great filibustering effort of this session.

Now, let us proceed to the second class referred to in my opening—the lawyers who try cases on technicalities. What is the honorable course that every man should pursue who runs for Congress or any other office in the United States? He should first seek to have every man in his district vote just as *he*, the voter, pleases. Should he not? He should then see to it that all the votes are honestly counted, and when they are honestly counted, if he is elected he should take his seat; if he is not really elected and should be dishonestly counted in and can find it out, then he should refuse to take his seat.

I can recall in my own State and in my own district an instance of this kind. In a very heated contest for member of our State Legislature a gentleman ran on the Republican ticket; he is a banker and a man of standing, and the Democrat who ran against him received the most votes, but was beaten by the official returns. There were four Democratic precincts in that district that were thrown out because the voters did not comply in any sense with the letter of the law. Their election was admitted to be informal, and these towns were rejected by the county canvassers. When the canvassers for the district met for the purpose of declaring the result this gentleman went with the other candidate to the board. He said, "Let me see those returns; what is the matter with them?" They showed him the returns and showed him the law and said, "We cannot receive those returns." He said, "Were the votes all honestly cast? Was there any trouble at the polls?" They answered, "None at all." He said, "For whom did these men vote?" They replied, "So many tried to vote for you, and so many for your opponent." He asked, "If they are all counted how would it leave this contest?" The answer of the officers was, "In that case you would be beaten." Then he said, "You must not throw them out. I will never take my seat given me against votes that have been honestly cast and thrown out on a mere technicality." He took his hat and walked out, and they gave the certificate to the other man, who is to-day a member of our State Legislature. Why was this? That man knew if the election laws mean anything, if free suffrage means anything, we must never lose sight of the great fact that that man should always be seated who gets a majority of the votes honestly cast.

A MEMBER on the Democratic side. How was it with Hayes?

Mr. HORR. I have not time to discuss that Hayes question. I never doubted that he was elected by the votes honestly cast. I was not here in that contest. If there is anything that has soured the Democratic stomach, and which they will never get over, it is that Hayes business. [Laughter.] No matter what you feed them, they will even throw up their toddy at the thought of Hayes. [Renewed laughter.]

But I was about to commence a review of these election cases, to show how the technical lawyer business is played out and why it is played out. First came this case of Lynch against Chalmers. My friend from Mississippi, [Mr. HOOKER,] whom I see before me, will bear me out in this statement: that the Chalmers district, with a fair vote, is more than 10,000 Republican. That is a fact well understood by every man living in that vicinity. When they hung the map up here before us showing that Shoestring district, and when you learn that the district was run up and down the river on purpose to include in it all the negroes possible, and in that way to prevent their votes from endangering other districts, when you understand that such was the real object of thus framing the district, you can then better understand the meanness of going to work to steal even that one from us.

There is not a gentleman here in this House who does not know that there are certain precincts in his district which, if they should be returned as having voted in a certain way differing from the well-known vote in them, he would know at once that there was something wrong about those returns. I have for example in my own district a town which has never given as high as 80 Republican votes, and has always polled 400, and over, Democratic votes. Now, if any one had come to me immediately after the last election and told me that that town had gone Republican by 300 majority I should have said instantly, "It is not true; there must be some mistake; that is not the way those people vote; I know the return is not correct." All of you have precincts in your districts of that kind. Such things may not be susceptible of proof, but we all know such to be the fact.

Now, this district of Mr. Chalmers is one of that kind. Every man I ever met from Mississippi who would talk with me in a quiet way outside of politics, and I have talked with several such, tells me that such is the fact, and that nothing is more surely known down there and more generally conceded than the fact that that district is Republican by more than 10,000 majority. And yet you gentlemen came in here and tried to keep Mr. Chalmers in his seat when we were about to turn him out. And on what plea? Was it because he received the most votes? No; not a man of you ever claimed that. Was it because the negroes intimidated the Democrats and kept the timid mortals from the polls? No; you claimed that in South Carolina, but never in the Chalmers district. What was the plea then? Simply this: that the punctuation marks on the Republican ticket differed from those on the Democratic ticket, and therefore they should not be counted. And you said the supreme court of Mississippi has decided that those dashes are bad things on a ticket; that they somehow destroyed the intent of the voter; that they were what these technical lawyers call "distinguishing marks;" and on such a flimsy, foolish pretense as that you undertook to keep Chalmers in his seat. Was such a wicked, nonsensical attempt ever before made in this country? Was such a brainless decision ever before made by any court?

I remember in my early reading to have seen it stated that a Boston Conservative, during the anti-slavery agitation, went to Theodore Parker, of whom you have all heard, and said to him: "Mr. Parker, what are you making such a fuss in the world for about slavery and polygamy? Saint Paul sustains slavery and Saint Paul sustains polygamy. Now, why are you worrying yourself so about it?" Mr. Parker said, "Does he?" "Yes," said his visitor, "I have looked it up, and find such to be the case." "Then," said Parker, "it is so much the worse for Paul." [Laughter.] Now, if the supreme court of Mississippi has ever made such a decision (I have never looked it up) as these gentlemen say they did, then I say, "So much the worse for the supreme court of Mississippi." For such a decision runs squarely against the common sense of every man who has the power to use his reason and who can read the statute and has eyesight enough left to look at the ballots. Every such man would know that those marks were put there by the printer and not with the intent to deceive the voters.

I understand that since Mr. Chalmers was voted out he has turned tail on his friends across the way. [Laughter.] I want to serve notice on you now and here that while the Republicans have stood a great deal from you Democrats that you cannot palm Chalmers off onto us. [Laughter.] Not any; under no circumstances. [Renewed laughter.] I serve this notice now on you thus early that we do not want him, and we will not take him. He belongs to you by nature; you claim him by grace; you fought for him illegally, and now you shall keep him. [Continued laughter.]

Mr. MANNING. Will the gentleman come down into Mississippi this fall and make that speech?

Mr. HORR. I should be glad to go to Mississippi and make a few speeches. Is that the district Chalmers has moved into and in which you live?

Mr. MANNING. Yes.

Mr. HORR. If I should get down there I would try to do as much for you as I did for Chalmers. If I could not, then I would give it up. [Great laughter.] There is nothing that would please me better than to go down there and compare the beauties of such a pair of Siamese twins in that district. [Loud laughter.]

Mr. ATHERTON. Will the gentleman keep Secretary Chandler from helping to elect him according to his contract?

Mr. HORR. I do not believe he ever made any such contract; it is not true; I demand the proof.

Mr. MANNING. Will you keep his hand off?

Mr. HORR. I do not believe his hands are on. If he is engaged in that then he is, it seems to me, in low business; but I deny the charge. That is all I have to say.

Now, to close up the Chalmers case.

Mr. COX, of New York. Go on; we all like to hear you.

Mr. HORR. Every man in this House knows that you rested the defense of Mr. Chalmers's case simply on a technical quibble and nothing else. You did not claim that Chalmers got the votes. The most you could claim was that the ballots for Lynch had a mark on them, a printer's dash, which enabled the negroes who could not read or write to tell for whom they were voting. You admitted that they voted for the man of their choice, and because you said the dash enabled them to do that, therefore you threw their ballots out. That was your argument. Was such iniquity ever before plead in justification?

We come now to the election case from South Carolina, and what do we find there? Technicalities again. Mackey was running in a district that every man in Charleston, South Carolina, knows is Republican by 10,000 majority; knows it as we all know things in regard to districts about us; a kind of knowledge that cannot be gainsaid, that we all rely upon. Mackey was elected by 8,000 majority. Now, how did you get him out? Why, first you managed to get up a tissue ballot. Now, I am not going into that matter only this far: I say to you gentlemen in South Carolina that the very existence of that tissue ballot is itself evidence of fraud. What was such a ticket ever invented for? What use can it be put to except for cheating purposes?

Mr. EVINS. The only tissue ballot exhibited here is a Republican ballot.

Mr. HORR. Not so. Every tissue ballot used in South Carolina had the Democratic names printed on it. Every one that found its way into a ballot-box was Democratic. Not a Republican vote of that kind has ever been found in a single case.

Mr. AIKEN. I never saw one in my life until I saw it here.

Mr. HORR. You have seen them here, and you know that they got over 1,600 of them into one box in your State, or you may know it if you will read the proof in that case.

Mr. AIKEN. I do not know that.

Mr. HORR. Your own Democratic witnesses swore to it. Do you not believe them? Now I will have to go back a little. I want to say that this whole business, in my judgment, rests on a fact away back of this election case. I know the House will bear with me when I say that I think it comes from an old theory which ought to have been exploded years ago. It comes from the idea that there is

a set of men in South Carolina, and in the other Southern States, who have a divine right to rule that country; and if they cannot rule it by means of a majority of the votes, they think there is nothing so devilish that they have not a right to do in order to keep the government in their hands. [Applause.]

Why, sir, the gentleman from South Carolina who has just been put out of his seat said, I am told, that South Carolina has always been loyal to the core. Sir, in my judgment, she has been only about half in this Union for forty years. [Laughter.]

Mr. EVINS. Let me interrupt the gentleman to say that the gentleman who left his seat two days ago did not say any such thing. He said that to-day and since the war South Carolina stood by the results of the war as loyally as any other part of the country.

Mr. HORR. Then I was misinformed.

Mr. EVINS. And I agree with him, and reaffirm what he said.

Mr. HORR. I understood that his remarks applied to her whole history and career. And I thought that was a little singular, for as young a man as I am [laughter] I recollect the old nullification days. But I remember much better that when we elected Mr. Lincoln as President this same trouble arose. It was simply because the people had concluded to have a man for President that you gentlemen did not want to be President. Then you went right out and kicked up that row. You said, "If we, the minority, cannot rule this nation, then we will destroy it."

It would seem to me almost that you gentlemen had been influenced as the Egyptians of old were. Pharaoh was the man whose heart was hardened so many times, was he not, Brother COX? [Laughter.]

Mr. COX, of New York. Yes; it was Pharaoh. [Continued laughter.]

Mr. HORR. Now, when you undertook to nullify the laws, because they did not suit you, you were taught better by a man who was an old-fashioned Democrat—"Old Hickory." He told you that "by the Eternal" you would obey the law, and for a little while you kept quiet. But the Lord or something else hardened your hearts again, and the moment, as I was just saying, that we elected Mr. Lincoln you kicked up another row. And after we had finally, with a great deal of difficulty, succeeded in getting you down to working business again, finding that you could not control things in any fair way, you started the Kuklux business. [Applause.] We finally, by sending your men to Auburn and other penitentiaries of the country, convinced you that kukluxism was hardly profitable.

Mr. EVINS. Will the gentleman let me interrupt him? What originated the Kuklux?

Mr. HORR. I cannot go into that now. It would spoil my figure about Pharaoh entirely. [Laughter.]

Mr. EVINS. I have no doubt that what I wish to say would spoil the gentleman's speech very much, for it is a beautiful tale of fiction in which he is dealing, and any truth I know would spoil it.

Mr. HORR. Fiction is often as true as fact.

Mr. EVINS. South Carolina is not ashamed of anything she ever did.

Mr. HORR. I do not think she is. [Laughter.] I never was foolish enough to accuse her of that. The trouble I have with you gentlemen is that you are not ashamed of anything. [Applause.]

Mr. EVINS. In our case there is nothing of which we need to be ashamed; but I will say to the gentleman that the blush of shame never mantles the cheek of men who do not know the sense of shame.

Mr HORR. That is exactly the point I was making. The trouble is that what would mantle other people's cheeks with shame you delight in, and what would turn the stomach of good citizens you roll as a sweet morsel under your tongues. That is what is the matter. [Laughter. Mr. EVINS rose.] Let me go on. My time is so limited, and I have so much in me that I desire to get out. [Laughter.]

Mr. EVINS. I know the gentleman's time is very precious, but I say to him while he is talking about the Kuklux of South Carolina that the men who were sent down there, or who came down there from the slums and sewers of the North to rob and plunder our people and oppress them as no other people in the world were ever oppressed, would have raised Kuklux in Massachusetts or Michigan or anywhere else.

Mr. MILLER. Do you refer to 1861 or 1866?

Mr. EVINS. I am not addressing myself to the gentleman from Pennsylvania, and I do not propose to refer to him.

Mr. HORR. The gentleman from South Carolina and I will not have any trouble about this. I do not pretend to be familiar with all the people who went down to the South, but I did know three or four young ladies who in the missionary spirit went down there to teach young colored children, very excellent young ladies, and I know you drove them from your shores rather than let them teach those little children how to read and write; and you did it by a kind of cold scorn and derision which would disgrace any man who had any real manhood in his breast. [Applause.] I know what you did in those cases, but time will not permit me to dwell on those matters now. I was trying to show you how your hearts have been hardened from time to time heretofore and led you into trouble, and desired to warn you against permitting them to be so hardened again.

After Kukluxism died out, we had—what? Tissue ballots, whereby a few men can connive together; and when at any poll there are known to be, we will say, 2,000 Republican votes cast and only 300 Democratic, they will manage by fraud to get a large number of these little tissue ballots into the box with the legal votes; and then under a law of South Carolina (oh, you are such law-abiding men!) they blindfold a fellow and set him to picking out the ballots which are in excess of the number indicated by the poll list. And I defy you to show an instance where they ever drew ballots out and left in the box any Republican ballots of any account.

Mr. EVINS. Will the gentleman allow me a moment?

Mr. HORR. Certainly.

Mr. EVINS. In the trial of some cases in Charleston the other day, one of the gentlemen who said that it could be done and had been done repeatedly, as I have no doubt it has been——

Mr. HORR. I am glad to hear that admission.

Mr. EVINS. This expert said it could be done so easily that he proposed to give an exhibition of it. He said he could pick out the Republican ballots every time. He tried the experiment, and the first ticket he brought out was a Democratic ticket. He was showing how easily it could be done.

Mr. HORR. Certainly, your men drew out all the Democratic as well as Republican tickets that were voted, and then left in the box only the Democratic tissue ballots, and in that way returned only Democratic votes.

Mr. EVINS. The law to which the gentleman refers was made by the Republican party.

Mr. HORR. The trouble is not in the law, when honestly executed, it is the wicked and dishonest execution of the law of which I complain. First fill up a box with enough of these little ballots to cover the entire poll, Republican and Democratic, and then shake them all up together, do you mean to tell me that a man blindfolded could not with his fingers tell the difference between those little ballots and the ballots usually voted just as easily as by the sense of feeling you can tell the difference between a sheet of foolscap folded up and a thin sheet of tissue paper?

Mr. EVINS. The gentleman who tried it did not succeed.

Mr. HORR. Then you Democrats know how to select fellows who can feel better than the courts do, that is all I have to say. [Laughter.]

When I first heard of these tissue ballots I said to myself, "Surely, the Democrats are not going to father such a fraud; they will never defend this tissue-ballot business. They have had their hearts hardened time and again, and been brought up standing and covered with shame and disgrace so many times, but surely they are not going to defend such iniquity." Thinking that, I went off to my home to attend to a little matter of business, and had hardly arrived there when a telegram reached me, stating that the Democrats were filibustering in the Mackey case on tissue ballots. I said: "Pharaoh-like, their hearts are again hardened;" and now in this case you are again trying to keep a man from his seat on the merest technical quirk ever invented.

Now, let me ask you, my Democratic friends, are you never going to learn anything by the past? Do the disgraceful failures of that past teach you nothing? Are you going to keep this thing up until you find toads in your punch-bowls and lice in your kneading-troughs? [Laughter.] What will bring you to a sense of shame in these attempts to thwart the will of the people and to prevent a square, honest count of the ballots cast?

But let us proceed with the case before us; I have been trying to lead this House up step by step in a philosophical way to a just appreciation of the case now on hand. We find down here in Alabama that they have seen the way things worked in Mississippi, and they too, have a statute of the same kind; and I will say to the contestee, General Wheeler, that if you apply that statute technically, according to the rules of lawyers, just as you are trying to apply it in this case, no man in Alabama, even if he could be aided by revelation, can ever vote a single ballot legally.

It cannot be done. One thing is curious to begin with. How comes it about that all the throwing out has to be done by the Democrats and against the Republicans? Why do not the Republicans throw out votes? How is it that Democrats make no mistakes? Is not this it? The moment the people beat you by their votes then you begin to look about you for some way to change the verdict?

What you do in order to prevent the people from beating you is a little singular. Let us examine the work done in this case. You issued a secret circular in this district. It is good reading. It shows system. It shows method in your works; some of it right and reputable, some of it disgraceful in the extreme.

This is your circular:

1. Make at once a complete list of the qualified negro voters in your precinct—

You say "negro voters," you were not interested in white voters yet—

In which shall be set down:
First. The name and address of each voter.
Second. With whom he works, and whether as a hired hand or tenant.
Third. What merchant or other person advances for him.

Brother Wheeler, what did you want to know that for? What difference did it make to you who furnished him the means by which he could make his little crop of cotton and keep his wife and babes from starvation?

Why did you want to know about any voter as to who had an

iron grasp upon him? Was it not that you might reach him through that man whom he owed and thus prevent the poor, colored, ignorant fellow from voting as he desired? [Laughter and applause.]

What next? Now, bear with me, for this is strange literature. [Laughter.]

2. It is deemed preferable that this census be made by regularly appointed census takers or committees, *and that the negro voter should know that he is thus enrolled by the club.*

Brother RANNEY, were these italics in this report of yours your own or theirs?

Mr. RANNEY. Not mine.

Mr. HORR. Then you put that last clause in italics to impress on them, these census takers, the necessity of letting the negro know that the man he owed and to whom he looked for his supplies to make his crop knew that he, the negro, was thus enrolled and was being watched. That was it, was it not?

Mr. WHEELER. I ask the gentleman if there is any evidence in this case that there was anything of that kind done, or whether there was not a great effort made to prove it and whether it did not utterly fail?

Mr. HORR. It is clearly proven by that internal evidence which you and I will have to acknowledge when we come to judgment, and which is stronger than all the evidence you men can cover up, [derisive laughter on the Democratic side,] and which says right here what you intended by this circular, and says it in language so plain that no man can avoid the conclusion, and you will see it, too, before I get through, and will in my judgment be heartily ashamed of this whole business. [Applause on the Republican side.]

Mr. WHEELER. How many of these circulars were used? The evidence shows that not more than three could be found in those eight large counties.

Mr. HORR. I do not know how many were found. Did you print them? Who got them up?

Mr. WHEELER. I am told they were gotten up in another State, and these drifted over there and a great bugaboo was made about them.

Mr. HORR. Did your newspapers publish them?

Mr. WHEELER. They were published in the newspapers as a matter of curiosity.

Mr. HORR. I do not know just where they originated. They show on their face that they were gotten up by Democrats. And the work they were intended to accomplish is also patent, perfectly plain. And one thing is certain, they worked their way into Alabama and into this eighth district, and had something to do with that election.

But permit me to read on:

3. As soon as these lists are completed, each club will promptly forward a copy to the county chairman, to the end that all may be collated and printed.

A copy of the county vote thus registered should be in the hands of our friends at each voting precinct on the day of election.

That is mere clerical work.

4. Make a separate list of those members of the club who think they have no influence with the negro voters, and detail each one to look after one or more lukewarm or infirm white men in the precinct and see that they vote.

That is good tactics. I find no fault with that. Again listen:

5. There are a number of negroes who will not vote with us, but who will promise to stay away from the polls.

To look after these and see that they adhere to their promise, enroll young white men of the precinct under the voting age, before the day of the election, and assign each one to his negro.

There you have the plan complete. First, find out who it is the negro owes, and urge the man to whom he is indebted to put the thumb-screw on the poor darkey. Let the darkey know that this man knows, so he will understand that if he goes to the polls he may as well look out for the thumb-screw. Then get a gallant little thorough-bred son of chivalry who is not twenty-one years of age, and has nothing else to do, to tie himself to the coat-tail of this poor negro and dog his steps through the day so as to see that he does not go to the polls and cast his vote. [Laughter.] That is what you call trying to have a free and fair ballot in Alabama. [Applause on the Republican side.] Shame! Shame!

Mr. WHEELER. Is it fair for you to state that such a thing was done, when the evidence, although great effort was made to show it, does not present any substantial proof of it whatever, but shows that it was not done?

Mr. HORR. If that troubles you so much I will try and come to something you did do. Let us refer to the statute of the State of Alabama which provides that no ballot shall have any distinguishing mark, figure, or anything of that kind upon it. Now, the Greenbackers got up their ballots, and printed them with Mr. Lowe's name upon them, and instead of spelling out the different districts from which the Presidential electors came, as for instance "first district," "second district," and so on, they simply put the numeral, "1st district" and "2d district," and so on, and when the polls were closed and you gentlemen knew that you were defeated——

Mr. WHEELER. You are mistaken about that. Nobody knew it.

Mr. HORR. Well, then, when you were fearful that you were, or when you had reason to think you were, or rather before that, when you feared you were going to be defeated, you cast about for some plan, tried to find some way of escape, and then you sent out your yellow circular advising that these ballots be thrown out on account of those numerals.

Mr. WHEELER. You are mistaken about that. That was not the reason for the ballots being rejected, and there is no testimony, no legal evidence, that any ballots were rejected in this case for that reason.

Mr. HORR. There is that legal testimony. The managers swear positively that they threw them out on that account, and for no other reason, and the Democratic manager swears to that also. You first resolved that you would apply a technical microscopic sort of rule to these ballots so that you might find any possible blemish, no matter what, so that the votes could be rejected, and thus defeat the will of the majority.

Now, the best lawyers on this side of the House, and they are just as good as there are in this House, say that there is nothing on the face of these ballots which violates the statute of Alabama or renders them illegal—that could in any way justify their rejection; and what is more, the gentleman from Texas, [Mr. JONES,] who seems to be a born jurist and an excellent lawyer, and who is on the committee, says that it is proven beyond all possible contradiction that enough ballots were thrown out on account of these numerals to elect Mr. Lowe by a large majority; thrown out simply because these figures were on them. I say to you that the friends of Mr. Wheeler did it, that the evidence shows it, and you know it. What is the fact? Suppose the figures were on these ballots. Did that make the vote any the less a vote for Lowe? Because it happened to be written "1st" instead of "first," does that destroy the intention of the voter? Does that make a ballot illegal? Can you in that way reverse the judgment of the people, and put in a man who has no title whatever to the place? Mr. Speaker, before I would take a seat and attempt to hold it in Congress on such a return as that I would dig dirt in the streets and pound gravel on the walks for my living. [Applause on the Republican side.] The idea of attempting in that manner to thwart the will of the people of this country, or the idea that the great Democratic party of this country, true to its old instincts, I know, of always doing the thing you would think they would leave undone—I say the idea of their approving such injustice, and then to think that their leading men should stand up here on this floor and pretend in the face of such facts to sustain by argument and logic such a proceeding as that! I must say it is perfectly astounding.

Why, Mr. Speaker, as I came recently from my home in Michigan and passed through the country my heart was filled with gladness as I saw the evidence of an abundant approaching harvest. Such beautiful fields of grain; such magnificent prospects of a bountiful crop seldom greets the American husbandman on this continent; and I said to myself, God is truly good to this nation of ours. And then I picked up a newspaper in the cars and read that the Democrats were still filibustering in favor of fraud and tissue ballots; that they were still trying to disfranchise the people by crying out about common figures and punctuation marks, and I thought to myself the Democratic party, as usual, playing the fool, and I could hardly restrain myself from exclaiming, "Glory be to God, the country is safe." [Applause on the Republican side.] Why, gentlemen, with such crops what can you do? Unless the weevil sets in, unless grasshoppers come, unless early frosts appear, unless the potato-bug comes among us, your doom is sealed. You fixed it yourselves right here in this House. [Laughter on the Republican side.] When you said we will permit no debate on these election cases your madness was complete. The American people are not going to allow these men by ballot-box stuffing, by this kind of trickery, this kind of statutory construction and legal technicalities to thus destroy the freedom of the ballot or the power of majorities in this country. They will never permit this Government to be destroyed in that way. They know that the will of the people as expressed at the ballot-box is and should ever be the supreme power of the land, and no one in this broad country of ours can shut his eyes to the near future. The voice of the people can already be heard like an approaching storm. Their shouts are now audible like the rumbling of distant thunder. We who can read the skies know that the fiat of the American people has already gone out, announcing in no doubtful tones that they are once more alive to the great pressing question of the day; that the purity and freedom of the ballot-box and an honest count of the ballots, those safeguards of American liberty, must and shall be preserved. [Applause on the Republican side.]

There is only one simple question in this case; there is only one issue involved; it is the question between right and wrong. It is the simple question stated by my friend from Texas, [Mr. JONES.] Did they throw the ballots out simply because there were numerals, figures upon them? If they did it by that technical construction, and if by such twisting as that you can destroy the will of the people in the eighth district of Alabama, then no such thing as a fair election is possible in that State. If they did that then it is the duty of the American Congress, without regard to the gentleman's politics, to correct such findings and prevent such a crime. So I say, though the gentleman differs from me in politics, notwithstanding I think he is almost crazy on the subject of finance, still it is my duty as a member of the American Congress and a duty we owe to the freemen of this country that we should put him in his seat on this floor simply because he was fairly and honestly elected. Now, I have no further words to say in this case, but before I close I wish to make a remark in response to my friend from Texas, [Mr. MILLS,] who

specially charges that there have been no cases on this side of the House where the Republican party voted to unseat a Republican and seat a Democrat.

That gentleman must have forgotten American history. The Forty-second Congress turned seven Republicans out of their seats and seated Democrats in several of their places. Why? Simply because they found the ousted men were not fairly elected. The Forty-third Congress, also a Republican Congress, turned out six Republicans and in some cases seated Democrats in their places.

Mr. COOK. Was not one of those Republicans unseated the very last night of the Forty-third Congress—not two hours before that Congress expired?

A MEMBER. Who was that?

Mr. COOK. On the last night of the Forty-third Congress General Hale Sypher, who had occupied a seat during the whole of that Congress, contested by Mr. Effingham Lawrence, a Democrat, from New Orleans, was unseated only two hours before the expiration of that Congress, when Mr. HALE, of Maine, of the Committee on Elections, reported that Mr. Sypher was not entitled to the seat, and that Mr. Lawrence was, and the only official act of Mr. Lawrence was to take the oath and draw his pay. Then, as between Pinchback and Sheridan, they were both kept out until the same committee reported that Sheridan was entitled to the seat, and he took the oath and drew his pay. That also was on the last night of the Forty-third Congress. And let me say, that was at a time when the Democratic side of the House numbered only, I think, seventy-seven members.

Mr. HORR. If what the gentleman says about the Sypher-Lawrence case is true, the Republicans of that Congress acted as badly as did the Democrats in the last Congress, when they kept Mr. Hull, of Florida, here in his seat during the whole Congress, although Mr. Bisbee was elected by a decided majority, and a Democratic supreme court of Florida had affirmed by their solemn decision that he was entitled to his seat; so that there was nothing to do in making up his case except simply to put on your spectacles and read the decision of your own court. Yet you kept Hull in the seat here until perhaps three days before the end of the session, and then turned him out by the unanimous vote of that House.

Mr. TALBOTT. May I ask the gentleman from Michigan a question?

Mr. HORR. Yes, sir.

Mr. TALBOTT. Was not Hull turned out first? And was it not some time afterward that Mr. Martin was turned out and Mr. Yeates put in his place, in the North Carolina case? Did not the Democrats turn out their own member (Hull) first, and the Republican (Martin) afterward?

Mr. HORR. Why did they not turn Hull out at once? He was kept there simply to let the Democrat draw his pay who was never elected. And my memory is that Martin was turned out a long time first.

Mr. TALBOTT. The gentleman is wrong about the time. Mr. Hull was turned out more than a month before Congress finally adjourned, and Mr. Martin remained in for several days after that.

Mr. HORR. I do not remember just how that was, and perhaps we were to blame in the Forty-second and Forty-third Congresses for waiting so long before turning out some of those men who had never been elected. But you are not going to charge us with that now, are you? I thought you were mad because in this Congress we have gone about it too early. I supposed it was on that account that you went to filibustering. We have not struck a single man, though we have been in session here for six months, who has had time to learn anything about his case. [Laughter.] Just recall how the gentleman from Alabama whined last night and plead for more time. He talked as if he was being imposed upon by the committee, and to hear him tell it you would suppose that he had just heard for the first time that there was such an election case pending in this House as that of Lowe *vs.* Wheeler. [Laughter.] I think, judging from his talk, he only found it out just as we were moving to take up his case. You all remember how astonished he seemed to be that any one should think of going into this trial at this time, and he wanted just a few days to look up the case. He did not seem to know much about it, but hoped, if we would allow him, say, two weeks to study it up, that he might be able to find out what all this fuss was about. Did any one ever see such efforts at delay as these election cases have called out? We on this side of the House have had only one course left open before us, and that was to go straight ahead, and where we could get proof of these efforts to stifle the voice of the people to give that voice full power and effect by seating in this House the man whom the people had actually and legally chosen. We have already done that in several cases, and I trust we shall do it in the case now on trial before us.

Gentlemen, this whole proceeding on the part of the opposition has been simply an effort to do—what? As I stated in the outset, let me repeat it in conclusion, it is purely an effort to prevent the majority of the people in this country from governing it. It comes from a school of politicians who are never willing that the people, by their majority, shall be heard when that majority speaks against a privileged few whom they think were born to rule. We are called upon by our votes in this case to put the seal of condemnation on all that kind of talk.

There is in this country no privileged class; learned and ignorant, black and white, rich and poor, are all entitled to equal rights before the law, and it is our high duty as representatives of the people to see to it that the expressed voice of our sovereign is both heard and obeyed. Mr. Speaker, I trust I have given reasons enough as to why I shall vote to seat Mr. Lowe, as much as I dislike his political views. I believe it to be my solemn duty to see to it that the deviltry practiced in Mississippi, the tissue ballots of South Carolina, and these tricks of politicians in Alabama, which would put to shame the cunning devices of a "three-card-monte man" anywhere on this continent, shall not prevail in seating members on the floor of this House. If in the hour allotted me I have succeeded in arousing in the breast of any member here a desire to join me in this work of duty, of real patriotism, then shall I be perfectly satisfied with this hurried effort. [Applause.]

Mr. WHEELER. I yield two minutes to the gentleman from Georgia, [Mr. SPEER.]

Mr. SPEER. Mr. Speaker, I have taken no part in any of the discussions of these election cases. I should not do so now but for certain remarks of the gentleman [Mr. HORR] who has just taken his seat. He has thought it proper to arraign the conduct of the Elections Committee of the Forty-sixth Congress. I had, sir, the honor to be a member of that committee, and I desire now to show its impartiality by this undeniable statement of the contests submitted to it:

In the case of Horatio Bisbee *vs.* Noble A. Hull the committee reported for a Republican.

In the case of James McCabe *vs.* Godlove S. Orth the committee reported for a Republican.

In the case of J. C. Holmes *vs.* W. F. Sapp the committee reported for a Republican.

In the case of John J. Wilson *vs.* Cyrus C. Carpenter the committee reported for a Republican.

In the case of E. M. Boynton *vs.* George B. Loring the committee reported for a Republican.

In the case of Ignatius Donnelly *vs.* William D. Washburn the committee reported for a Republican.

In the case of Sebastian Duffy *vs.* Joseph Mason the committee reported for a Republican.

In the case of Anthony Eickhoff *vs.* Edward Einstein the committee reported for a Republican.

And only in the cases of Andrew G. Curtin *vs.* Seth H. Yocum and of Jesse J. Yeates *vs.* Joseph J. Martin, as I remember the facts, did the committee report for Democrats; and a sufficient number of Democrats voted with the Republicans against Governor Curtin to defeat him and retain Mr. Yocum, the Greenbacker, in the seat. I think the facts I have stated will show that the action of that committee was at least impartial, and that is all I desire to say.

Mr. WHEELER. Mr. Speaker, if anything had been needed to admonish me of the predetermination of this House, it is the fact that in every speech that has been made on this floor to-day upon the case under consideration, the question as to who received the majority of votes in this election has not been touched; it has not been considerd; but the speech just made by the distinguished member from Michigan [Mr. HORR] touches just about as much upon this case as does the majority report which has been brought into this House, and yet that gentleman probably knows just as much about this case as the committee knew who made that report to this House. I say that because I would not asperse the members of the committee by charging that they made that report with a knowledge of the facts in this case.

The gentleman from Michigan in his speech sought to assail the people of the South and the people of my district. Sir, if he had read the evidence in this case he would have found that all the witnesses who were credible, and whose testimony was not contradicted, testify that the election was conducted with perfect fairness; and the efforts of the opposing counsel to prove frauds only resulted in obtaining testimony from their own witnesses that they had never known the people of that district to commit any fraud in any election. I refer the gentleman to the evidence cited in pages 1 to 12 of my brief with reference thereto.

The people who supported me in my district are an honorable, honest, and brave people. In everything that is admired by Christians and high-toned citizens they are the peers of the constituency of any member of this House. They would repudiate fraud or dishonesty of any kind, whether it referred to elections or to transactions of a private character.

With regard to the majority report, I want to say that while I favor and always have favored fair elections, I have a right to ask that the majority report should have been a fair and correct statement of the evidence in the case. To illustrate: with regard to one box there is the evidence of two witnesses. One of the witnesses swears that 136 votes were polled, and that Mr. Lowe received 59, which would leave me 77 votes.

The other witness swears that Wheeler received 59 votes and Lowe received 76. Now how many votes do you suppose that committee reports for the two parties? The evidence is given by the witnesses in answer to the same questions, in the same breath, and referring to the same character of ballots. The committee give 76 votes to Lowe and none to me; not one. That same thing occurs in regard to six different precincts.

Now, I ask gentlemen when they reply to me to explain upon what

theory they have brought in such a report as that. When the evidence was precisely the same they had no right to say that my opponent should have votes counted for him, when the same evidence gave me votes which they refused to count for me. So much in regard to counting actual votes.

Now, with regard to their decisions regarding points of law. For instance, in the Bisbee and Finley case, with a law in Florida in effect precisely like ours in Alabama, the committee says that a vote cast under the Florida law is illegal unless the voter is registered, and that no evidence brought before the committee in regard to the qualifications of an unregistered voter can make his vote legal so that it can be counted.

In my case, under the same law, where I prove 1,400 illegal and unregistered votes for Lowe, the committee say they will not consider that evidence. Let me state to you the reasons.

Mr. ROBESON. If the gentleman will permit me, I would suggest to him that it would be much more convenient for him to speak from the Clerk's desk, as he has a right to do under the rule. [Mr. WHEELER then took his place at the Clerk's desk.] As this is a matter in which the gentleman has a personal interest, and as his voice is not strong, I trust the Chair will see that order is preserved in the House, so that he can be heard.

The SPEAKER *pro tempore*, (Mr. DINGLEY.) The House will preserve order; the gentleman from Alabama is entitled to be heard, and the Chair requests members to cease conversation and that order be restored in the Hall.

Mr. WHEELER. I will ask the Clerk to read from the constitution of Alabama.

The Clerk read as follows:

The General Assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided no person shall vote at any election unless he shall have registered as required by law.

Mr. WHEELER. Under that provision of the constitution of Alabama it is plain that if a man does vote without being registered he is not a legal voter, and that his vote cannot avail the man for whom it is cast. As I have already stated, under a similar law in Florida, this House on yesterday decreed that a vote cast by an unregistered voter was illegal and could not avail the person for whom it was cast.

The committee in this case construe that law in a manner in which I desire to submit to any lawyer to say whether it is a fair construction of a law of that character. Let me repeat what the constitution of Alabama provides. It provides that the General Assembly may provide for registration; and that when registration has been provided for, then no person shall vote unless he has been registered.

Now, the committee construe that provision in this wise: that the Legislature may pass a law for registration, and when it does pass a registration law, if that law says that a man shall not vote without being registered, then he shall not vote without being registered.

I submit that is a perversion of the meaning of the framers of the constitution. The true meaning is this: the constitutional convention being assembled, it desired to provide as a prerequisite for voting that every voter should be registered. In registering he is required to subscribe to an oath to support the Constitution of the United States and the constitution of the State of Alabama.

The framers of the State constitution could not with propriety establish all the framework and machinery of registration, but they meant to provide that when the General Assembly provided for registration, then, after the system had been established by act of the General Assembly, it would be illegal for any man to vote without being registered.

The gentleman from Wisconsin [Mr. HAZELTON] asked this morning why the framers of that constitution did not adopt a provision that no man should vote unless registered, and have it operate immediately. The reason is plain. If they had done so it might have been impossible to elect a legislature. If the constitution said that no man should vote unless registered, without deferring its operation until the machinery for registration had been established, grave questions regarding the legality of an intervening election might have been raised.

Now, I submit to any lawyer whether there could be any other proper construction placed upon that. I dwell upon this because if it should be decided that under this constitutional provision no citizen can be a legal voter in Alabama unless he has registered, then enough illegal votes are proved to have been cast for the contestant in this case to change the result by 500 or 600, even though every vote which he claims be counted for him.

The next point in this case is the question of non-residence. I stated that the majority report was in error on this point also. That report states that the contestee does not prove that the men are non-residents.

The majority of the committee refused or failed to deduct the illegal votes of non-resident persons who voted for Mr. Lowe, although the proof is positive and uncontradicted that such persons voted for Mr. Lowe, and that they were not residents of Alabama, but residents of other States.

The witnesses give evidence regarding this matter similar to the following:

"John Wilson was not a resident of Alabama; he lives in Tennessee, and he never pretended to claim this as his home.

"Wesley Phillips was a non-resident of the State of Alabama; he lives in Tennessee.

"Squire Holsten was a non-resident of the State of Alabama; he lives in Georgia, and is an illegal voter.

"John O'Neal was a non-resident of the State of Alabama; claims his home in Georgia.

"Berry Blair was a non-resident of the State of Alabama; lives in Tennessee; was an illegal voter."

The witness also testified that all the non-residents whose names they gave voted for William M. Lowe, and all these names are found on the poll lists.

We could go on with these details, but space forbids.

It is evidence of this character which the majority of the committee say is "not sufficient."

They also say: "His (Wheeler's) proofs do not sustain his allegations."

Could it be possible to give more positive proof than that? By this character of evidence we prove that eighty-one men who were working on the Shoals Canal and were residents of Tennessee and North Carolina and Georgia voted for the contestant. Certainly no one will contend that such a person is a legal voter under the laws of Alabama. And this evidence is not in any way controverted by any other evidence in the cause. But the majority report does not deduct a single one of these votes from the vote of the contestant.

Again, on the question of votes of minors. We allege in our answer that minors voted for Mr. Lowe at various precincts, and we put in proof of this character:

Mr. Lewis swears that Jack L. Armestead voted for Mr. Lowe; that he had known him for ten years, and when he first knew him he was not more than six or seven years old. He also swears that Berry Coager voted for Lowe; that he had known him for twelve years, and when he first knew him he was not more than six years old.

On page 894 of the record I proved that James Chandler was only eighteen years old. Also, page 899, that Robert Smith was only twenty years old, and that Ephraim Springer was only twenty years old. All of these persons the proof shows voted for Mr. Lowe.

This is the character of the uncontradicted evidence which I produce to show that minors voted for William M. Lowe.

By such evidence I have proved that sixteen voters were minors, their ages varying from seventeen to twenty years, and that they voted for Mr. Lowe; yet the majority report says that there is no evidence showing that these minors voted.

Then again, with regard to convicts. We prove by the magistrates who convicted certain men that they were convicted; and we prove also that they voted for the contestant. The majority report states that we should have produced in evidence transcripts of the convictions. This would be true if the convictions were matters of record. But it is shown by the proof that these men were convicted in magistrates' courts, which under the laws of Alabama are not courts of record. Hence there was no record of their conviction. But as this was somewhat of a questionable subject, I notice that the minority of the committee have not included these in the votes they say should be deducted from the votes of the contestant.

Again, the report of the majority says that we did not prove for whom the unregistered voters voted. It would be impossible for me to read all the evidence on this subject, but with regard to 600 voters of this character the evidence is as conclusive as it is possible for human evidence to be.

For instance, the witnesses swear, "I know such a man; I saw him vote; I saw his ballot, and the name on his ballot for Congressman was William M. Lowe. I saw him hand that ballot to the inspectors." Other witnesses swear as follows: "I know such a man; I know he voted for William M. Lowe for Congress, November 2, 1880."

There is evidence similar to this with regard to over 600 voters whom we prove to be unregistered and to have voted for Mr. Lowe. The majority report says there is no evidence showing how these unregistered men voted.

As to 400 others of these unregistered voters we prove how they voted in this way: we prove that they were of the party which supported Mr. Lowe; that they were recognized advocates of his at the election; and although the witnesses say they did not see them hand in their ballots, yet they say they were supporters of Mr. Lowe, they were advocating his election, they belonged to the party which supported him and they have every reason to believe that these men voted for him. This evidence is entirely undisputed, and it is the very character of evidence which the majority report in the case of Bisbee *vs.* Finley says is sufficient to prove how a man voted. It is the same character of evidence which the majority report in the case of Lynch *vs.* Chalmers says is sufficient to prove how men voted.

Now, to illustrate another point which I regard as a hardship upon the contestee. The majority take the evidence of one witness who says that sixty-one colored men voted at a certain precinct—Cave Springs; and that the colored men were solid for Mr. Lowe. Upon this evidence the majority count 10 more votes for Mr. Lowe than were returned for him, simply because one witness swears that sixty-one colored men voted there, and that the negroes were solid for Mr. Lowe, and the returns showed only 51 votes for him. When I prove twenty-two of those men were not registered, they refuse to take that same evidence to show how they voted.

I will repeat that while they take a part of the same answer to a question to prove that sixty-one men voted for Mr. Lowe, and when I prove twenty-two of those sixty-one men were unregistered, they refuse to take that evidence to prove how the men voted when we proved them to be illegal. So far as this evidence benefited Mr. Lowe they took it to attack the sworn return of an inspector, but when

we turn and say take those 10 extra votes and give them to him, but we claim you must deduct 22 because we prove those 22 are not registered, they say that evidence is not sufficient to prove for whom they voted.

We come now to Meridianville. They put witnesses on the stand, and those witnesses swore they voted for William M. Lowe. I proved twenty of them were not registered—voted without being registered, and they say that proof is not sufficient to show for whom they voted; in other words, in the same cause the same witnesses giving evidence with regard to the same subject, that much of it which is of benefit to the contestant they say is good, but that much which is to the benefit of the contestee they say is not good.

I respectfully submit that it is not right for the committee to make a report that would do the injustice to my district and to myself to say that they would count 400 or 500 more votes for the contestant than the evidence shows belongs to him and refuse to count any part of the votes which were cast and not counted and which the evidence showed belonged to the contestee, even though it did not change the result? But I insist it does change the result, and would, if counted properly.

There is one question more I want to speak of. The law of the United States regarding the manner in which evidence is taken in a contested-election case is in substance like the judiciary act of 1789 in regard to the same subject, and the decisions of the Supreme Court on the one law will be a correct construction, and binding on the other.

It is a remarkable fact that nearly every essential paper called a deposition which the contestant has brought here and placed before this committee is entirely without any certificate of any kind whatever. One hundred and ten of the depositions also fail to show that any one of the witnesses were sworn. In addition to that fifty depositions in the record show the commissioner who took them refused to allow the contestee to cross-examine the witnesses, or to propound to them any question of any kind.

I ask the Clerk to read one of the certificates of the commissioner, which shows his illegal rulings in refusing to allow contestee to cross-examine witnesses.

The Clerk read as follows:

THE STATE OF ALABAMA, *Madison County:*

The objections on the other side of the sheet were made to each question of contestant, but were written below the answers for convenience, as contestant had printed his questions so closely that objections could not otherwise be entered.

After entering the objections contestee, by his attorney, then proceeded to cross-examine said witness, but the commissioner ruled and decided that contestee had no right to cross-examine a witness after entering an objection to the questions of contestant, and the commissioner declined to allow any question propounded by contestee or his attorney to be written down and become a part of the record, to all of which contestee, by his attorney, objected, and after the ruling of the commissioner duly excepted thereto, and asked the commissioner to sign his name to these objections and exceptions.

A. J. BENTLEY,
Notary Public and Commissioner.

Mr. HEWITT, of Alabama. I would like to ask my colleague whether a motion was made before the committee to exclude that kind of depositions.

Mr. WHEELER. Motions were regularly filed before the committee, and they were printed and in the hands of the committee, and when this was brought to their attention they all with one voice seemed to say, and some expressed themselves openly, that such testimony was illegal and could not be received. But on such evidence as that they make a change in the result of about 300 votes.

In other cases where we cross-examined the witnesses of Mr. Lowe we conclusively showed that the witnesses did not testify truthfully in answer to questions of contestant. Therefore, to prevent the embarrassment of cross-examination, the contestant's attorneys served a false notice on the contestee. The notice said they would take evidence at or near Pleasant Hill, and as Pleasant Hill was a place consisting of several plantations it would be no more notice than to say they would take evidence at or near Capitol Hill. I had notice served by the sheriff requiring a more definite notice, and I will have that notice read.

The Clerk read as follows:

William M. Lowe, contestant, *vs.* Joseph Wheeler, contestee.

To David D. Shelby, esq., or Paul L. Jones, esq., or L. W. Day, esq., attorneys of Hon. William M. Lowe:

GENTLEMEN: I have received notice that you will take evidence on Monday, March 7, 1881, at or near Pleasant Hill, in the county of Madison, Meridianville precinct.

This is to inform you that there is no such place as Pleasant Hill on any maps of Alabama, or Madison County, not even the largest maps; there is no post-office of that name; there is no voting place of that name; there is no incorporated town of that name; there is no town of any kind of that name; there is no village of that name, or hamlet of that name.

Well-informed people are unable to state what place is referred to by that name. Contestee therefore gives notice that without more definite or specific information and notice he will be unable to find said place and cross-examine witnesses. Contestee therefore gives notice to contestant through his attorneys that he will move to suppress all evidence taken under the pretended notice referred to. Contestee states that he is desirous of being present when the witnesses mentioned in said pretended notice are examined, and he desires and demands as a right that he have a new notice as required by law.

JOS. WHEELER.

Executed March 5, 1881, by serving a copy of the within notice on D. D. Shelby, esq., as attorney for William M. Lowe, esq.

JNO. W. COOPER, *Sheriff,*
By JOE E. COOPER, *Deputy.*

Mr. WHEELER. Receiving no response to that, I made an affidavit to a similar paper, and had that served upon them also, as is shown by the record below; and even with that paper they gave no intimation as to the place where they would take the testimony. I then employed a lawyer and told him to go to the place indicated, or to the plantation which bore that name, and see if he could find where men were congregating and in that way ferret out the place where this testimony was to be taken. He started to the place, and on inquiry he learned that colored men were seen going west that morning. He followed, and after going six or seven miles he found a place where a nephew of the contestant was taking testimony. But after he reached there he was refused the privilege of cross-examining the witnesses, as is shown by the commissioner's certificate. But that is not the worst of it. The certificate of the commissioner and the affidavits of two lawyers who happened to be there when some of these *ex parte* affidavits were being taken are in the record, and I will have one of them read.

The Clerk read as follows:

STATE OF ALABAMA, *Madison County:*

Before me, A. J. Bentley, notary public and *ex officio* J. P., personally appeared James M. Robinson, who, being sworn, deposes and says that he came to the office of A. J. Bentley on Monday, March 7, 1881, and saw Joseph Walker being examined as a witness in the contested-election case of Lowe, contestant, and Wheeler, contestee; that said Joseph Walker was asked, "For whom did you vote for Representative in Congress?" The witness replied, "I voted for General Wheeler and Colonel Lowe."

Mr. Lowe Davis was acting as attorney and was taking down the evidence himself, and no one was representing Joseph Wheeler.

Mr. Lowe Davis did not put down the answer as it was given, but put down only the name of William M. Lowe, thus making the witness's evidence show that he voted for William M. Lowe, when in fact affiant believes he did vote for Joseph Wheeler. Affiant further states that he gave said Joseph Walker a ticket with the Garfield electors upon it, and the name of Joseph Wheeler for Congress on it; and affiant believes said Joe Walker did vote said ticket.

J. M. ROBINSON.

Signed and sworn to before me this the 15th day of March, 1881.

A. G. BENTLEY,
N. P., ex off., Jus. Peace.

Mr. WHEELER. In addition to that I will have the Clerk also read the certificate of the commissioner who took this evidence.

The Clerk read as follows:

THE STATE OF ALABAMA, *Madison County:*

When the witness, Harry Derrick, was being examined, and when he was asked the second question by contestant, which was as follows: "For whom did you vote for Representative in Congress?" the witness replied: "I voted for General Wheeler and Colonel Lowe;" and to the further question of contestant's attorney the witness said "The names of both General Wheeler and Colonel Lowe was on the ticket I voted;" and finally, after much prompting by contestant's attorney, the said witness finally said he voted for William M. Lowe.

A. J. BENTLEY, *J. P.,*
Commissioner.

Mr. WHEELER. It is that character of evidence, evidence which the certificate of the commissioner shows was written down by the lawyer who was taking the evidence, and which conveyed a meaning different from what the witness sought to convey—this is the character of evidence that you are called on now to consider in the question of a right to a seat in this House, and that is exactly the kind of evidence that is used against the contestee in this case.

Mr. HEWITT, of Alabama. I would like to ask my colleague in this connection if that deposition which has just been read is taken in the handwriting of Colonel Lowe's attorney that represented him there?

Mr. WHEELER. I think it is, though I know nothing further except what the evidence discloses.

Mr. HEWITT, of Alabama. It says he was writing out the answers.

Mr. WHEELER. Yes, sir; but the evidence is here, though I cannot testify myself as to the handwriting.

Again, an attempt was made to attack Flint box. They put in evidence the return from the probate judge of Morgan County, and on that return, as appears in the committee-room, is indorsed the words, "Flint precinct not given: Lowe 76, Wheeler 59."

The argument is made by contestant's attorneys, and by that argument 76 votes are claimed for Lowe; and afterward we sent to the probate judge, who files his affidavit, which is attached to a motion which was before this committee, showing that when the return left his hands that indorsement was not on it, and never was put on it until it went into the hands of the agent of Colonel Lowe. And this is the character of evidence brought here to be imposed upon Congress to affect the right of a seat on this floor.

The affidavit of the probate judge referred to is as follows:

THE STATE OF ALABAMA, *Morgan County:*

Before me, John R. Fowler, clerk of the circuit court, personally appeared E. M. Russell, probate judge of the county of Morgan, State of Alabama, who, being duly sworn according to law, says that he furnished to the attorneys of William M. Lowe a paper certifying to the vote of Morgan County, by precincts, as returned to the secretary of state by the board of supervisors of the county of Morgan, for election held November 2, 1880.

Affiant further states that the following words, viz, "Flint precinct not given: Lowe 76, Wheeler 59," were not indorsed upon the paper by affiant, nor were such words on the paper when the paper left his office.

E. M. RUSSELL,
Judge of Probate Court.

Sworn to and subscribed before me this the 27th day of March, 1882.

[SEAL.] JOHN R. FOWLER,
Clerk of Circuit Court.

There are one hundred and ten depositions of this character; for instance, it is headed "deposition of Justice Macdonald, a witness for contestant, taken on the 11th day of March, 1881," and at the bottom is put, "signed before me on the day and year above written. Robert W. Figg, N. P." There is nothing to show that the witness, who it is claimed was examined, was ever sworn, and no certificate showing that it was written in the presence of the commissioner; there is no certificate of any kind as required by the law except the words "signed before me on the day and year above written."

And that deposition and one hundred and nine like it are taken as good evidence to attack the seat of a member of Congress. And worse than that: they took these depositions to show how men voted, and they swore they did not know how they voted. Even if they were sworn at all, the pretended depositions prove nothing.

I give him a sample of this evidence:

State if it is not true that you do not know what ticket you voted except by hearsay. Answer. It is true.

And there are fifty pretended depositions of the same character, where the witnesses say that they only knew from what some man told them of how they voted, and several swore that they voted for Lowe for President and others that they voted for him for Senator. I only allude to that to show that these people did not know how they voted, and yet the committee take that evidence to not only reject the box that represents 142 votes for contestee and only 57 for the contestant but they reject the box altogether and take this character of evidence to prove 128 votes for Lowe, and they give him 128 votes and do not give any to the contestee, although the same witnesses swore that the contestee received a number of votes at that box. At this box the inspectors are proven to be men of high character, and they testified that every thing was conducted with perfect fairness, but notwithstanding this the box was rejected.

This illegal evidence taken for the contestant was taken at an illegal time, taken at a time when the contestee could not rebut it, because it was taken within the last ten days, and the contestee therefore had no opportunity to rebut. The contestant had a right to only take evidence in rebuttal of what the contestee had proven.

I desire to say, with reference to the committee, that I do not believe they intentionally made such a report. They have been imposed upon by some one. In view of the voluminous character of the record and the extent of their duties they relied on some one to give them these facts and to point out the evidence to be inserted in the report, and in that way they have committed this great wrong against the contestee.

Now, to illustrate in regard to the Meridianville box. There were sixty pages of evidence. The committee put in two pages. There is not one word of contestee's evidence alluded to; and this House would never know that the contestee had taken any evidence at that poll unless I was permitted to stand here and tell the House of it. They put in their report what occupies less than two pages, and call that evidence in regard to Meridianville box No. 2, while every word that is hurtful to the contestee in the evidence is refuted and denied by three witnesses, who the witnesses for the contestant as well as all the other witnesses in the case state to be men of the very highest character; and the evidence of those gentlemen is not alluded to or referred to in this majority report.

They proceed in the same way in regard to Lanier's. Out of evidence covering over seventy pages there are but three lines of evidence of the contestee incorporated, and those three lines are culled out for the benefit of contestant and not for the benefit of the contestee.

I insist that it is the duty of a committee when it reports to this House to report the facts, to report the facts that are proven, and to give enough of evidence to show what legal conclusion should be arrived at from all the evidence in the case.

I shall now allude to some of the conclusions which are arrived at by a member of the committee, the gentleman from Massachusetts, [Mr. RANNEY,] with regard to registration. That gentleman refuses to concur with the majority of the committee in their assumption that registration is not a prerequisite for a voter in Alabama, but he takes the ground that the evidence offered by the contestee is not sufficient to establish that these persons were not registered.

For instance, there are some poll lists in evidence; they are put in evidence in this way: the law says that when the polls are closed, and the votes are counted out and the returns prepared, the inspectors shall certify to the poll list and to the returns. It is frequently the case that all these statements are incorporated in one certificate, because the wording of the statute implies that that is what was intended. When we apply to the probate judge for the returns of the county he extracts from the returns of each precinct the necessary information that is wanted.

For instance, if we want a return of the votes of the county he will take for this precinct the votes as returned from it, and for the next precinct the votes as returned from that, and so on throughout the whole list. He will then tabulate the returns, put them in the form of a table, certify them to be correct, and deliver them as good evidence in any cause. And the contestee in this case has produced just such evidence, and it has never been questioned by any court when properly certified. In the same way if we want the poll lists the judge takes the returns and copies out the poll lists and certifies under the seal of office that it is a correct copy of the poll list of the precinct referred to. Now, in seven different precincts the probate judge of Jackson County gives us certificates of that character, and I will have one of the certificates read.

The Clerk read as follows:

THE STATE OF ALABAMA, *Jackson County:*

I, John B. Tally, judge of probate for said county, hereby certify that the above and foregoing, from one to four inclusive, contain a full, true, and complete exemplification of the poll list of Carpenter's precinct No. 4 in said county, made on the second day of November, 1880, of the election for President and Vice-President of the United States of America and for Congressman for the eighth Congressional district of the State of Alabama.

Given under my hand this the 5th day of March, 1881.

JOHN B. TALLY,
Judge of Probate.

Mr. WHEELER. That same probate judge was afterward put on the stand, and he puts that poll list in evidence, and swears it is the poll list for that precinct for that election; and he is cross-examined on it, and no question is raised as to that being the poll list of that precinct.

I respectfully submit that this evidence is conclusive and satisfactory; but even if it were not, there is sufficient other evidence to elect me by a large majority.

The SPEAKER. The time of the gentleman from Alabama [Mr. WHEELER] has expired.

Mr. ROBESON. Does the gentleman from Alabama desire more time?

Mr. HAZELTON. I desire to make a request of the House. We all know as to the contestant, Mr. Lowe, that the condition of his throat is such that he is unable to address the House. But he has a speech prepared which he desires to have the leave of the House to print.

The SPEAKER. The gentleman from Wisconsin [Mr. HAZELTON] asks unanimous consent that the contestant in this case be allowed to print remarks on it.

Mr. SPRINGER. I do not think that has ever been done. I do not wish to object, but I would suggest that this might give an opportunity for one gentleman to make very serious assaults on another. I will not object, however, if it is not proposed to print anything of a personal character.

Mr. HAZELTON. I do not presume there will be anything personal in the speech. The gentleman from Alabama merely desires to present the legal argument.

Mr. SPRINGER. It is a precedent which has never been allowed heretofore.

The SPEAKER. Contestants have always been allowed to address the House when they have so desired.

Mr. WHEELER. I do not object.

There being no objection, leave was granted to Mr. Lowe, the contestant, to have printed in the RECORD remarks on the pending case. [See Appendix.]

Mr. HAZELTON. I move that the House do now adjourn.

Mr. ROBESON. If the gentleman from Alabama [Mr. WHEELER] wishes his time extended, I shall ask that that be agreed to by unanimous consent.

The SPEAKER. The gentleman from New Jersey [Mr. ROBESON] asks unanimous consent that the gentleman from Alabama have an additional hour.

There was no objection.

Mr. HAZELTON. Let the gentleman take the additional time in the morning.

ENROLLED BILLS SIGNED.

Mr. ALDRICH, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

A bill (H. R. No. 800) granting a pension to Justus Beebe;

A bill (H. R. No. 632) authorizing a duplicate check in payment of pension to William A. Gardner, of Frederick County, Maryland, in lieu of one lost;

A bill (H. R. No. 377) granting a pension to Frank Kitzmiller;

A bill (H. R. No. 1154) granting a pension to Edward Farr;

A bill (H. R. No. 1180) increasing the pension of George H. Blackman;

A bill (H. R. No. 1288) granting a pension to Mary Blowers;

A bill (H. R. No. 1373) granting a pension to James K. Sturtevant;

A bill (H. R. No. 1452) granting a pension to Lewis Blundin;

A bill (H. R. No. 2088) granting a pension to Caroline Chase;

A bill (H. R. No. 2260) granting a pension to Thomas J. Cofer;

A bill (H. R. No. 2442) granting a pension to Merton Stancliff;

A bill (H. R. No. 3000) granting a pension to Nathaniel J. Coffin;

A bill (H. R. No. 3071) for the relief of Charles H. Frank;

A bill (H. R. No. 3549) granting a pension to Mary C. Murray;

A bill (H. R. No. 3761) granting a pension to Lewis Lewis;

A bill (H. R. No. 4546) granting a pension to William H. Styles; and

A bill (H. R. No. 5998) for the relief of Prescilla Decatur Twiggs.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. WHITTHORNE for ten days.

ORDER OF BUSINESS.

Several MEMBERS. Regular order!

The SPEAKER. The regular order is the motion of the gentleman from Wisconsin, [Mr. HAZELTON,] that the House now adjourn.

The motion was agreed to; and accordingly (at four o'clock and twenty-five minutes p. m.) the House adjourned.

PETITIONS, ETC.

The following memorials, petitions, and other papers were laid on the Clerk's desk, under the rule, and referred as follows:

By Mr. ATHERTON: Paper relating to the pension claim of Sarah Maxwell—to the Committee on Invalid Pensions.

By Mr. BRAGG: Papers relating to the pension claim of Adaline P. Loy—to the same committee.

By Mr. CAMPBELL: The petition of 1,250 mechanical engineers from different States, for the appointment of a commission to test iron and steel and other materials used in the construction of bridges, &c.—to the Committee on Manufactures.

Also, the petition of honorably discharged soldiers of Meyersville, Pennsylvania, for the establishment of a soldiers' home at Erie, Pennsylvania—to the Committee on Military Affairs.

By Mr. DEUSTER: Memorial of the Wisconsin Academy of Sciences, Arts, and Letters, praying for an appropriation for the continuation of survey in Wisconsin under the auspices of the United States Coast and Geodetic Survey—to the Committee on Appropriations.

By Mr. FORD: Papers relating to the claim of W. W. Jackson—to the Committee on War Claims.

By Mr. GARRISON: The petition of J. F. Lamden, praying to be reinstated as an engineer in the United States Navy—to the Committee on Naval Affairs.

By Mr. LUNA: The petition of Sisters of Mercy, of Yankton, Dakota Territory, praying for an appropriation of $25,000 to aid them in maintaintng their works of charity—to the Committee on Appropriations.

By Mr. MOREY: The petition of J. F. Hill, for the establishment of a post-route from Cravers to Owensville, Clermont County, Ohio—to the Committee on the Post-Office and Post-Roads.

By Mr. PACHECO: The petition of Fairbanks & Co., praying the Government to adopt their gold and silver coin scale and counterfeit coin detector—to the Committee on Coinage, Weights, and Measures.

By Mr. WILLIS: The petition of the Louisville (Kentucky) Board of Trade, for the passage of the bill relating to the construction of bridges across the Ohio River—to the Committee on Commerce.

By Mr. M. R. WISE: Memorial of John Carlson, in relation to a claim against the Egyptian Government—to the Committee on Foreign Affairs.

HOUSE OF REPRESENTATIVES.

SATURDAY, *June* 3, 1882.

The House met at eleven o'clock a. m. Prayer by the Chaplain, Rev. F. D. POWER.

The Journal of yesterday's proceedings was read and approved.

RIVER AND HARBOR APPROPRIATION BILL.

The SPEAKER. The gentleman from Louisiana, Mr. GIBSON, who is confined to his room by illness to-day, has, by note to the Chair, requested that leave be obtained for him to have printed in the RECORD some remarks by him upon the river and harbor appropriation bill.

Mr. COX, of New York. I would like to have the same privilege in case I do not get an opportunity to speak on that bill.

Mr. HAWK. Let general consent be given.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana, [Mr. GIBSON?]

There was no objection, and leave was granted accordingly. [See Appendix.]

ELECTION CONTEST—LOWE VS. WHEELER.

Mr. HAZELTON. I call for the regular order.

The SPEAKER. The regular order is the further consideration of the contested-election case of Lowe *vs.* Wheeler. The gentleman from Alabama [Mr. WHEELER] is recognized by the Chair, and is entitled, under the permission of the House already given, to one hour longer.

Mr. WHEELER. Mr. Speaker, owing to illness in my family, which prevented my sleeping last night, I had determined at one time not to avail myself of the courtesy of the House in extending my time. But there are one or two things which I have thought best to state before I close. On yesterday a question was raised by a statement of the gentleman from Pennsylvania [Mr. KELLEY] to which I desire to refer, and I repeat that my statements to the House on this subject are correct. The full record reached me on the last day of February, and the argument was ordered to commence (against my protest) on March 29.

The only Democrat on the sub-committee was absent when the counsel for contestee made their arguments. The committee announced that one hour and a half would be allowed my side, and I am convinced that had my counsel thought it would have availed they would have urged with all power for an extension, because that time gave no opportunity to hardly touch upon half of the points involved, and the committee shut off my counsel in the midst of an argument upon one of the points in question.

The committee positively refused to give an extension to thirty days for filing briefs, and consequently we were compelled to appear before the committee before the briefs for the contestee were printed, and I will state here that the counsel who argued my case assured me that it was their opinion that on the evidence no judicial tribunal would come to any other conclusion than that the contestee was elected by a large majority.

I stated, and I state it again, that two gentlemen selected to argue my case before the House were unable to get the majority report from either the document-room or the Election Committee room until the day the case was called up for consideration. It is true a few copies were given out before, but they had been given to other gentlemen; and on May 31 and the morning of June 1 additional copies were sought for without success.

I desire also to say one word in reply to the gentleman from Michigan, [Mr. HORR.] His speech was not upon the case before this House; but it was largely an aspersion upon the people of the South. Now, I desire to say to him with all respect that if the people in the Southern States—and I say it because I know the people in every part of the South—if the people in the South who you call Democrats were congregated together and any one should commence aspersions against the people of Michigan he would be rebuked by his comrades. Southern people do not gather together to vilify people of entire States and sections. When they speak of strangers and persons who are absent they adhere strictly to the truth and endeavor to avoid the possibility of doing injustice; and I never have known any persons, wherever from, whether male or female, who had just cause to complain of any lack of the most courteous hospitality while in the country of the Southern people.

I desire to say further, in refutation of what the gentleman from Michigan said yesterday, that no less distinguished a gentleman than the honorable Mr. Warner, of Alabama, formerly of Ohio, and who a few years back was Senator from Alabama, in the presence of the honorable Speaker of this House and an assemblage of over three thousand people, asserted substantially as follows: that he had lived in Alabama for sixteen years; that he had been an open, avowed, out-spoken, earnest Republican politician during that time, and had never yet received from any confederate soldier a single word or act that was not as courteous and kind as it was possible for one gentleman to extend to another. Ex-Senator Warner, whose testimony I thus cite, has traveled over the South, and is known generally by the Southern people.

I wish to say one word more. The gentleman from Michigan saw fit to read a lecture upon what a gentleman who receives a certificate from his governor to a seat in this honorable body should do; and he illustrated it by what he stated had been done by a gentleman from Michigan. I will state to him that when I received notice of contest filled with charges of fraud, I informed the gentlemen who had charge of Mr. Lowe's interests that if the evidence showed that I had not been fairly and honorably elected, I would resign my certificate and would refuse to come and sit in the halls of Congress. But as the investigation progressed the evidence showed more and more illegality regarding the votes of my opponent, while at the same time the thorough fairness of the election on the part of my friends was conclusively proven until the evidence presented here shows beyond question according to the precedents established in this House, even including those of this very week, that the contestee in this case was elected by a very large majority of the legal voters. I mean by this that the proof conclusively shows that giving to the contestant every vote he claims and deducting votes of voters which this House has decided to be illegal and void in deciding cases under similar laws, there would be left for me a very large majority. I ask any gentleman whether with such evidence he would be doing right to his constituents if he did not obey their mandate and serve them here to the best of his ability?

The minority report in this case, concurred in by the Democratic members of the committee, cites the law and the facts; and the conclusion of the minority is that under no circumstances upon the evidence in this case could a decision be rendered giving the contestee less than two thousand majority. A decision was rendered by this House on Thursday, on the subject of registration, which, if adhered to, would elect me by a large majority, and I insist that this House has no right to decide a question on Thursday to seat a Republican member, and then reverse their decisions on Saturday of the same week to seat a Greenback ally; and yet that is what the majority of this House will do if they confirm the majority report in this case.

The proof in this case shows beyond any question, as I stated on yesterday, that at least three thousand persons who were not registered voted at that election. We prove further by uncontradicted and unquestioned evidence that at certain polls eight hundred of these unregistered persons voted for the contestant, and there is not a particle of proof in the record to controvert this. The proof is, further, that in many cases the poll list shows the names of persons