

FINLEY vs. WALLS.

MARCH 23, 1876.—Laid on the table and ordered to be printed.

Mr. THOMPSON, from the Committee of Elections, submitted the following

R E P O R T :

The Committee of Elections, to whom was referred the case of Jesse J. Finley vs. Josiah T. Walls, in which said Finley claims the right to be admitted to the seat as Representative from the second congressional district of Florida, report :

The laws of the State of Florida provide that “every male person of twenty-one years and upward, of whatever race, color, nationality, or previous condition, who shall, at the time of offering to vote, be a citizen of the United States, or who shall have declared his intention to become such, in conformity to the laws of the United States, and who shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida one year, and in the county for six months, next preceding the election at which he shall offer to vote, shall in such county be deemed a qualified elector at all elections, provided the following classes of persons shall not be entitled to vote: First; persons under guardianship; second, persons who are insane or idiotic; third, persons hereafter convicted of felony, bribery, perjury, larceny, or other infamous crime.” (Sec. 6, chap. 66, Bush’s Digest, pages 299, 300.)

It is also provided—

“SEC. 8. No person shall be entitled to vote at any election unless he shall have been duly registered six days previous to the day of election.

“SEC. 9. The county commissioners, or a majority of them, shall meet at the office of the clerk of the circuit court within thirty days preceding the day on which any election shall be held, and examine the *list of registered electors*, and *erase therefrom* the names of such persons as are known or may be shown to their satisfaction to have died or ceased to reside permanently in the county, or otherwise become disqualified to vote: *Provided*, That if any person, whose name may be erased, shall, on offering to vote at any election, declare on oath that his name has been *improperly struck off from the list* of registered voters, and shall take the oath required to be taken by persons whose right to vote shall be challenged, such person shall have the right to vote, and on making oath before the clerk of the court that his name has been *improperly erased from the list* of registered voters, may have his name again entered upon said list; and the county commissioners shall, at the same meeting, appoint a board of three discreet electors to be inspectors of the election for each place designated for voting within the county, and shall also at said meeting designate so many places for holding such election within the county as may be deemed necessary for the conven

ience of the electors, and shall cause three notices of such designation and appointment of inspectors to be posted conspicuously in the vicinity of each place so designated twenty days before the election."

Section 10 provides that "a copy of the list of names of all persons duly registered as electors shall be furnished to the inspectors of election at each poll or place of voting in the county before the hour appointed for opening the election. The clerk shall prepare and certify such copies, and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause one such list to be delivered to one of such inspectors before the time for opening the election."

Section 11 provides: "In case of the death, absence, or refusal to act of any or all of the inspectors appointed by the county commissioners, the electors present at the time appointed for opening the election may choose, *viva voce*, from the qualified electors, such a number as, together with the inspector or inspectors present, if any, will constitute a board of three, and the persons so chosen shall be authorized to act as inspectors of that election. The inspectors shall, before opening the election, choose a clerk, who shall be a qualified elector, and said inspectors and clerk, previous to receiving any votes, shall each take and subscribe an oath or affirmation in writing that they will perform the duties of clerk or inspectors of election according to law, and will endeavor to prevent all fraud, deceit, or abuse in conducting the same. Such oath may be taken before any officer authorized to administer oaths, or before either of the persons chosen as inspectors, and shall be returned with the poll-list and the returns of the election to the clerk of the circuit court. One of the inspectors shall be chosen as chairman of the board."

Section 12 provides that "the polls of the election shall be opened at 8 o'clock a. m. on the day of the election, and shall be kept open until sunset of the same day; but the board may adjourn between twelve and one o'clock for half an hour. The inspectors shall cause proclamation to be made of the opening and closing of the polls, and of the adjournment. During an adjournment the ballot-box shall be sealed and kept in the possession of an inspector, who shall not have the key thereof, but the box shall not be concealed from the public."

Section 13 provides that the names of all persons voted for shall be on one ballot.

Section 14 provides that the election shall be by ballot, and the ballot shall designate the office to which the person voted for is intended to be chosen.

Section 15 provides that a vacancy shall be filled in same manner.

Section 16 provides, "if any person offering to vote shall be challenged as not qualified, by an inspector or by any other elector, one of the board shall declare to the person challenged the qualifications of an elector. If such person shall claim that he is qualified, and the challenge be not withdrawn, one of the inspectors shall administer to him the following oath: 'You do solemnly swear that you are twenty-one years of age; that you are a citizen of the United States, [or that you have declared your intention to become a citizen of the United States, according to the acts of Congress on the subject of naturalization;] that you have resided in this State one year, and in this county six months next preceding this election; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court.' If the person challenged shall take such oath, his vote shall be received.

"SEC. 17. There shall be provided by the county commissioners as many ballot-boxes as there shall be places for voting in that county,

which boxes shall each be provided with a suitable lock and key. There shall be an opening through the lid of each box, no larger than to conveniently admit a single closed ballot. After the close of any election and canvass, inspectors shall return such boxes to the clerk of the circuit court, together with the returns of such election. One of such boxes, with the key thereof, in good order, shall be furnished to the inspectors of election before the holding of any general or special election.

"SEC. 18. Before opening the polls of any election, the ballot-box shall be publicly opened and exposed. And nothing shall remain therein; it shall be thus locked, and the key thereof delivered to one of the inspectors, and said box shall not be opened until the close of the election.

"SEC. 19. When a ballot shall be received, one of the inspectors, without opening the same or permitting it to be opened, shall deposit it in the box. When any person shall have voted, his name shall be checked upon the list by one of the inspectors, and the clerk shall make a list of the names of the persons voting; and if such elector shall have been challenged and sworn, the clerk shall make note thereof, as follows: If the person shall swear that he is a citizen of the United States, the letter C shall be entered opposite his name in the list kept by the clerks; if he swear that he has declared his intention to become a citizen, then the letter D shall be entered opposite his name upon said list."

Section 20 provides that the inspectors shall have authority to maintain good order at the polls.

"SEC. 21. As soon as the polls of an election shall be finally closed, inspectors shall proceed to canvass the votes cast at such election, and the canvass shall be public and continued without an adjournment until completed. The votes shall be first counted; if the number of ballots shall exceed the number of persons who shall have voted, as may appear by the clerk's list, the ballots shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy unopened so many of such ballots as shall be equal to such excess.

"SEC. 22. If two or more ballots shall be folded together, so as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed, and if, upon comparison of the count and the appearance of such ballots, a majority of the board shall be of the opinion that the ballots thus polled together were voted by one person, such ballots shall be destroyed.

"SEC. 23. The canvass being completed, duplicate certificates of the result shall be drawn up by the inspectors or clerks, containing, in words written at full length, the name of each person voted for for each office, the number of votes cast for each person for such offices, which certificates shall be signed by the inspectors and clerk, and one of such certificates shall, by one of their number, be without delay delivered, securely sealed, to the clerk of the circuit court, and the other to the county judge of the county; and the poll-list and oaths of the inspectors and clerks shall also be transmitted with the certificate to the clerk of the circuit court, to be filed in his office.

"SEC. 24. On the sixth day after an election, or sooner, if the returns shall have been received, it shall be the duty of the county judge and clerk of the circuit court to meet at the office of the said clerk, and take to their assistance a justice of the peace of the county, (and in case of the absence, sickness, or other disability of the county judge or clerk, the sheriff shall act in his place,) and shall publicly proceed to canvass the votes given for the several offices and persons, as shown by the returns on file in the office of such clerk or judge, and shall then make and sign

duplicate certificates, containing, in words and figures written at full length, the full number of votes given for such office, the names of the persons for whom such votes were given for such office, and the number of votes given to each person for such office. Such certificate shall be recorded by the clerk in a book to be kept by him for that purpose, and one of such duplicates shall be immediately transmitted by mail to the secretary of state, and the other to the governor of the State." (Chap. 66, Bush's Digest.)

"On the thirty-fifth day after the holding of any general or special election for any State officer, member of the legislature, or Representative in Congress or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the secretary of state, attorney-general, and the comptroller of public accounts, or any two of them, together with any other member of the cabinet who may be designated by them, shall meet at the office of the secretary of state, pursuant to notice to be given by the secretary of state, and form a board of State canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns. If any such returns shall be shown or shall appear to be so irregular, false, or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify, and shall not include such return in their determination and declaration, and the secretary of state shall preserve and file in his office all such returns, together with such other documents and papers as may have been received by him or by said board of canvassers. The said board shall make and sign a certificate, containing in words written at full length the whole number of votes given for each office, the number of votes given for each person for each office, and for member of the legislature, and therein declare the result, which certificate shall be recorded in the office of the secretary of state, in a book to be kept for that purpose, and the secretary of state shall cause a certified copy of such certificate to be published once in one or more newspapers printed at the seat of government." (Acts of 1872, chapter 1868, No. 6.)

The second congressional district is composed of seventeen counties, viz, Alachua, Baker, Brevard, Bradford, Columbia, Clay, Duval, Dade, Hamilton, Madison, Marion, Nassau, Orange, Putnam, Suwannee, Saint Johns, and Volusia.

The contestant, as his grounds of contest, makes seventeen specifications, to which the contestee has severally answered. It will be necessary to consider each specification separately. The first specification is, in substance, that the State canvassers illegally counted and canvassed illegal returns from certain precincts in Alachua County, and thereby gave the contestee a majority of votes, when in truth and in fact he had not a majority. Your committee are of opinion that whatever may be said as to the right of the county canvassers to reject the returns from said precincts, the State canvassers had no right to canvass them, and that the certificate of election should have been given to the contestant and not to the contestee; (sec. 4, chap. 1868, acts of 1872;) still, they are called upon now to go behind the canvass of both the county and State canvassers and ascertain if possible the actual vote at said precincts. The second specification relates to Gainesville precinct, No. 3, in Alachua County, which is as follows:

That said election at precinct No. 3, at Gainesville, within the county of Alachua, and within said second congressional district of Florida, was irregularly and illegally conducted, and was null and void, and I hereby notify you that I will ask that all the votes cast at said

precinct be rejected on the following grounds, viz: 1st. Because no poll-book or list of the names of the electors voting at said precinct was returned to the judge of the county court or to the clerk of said county, with the certificates of the election at said poll, as the law requires, but a paper list of names was found eight (8) days after said election, unsigned by any of the officers of the election at said precinct; 2d. Because a large number of illegal votes at said election were received and counted at said poll, viz, about fifty-eight (58) votes not registered, and five (5) not checked, as the law requires, were received at said poll, and changed the result of the election at said poll, and only three (3) appeared to be sworn, and because the oath administered to the unregistered voters who voted at said poll was not such as the law prescribes.

To which the contestee answers in substance that it is untrue that said election was irregularly and illegally conducted, or was null and void. He admits that the poll-book was not returned to the judge of the county court nor to the clerk of the county with the certificate of the election at said precinct, but alleges that the same was found eight days after said election, and that this irregularity is not such as will affect the rights of the contestee. He also objects to proof of any illegal votes, as it does not appear from the contestant's said specifications for whom said illegal votes were cast. A poll may be purged of illegal votes without it being proved for whom they were cast. (Am. Law of Elec., sec. 298.)

The not returning of the poll-list, although an irregularity which might, connected with other irregularities, be entitled to very considerable weight, still, in this case, it being shown that the poll-list used at this precinct was found and used by the county canvassers in canvassing this precinct, and there being no evidence that it had been tampered with, or was by reason of fraud not returned in the ballot-box, the committee have not regarded it as a sufficient reason for rejecting said poll. A more difficult question is presented in relation to this poll. It is clear from the evidence that some sixty persons voted at this precinct whose names were not on the certified copy of the registration-list used at this precinct. This appears from the deposition of Peter G. Snowden, page 74.

Deposition of Peter Snowden.

PETER G. SNOWDEN, of Alachua County, Florida, being duly sworn, deposeth and says: I was in Gainesville, Alachua County, Florida, on the 3d day of November, A. D. 1874, and acted as supervisor at poll or precinct No. three, (3,) in Gainesville, at the election held there on that day for Representative in Congress from the 2d congressional district of the State of Florida; and I paid close attention to the general conduct of the election on that day at that poll or precinct.

Question. Were there or were there not a considerable number of persons who voted at that precinct on that day whose names could not be found on the registration-lists?

(Objected to by contestee's counsel.)

Answer. There were a good many; I do not remember the number, but I think there were some sixty-odd. I sat near the clerk of the election at this poll, and, at the request of all the managers or inspectors, I assisted the clerk of the election to look for the names of the voters on the registration-lists as they would come up to vote. As we would find the name of a voter presenting his vote on those lists, we would exclaim, "Found;" and if the name could not be found on the registry-lists, we would exclaim aloud, "Not found;" and for those names that could not be found on these lists the clerk would write opposite thereto on his poll-list in parenthesis, "Not registered." These parties whose names could not be found on the registry-lists, before they were allowed to vote, were required to take the oath found in section sixteen (16) of the election-laws of the year A. D. 1868, with the addition thereto of the further oath that they had been registered voters previously thereto, but they did not swear that their names had been improperly struck off of the lists of registered voters—this I am confident of. Nearly all of these voters whose names were not on the registry-lists were colored men. There were some four white men who offered to vote at that poll whose names were not or could not be found on the registry-lists, and when these would offer to vote, the same oath was administered to them before they were allowed to vote that was administered to the colored men.

Cross-examination of Peter G. Snowden by contestee's counsel:

There was no form of oath at this precinct or poll No. three (3) in the hands of the inspect-

ors, clerk, or managers of the election there, and when they found they had none, I went into an adjoining room and got the form of the oath that I thought was required by the laws to be administered to parties offering to vote whose names were not on the registry-lists, and told the managers what the oath was that I had thus found, and they used this oath all during the day. The inspectors of the election at that precinct were M. E. Papy, E. Lawrence Chestnut, and W. H. Battzell, and the clerk there was John B. Brooks. My politics are democratic, and I voted at that election for J. J. Finley.

Redirect examination of P. G. Snowden :

Q. Were not the majority of the inspectors at that poll or precinct republicans ?

(Objected to by contestee's counsel.)

A. They were so considered.

The deposition of John B. Brooks, called by the contestee, (page 124 of record :)

JOHN B. BROOKS, of Gainesville, Alachua County, Florida, being duly sworn, deposes and says :

Question. What is your name and where do you reside ?—Answer. John B. Brooks, and I reside in this place, Gainesville.

Q. Were you in Gainesville at the general election held there November 3, A. D. 1874 ?—A. I was.

Q. What position, if any, did you hold at that election ?—A. I was clerk of election of precinct number three, (3.)

Q. Did the persons opposite whose names the words "not registered" were written on the poll-books take the ordinary oath before being permitted to vote ?—A. They did.

Q. Do you recollect the substance of that oath ?—A. I do not think I do exactly, but I think I could come pretty near it.

Q. Would you recognize the oath, were you to hear it read, that was administered to persons whose names were not found on the registration-list ?

(Contestant objects to the question and to the reading of the oath.)

A. I think I would.

(Witness recognizes the oath contained in section (16) sixteen, act of 1863, or Bush's Digest, as the oath administered to electors whose names did not appear on the registration-list.)

Deposition of M. E. Papy, called by contestee, (page 126 :)

Q. Were you in Gainesville at the general election held there on November 3, A. D. 1874 ?—A. I was.

Q. What position, if any, did you hold in that election ?—A. I was inspector of election at precinct No. 3.

Q. Did or did not the persons who had the words "not registered" written opposite their names on the poll-list take the ordinary oath administered to electors whose names had been left off the registration-list before being permitted to vote ?—A. I administered an oath to them. I do not know whether it was the proper oath or not, but presume it was. My intentions were to carry on a fair election.

Q. What was the substance of that oath ?—A. I varied in the wording of the oath, but not in the substance. The general average of the oath was, "Are you twenty-one years of age ; do you live in Alachua County, State of Florida ; have you voted at any other precinct at this election ?" That is about the substance of the oath that I administered.

It is clear by the election-laws of Florida that a person, in order to be entitled to vote at any election, must, six days prior thereto, be duly registered as a voter in the clerk's office of the circuit court in the county. If, on offering to vote, his name is not on the certified copy of the registry-list at the voting-precinct, he may then, if he takes the oath prescribed in section sixteen and the additional oath required by section nine, which is "that his name has been improperly struck off from the list of registered voters," be entitled to vote. And the taking of the oath in section nine is indispensable to the right of the person to vote whose name is not upon the registration-list. The officers presiding at the election have no right to receive his vote without this oath. But it also appears by the evidence that although the names of these sixty voters were not on the certified copy of the registration-list furnished for this poll, still a large number of the names were actually on the registration-list in the clerk's office of the circuit court. Your committee, in view of this fact, although the inspectors were in fault in allowing the persons to vote whose

names were not on the list furnished them by the clerk of the circuit court, still, as their names should have appeared on such list, and they were deprived of the legal right to vote without taking the oath in section nine, by the neglect of the clerk of said court, in not providing a correct list of the voters of said precinct, have arrived at the conclusion that, they having voted, their votes should be counted when their names are found to have been on such registry-list at the clerk's office. This leaves the poll to be purged of twelve votes. "In purging the polls of illegal votes, the general rule is, that unless it is shown for which candidate they were cast, they are to be deducted from the whole vote of the election division, and not from the candidates having the highest number." "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." (Am. Law of Elec., sec. 298.) Although this is the rule to be applied where it cannot be ascertained for whom the illegal votes were cast, and in this case there is nothing to show that it might not have been ascertained for whom the illegal votes were cast, as the names of the unregistered voters could have been ascertained by comparing the poll-list and the registry-list, and the evidence of the illegal votes taken as to whom they voted for, and the poll purged in this the more regular mode; still, as this has not been done, your committee, unwilling to reject the entire poll, there being not evidence sufficient to prove actual fraud on the part of those having charge of the election, have determined to purge the poll of the twelve illegal votes by subtracting from each of the candidates a proportionate number of the illegal votes, according to the entire vote returned for each, which will give in this precinct (196) one hundred and ninety-six, instead of (207) two hundred and seven, for Wall, and (15) fifteen, instead of (16) sixteen, for Finley.

Specification third is waived.

The fourth specification of the contestant is as follows :

That the election at the Micanopy poll, within the county of Alachua, and within the second congressional district of Florida, was irregularly and illegally conducted, and was null and void; and I hereby give you notice that I will urge that all the votes cast at said poll at said election be rejected, on the following grounds, viz: 1st. Because the inspectors or officers of said Micanopy poll allowed and permitted about sixty-three (63) persons, whose names were not found on the registration-list of said county, to vote at said precinct, the same not being sworn as required by law; 2d. Because the ballots at said poll were all numbered to correspond with the number set opposite the names of the respective voters, thus depriving the voters at said precinct of the right of secrecy guaranteed by law, and changing said election in effect to an election *viva voce*, contrary to the statute in such case made and provided; and, 3d. Because the polls at said precinct were not opened at said Micanopy precinct until nearly two hours after the time prescribed by law, which tended to and did change the result of said election at said poll.

To which the contestee answers substantially as follows: That the election was not irregularly or illegally conducted; that he is ignorant as to whether the inspectors allowed sixty-three persons not registered to vote without being sworn according to law, but does not believe the allegation to be true; denies that the numbering of the ballots is a violation of law; alleges ignorance as to the not opening of the poll at the proper hour, and alleges that if the poll was not opened at the proper hour, it does not appear that it was a fraud upon the voters, or that it worked any injury to the contestant. Your committee do not find any sufficient evidence that the poll at this precinct was not opened at the proper hour; neither do they find that the numbering of the ballots, if an irregularity, is such an irregularity as calls for the rejecting of the poll; but they do find that unregistered persons were allowed to vote without taking the oath required by section 9. William H. Belton, clerk of the circuit court, testified as follows :

Q. Do the returns made to the board of county canvassers from the Micanopy precinct, in Alachua County, of the election held there on the 3d day of November, A. D. 1874, show that there were any persons who voted at that precinct whose names were not on the registration-lists, and how many?

(Objected to by contestee's counsel, on the ground that the returns themselves are the best testimony, and are not introduced in evidence.)

A. Sixty-three unregistered persons were allowed to vote at the Micanopy precinct. I know this, because the board of county canvassers, of which I was a member, compared the poll-list from that precinct that was made and kept by the clerk of the election there with the registration-lists of the county. I do not know that these sixty-three persons were sworn by the inspectors of that precinct before they were allowed to vote.

On cross-examination he had answered as follows :

Of my own knowledge, neither I nor the rest of the board of county canvassers knew that these sixty-three persons were not sworn before being allowed to vote, except from what we saw on the poll-list from that precinct. We compared this poll-list with the registration-lists, and the greater portion of them, designated as not being registered voters, were found to be on the registration-lists, though some of them could not be found. I mean a great many more were found than were not found.

C. H. Crisman testified as follows, (page 130 of record :)

Question. What is your name, and where do you reside?—Answer. C. H. Crisman. I reside at Micanopy, Alachua County, Florida.

Q. What official position did you hold at an election held at Micanopy precinct, November 3, A. D. 1874, for member of Congress in the second congressional district of Florida?—A. I was inspector.

Q. Were or were not the names of some of the electors who were sworn at said election afterward found on the registration-list; and, if so, how many?—A. I should think about three-fourths of those that were sworn were found afterward.

Cross-examined :

Q. How many registration-lists did they have at that precinct; did they have both the unrevised and the revised?—A. They had a printed list and a written one.

Redirect :

Q. Was the written list an additional list to the printed list?

(Objected to by contestant's counsel.)

A. Yes; I should say it was.

Allen B. Barber testified as follows, (page 133, record :)

Question. What is your name, and where do you reside?—Answer. Allen B. Barber; I reside in Micanopy, Alachua County, Florida.

Q. Were you at Micanopy at the time of the general election held there on November 3, A. D. 1874?—A. I was.

Q. What position, if any, did you hold there on that day?—A. I was inspector of the election.

Q. State whether or not the electors whose names were not found on the registration-list were sworn before being permitted to vote.—A. All were sworn.

Cross-examined :

Q. Who swore those electors whose names were not found on the registration-list?—A. J. H. Stokes.

Q. What was the oath administered to them?—A. "Will you solemnly swear that you are a legal registered voter of the State of Florida?" The answer was, they were, and I have forgotten the balance of the oath.

Redirect :

Q. Would you remember that oath if you should hear it read?—A. I think I should.

Q. Is the oath prescribed in section sixteen, (16,) act of 1868, or Bush's Digest, the oath they took before being allowed to vote?—A. Yes.

Q. Whether or not did those persons swear, in addition to that oath, that their names had been improperly left off of the registration-list?

(Objected to by contestant's counsel on the ground that it puts the answer in the witness's mouth.)

A. They did swear it.

J. H. Stokes testified as follows :

Question. What is your name, and where do you reside?—Answer. My name is J. H. Stokes; I reside in Micanopy, Alachua County, Florida.

Q. Were you at that precinct at the general election held there on November 3, A. D. 1871?—A. I was.

Q. What position, if any, did you hold at that election?—A. I was inspector, and took in the votes.

Q. Were the persons whose names did not appear upon the registration-list sworn before being permitted to vote?—A. They were.

Cross-examined:

Q. Who administered the oath to non-registered voters?—A. I did.

Q. Do you recollect the oath which you administered to persons whose names were not found on the registration-list, who were permitted to vote at that precinct?—A. "You do solemnly swear that you are twenty-one years of age, that you are a citizen of the United States, (or that you have declared your intention to become a citizen of the United States, according to acts of Congress on the subject of naturalization;) that you have resided in this State one year, and in this county six months, next preceding this election; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court." The above is the substance of the oath; all of it was not administered every time.

Q. About how many were thus permitted to vote?—A. I should think about one-fourth of who voted at the precinct.

From this evidence your committee find that fifteen not registered persons voted at this precinct without taking the oath required in section nine, and they have purged the poll in the same manner as in the Gainesville precinct, No. 3, which will make the vote in this precinct (123) one hundred and twenty-three instead of (132) one hundred and thirty-two for Walls, and (76) seventy-six instead of (83) eighty-three for Finley.

The fifth specification relates to Gordon precinct, and is as follows:

That the said election at the Gordon poll, within the county of Alachua and within the second congressional district of Florida, was irregularly and illegally conducted, and was null and void, and I hereby give you notice that I will ask that all the votes cast at said poll at said election be rejected, on the following grounds, viz: 1st. Because the clerk of the election at said poll was not sworn as required by law; 2d. Because the officers of said election at the said Gordon precinct allowed and permitted a large number of votes to be cast at said precinct who were not legally entitled to vote, viz, about forty (40) votes, who were not registered, and who were not sworn as the law requires; 3d. Because the clerk of the election at said precinct was not sworn as the law requires; and, 4th. Because the ballot-box, poll-list, and certificate of said election at said poll did not correspond; and, 5th. Because no legal election was held at said precinct, and because of the reception at said poll of a large number of illegal votes, the said precinct giving you from said illegal poll a plurality of about twenty (20) votes, thus changing the result of the election at said poll.

All the allegations therein contained the contestee either denies or expresses ignorance of, and says that if the clerk was not sworn it is immaterial.

Your committee do not find any legal evidence to substantiate either of the allegations contained in the contestant's specification. The minutes of the board of canvassers for the county of Alachua are not evidence; neither are the reasons given by them for rejecting this precinct in their certificate. They are not of such official character as to make them evidence. The only evidence tending to show that unregistered voters were allowed to vote without being duly sworn is given by Caesar Swett, a witness for the contestee, in his deposition, (pp. 116 and 117,) but his statements are not sufficiently clear, definite, and full to establish that fact. This poll must therefore stand as certified by the inspectors and clerk at the precinct, viz: 86 for Wall, 66 for Finley. (Page 142.)

The contestant's sixth specification relating to Barnes's Store precinct is as follows:

That the said election at the precinct of "Barnes's Store," within the county of Alachua, and within the second congressional district of Florida, was irregularly and illegally conducted, so that there was no valid and legal election held at said precinct; and I hereby give you notice that I will urge that all the votes cast at said poll be rejected on the follow-

ing grounds, viz : 1st. Because the clerk of said election-poll was not a registered voter of said State and county, and was not a citizen of the United States; 2d. Because the inspectors and clerk at said poll were not sworn, either before or after receiving any votes at said pretended election, that they "will perform their duties respectively according to law, and will endeavor to prevent all fraud, deceit, or abuse in conducting the same," and for that said officers or pretended officers of said election-precinct at Barnes's Store, aforesaid, did not take and subscribe such oath as the law requires before receiving any votes at said election, and did not return such oath with the poll-list of said precinct to the clerk of the circuit court, as the law requires; 3d. Because there were gross irregularities, as shown by the returns of said poll, there being one hundred and ninety-four votes found in the ballot-box by county canvassers, and one hundred and eighty-one (181) votes on poll-list, showing a discrepancy of thirteen (13) votes; while the number of votes, as appears from official certificate of result at said poll, was one hundred and ninety; 4th. Because you received one hundred and twenty-five (125) illegal votes cast at said precinct, and a plurality of sixty (60) illegal votes cast at said precinct.

To which the contestee answers as follows :

To this specification I reply that it is not true, as stated, that at the precinct of Barnes's Store, within the county of Alachua, and within the second congressional district of Florida, the election was irregularly and illegally conducted, so that there was no valid and legal election held at said precinct. To the first paragraph of said specification I reply, I am informed and believe that the clerk of said election-poll was not a registered voter or citizen of the United States. To second paragraph of said specification, contestee enters a general and special denial to such allegation therein contained; neither are the allegations of gross irregularities, as set forth in the third paragraph of said specification, true, as your contestee stands ready to prove; neither is it true, as stated in the fourth paragraph of said specification, that I received one hundred and twenty-five illegal votes at said precinct, and a plurality of sixty illegal votes at said precinct.

There is not any legal evidence showing discrepancies as alleged by the testant between the returns, poll-list, and ballots. W. H. Belton testified (page 66) that it appears from the minutes made and kept by the board of county canvassers at the time of canvassing the returns from this precinct, that such discrepancies existed, but, as stated above, such minutes are not legal evidence. It is admitted that the clerk at this precinct was not a citizen of the United States. It also appears that the oath of the inspectors and clerk were not returned with the poll-list and the returns to the clerk of the circuit court. But the evidence shows that the inspector and clerk were duly sworn before entering upon their duties. There not appearing anything unfair in the mode of conducting the election by said officers, and no evidence that there was any fraudulent intent either with reference to the clerk or the failure to return the oaths, your committee, although such irregularities might, in connection with other circumstances tending to show fraud, compel the rejecting of the entire vote, do not think they ought to reject the returns from this poll, and they therefore decide that the returns from this precinct must stand as certified, viz, 125 for Wall, 65 for Finley.

The testant's seventh specification is as follows :

That the said election at the Archer precinct, within the county of Alachua and within the second congressional district of Florida, was irregularly and illegally conducted, so that, as this testant alleges, there was no valid and legal election held at said poll; and I hereby give you notice that I will urge that all the votes cast at said poll be rejected on the following grounds, viz : 1st. Because the inspector and clerk of said election-precinct were not properly and legally sworn as required by law; 2d. Because there were many illegal votes received at said poll, who were not registered and who were under age, and without taking the oath required by law to be administered by an officer of said election-precinct; 3d. Because at said poll one W. U. Saunders, one of your partisan friends, and partner in the practice of law, claiming to be a deputy United States marshal, under the guise of an assumed authority, illegally dictated to and overawed the inspectors at said poll, so that they did not and could not impartially discharge their duties as such officers at said poll; 4th. Because a large and excited crowd of your political friends, armed with clubs, &c., so surrounded said poll, and so boisterously and violently demeaned themselves, that a number of my supporters left the said poll without voting; 5th. Because said W. U. Saunders, a partisan friend

to you, and partner in the practice of law, acting under the color of the authority of a deputy United States marshal, so intimidated and influenced the inspectors at said poll that they yielded the whole control and management of said election to him, supposing that he had the authority; and after said election was over the said Saunders, by his interference and directions, prevented said inspectors from counting the ballots as directed by law, but counted the same himself and sealed up the ballot-box himself without the solicitation of said inspectors; 6th. Because said ballot-box at said Archer precinct during the dinner-hour was shut up and closed from the public view for half an hour, contrary to the statute in such case made and provided; 7th. Because there were great discrepancies in the returns from said poll, no registration-list returned, &c., and because the polls were not open for at least one hour after the legal time, so that, as this contestant alleges and charges, a large number of illegal votes were received and counted for you from said Archer precinct; that is to say, about two hundred and ninety-three (293) illegal votes, and a majority of about one hundred and sixty-eight (168) votes.

To which the contestee answers as follows:

To your seventh specification I reply as follows: That it is not true, as stated in said specification, that at the said election at the Archer precinct, within the county of Alachua, and within the second congressional district of Florida, the election was irregularly and illegally conducted; neither is it true, as set forth in the first paragraph of said specification, that the inspectors and clerks of said election-precincts were not properly and legally sworn, as contestee affirms and will prove; neither are the allegations contained in the second paragraph of said specification true. To the third, fourth, and fifth paragraphs of said specifications, contestee replies that the facts therein stated are not true, and a general as well as a specific denial is herein interposed to each and every allegation therein contained. To the sixth paragraph in said specification, contestee says that he knows of no discrepancies in the returns from said polls, neither does he know whether said poll was opened as alleged in said paragraph or not, and he emphatically denies that two hundred and ninety-three illegal votes were cast for him, and a majority of one hundred and sixty-eight votes. He also emphatically denies that any illegal votes were cast for him at said precinct.

It appears from the evidence of William H. Geiger, one of the inspectors, that about thirty-five voted at this precinct whose names were not on the registration-list. He testified as follows, (page 54-55:)

Q. Were there or were there not a good many persons who voted there on that day whose names could not be found by you on the registration-lists?

(Objected to by contestee's counsel.)

A. There was. I think I objected to about thirty-five voters voting at that precinct, on account of their names not being on the registration-lists, and about seventy in all, including the thirty-five mentioned already, on account of not being legal voters. All these persons referred to were allowed to vote, and did vote.

It appears that those whose names were not on the registration-list did not take the oath prescribed in section nine.

This appears from the evidence of Allen M. Jones, who testified as follows, (page 115:)

Q. Were or were not the electors, whose names did not appear upon the register, properly sworn before being allowed to vote?

(Objected to by contestant's counsel.)

A. Yes, they were. They were asked first how long they had lived in the State of Florida, and what were their names; how long they had been living in the county; if they had ever registered in the county, where and at what time; how old they were. The electors whose names were not found on the registration-list at Archer precinct took the oath found in section sixteen, acts of 1868, or Bush's Digest.

Q. Did or did not said sworn electors swear, in addition to said oath, that they were registered voters, and that their names had been improperly stricken from the registration-list?—A. They swore that they were registered.

Such being the fact, the poll is to be purged of the thirty-five illegal votes upon the same principle before applied. It also appears that there was a discrepancy between the number of votes in the ballot-box and the poll-list. There were three or four more named on the poll-list than votes in the ballot-box.

Inspector W. H. Geiger testified thus, (page 56:)

Q. Did the number of votes in the ballot-box and the names on your clerk's lists correspond?

(Objected to by contestee's counsel.)

A. When the votes cast at that precinct were counted out, the number of votes in the ballot-box did not correspond with the number of names on the lists kept by the clerk of the election. When we found out this discrepancy, we did nothing with it at all, but sent the whole thing up just as it was. I do not remember whether there were a greater number of votes in the ballot-box than there were names on the clerk's lists, or whether the names on the clerk's lists exceed the votes in the ballot-box, but I think there were a larger number of names on the clerk's lists than there were votes in the ballot-box; and we did not put the votes back into the ballot-box and draw therefrom a sufficient number of votes to cure the excess.

Green E. Moore (page 58) says there were three or four more names on the poll-list than ballots in the box.

At this poll other and serious informalities are found to exist, such as a failure to swear the inspectors, the concealment of the ballot-box from public view during the adjournment for dinner, being about a half hour, (Geiger page 56,) not opening of the poll until about half-past 9 o'clock, and the keeping it open after sunset. There was also an improper interference with the election by W. U. Saunders, United States marshal, both in meddling with the ballots and controlling the order of voting, so that several conservatives could not vote at all. These irregularities are grave ones, and might, with much reason, be adjudged sufficient to vitiate the poll; still, your committee are unwilling to reject an entire vote where there is not proof of actual fraud and the poll may probably be purged of its illegal votes. They have, therefore, allowed the returns to stand as certified by the inspectors, deducting only the thirty-five illegal votes proportionately from each candidate, which will leave the vote 260 for Walls and 23 for Finley, instead of 293 for Walls and 25 for Finley.

The eighth specification relates to Newnansville, and is as follows:

That the said election at the Newnansville precinct, within the county of Alachua, and within the second congressional district of Florida, was irregularly and illegally conducted, so that, as this contestant alleges, there was no valid and legal election held at said poll; and I hereby give you notice that I will urge that all the votes cast at said precinct be rejected on the following grounds, viz: 1st. Because one of the inspectors who acted as such at said election at said poll, viz. Henry C. Parker, was not legally chosen, and was not sworn as the law prescribes an inspector of an election in the State of Florida should be; 2d. Because the key of the ballot-box at said poll during the election-day was in the hands of one Joseph Valentine, a noted political friend and supporter of yours; said Valentine being neither an inspector nor clerk of said election at said poll, but claimed to be a United States deputy marshal, and having no authority to influence or control said election, except to preserve the peace, and was not the legal custodian of the key to said ballot-box. That during the adjournment for dinner said ballot-box was not sealed, as the law requires, but kept open; that a large number of illegal votes were received and counted at said poll, who were not registered as the law requires, and who were not legally sworn; that is to say, about one hundred and thirty (130) persons were allowed and permitted to vote at said election-poll whose names were not duly registered in said State and county; and because the canvass of the votes cast at said polls was proceeded with by the managers or inspectors of said poll before said poll was closed, and votes were received thereat pending said canvass; and because the ballots cast at said polls were not counted by the officers of said poll before proceeding to make up their returns, but were called off and reported without being counted at all; and because the ballot-box at said poll, and the returns of said precinct, together with the certificate of the results of said election-precinct, were not returned to the clerk of the circuit court, securely sealed, as the law prescribes, by the inspectors, or any of them, but unsealed, and by the aforesaid Joseph Valentine, who was neither an inspector nor clerk at said precinct. You are therefore hereby notified that I shall urge the rejection of all the votes cast at said precinct of Newnansville, within the county of Alachua, and within the second congressional district of Florida, upon the above grounds, which, contestant alleges, renders the election there entirely illegal, null, and void; from which illegal precinct there were received and counted for you two hundred and fifty-one (251) illegal votes, and for me thirty (30) votes, giving you at said poll a majority of two hundred and twenty-one (221) votes, to which you were not entitled under the law.

To which the contestee answers as follows:

Eighth specification.—To your eighth specification I reply as follows: It is not true, as stated in said specification, that the said election at the Newnansville precinct, within the

second congressional district of Florida, was irregularly and illegally conducted, so that there was no legal and valid election at said poll, and all the allegations contained in said eighth specification are hereby denied in general, as well as specifically and in detail. In regard to Alachua County, contestee affirms, and stands ready to prove, that all the precincts, on the day of the election above referred to, were in the hands of the political and personal friends of the contestant, and that contestant's friends and contestee's enemies were inspectors and clerks at all said precincts in said county; that for all and any irregularities, illegalities, and frauds, (if any should be discovered in said county,) contestant, and not contestee, is responsible. Contestee believes and affirms that there was a conspiracy among contestant's friends in Alachua County to so conduct the election at the different polls or precincts in said county as that contestee would be defeated.

It appears from the evidence that 119 unregistered persons were allowed to vote at this precinct without taking the oath prescribed in section 9.

J. SAMUEL DUPUIS testified as follows, (page 59 :)

Question. Did you act as supervisor of the election held there on that day?

(Objected to by contestee's counsel.)

Answer. I did, so far as I knew what the duties of a supervisor of an election were at the time, having been appointed as such supervisor.

A. There were quite a large number of persons who voted at that precinct, whose names were not on the registration-lists. There were a hundred and twelve or a hundred and fifteen persons who voted at that precinct, whose names were not on the registration-lists. I know this because I kept a list of their names as they were sworn and voted, and I aided the inspectors of the election to inspect the registration-lists, and their names could not be found on those lists, and I assisted in the election, and administered the oaths to most of the challenged voters. I did this to facilitate the election. The oath contained in section (16) sixteen of the acts of the Florida legislature, of the year A. D. 1868, were administered to challenged voters. These challenged voters did not swear that their names had been improperly stricken from the registration-lists, but they swore that they had been registered voters.

Cross-examination of J. S. DUPUIS, by contestee's counsel :

A. I did not insist on the managers having the ballot-box sealed, or say anything to them about it, as I thought that that was their business and not mine.

Q. Were you not satisfied that a majority of the one hundred and twelve or one hundred and fifteen whose names were not on the registry-lists, but who voted at that precinct, were legal voters or legally entitled to vote, and had been properly registered in this State and county, and that their names had been intentionally, or otherwise, left off of the registry-lists which were used at the Newnansville precinct?

(Objected to by contestant's counsel.)

A. I believe that the greater number of the one hundred and twelve or one hundred and fifteen who voted, but whose names were not on the registry-lists, were registered voters, or had registered at some time previous, but how their names came to be absent from the registry-lists I do not know and cannot tell. The following is a list of the names of those voters who were challenged, but whose names were not on the registry-lists used there at that precinct, which lists were printed, and a few names written thereon, to wit: Henry Woodward, Abram Brown, Harrison Adams, Joseph Johnson, Geo. Pray, David Jones, Daniel Williams, Andrew J. Brown, John Fields, J. H. Revere, Saml. Hathecock, S. Blake, Bob Wilson, Taylor Drew, Harry Hall, Jackson Fowler, Isaac Hays, Aaron Dean, Chesser Mahoney, William Washington, Alex. Barbey, Willis Reynolds, Jack Banks, July Gaines, Jefferson Brooks, Dan. Clark, Jack Bosby, Henry Mahoney, William Brookington, John Harris, Geo. Sheppard, Isaac Brookington, James Gaines, N. Gaines, Barney Belcher, Pressley Harris, Raphael Ferguson, Eloni Ferguson, Nelson Riley, George Doby, Manuel Doby, James Madison, Charles Gee, Abe Clifton, John Stephens, Taylor Johnson, Ned Dorsey, Amos Johnson, Henry Cooper, Jones Evans, Richard Cook, Jerry McCaslin, Balidal Small, Bristol Blue, Robt. Boulware, Richard Yates, Hector Mangum, Chester Fields, Amos Graham, Bill Williamson, George Sharpe, Ben. Thompson, Charles Holland, Lee Lyons, Daniel Mahoney, Seth Brown, Ransom McDaniel, Reuben Buscam, Peter Jackson, William Mott, Crejo Howell, Eli McRae, Saml. Kerr, Washington Clark, George Pelason, Toby Welch, Albert Harkley, Steve Harris, Preston Welch, Richard Hall, Geo. Amos, Newton Harris, David Walker, George Lumpkin, Bassie Terry, Stephen Smallwood, Jacob Stanley, Joe Harris, George Hughes, Emrey Danton, Lowden Tucker, Abe Brown, James Boyd, Isaac Bernau, Cain King, Randal Stanley, Harry Amos, Wm. McLean, Joseph Bradley, Chas. Adams, Ben. Nelson, Smart Sholler, Thomas Day, W. H. Green, J. B. Haggins, Horer Cato, Samuel Payne, J. G. Sparkman, Saady, (idiot,) John Richardson, Ivy Brewer, Calvin Sewell, Ivey Cooper, Willis Vaughn, Vance Maury, James Brown, John Low, J. M. Farmer, C. F. Parker.

Henry C. Parker, who acted as an inspector at this precinct, testified as follows, (page 73 :)

Q. Do you know whether or not a number of persons voted there at that precinct at that election whose names were not or could not be found on the registration-lists of the county of Alachua ?

(Objected to by contestee's counsel.)

A. There were a good many who voted there whose names could not be found on the registration-lists. I do not now remember the number of them. Gideon Sparkman and C. F. Parker were two white men whose names I can remember who voted there whose names were not on the registry-lists. I administered the oath to both of them before they were allowed to vote. One of them said that he was a registered voter of Bradford County, and claimed the right to vote for member of Congress, and did vote. The white men there at that precinct voted for—at least it is my impression and opinion that they voted for—General J. J. Finley; and it is equally my opinion that the colored men voted there generally for General J. T. Walls. The voters who voted there at that precinct whose names could not be found on the registration-lists of the county took the oath that is prescribed in section sixteen (16) of the election-laws of the State of Florida of the year A. D. 1863, and no other oath. They did not swear that their names had been improperly struck from off the registry-lists of the county.

M. N. Lewrey, clerk, was called by the contestee, and testified thus, (page 120 :)

Q. What oath was administered to the electors whose names were not found on the registration-list?—A. The substance of the oath runs about like this: Are you twenty-one years of age? Are you a citizen of the United States, and of the State of Florida? Are you entitled to vote at this general or congressional election by previous registration? Are you disqualified by the judgment of any court? The oath set out in section sixteen (16) of the act of 1868, was the oath administered to non-registered voters, and in addition they swore that they were previously registered.

There were several other irregularities at this poll, viz: Henry C. Parker, who acted as inspector, was not sworn; the ballot-box was left unsealed during the adjournment for dinner; the count of the ballots was irregular. Testimony of Henry C. Parker, (page 73 :)

Question. Before you commenced acting as inspector of that election at that precinct, did you take the oath required by law to be administered to inspectors before they proceed to act as such?

(Objected to by contestee's counsel.)

Answer. No, sir; I did not take any oath at all. The ballot-box at that precinct during the adjournment for dinner was left in charge of some of the inspectors and managers, and was left with them unsealed, and was so during the adjournment; that is, the hole through which the ballots were inserted was not sealed up or closed. I do not know where the key to the ballot-box at that precinct was during the adjournment there for dinner or during the whole day; but toward night, about the time of the close of the polls, the key was called for, and was produced by Joseph Valentine. This key was called for at the time we commenced to count the votes cast at that poll, which was a little while before the close of the polls. We—that is, the inspectors—did not count the number of ballots that were in the ballot-box as they were taken out of the box. They were only counted by and from the tally-lists that were kept by the clerk and Mr. J. S. Dupuis, as the votes or ballots were called off.

The key of the ballot-box was left with Joseph W. Valentine, who was neither clerk nor inspector at the election, but a partisan friend of the contestee. (See testimony of Parker above and deposition of Valentine, page 127.) The ballot-box was not returned to the clerk of the circuit court of the county sealed, as required by law, by one of the inspectors or the clerk, (Bush's Digest, p. 303,) but was returned by said Valentine, unsealed, as appears by deposition of E. C. F. Sanchez, (p. 166,) who testifies as follows:

Q. Do you know Joseph W. Valentine, who has testified in behalf of the contestee in this cause?

(Objected to, because the question is leading.)

A. I do know Joseph W. Valentine.

Q. Do you know whether or not Joseph W. Valentine, from his general reputation, is a warm friend of the contestee, Josiah F. Walls, and whether or not he is a strong political partisan in favor of the contestee?

(Objected to by contestee's counsel.)

A. Joseph W. Valentine by reputation is a republican in politics, and, from expressions made by him in my presence, he is a friend of General Walls.

Q. Is he a colored or a white man?

(Objected to by contestee's counsel, because it is irrelevant and not in strict rebuttal of contestee's testimony.)

A. He is a colored man.

Q. After the election held November 3, 1874, did you or did you not see this same Joseph Valentine with one of the ballot-boxes of some precinct in Alachua County; and, if so, where did you see him, what ballot-box did he have, and under what circumstances did he have it?

(Objected to by contestee's counsel, on the ground that it brings out new matter, of which the contestee had no notice, tending to create surprise, and which he has no opportunity of disproving.)

A. I saw this same Joseph Valentine the day after the election. He had at the time that I saw him a ballot-box of election-returns from the precinct of Newnauville. He came to the court-house in Gainesville with this ballot-box; the clerk's office was closed, and he walked into my office and put the ballot-box on the floor. The ballot-box at that time was unsealed.

Q. At the time he put this ballot-box on the floor in your office did he not have it in an exposed condition, or did he keep it under strict scrutiny?

(Objected to by contestee's counsel, on the ground that it is a leading question, and because it is new matter, and not in strict rebuttal of contestee's testimony.)

A. I would say that, for a ballot-box, it was left in a very exposed condition. He left it and went out into the streets and was gone for a considerable time. My office is a very public place. I was walking in and out from time to time, and did not pay a great deal of attention to it.

Your committee regard these irregularities of such a character as to throw great discredit upon the election at this precinct, but they have not come to the conclusion that by reason thereof the entire vote must be rejected, and while not in any manner wishing to appear to sanction or excuse such irregularities and direct violations of statutory provisions made to secure a fair election, they have determined in favor of purging the poll by the rule adopted in the Gainesville precinct No. 3, and have subtracted the one hundred and nineteen illegal votes proportionately from each candidate, which will leave the vote as follows: 146 for Walls, instead of 251, and 16 for Finley, instead of 30, as returned by the inspectors.

The contestant's ninth specification, relating to Colored Academy precinct, Columbia County, is as follows:

That the said election at the Colored Academy precinct, within the county of Columbia, and within the second congressional district of Florida, was irregularly, illegally, and fraudulently conducted, thereby rendering the election at said precinct null and void; and I hereby give you notice that I shall claim and urge that all the votes cast at said precinct be rejected, upon the following grounds: Because the majority of the persons who acted as inspectors at said precinct were not the persons who had been duly appointed to act as such inspectors at said precinct, but unlawfully and fraudulently assumed to act as such inspectors at said precinct, and opened the polls at said precinct at a very early period of the day, and more than one hour before the time prescribed by law, and before the regularly-appointed inspectors of said precinct had time to reach the place of voting, and before they were required by law to be present and open said poll, and that a large number of votes were polled at said precinct before the legal hour of opening the polls. That there was a large number of illegal votes received at said poll, whose names did not appear on the registration-list, and to whom the oath prescribed by law was not administered. That a large number of illegal votes were received at said poll of persons convicted of crimes and felonies, and disfranchised by the laws of Florida, and of persons under the age of twenty-one years, and of persons who were not residents of said county of Columbia. That the illegal conduct of said inspectors at said polls was such as clearly to indicate a fraudulent purpose, and to defeat the legal and fair result of said election, and did change the result of said election; and so this contestant alleges and charges that said election at said Colored Academy precinct, within the county of Columbia, and within the said second congressional district of Florida, was illegal, fraudulent, and void, and that a large number of votes were received thereat for you to which you are not legally entitled, and which should be rejected.

The contestee replies to this as follows:

To your ninth specification I reply as follows: It is not true, as stated, that at said elec-

tion at the Colored Academy precinct, within the county of Columbia, and within the second congressional district of Florida, the election was irregularly, illegally, and fraudulently conducted, thereby rendering the election at said precinct null and void. Contestee further says, in regard to said specification, that he denies the charge in said specification that a majority of the inspectors at said precinct were not properly and legally appointed, and that the poll at the said precinct was opened one hour or more before the time prescribed by law, and before the regularly-appointed inspectors had time to reach the place of voting, and before they were required by law to be present and open said poll, and that a large number of votes were polled at said precinct before the legal hour of opening the poll. Contestee also denies the allegation in said specification that a large number of illegal votes were received at said poll, as set forth in said specification, and contestee will object to any testimony being received in regard to said charge of illegal voting, because said charge is too indefinite, vague, and uncertain. Contestant should have furnished the names of all such persons whom he accuses of illegal voting, in order that contestee might be prepared to prove the falsity of said charge. Contestee also denies the charge in said specification that a large number of illegal votes were received at said poll of persons convicted of felonies and disfranchised by the laws of Florida, and of persons under the age of twenty-one years, and of persons who were not residents of said county of Columbia. Contestee will also object to any testimony being received concerning said charge upon the ground already just specified; contestant should have furnished the names of all such persons for the reasons already set forth. Contestee further denies the allegation concerning the illegal conduct of the inspectors at said poll, but asserts and stands ready to prove that the election at said Colored Academy precinct was in all respects honorably, fairly, and legally conducted, and in full accordance with the laws of the State of Florida, and he emphatically denies that any votes were polled for him at said precinct to which contestee was not legally entitled.

At this precinct your committee find that there was a conspiracy to commit a fraud upon the election. That the conspirators were Dr. E. G. Johnson, who was a candidate for State senator in Columbia County, and was voted for at this precinct, together with Charles R. King and John W. Tompkins, who acted as inspectors, Charles A. Carroll, who acted as clerk, and one Duval Selph, a supporter of Dr. Johnson. Carroll and Selph were at Dr. Johnson's during the night previous to the election, and King took breakfast with him in the morning. They all, except Selph, left the house of Dr. Johnson in the morning a little after daylight, and proceeded to the place where the election was to be held, and, in pursuance of the object of the conspiracy, opened the polls at about seven o'clock in the morning, an hour before the time at which the meeting was notified, and an hour before the duly-appointed inspectors were called upon to be present, and an hour before the election could be held according to law. No one of the duly-appointed inspectors, unless it was Aleck Hamilton, was present or acted at this precinct. Tompkins and King had been requested to be present by Dr. Johnson and act as inspectors, and Charles A. Carroll had been requested by him to act as clerk, and these several persons were either nominated by, or acted at the request of, Dr. Johnson. They were not legally elected, as there was no regular meeting of the electors having power to choose inspectors before Tompkins and King undertook to act as such, and without legally appointed or chosen inspectors no legal clerk could be chosen or appointed, so that the election at this precinct was conducted by persons not legally authorized, with the exception of Hamilton, and by persons who were ready and willing to violate the election-laws of the State, and who did violate them.

The fact that the poll was open at 7 o'clock is established by deposition of Duval Selph, (page 86:)

I was at the Colored Academy precinct when the polls were opened. They were opened at about three minutes after 8 o'clock by my watch. I guess my watch was a little fast. I ran my watch up from the usual time one hour and twenty minutes. I believe I did this on the morning of the election. I saw Dr. Johnson in the afternoon before the election, and also after tea; had conversations with him in reference to the question.

Q. From these conversations, and from the apparent interest he took in the election, was it not apparent that his object was to have this poll at the Colored Academy precinct opened before the legal hour?

(Objected to by contestee's counsel.)

A. I think he desired to get to voting as early as possible ; I think so from his asking me to run up the watch. His calculation was that we would have to vote about three men to the minute, at least, so he stated to me. This was one of the reasons why he wished the polls opened early, as I suppose.

Q. Do you think one of his reasons for having the polls opened early was that he might have an opportunity to get votes polled before there was any one present to object ?

(Objected to by contestee's counsel.)

A. I suppose it was.

John V. Brown, (page 78 :)

I was present at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second congressional district, on the 3d of November last, at the general election. I was acting as a challenger for the conservative party: I was there about 7 a. m. ; it could not possibly be ten minutes after 7. When I got there the house was closed. I looked through the window and saw the managers, and I asked for admission, and they let me in. John W. Tompkins, Chas. R. King, John A. Carroll, and Francis Carolina, and George G. Keen, (magistrate,) and four or five others whose names I do not now remember, were in the room where the ballot-box was. Dr. E. G. Johnson was in the next room, issuing paper of a green color, which I took to be tickets, to the colored people. There was a partition between the rooms. They were voting in there when I arrived. John W. Tompkins and Charles R. King, and a colored man named Hamilton, were acting as inspectors, and John A. Carroll as clerk.

Francis M. Weeks, (pages 82, 83 :)

I was at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second congressional district, on the morning of the 3d day of November, A. D. 1874. I got there about 7 o'clock a. m. When I arrived there I went to the clerk's desk, and found about twenty persons had already voted, as appeared from the lists.

Charles A. Carroll, clerk, (page 80 :)

Q. Was there anything said about opening the polls earlier than 8 o'clock ?—A. The object was to open the polls as early as possible, so as to let them all vote. Johnson, I think, was estimating how many must vote in a minute to get through that day. It was a little after daylight when I got to the polls in the morning ; I went there with Dr. Johnson ; they did not commence voting as soon as I got there, but went at once to make arrangements for voting, by removing benches, &c.

Wm. I. Bennett, (page 76 :)

The election was held on the 3d day of November, A. D. 1874. I was in Lake City, in Columbia County, Florida, in the second congressional district, on that day, and at the Colored Academy precinct the greater part of the day. I was there as a challenger. I reached the polls about 8 o'clock ; when about three hundred yards from the polls I looked at my watch, which was set the day before to railroad-time, and found it wanted five minutes to 8 o'clock a. m., and I went immediately to the polls, walking fast, directly, and in haste. The polls were open when I arrived there, and they were voting.

John W. Tompkins, (page 84 :)

Cross :

We were at the polls some time before we opened them, and arrived at an early hour. It was insisted by several persons present that it was time to open the polls, but having considerable fixing to do—

Q. Why were not the polls opened ?—A. Before it was possible to begin the election it was necessary to open a panel through a door before we could receive the ballots. This took twenty or thirty minutes, as it took some time to send for a saw to open the aperture. The door was broken by doing it. In addition to this we had to arrange the table for the inspectors and clerk. It was quite a cloudy morning ; it was impossible to tell without a watch when the sun did rise. It occurred to me it was not eight o'clock. Mr. Carolina, being present with a watch, stated that it was twenty or twenty-five minutes past seven o'clock. By Mr. Duval Selph's watch it was two minutes past eight o'clock ; by Armstrong's watch it was three or four minutes past eight o'clock. Armstrong stated that he was just from a watchmaker's (Mr. Ross's) shop, and that he had the watchmaker's time. Consenting to be governed by the majority of the watches present, we opened the polls.

Direct :

Mr. Armstrong was a preacher, and a republican candidate for State assembly, a colored man.

The inspectors permitted a large number of persons not registered to

vote without taking the oath required by section nine. This appears by the evidence of W. I. Bennett, who testified thus, (page 77 :)

Q. Were there any votes cast at that precinct when the names were not on the registration-list ?

(Objected to by counsel for contestee.)

A. A great many. I am satisfied there were seventy-five, and probably a hundred voted, whose names were not on the registration-list, who only took the following oath : " You do solemnly swear that you are twenty-one years of age ; that you are a citizen of the United States, (or, that you have declared your intention to become a citizen of the United States, according to the acts of Congress on the subject of naturalization ;) that you have resided in this State one year, and in this county six months next preceding this election ; that you have not voted at this election, and that you are not disqualified to vote by the judgment of any court." No other oath was taken by those who voted, and whose names were not on the registration-list. None of the above took the oath that they had been registered and their names had been improperly stricken from the registration-list.

Cross :

Q. You stated that there were seventy-five, perhaps one hundred, voted whose names were not on the registration-list ; will you state on what grounds you make that statement ?—A. From the number who voted whose names were not on the registration-list. When a man came up to vote, his name was looked for, and if not found the inspectors administered the oath. It is my impression the number is as large as seventy-five ; not less.

Q. Do you mean to be understood that each and every one of the persons who voted, whose names were not on the registration-list, and included in the seventy-five or a hundred referred to, took the oath above referred to and no other ?—A. I do.

John W. Tompkins, (page 84 :)

Cross :

Q. When their names, who offered to vote, could not be found on the registration-list, did you and the other inspectors require them to declare, on oath, that his or their names had been improperly struck off from the list of registered voters ?

(Objected to by contestant's counsel.)

A. We had two oaths, and Captain King almost invariably administered the oath, and in every instance, as well as I remember, we administered the oath. I recollect occasionally they swore their names had been improperly struck from the rolls. The oath, section sixteen, act 1868, page 5, was the one generally administered in almost every case. There were only a few took the oath that their names were improperly stricken from the list.

Sixteen persons voted, both at the Market-house precinct, in this county, and at Colored Academy precinct, as appears from the evidence of Keightley S. Waldron, clerk of the circuit court of Columbia County, (page 82 :)

Q. Did you examine the election-returns after the election of the Colored Academy precinct and the Market-house precinct, to see whether there had been any double or illegal voting ?

(Objected to by counsel for contestee.)

A. I examined the copies of the registration-lists as returned from those precincts. I compared the registration-lists of the two precincts.

Q. State if, upon this examination and comparison, you found a number of names who had voted at both precincts.

(Objected to by counsel for contestee.)

A. I did. In the examination of the lists, I found sixteen names which had been voted at both precincts. Before I had finished the examination I was called on business in the office. I then went into the country, and when I returned the office had been destroyed by fire. I did not complete the examination. The copies of the registration-lists were certified copies of the original, and were alike at all the precincts.

One Huison Yates voted twice, once for the contestee, and the second time he voted a green ticket, (" the republican color that day," page 78.)

One Jim Jones, not twenty-one years of age, voted, (Brown, pages 79, 80.)

Your committee are satisfied that the irregularities at this precinct were not the result of ignorance, inadvertence, or carelessness, but were the result of fraud, and that there were no legally-appointed inspectors nor a legally-appointed clerk at this precinct ; that Johnson took the entire charge of the polls through persons who by his procurement act-

ed as inspectors and clerk. They cannot stand better than mere intruders having no official character, intruders not for the purpose of aiding in conducting an election fairly, but for the purpose of carrying into execution a previously-arranged fraud upon the ballot-box. It is clear that the pretended clerk, Charles A. Carroll, arranged with Dr. Johnson to commit a gross fraud at this election, and although he did not do the particular acts it was arranged he should do, still the evidence is clear that Dr. Johnson himself carried out the fraud planned with the clerk, of putting illegal votes into the ballot-box with the knowledge of the clerk. The evidence of fraud is found in the depositions of several witnesses.

John A. Carroll testified, (page. 80 :)

Was present at the Colored Academy precinct in Lake City, Fla., in the second congressional district, on the 3d day of November, A. D. 1874, at the general election ; I acted as clerk on that day. Dr. Johnson (E. G.) asked me to serve. I came up the day before the election at Dr. Johnson's request. I saw Dr. Johnson the day before the election. I saw Dr. Johnson several times during the day after I came in ; I saw him at night again at his house. There was an appointed time for us to meet at Dr. Johnson's house ; when I first went there at eight o'clock, when Mr. Selph was there, I don't think Dr. Johnson was in the room ; I suppose he was busy in the matter of the election. After Mr. Selph went away and he, Johnson, had quieted his company, Dr. Johnson came in and brought a book, which I took to be a copy of the registration-book.

Question. State all that occurred between you and Dr. Johnson.

(Objected to by counsel for contestee.)

Answer. I took down fifty names, more or less, at Dr. Johnson's request, from the book Dr. Johnson took from the shelf. Dr. Johnson called off the names and I took them down. I had consented to act as clerk before Dr. Johnson gave me these names.

Q. What was the impression on your mind that Dr. Johnson desired you to do with those names ?

(Objected to by counsel for contestee.)

A. The impression created at the time was that he wanted the names worked in to secure his election.

Q. Was there anything said about opening the polls earlier than eight o'clock ?—A. The object was to open the polls as early as possible, so as to let them all vote. Johnson, I think, was estimating how many must vote in a minute to get through in that day. It was a little after daylight when I got to the polls in the morning ; I went there with Dr. Johnson ; they did not commence voting as soon as I got there, but went at once to make arrangements for voting, by removing benches, &c. Mr. Cleaveland told me he could not serve that day.

Q. Was there anything said about King, Selph, or anybody else acting as inspectors ?

(Objected to by counsel for contestee.)

A. There was something said relating to King's getting back ; King was wanted here by Johnson ; he came and acted as inspector ; myself, Dr. Johnson, Charles R. King, and John W. Tompkins started in company to the polls from Dr. Johnson's house.

Q. Was there anything said by Dr. Johnson, or any proposition made in your hearing, that a party should go and intercept the returns from the Ellisville precinct ?

(Objected to by counsel for contestee. Question withdrawn.)

Q. Was there anything said by Johnson or any one else at that interview or any other with regard to voters coming up by the railroad ?

(Objected to by counsel for contestee.)

A. After I lay down, there was a man came and knocked at the door at a late hour ; I asked his name, and he told me it was Aleck Johns ; I went with Johns part of the way to Dr. Johnson's door ; he and Johns were talking on business, and I heard something said about some one coming up from Jacksonville ; Johnson did not tell me who was coming up or what they were coming for ; I was not near enough to hear distinctly, as the conversation was in whispers. Johns was a colored man ; Dr. Johnson told me that the book I spoke of above was a copy of the registration-book.

Cross :

I do not recollect that Johnson asked me to work the names in ; I don't remember ; I suppose he thought I had sense enough to know what to do or he would not have wanted me as clerk.

Q. What did you do with the fifty names ?—A. I tore them in pieces and put them in my boot-leg, and afterward gave them to Wm. P. Roberts ; they were not used at all on the day of election ; there were some half-dozen tally-sheets, perhaps a dozen. I think there were the same number of names on the sheet I tore up as on the other tally-sheets. Johnson told me the day before he wanted me to act as clerk. Before the polls were open George G. Keen was called or sent for and swore us in ; four of us were sworn in ; I was sworn separately, the rest I think together.

Q. Did Johnson tell you about his wanting King as inspector?—A. Do not recollect. I was present e'll the time the voting was going on.

Q. As far as your observation extended, was it a fair and legal election?—A. I was only a clerk and not acquainted with the people; as far as I know, it seemed to be a fair election; there were a great many challenges made by Mr. Barnett and Brown, especially by Mr. Barnett.

Redirect:

I destroyed the list I wrote at Johnson's prompting after the election commenced. Johnson did not know till after I had torn it up. He knew before the election was over. I told him before the election was over.

Recross:

Johnson made no objection when I told him there was no use for it; it was too late to make any. He did not act as if he cared anything about it.

John W. Tompkins, (page 83:)

I was at the Colored Academy precinct in Lake City, Columbia County, Florida, in the second congressional district, on the 3d day of November last, and served as one of the inspectors of election there. I was nominated as inspector by Doctor Johnson. Doctor Johnson asked me the night before the election to act either as clerk or inspector. Mr. Cleaveland was the regularly-appointed inspector. Doctor Johnson told me that Mr. Cleaveland had declined to act, and that Mr. Cleaveland had suggested to him (Johnson) to get me. I was a supporter of Doctor Johnson at the election.

Question. Did Johnson say anything at that time to you about Charles R. King being requested to act in some official capacity at the Colored Academy precinct?

(Objected to by contestee's counsel.)

Answer. During the conversation I asked Johnson who he expected to have as inspectors. He said it was probable he would have Charles R. King; but as he was in Live Oak, he did not know whether he would be down or not. Johnson said it was likely there was another of the inspectors, whose name I do not recollect, would not act, and that was the reason he wanted Captain King. I slept or staid at Doctor Johnson's the night before the election. Mr. Carroll and Mr. Selph were at Doctor Johnson's when I went there. Mr. Carroll remained all night and slept with me. Captain King was not there that night. I expect we were all political supporters of Doctor Johnson. I cannot speak positively except as to myself. King came to Johnson's to breakfast next morning. He was sent for to Holt's office by Doctor Johnson to see if he had come on the train, and if he was there to come to breakfast at Johnson's. King acted as inspector.

Duval Selph, (page 85:)

I was at the Colored Academy precinct, in Lake City, Columbia County, Florida, in the second congressional district, a good part of the day on the 3d day of November, 1874, the day of the general election. I know Dr. E. G. Johnson; he was a candidate for the State senate. He was the republican candidate.

Question. Did you hear Doctor Johnson speak with reference to men voting both at the market-house and the Colored Academy precincts; and, if so, what did he say?

(Objected to by contestee's counsel.)

Answer. Heard him say that he did not think they would notice the voting at the market and at the Colored precinct.

Q. Did you hear Dr. Johnson speak of voters being brought from other counties; and, if so, how many?

(Objected to by contestee's counsel.)

A. I did; fifty-two in number. He said they were brought at his expense. I think he told me it cost him either three hundred and twenty-five or three hundred and seventy-five dollars. This conversation was after the election.

Q. Did you not have some conversations with him on the same subject before the election?

(Objected to by contestee's counsel.)

A. He said at one time before the election that it might be difficult to get them. He said in Duval County there were two republican candidates running, and they might try to keep them in that county.

Q. Was there any conversation about getting men from other counties who had been registered in this county, and whose names had not been stricken from the registration-list?

(Objected to by contestee's counsel.)

A. He claimed that their names were on the registration-list.

Q. When Johnson remarked that he did not think they would notice the voting at the market-house and at the colored precinct, was the impression on your mind that he alluded to those who voted at both precincts?

(Objected to by contestee's counsel.)

A. Such was my impression. I was at the Colored Academy precinct when the polls were opened. They were opened at about three minutes after eight o'clock by my watch. I guess my watch was a little fast. I ran my watch up from the usual time one hour and twenty minutes. I believe I did this on the morning of the election. I saw Dr. Johnson in the afternoon before the election, and also after tea; had conversations with him in reference to the election.

Q. From these conversations, and from the apparent interest he took in the election, was it not apparent that his object was to have this poll at the Colored Academy precinct opened before the legal hour?

(Objected to by contestee's counsel.)

A. I think he desired to get to voting as early as possible; I think so from his asking me to run up the watch. His calculation was that we would have to vote about three men to the minute; at least, so he stated to me. This was one of the reasons why he wished the polls opened early, as I suppose.

Q. Do you think one of his reasons for having the polls opened early was that he might have an opportunity to get votes polled before there was any one present to object?

(Objected to by contestee's counsel.)

A. I suppose it was.

Q. Did you have any conversation with Dr. Johnson with reference as to who were to act as inspectors at that precinct?

(Objected to by contestee's counsel.)

A. I did. He said he expected Johnny Tompkins, and Charles R. King, and a colored man, whose name I have forgot. These persons did act.

Q. Did you understand the fifty-two voters expected by Dr. Johnson from other counties were colored men?

(Objected to by contestee's counsel.)

A. I did.

Q. Did you have a conversation with Dr. Johnson after the market-house precinct had been heard from, as to what he thought of the result of his election?

(Objected to by contestee's counsel.)

A. About four o'clock in the afternoon, I think—it might have been later—some person stated to Dr. Johnson about the number that had been polled at the market-house; he then remarked if there was not something done he was defeated. He then asked some person present—I do not recollect who; there were several present—if they could not fix up a trick and capture the Ellisville precinct returns as they were bringing them to Lake City. The Ellisville precinct is regarded as a conservative precinct.

Cross:

Q. Was not Dr. E. G. Johnson murdered since the election?

(Objected to by contestant's counsel.)

A. I don't know.

Q. What is your impression?

(Objected to by contestant's counsel.)

A. I heard so.

Q. Have you any doubt about it?

(Objected to by contestant's counsel.)

A. I believe he was killed. My relations with Dr. Johnson at the time of these conversations were confidential and very friendly. I was in frequent conference with him with regard to the election; I advised with him very frequently. I very frequently made suggestions to him with regard to the election. I do not know that I had not his confidence more than some others. I was desirous he should be elected. Our intention was to elect him. I do not recollect suggesting to him to bring back persons who were registered, who were absent from the county, to vote at the election; he spoke of doing it. I understood that the fifty-two voters were or had been registered voters of this county. The conversation with regard to parties voting both at the Market-house and the Colored Academy took place about 10 o'clock p. m. of the day of the election. Johnson had not told me that parties had voted at both precincts before this conversation, nor at any other time. I have already stated what he said. Johnson did not pay me anything for running my watch ahead; I did it on my own free will. I was active in electioneering for Johnson. The election was conducted quietly, but I do not think fairly. I did not assist in conducting it; I went round and distributed tickets. There were several white men who, I think, voted for Johnson at that precinct. I was neither clerk nor inspector.

Q. Did you do anything unfair yourself at the election?—A. To my knowledge I did not. The reason I think the election was conducted unfairly is, that from seventy-five to a hundred persons received tickets from Johnson. He called a name and a number, and they put it through an aperture in the wall where the ballot-box stood, and called out the name and number, and the ballot was thus received; this is one of my reasons. Johnson called the name and gave the number which he gave to these parties from what he told me was a copy of the registration-list, and the parties took the number with the ticket and passed it through the hole to the inspectors, calling out the name. The returns from the Ellisville precinct were not intercepted.

Redirect :

Q. State other reasons why you consider the election unfair.—A. My other reason is that the number of men who voted through the window by number, as above stated, were, (as I believe,) voting under fictitious names ; no one told me so.

Thomas M. Mickler, (page 85 :))

I know John W. Tompkins.

Question. Since the election, on the 3d day of November last, did you have a conversation with John W. Tompkins in reference to the Colored Academy precinct, as to whether the votes all tallied there or not ?

(Objected to by contestee's counsel.)

Answer. On the evening of the election, after the polls were closed, he (Tompkins) remarked to me that the votes did not tally at the Colored Academy precinct by thirty or forty. I asked him how they managed it. He said there was always a wheel within a wheel. I understood he was one of the inspectors at the Colored Academy precinct.

Cross :

The conversation commenced in this way : I remarked to Tompkins that I never saw an election conducted more fairly than it was at the precinct where I was, (the Market-house,) and that the votes (twice counted) came out even both times. He then made the remark above stated. I mean by the votes tallying that they were the same in number with the names on the clerk's list. I took the conversation jestingly, and I thought he had a little too much liquor aboard at the time.

The facts stated by these witnesses are uncontradicted and unexplained. Tompkins and Carroll were acting as officers of the election and if it can be said their testimony is not entitled to the fullest credit it must also be said that their acts as officers are unreliable. Their conduct, instead of rendering it probable that their return is correct, makes it certain that fraud was practiced at the polls. The fraudulent intent of Johnson is clearly proved ; the willingness of the officers to aid him in carrying into effect his fraudulent purpose is manifest ; and it is also clear from all the facts that fraud was committed which was facilitated and aided by the officers of the election.

The law is that where fraud is proved to have been committed by the officers of an election in conducting the election, no reliance can be placed upon any of their acts, and their return must be rejected as wholly unreliable. The party claiming under the election must prove the actual vote in some other way. The only evidence as to what the vote was is from John V. Brown, (page 79,) one of the challengers, a conservative, who says : " Finley got 11 and Wall 588, I think. I derived my information from being present and keeping a tally-sheet." This certainly cannot establish the vote, as his testimony at most can only be evidence of the actual number of votes cast, but one of the principal obligations is that illegal votes were cast, and this, too, with the guilty knowledge of the officers of the election. There being proof that such illegal votes were cast, and the real number of legal votes not being proved, there is nothing upon which the true vote can be ascertained, and, therefore, the entire poll must be rejected ; and your committee so find and determine. The contestant has waived his tenth, eleventh, and twelfth specifications. The thirteenth is as follows :

That said election at the Sheriff's-office precinct, in the court-house, within the town and county of Madison, and within the second congressional district of Florida, was irregularly and illegally conducted, and null and void, so that no legal and valid election was held at said precinct ; and I give you notice that I will urge that all the votes cast at said precinct be rejected on the following grounds, viz : 1st. Because the returns from said precinct show that the number of ballots counted out exceed the number of persons who voted at said precinct by eleven (11) votes, as evidenced by the poll-list ; and that the whole number of votes were counted, there being three hundred and nine (309) votes cast and counted, and the poll-list shows only two hundred and ninety-eight, (298.) That one of the inspectors did not, as the law requires, publicly draw out and destroy so many of such ballots as were equal to such excess, thus tending to change the result of the election at said poll, contrary to the statute in such case made and provided, and rendering it impossible to determine the

egal vote cast at said poll. 2d. Because during the adjournment at dinner, on said election-day, the ballot-box of said poll was not kept in the possession of any one of the inspectors of said precinct, and during said adjournment the ballot-box at said poll was concealed from the public; and, 3d. Because on the election-day, at said precinct, during the absence of the clerk of said precinct from the polls, a person who was not a clerk of said precinct, and not sworn as such, acted as clerk of said poll in taking names of voters, &c., without authority, and contrary to the law in such case made and provided.

The contestee answers :

To the thirteenth specification I reply that I hereby interpose a general and special denial to each and every allegation contained in said thirteenth specification.

There was at this precinct a grave omission on the part of the officers of election in their failure to purge the poll as directed by the law of Florida. It appears from the testimony of Albert A. Ellenwood, one of the inspectors, (pages 96, 97,) that there were only 298 names on the poll-list, while there were 309 votes cast and counted.

There appearing to be 11 more votes than names on the poll-list, it was the duty of the inspectors to replace the ballots in the box and have one of their number publicly draw out and destroy, unopened, so many of such ballots as were equal to such excess. (Section 22, above.)

This not having been done, it becomes a difficult problem to determine what shall be done with the poll. The statute having prescribed the method of and the person by whom the poll should have been purged, can it be purged in any other manner? Your committee, upon a careful consideration of the question, regarding it as settled that an entire poll is not to be rejected except after the fullest attempt to purge the poll of illegal votes, and, to ascertain the real vote by all reasonable means, have decided to regard this statute of Florida as providing a principle upon which, as well as a mode by which, the poll in such a case should be purged; and as the method was omitted without fraud, have not regarded its omission an act of such a character as to compel the rejecting of the entire poll, but have decided to apply the principle established by the law, viz, that the excess of votes shall be regarded as thrown proportionately for both candidates, according to the entire vote for each, and that the drawing out in the manner provided by law would draw a proportionate number for each candidate. Your committee have taken from each candidate a proportionate part of said 11 votes.

The poll thus purged, will give Walls 240 instead of 248, and 58 for Finley instead of 61. Your committee have not regarded the other informalities, which are the not keeping the ballot-box in public view during the adjournment for dinner, and the acting of one Bogue for a short time as clerk without being sworn, in the absence of fraud, of such a character as to vitiate the election, and have, therefore, found the actual vote as above stated. The fourteenth specification, as to Probate-office precinct, Madison County, is as follows :

That said election at the probate office in the court-house within the town and county of Madison, and within the second congressional district of Florida, was irregularly and illegally conducted, and null and void; and no valid or legal election was held at said precinct; and I hereby give you notice that I will urge that all the votes received at said poll be rejected, on the following grounds, viz: Because at one time during the election on the 3d day of November, A. D. 1874, at said poll only one inspector or judge of the election of said poll was present at said poll, and received a large number of votes during the absence of the other two, during which time there was no legally-constituted board of inspectors at said precinct, rendering said election at said poll null and void.

To which the contestee replies by a special and general denial of each and every allegation. Your committee do not find any fact established to throw discredit upon the elections or returns at this precinct.

Specifications 15, 16, and 17 are waived by the contestant. The contestee has also waived all his specifications as to frauds in other precincts, but claimed in his argument before the committee that the vote of Colored Academy should be allowed on account of the testimony of Brown as to the number of votes cast for each candidate, and that the vote at the Market-house precinct, in the same county, ought to be excluded on the ground that the certificate of the county canvassers was void "because the majority of the board were unofficial persons, not authorized by law to canvass the votes or make the return." This point was not raised in the contestee's answer, and therefore came too late to be considered. The board of county canvassers were at least *ipso facto* officers, and there is nothing to show their action was not in every respect regular and their return correct as to this precinct, and your committee see no valid grounds for its exclusion. The vote in this district, according to the State canvassers, stood—

| | |
|------------------------|-------|
| For J. T. Walls | 8,549 |
| For J. J. Finley | 8,178 |

| | |
|--------------------------|-----|
| Majority for Walls | 371 |
|--------------------------|-----|

As corrected it will stand thus, deducting in—

| | | |
|--------------------|-----------------|-----------------|
| Gainesville No. 3, | 11 from Walls, | 1 from Finley. |
| Archer, | 33 from Walls, | 2 from Finley. |
| Newnansville, | 105 from Walls, | 14 from Finley. |
| Colored Academy, | 588 from Walls, | 11 from Finley. |
| Sheriff's Office, | 8 from Walls, | 3 from Finley. |

| | |
|-----|----|
| 745 | 31 |
|-----|----|

| | |
|----------------------------|-------|
| For Finley, 8,178—31 | 8,147 |
| For Walls, 8,549—745 | 7,804 |

| | |
|-------------------------|-----|
| Finley's majority | 343 |
|-------------------------|-----|

The committee therefore recommend the adoption of the following resolutions :

Resolved, That Josiah T. Walls was not elected, and is not entitled, to a seat in the House of Representatives in the Forty-fourth Congress from the second congressional district of Florida.

Resolved, That Jesse J. Finley was elected, and is entitled, to a seat in the House of Representatives in the Forty-fourth Congress from the second congressional district of Florida.

JOHN T. HARRIS.
 CHARLES P. THOMPSON.
 JO. C. S. BLACKBURN.
 JNO. F. HOUSE.
 G. WILEY WELLS.
 GEO. M. BEEBE.
 E. F. POPPLETON.

I concur in the conclusion reached in the foregoing report, but believe the rule adopted in regard to the Gordon, Barnes's Store, and Archer precincts, in Alachua County, and the Sheriff's Office precinct unwarrantably liberal, and that the precincts named should be thrown out absolutely, which would largely increase contestant's majority. I also believe that under the statutes of Florida no vote can be counted if the voter's name is not on the registry-list in the hands of the inspectors or

commissioners, even though it be on the list at the county-seat, unless the voter took the oath required by the (9th) ninth section of the election-law of that State.

JO. C. S. BLACKBURN.

We concur in the result reached in report above set forth, but believe that the facts proven warrant the application of a more stringent rule to the precincts of Gordon, Barnes's Store, and Archer, in Alachua County, and the Sheriff's Office precinct, in Madison County, which would increase the majority of Mr. Finley.

E. F. POPPLETON.
R. A. DEBOLT.
G. WILEY WELLS.

VIEWS OF THE MINORITY.

Mr. M. I. TOWNSEND, from the Committee of Elections, submitted the following as the views of the minority :

To the honorable the House of Representatives of the United States :

The undersigned, a minority of the Committee of Elections, in the case of J. J. Finley, contesting the seat now held by Hon. Josiah T. Walls, of the State of Florida, the sitting member, respectfully report :

That the district in question consists of the counties of Alachua, Baker, Brevard, Bradford, Clay, Columbia, Dade, Duval, Hamilton, Madison, Marion, Nassau, Orange, Putnam, Saint John's Suwannee, and Volusia.

The majorities in the several counties were as follows :

| | Walls. | Finley. |
|------------------------------|--------|---------|
| In Alachua County..... | 811 | ..... |
| In Baker County..... | ..... | 100 |
| In Brevard County..... | ..... | 78 |
| In Bradford County..... | ..... | 328 |
| In Clay County..... | ..... | 98 |
| In Columbia County..... | 38 | ..... |
| In Dade County..... | ..... | 11 |
| In Duval County..... | 465 | ..... |
| In Hamilton County..... | ..... | 319 |
| In Madison County..... | 469 | ..... |
| In Marion County..... | 464 | ..... |
| In Nassau County..... | 130 | ..... |
| In Orange County..... | ..... | 553 |
| In Putnam County..... | ..... | 40 |
| In Saint John's County..... | ..... | 231 |
| In Suwannee County..... | ..... | 44 |
| In Volusia County..... | ..... | 204 |
| Total majorities..... | 2,377 | 2,006 |
| Not majority for Walls, 371. | | |

The certificate of election was given to Walls, and notice was given by Finley to Walls on the 7th day of January, 1875, that he contested his election upon grounds specified in the notice. Notice is found in the case upon pages one to seven, inclusive. The specifications relate to the action of the State board and to the elections in sixteen different precincts.

The first specification, relating to the action of the State board, it is not material to consider here, as the questions raised in that specification are raised again under the second specification relating to the various precincts therein named.

Second specification, Gainesville, Alachua County, precinct No. 3.

The charges in relation to this precinct are :

First. Because no poll-book or list of names of electors voting was returned to the county judge and clerk of the county court with the certificate of election at the poll as required by law, but a paper list of

names was found eight days after such election unsigned by any officers.

Second. Because a large number of illegal votes at said election were received and counted at said poll, viz, about fifty-eight votes not registered and five not checked as the law requires; only three appeared to be sworn, and because the oath administered to unregistered voters who voted at the said poll was not such as the law prescribes.

The return of the inspectors of this precinct is found in the case at pages 132 and 133 signed by three inspectors and the clerk, showing that Walls received at that precinct 207 votes, and Finley 16 votes.

It may be not improper to remark here that by the laws of Florida an elector may vote at any precinct in the county, and the case shows that very frequently the colored voters very largely resorted to one precinct, while the white voters as generally resorted to another, which may readily account for the large preponderance of votes for Walls at this precinct.

To prove the first charge, that no poll-list was returned with the certificate of votes, the contestant examines, at pages 63 and 64, W. H. Belton, county clerk, who states that no poll-list was found in the box with the votes returned. But Mr. Cessna, one of the county canvassers, went into the room where the election was held, and found what was supposed to be the poll-list.

John B. Brooks, at page 124, testifies that the poll-list found was the true poll-list; he was clerk and wrote the list; so the county canvassers had the true poll-list at the county canvass, although it was not returned as directed by law.

The laws of Florida, chapter 1625, being the first act of the first session of 1868, section 19, require that the clerk of election shall keep a list of the names of the persons voting at the precinct for which he is clerk, and by section 23 it is directed that this poll-list shall be transmitted with the certificate of the result of the election to the clerk of the circuit court.

The undersigned are clearly of opinion that the requirement of the statute that the poll-list should be returned is merely directory, and not mandatory, and that the failure to return the list under the circumstances does not vitiate the poll.

Second. By the constitution of Florida, article 14, section 6, the legislature at its first session after the ratification of the constitution was required to provide by law for the registration by the clerk of the circuit court in each county of all the legally-qualified voters in the county; and further provided that after the completion from time to time of such registration, no person not duly registered according to law should be allowed to vote. The next session of the legislature after the ratification of the constitution sat in 1868, and, by chapter 1625 above quoted, provided for the registration of voters.

Section 7 of the act provides for the registration of voters by the clerk of the circuit court as provided by the constitution, and for the taking of the constitutional oath by the elector. Section 8 provides that no person shall vote unless he has been registered six days previous to the election.

The ninth section of the statute, apparently without authority from the constitution, authorizes the county commissioners, at a meeting to be held within thirty days preceding the election, to erase the names of persons supposed or shown to be disqualified to vote, and further provides—

That if any person whose name may be erased shall, on offering to vote at any election,

declare on oath that his name has been improperly struck off from the list of registered voters, and shall take the oath required to be taken by persons whose right to vote shall be challenged, (see sec. 16,) such person shall have the right to vote.

“A complete copy of the list of names of all persons duly registered shall be furnished to the inspectors at each poll,” &c., and the clerk shall prepare and certify such copies and furnish the same to the sheriff at least two days before the day of holding the election, and the sheriff shall cause them to be delivered to the inspectors before opening the polls. (Sec. 10.)

After looking at these provisions of the constitution and law we come to consider the question whether the constitution and laws were complied with in this precinct in respect to voters whose names were not upon the copy registry-list furnished to this precinct.

First. The law presumes that the inspectors of the election, who are appointed by the county commissioners, (sec. 9,) and who are before the election commences sworn to do their duty in all respects, (sec. 11,) have done their duty, and that evidence will prevail unless clear and conclusive proof to the contrary is presented by persons seeking to impeach their action.

McCrary, in his Law of Elections, sec. 87, says:

The doctrine that the acts of an officer of election within the scope of his authority are presumed to be correct, is strongly stated and ably argued in *Littell vs. Robins*, (1 Bartlett, 138.) The rule is here placed upon two grounds, viz: First, that the presumption is always against the commission of a fraudulent or illegal act, and, secondly, that the presumption is always in favor of the official acts of a sworn officer.

1st Bartlett Contested Elections, page 25, New Jersey case, says:

It is not sufficient that there should exist a doubt as to whether the vote is lawful or not, but conviction of its illegality should be reached to the exclusion of all reasonable doubt before the committee are authorized to deduct it from the party.

Second. The inspectors make their returns at the close of election-day, and the witness Snowden, by whom alone the action of the inspectors, in not administering the proper oath to persons whose names are not found on the copy registry-lists, is sought to be impeached, testifies on the 21st day of August—see case, pages 74 and 75—more than nine months after the occurrence, and without memoranda. Snowden testifies that the persons whose names were not found on the copy registry-lists were required to take the oath in sec. 16, *i. e.*, the general oath, and the further oath that they had been registered previously thereto, but they did not swear that their names had been improperly struck off. “Of this I am confident.” (Case, 74.) But this man was a United States supervisor, and, presumably, a man of intelligence; and he further testifies that when he found, at the polls, that the inspector had not the form of oath, “I went into the adjoining room and got the form of oath that I thought was required by the laws, &c., and they used that form during the day.” It would require a pretty wide stretch of faith to believe that when he was looking for a form and “found a form,” he found a defective form—merely because nine months afterward he was “confident,” but did not produce that form, to see whether it was defective or not.

True, the inspectors themselves at 124, 125, and 126 do not remember the full form of the oath, but they swear that they intended to do their duty, and the undersigned submit with great confidence that it is not proved that the full and statutory oath required of persons whose names are not found on the copy register at the place of voting was not administered to every person who voted at Gainesville precinct No. 3, and whose name was not found on the list, and that no deduction can be lawfully or properly made from the vote cast at that poll.

Third. If the undersigned are wrong in this, and a deduction is to be made from the votes on account of persons voting without taking the proper oath, after a failure to find their names on the copy-list at the precinct, what number of names should be deducted ?

Snowden, at page 74, thinks sixty-odd voted whose names were not found.

It will be remembered that the whole number who voted in the county was 2,373, (page 35,) and the registration-list must have reached nearly or quite that number ; and that the testimony nowhere shows that any person voted whose name was not in point of fact on the copy at the polls, except such as were not found by Belton, clerk of the county court, at the more deliberate examination made at the county clerk's office on the occasion of the county canvass. The proof in all cases is that the name of the person claimed not to be on the copy-register at the polls "could not," or "was not found" on the copy-register at the polls. Belton, clerk of the circuit court, says, at page 69, that after finding much the larger number of persons marked on the poll-lists as not registered, there might have been from 12 to 20 persons so marked whose names could not be found on the registry-list in the office.

So that in any event we have but from 12 to 20 votes at this precinct whose validity is in question.

The third specification of the notice of the contestant relates to *Liberty Hill precinct*, in the county of Alachua. No evidence was given under this specification.

The fourth specification relates to *Micanopy poll*, in Alachua County. In respect to this Micanopy poll the notice alleged—

First. That the inspectors allowed 63 persons "whose names *were not found* on the registration-list of the county to vote at said precinct, the same not being sworn according to law."

Second. Because the ballots were numbered with numbers corresponding with numbers set on the poll-list opposite the voters' names.

Third. Because the polls were not opened until near two hours after the time prescribed by law, and that the delay tended to change the result.

It will be observed that the notice does not allege that the names of the 63 voters whose votes are complained of were *not in fact* on the registration-list, but only that they "*were not found*."

The contestant calls to this point William H. Belton, clerk of the circuit court, and one of the county canvassers, who testifies, on page 69, that the county canvassers found "*the greater portion*" of the 63 persons marked on the poll-list as not registered.

O. H. Crisman testifies, on page 130, that three-fourths of the persons "sworn," *i. e.* because not found on the register, were "*afterwards found*," leaving but 16 voters about the manner of whose swearing there can be any controversy.

Upon the question of what oath was taken by these persons whose names were not found, we have, first, the inspectors' return and the presumptions arising from it.

Allen Barber testifies, at page 123, that the voters whose names were not found on the registry swore that they were legal registered voters of the State of Florida, and that he had forgotten the balance of the oath.

J. H. Stokes, a witness for the sitting member, at page 128, on his cross-examination, undertakes to repeat the oath from memory, but fails to remember the whole oath required by law. The contestant, on his part, gave no evidence as to the form of oath used at this precinct.

The undersigned hold that there is no evidence to show that the voters whose names were not found did not take the oaths required by law in such cases, and that in any event there are but 16 votes in regard to which there can be a controversy.

Second objection to the Micanopy poll. It appears from Belton's (the circuit clerk) testimony, on page 65, that at the county canvass the ballots were found to be numbered on their backs to correspond with numbers set opposite the names of the voters on the poll-list.

The undersigned are of opinion that such marking could not vitiate the poll, as there is no evidence that any voter knew that his vote was to be marked, or was in fact marked, and that this fault of the inspectors did not, and could not, deprive the electors of their rights.

Third objection to this precinct. No evidence was given showing or tending to show that the polls at this precinct were not opened at the proper hour.

Fifth specification: Gordon precinct, Alachua County. The objections to the vote in this precinct are:

First. That the clerk of that precinct was not sworn as required by law,

Second. That about forty persons were allowed to vote who were not registered and who were not sworn as required by law.

Third. This objection simply repeats the first.

Fourth. Because the ballot-box and poll-list do not correspond.

Fifth. Because no legal election was held at that precinct, and because of the reception of illegal votes, &c.

As to the first objection, it appears from the testimony, at page 70, that the clerk was sworn and his oath was returned.

As to the second objection, it does not anywhere appear what number of persons voted whose names were not found upon the registration-list, but Belton, the circuit clerk, says, at page 70, that a greater part of those represented on the poll-list as having voted at this precinct, and marked as not registered, were found. "I think the board found all of them on the registration-lists, except eight or twelve." The contestant does not prove what oath these voters took. The contestant calls, on the cross-examination of Caesar Sweat, for his memory of the oath, eleven and a half months after the election, and he, at page 117, gives what he can remember of the oath, and says he cannot remember the rest. So that the legal presumption that the officers administered the right oath is strengthened by what evidence is given upon the subject, and the undersigned hold that all the voters at this precinct who were not registered, *i. e.* eight to twelve in number, were properly sworn.

As to the fourth objection, it appears from the testimony of William H. Belton, clerk of the circuit court, at page 70, that the vote of the precinct, as by return, was 152; that the number of names on the poll-list was 158; that the number of votes in the box was 173. These votes we find, at page 141, were divided as follows: Walls, 86; Finley, 66. These sworn officers stand in all respects unimpeached, and for that reason their return is the better evidence of what was the true state of the vote at that poll. As to the poll-list, it may very possibly be erroneous in containing names of persons who offered to vote, but who in fact did not, and names may have been surreptitiously added after the list had been returned. As to the votes found in the box, the 21 in excess of the return may have been blank as to member of Congress and the box may have been tampered with. That the return should prevail in such a case, see McCrary's American Law of Elections, section 278.

No other evidence than what is above set forth was given as to the fifth objection, and that objection need not be further considered.

Sixth specification. Barnes's Store precinct.

The objections made by the contestant to this poll are :

First, the clerk was not a registered voter, and was not a citizen of the United States. —

Second. The inspectors and clerk were not properly sworn before entering upon their duties, and did not return the oath with the poll-list.

Third. There was a discrepancy between the poll-list, the votes in the box, and the return.

| | |
|---|-----------|
| Return states. | 190 votes |
| Votes found in box by county canvassers | 194 " |
| Names on poll-list. | 181 " |

Fourth. Because 125 illegal votes were cast at the precinct.

To the first objection the contestee answers, admitting, on page 10, that the clerk at this precinct was not a registered voter, nor a citizen of the United States. But as it appears that the clerk was sworn to do his duty as the law requires, (see testimony of Tropp, pages 122 and 123 ; that of Barnes, page 127,) this clerk was an officer *de facto*, and would be liable to the penalties provided by law for any violation of duty, and an innocent voter cannot be deprived of the benefit of his vote for that cause.

As to the second objection, it appears that the oath of the inspectors and clerk was not returned as directed by law, (see testimony of Belton, circuit clerk,) but Trapp, at pages 122, 123, and Barnes, at page 127, show that the inspectors and clerk were sworn ; and, in the opinion of the undersigned, these inspectors and this clerk having, for aught which appears, conducted the election legally and honestly, the failure to return the oath does not vitiate the poll.

As to the third objection, the allegations were found to be true, viz, the inspectors and clerk return 190 votes as cast. The box, when opened by the county canvassers, contained 194 votes, and the poll-list showed but 181 names. The undersigned, for the reasons given above in relation to the discrepancy found to exist between the returns, the poll-list, and the ballot-box of the Gordon precinct, are of opinion that the evidence establishes the fact that the true number of votes was returned.

No evidence was given under the fourth objection.

Seventh specification. Archer precinct, Alachua County. Under this specification the objections were :

First. Because the inspectors and clerk were not legally sworn.

Second. Because there were many illegal votes received from persons not registered and were under age, without taking the oath required by law.

Third. Because one Saunders, who claimed to be a deputy United States marshal, so dictated and overawed the inspectors that they did not fairly and impartially discharge their duty.

Fourth. There was so riotous a crowd that voters left the poll.

Fifth. This objection is very like the third.

Sixth. Because the ballot-box was not kept in plain view of the electors during the adjournment for dinner.

Seventh. Because there was a great discrepancy in the returns from said poll—no registration-list returned. Because the polls were not opened for at least one hour after the legal time, and a large number of illegal votes were received and counted for contestee.

As to the first objection, contestant, at pages 54 and 56, calls Geiger, one of the inspectors, who testifies on the 19th of August, 1875, that although he signed a form of oath, he was not sworn. Green R. Moore, another inspector, at 57, testifies that the inspectors and clerk were not sworn, although they signed a paper. But Washington, the other inspector, testifies, at page 112, that he was sworn, and identifies Exhibit A, on page 131, as the oath taken. Allen M. Jones, at 115, testifies that he administered the oath (Exhibit A, page 131) at the time of opening the polls, and that he administered oath (Exhibit C, page 143) to the clerk. Belton, circuit clerk, at page 71, testifies that the oaths of office and certificate of result were regular.

So that objection is not sustained, and the men who had returned their own oath as inspectors had forgotten.

As to the second objection, that persons voted who were not registered, Belton, circuit-court clerk, testifies, at page 71, that the county canvassers compared the poll-list from Archer precinct with the registration-lists of the county, and found that *nearly all* the persons who were thought to have voted there without being registered, were upon the registry-lists.

Geiger testifies, at pages 54 and 55, that he objected to about thirty-five as not registered, but he does not say whether they did or did not take the proper oath. Green R. Moore took the oath and voted. "I think (this was August 19, 1875) that the oath they took was that in the sixteenth section," but he does not say he even thinks that they took no other. Inspector Washington swears, at 113, that the persons whose names were not found were properly sworn. On page 114 he swears that they, when sworn, were asked if they had been registered, and they swore they were, "and something else I can't remember;" they swore they were registered, &c.

Allen M. Jones says they were asked first how long they had lived in the State of Florida; what were their names; how long they had been living in the county; if they had ever been registered; how old they were, and they took the oath in section 16. They swore that they were registered. No man even expresses a belief that they did not take the full oaths required by both the ninth and the sixteenth sections; and the presumption that the sworn officers did their duty is controlling evidence in this case that these men whose names were not found on the copy registry-lists, took both oaths required by law in such cases, as nearly all of the thirty-five not found on the registry-lists were afterward found to be; then the controversy on this point becomes of small importance.

As to the third objection, that Saunders overawed the inspectors, there is no evidence worthy of a moment's consideration; and so in regard to the fourth objection, that there was a riot there; and so in regard to the fifth objection. In regard to these matters, Geiger testifies, on page 54, 55; Moore, on page 58; Washington, on page 113, 114; Jones at 115, and so on.

As to the sixth objection, that the ballot-box was not kept in plain view of the voters, it is sought to be made out by Geiger, at page 56.

He says that while they adjourned for dinner the ballot-box was shut up in the house where the election was held, with all the doors and windows shut. Inspector Geiger swears that he voted for Finley. Inspector Moore swears that the box was "closed up in the house, concealed from public view" at dinner-time; that there was no one in the house but himself and Inspector Washington while Geiger was gone to dinner. He says, on his cross-examination, that the box was not tam-

pered with during the hour of adjournment for dinner. This man, too, voted the conservative ticket. (Page 58.)

Inspector Washington was nominated by Geiger, conservative, and friend of Finley, (113,) so that these men did not tamper with the box for Walls's benefit, and the irregularity at dinner time did not vitiate the poll.

As to the allegation in the seventh objection, that there was great discrepancy in the returns from said poll, it appears from Belton's testimony, on page 71, that the ballot box and return showed 318 votes, but the poll-list showed 320 names; and the return and ballots fix the true vote.

The evidence above-referred to shows that there was not a particle of disorder at the polls. No "registration-list" was required by law to be returned. The poll-list, we see, was in Belton's hands. As to the time when the polls opened, Geiger thinks, nine months after, August 19, 1875, that the polls were not opened until 9.30, by Green R. Moore's watch. Green R. Moore was the other inspector. (Page 56.) But Green R. Moore, on page 58, at bottom, cannot tell at what hour the poll was opened or whether it was opened by his watch. Inspector Washington, at page 113, thinks the poll was opened at 8, as required by law, but is not certain; it was a cloudy morning. Allen M. Jones swears (at 115) that the polls opened at 8 and closed at sundown, as required by law.

It will hardly do on such evidence to find that these friends of Finley's intentionally violated the law in regard to opening and closing the polls, in order to work a fraud in the interest of Walls.

The undersigned therefore hold that the election at this poll was conducted honestly and fairly, and with intent to carry out the law, and that no essential informality occurred at the time of the adjournment for dinner.

Specification eighth. Newnansville precinct, Alachua County. Under this specification the objections are:

First. Henry C. Parker was not legally chosen or sworn as inspector.

Second. Because the key of the ballot-box was, during the day, in the hands of Joseph Valentine, a friend of contestee, and who was neither inspector nor clerk. Ballot-box not sealed during dinner-time. Some one hundred and thirty non-registered voters were allowed to vote without taking the proper oath. That counting was begun before the polls closed, and votes were taken during the counting. Ballots not counted by the officers. Ballot-box, &c., were not duly returned to the circuit clerk, but were returned by said Joseph Valentine.

Belton, circuit clerk, at pages 71 and 72, states what occurred at the county canvass, where the contestant opposed and raised objections, and it does not appear that any objection was then made that the inspectors did not all take the legal oath. The presumption is very strong that the oath was returned in proper shape.

Upon the subject of Parker's election as inspector, he himself testifies to his election at 72, 73.

Joseph W. Valentine says, at 121, that Parker was elected in the place of Richards, an inspector who could not serve; that he was elected when about twenty votes had been cast, and that witness, as justice of the peace, administered the oath to Parker, the other inspector and clerk, and that the oath was duly returned. Lewey, the clerk, testifies, at 19, that the inspectors were sworn. It appears from Belton's testimony (at 67, and by the return at 137) that two of the inspectors who were originally chosen by the county commissioners, Simpson and Valentine,

acted all day, and that there was at all events no such incompetency about Parker as to vitiate the election.

As to the second part of this objection, that the key of the ballot-box was, for a part of the day, in the hands of Joseph Valentine, Parker, at page 73, says Joseph Valentine was found to have the key when they came to count the votes. This is not controverted by evidence, and must be taken as established. The undersigned believe, however, that such fact, under the circumstances presented, does not vitiate the poll.

As to the third part of this specification, that the ballot-box was not sealed during the dinner-adjourment, is established by Parker at page 73, and not controverted. But as he also states that the box was all the while in the hands of the inspectors, and as there is no allegation or pretense that the box was tampered with, the undersigned are clearly of opinion that this irregularity did not vitiate the poll.

As to the next objection, that some one hundred and thirty voters whose names could not be found on the copy registration were allowed to vote without taking the full oath, it appears by the testimony of Dupuis, at pages 59-60 to 61, that 120 voters were challenged as not on the copy registry-lists, and yet voted. Dupuis swears that he believes a majority of them had been registered, and he knew not how they got off the list. *These challenged voters did not swear that their names had been improperly stricken off.* To show the inspectors meant to do their duty, Parker, the contestant's inspector and witness, testified, at page 74, that he administered the oath to most of them. The testimony of Lewey, clerk, at page 119, shows that the oath administered was nearly correct. Indeed, he swears that it was absolutely correct according to the statute, although he cannot repeat the statute form. The undersigned are of opinion that the opinion of Dupuis, that the challenged whose names were not found did not take the full oath, is stronger evidence that those 120 persons were not entitled to vote than we find elsewhere, and perhaps these 120 votes should be deducted from this poll. But the undersigned seriously doubt it. As no effort was proved to have been made to find whether any of these names were in fact upon the original register, one hundred and twenty must be deducted, if any. But the undersigned believe the returns of the inspectors must be taken as conclusive evidence in this case that the inspectors did their whole duty.

As to the last objection to the vote at this poll, that the ballot-box and returns were suffered to be taken to the county-seat by Joseph Valentine, who was neither inspector nor clerk, the fact is fully established by the testimony of Saunders, at pages 166, 167, and not contradicted. But as we are furnished with two original certificates or returns, made by inspectors and clerks, of what the vote actually was at this poll, and as there is no pretense that those certificates were erroneous, we deem this fact does not vitiate the poll.

Dupuis thinks the polls were closed after sunset, (page 59,) but Parker says (at 73) that they finished canvassing before dark. There cannot have been any serious error in this respect. Dupuis says William Hawkins voted after they began to canvass. This, by itself, has no significance.

The undersigned are of opinion that the return at this poll should stand in all respects, but if any deduction is made it can only be of the 120 persons whose names were not found upon the register, and it is not necessary to decide in what manner the 120 votes should be disposed of, as the sitting member will be elected though all the votes not found

on the register should be deducted from his side, unless the whole vote at the Colored Academy precinct of Columbia County should be rejected; and if that vote shall be rejected the sitting member will be defeated, whatever disposition be made of the votes in question.

For the reason that will be apparent in the further progress of this report, we, for the present, pass the ninth specification, and consider the next specification under which any evidence was given:

Thirteenth specification: Sheriff's-office precinct, Madison County.

The objections under this specification are:

First. That there was a discrepancy between the poll-list and the ballot-box, there being an excess of ballots, and that the excess was not drawn and destroyed.

Second. The box at the adjournment was kept in the possession of one inspector.

Third. Because a person, not a sworn clerk, wrote some names of voters upon the poll-list during the voting, in the absence of the clerk.

As to the first objection: By the testimony of Ellenwood, at page 96 to 103, it appears that the return of votes in the clerk's office was 309, and the votes as shown by the poll-list were 298, and that was the state of things at the polls, and that the extra 11 votes were not drawn as required by law.

The inspectors and clerk in all four were equally divided in their politics, two and two, so that no wrong was intended. The extra 11 votes may now be deducted, either proportionally or wholly, from Walls, and there will be no difference in the result.

As to the second objection, the box was not, during the day, out of the possession of the democratic members of the board of inspectors, and the honesty of all parties is fully maintained. Testimony runs from 96 to 108.

As to the third objection, a man was sworn to act for clerk in the absence of the regular clerk, and wrote six or seven names of voters. This irregularity cannot vitiate the poll.

Fourteenth specification. Probate Office precinct, Madison County. The objection to the election at this precinct is that one inspector acted during some parts of the day alone, and received a large number of votes when the others were absent.

To maintain this objection, the contestant calls, at pages 88, 89, and 90, a witness who swears that he was a democrat, and was present when the clerk was in charge of the box at dinner-time. Wardlaw, one of the inspectors, was a democrat. The clerk also voted the democratic ticket. This witness, who shows that he was present with the clerk some forty minutes, says there was no voting during the absence of the inspectors that he saw.

Wardlaw, one of the inspectors, is called by contestant, at page 91, and entirely fails to make out that any votes were taken by a single inspector. On page 92, after having his recollection refreshed, he thinks he took votes when the other inspectors were absent; but on close examination he says he cannot remember that that was the fact.

Parramore, on page 95, thinks that several votes were taken by Wardlaw when the other inspectors were absent. So it appears that it is conceded that Wardlaw and the clerk, both of whom were opposed to Walls, were present all the time, and that it is uncertain whether the other two were not present while every vote was cast. This poll is not impeached.

We have now scrutinized every poll in regard to which evidence was given, except the Colored Academy precinct in Columbia County, where

it is alleged that actual fraud was practiced, and for that reason we have reserved this precinct to the last.

Ninth specification. Colored Academy precinct, Columbia County. The allegations of misconduct here are not divided into specific objections, but a large number of charges are grouped together.

A very large colored and republican vote was cast at this precinct, and a very small white and democratic vote; and this might suggest the idea of fraud but for two facts, which abundantly appear in this case as well as in several other election-cases arising in the more southern States.

The first is that, by the laws of these States, voters may cast their ballots at any precinct in the county; and, second, great unwillingness is everywhere manifested on the part of both blacks and whites to vote together at the same precinct; and it will be noticed that the voting must have been as thoroughly white and democratic at some other of the precincts, as this was colored and republican, as Walls's majority in the county was but 38. The county was known, before this election, to be very close, or democratic, as is shown abundantly by the testimony given in relation to this precinct. The contestee starts with three difficulties in his way in regard to this precinct: First, the county clerk's office was burned soon after the election, and the original return cannot be found, nor the original registration-list; second, Johnson, who figures much in the testimony of the contestant, was, as the evidence shows, murdered soon after the election, and the contestant could not call on him for explanations if he would; third, Walls was not present, in person, at the taking of this testimony, and the committee, on Walls's application for leave to rebut the allegations in relation to that poll, felt constrained to refuse him permission to do so.

The testimony is, therefore, *ex parte*, or at least all called by one party. By section 9 of the law above referred to, the inspectors are to be appointed by the county commissioners. By the 11th section: "In case of the death, absence, or refusal to act of any or all of the inspectors appointed by the county commissioners, the electors present at the time of opening the polls shall choose, &c.;" "the inspectors shall appoint a clerk," &c.

We are nowhere furnished with the names of all the inspectors who were originally appointed, the contestant not having proved their names. We find, at page 77, that Charles R. King, John W. Tompkins, and Aleck Hamilton acted as inspectors. (Page 78.) John Carroll acted as clerk. On page 80, Carroll says: "Mr. Cleveland told me he could not serve that day." Tompkins, on page —, swears that Cleveland was a regularly-appointed inspector. Johnson told Tompkins, the day before, that Cleveland declined to act, and recommended him to Tompkins. Tompkins says Johnson said that it was probable another inspector would not act, and that it was probable he would have Charles R. King for the other inspector. Tompkins and Carroll staid at Johnson's the night before election, King did not, and Hamilton is not proved to have done so. As nothing is said to the contrary, Hamilton is presumed to have been an originally-appointed inspector. As these men acted as inspectors and clerk, and as no proof is given to show that they were not, in fact, appointed, and as it is now claimed that their return went into the Columbia County return, counted by the State board, and found at page 23, and as it is now sought to deduct this vote from the State count, these inspectors and clerk must be taken to be officers *de facto*, and full faith, *prima facie*, is due to their acts.

But it is said we must infer that a fraud meets us at the outset; that

the commencement of business in the morning was hurried fraudulently to prevent, and that thus Johnson did prevent, the regularly-appointed inspectors acting as such. But not a word of evidence is given to show that Cleveland, the inspector, or the other unnamed inspector came to the polls, which certainly the contestant could have done if it was true; and he it is who gives Johnson's declarations of the day before, that both these men had declined to serve. If upon these facts any one *infers* that Tompkins or King was appointed early to prevent the two absent inspectors acting, he draws that inference in defiance of every rule of evidence ever acted upon by any sane man for all time. *They were not appointed and set to work early for any such purpose.*

Had Johnson an object in having the work of election done as fast as it might lawfully be done? Upon this subject, the only evidence is from such persons as the contestant chose to present. The vote actually cast was 600, as Brown testifies at page 79. Somebody makes the vote 599. The polls must open at 8, giving two hundred and forty minutes before 12 o'clock; the sun sets November 3 at 4.54, giving two hundred and ninety-four minutes after 12 o'clock. If the poll opened at just 8 a. m., and closed at sundown, *i. e.* giving five hundred and thirty-four minutes of time in which to do the work of voting. Now as it was expected to be the place where the colored voters would vote, it was clear that the day must be a diligent one, and a good deal more than one vote must be cast in a minute if the work was to be done. This furnishes an honest and laudable reason why Johnson was in a hurry all day. It is perfectly certain that Johnson's declarations to individuals *are not evidence on which to decide the rights of the people to representation*, but certainly the contestant is bound by evidence which he gives of what Johnson said his object was. Contestant proves by Carroll, who acted as clerk, (near the bottom of page 80,) that "the object was to open the polls as early as possible so as to let them all vote. Johnson was estimating how many must vote in a minute to get through that day." This shows a laudable and legal purpose, and, so far as the opening of the polls is concerned, there was no purpose on the part even of Johnson to violate the law or work a fraud. *The contestant shows that affirmatively.*

This brings us to the question as to when the polls did in fact open.

Barret set his watch the day before by railroad-time, (see pages 76, 77,) and found them voting at about 8 o'clock by his watch.

Brown, at page 78, says he got there at about 7 a. m., and not more than ten minutes after, and found Dr. Johnson issuing tickets; but does not say that they were voting. Perhaps this, however, may be inferred from the testimony on the 79th page.

Weeks says, at page 83, that he got there at about 7 o'clock, and that about twenty had voted, as he found, on examination, from the lists.

Tompkins says, at page 84, that "the inspectors had to consume about twenty minutes after their arrival before voting began; then they had to arrange the table and desk for the clerk. *It was quite a cloudy morning. It was impossible to tell without a watch when the sun did rise.* It occurred to me that it was not 8 o'clock. Mr. Carolina stated that by his watch it was 25 minutes past 7 o'clock. Duval Selph said it was 2 minutes past 8 by his watch. By Armstrong's watch it was three or four minutes past 8; and Armstrong said his watch was right from a watch-maker's, and that he had watch-maker's time. We consented to be governed by the majority of watches present."

Now, remembering that this is contestant's evidence, there is not a hint in the case that the inspectors did *not believe* that 8 o'clock had arrived

when the voting began, and among a collection of watches, not probably together worth ten dollars, it would be very unsafe to infer that the voting actually commenced before 8. Besides, the contestant's witness Weeks (at page 88) examined the poll-list when there were 20 names on it, and no hint is anywhere given that any person voted before 8 who was not entitled to vote. This Weeks was the candidate against Johnson for the senate. (See page 23.) We, then, infer that the early commencement of voting is not proved to be fraudulent, and was not, in fact, fraudulent.

Another circumstance was during the argument urged against the inspectors to show that they were not honest officials, to wit, that Tompkins spent the night before election at Johnson's house. Now, look for a moment at the state of things in Columbia County. A scattered population casting 1,350 votes, or thereabout, in the whole county, is about to vote. Republicans and democrats hate each other too badly to vote peaceably together. They each are to vote at their chosen precinct. Inspectors must do the same thing and traverse perhaps the whole county. Johnson is a man of some consideration, and perhaps has a comfortable house to stay in. He is interested in the coming election, and finding that two of the inspectors appointed from the county-seat are to fail, he knowing how few have intelligence enough to act, solicits two other gentlemen to act as inspectors, and invites one, who will be presumed to have resided at a distance, to come and spend the night at his house, and the same is true as to the clerk. Considering the condition of affairs disclosed by the contestant's witnesses, these acts are not only consistent with the integrity of the inspectors, but such as must almost necessarily have occurred.

We are, therefore, of opinion that the inspectors at this poll stand wholly unimpeached, and that their conduct at the polls was above reproach.

But it is urged that this poll is tainted with fraud because Dr. Johnson, in addition to the general activity he evinced, planned and worked great schemes of fraud. Carroll, who acted as clerk, is called to say (page 80) that on the evening preceding the election he was at Johnson's house, and that Johnson came in and "*brought a book, which I took to be a copy of the registration-book. I took down fifty names, more or less, from the book Dr. Johnson took from the shelf. Dr. Johnson called off the names, and I took them down.*" Not another word or act of Johnson in relation to that list of names is proven. The possession of a copy of the registration was necessary to any person wishing to look after the election, and copies of portions of it were necessary for the purpose of sending by minor agents to the localities for voters, and for many other purposes, and yet it is gravely urged that we are to disfranchise 600 voters on the idea that possibly this copying was with a fraudulent design.

For the remaining evidence of Johnson's fraudulent designs we are called upon to give credence to one Duval Selph, whose testimony is found on pages 85, 86, and 87. This man is a self-convicted villain, and probably perjurer. We say he is a self-convicted villain. He tells us on page 86 that he, on the day previous to election, at the request of Dr. Johnson, put forward his watch ahead of the time one hour and twenty minutes, and then went to the polls on the morning of election and showed his watch and stated the time as shown by it, for the purpose of misleading the electors and defrauding them and the country. Every honorable mind revolts at the mention of such rascality, and no man will give credence to the testimony of such a villain unless cor-

roborated by worthy testimony. There is no lawyer who will fail to apply to the testimony of this man the doctrine "*falsus in uno falsus in omnibus*." Being confessedly a villain in one respect, he must be taken to be a villain "all the way through."

This witness says, on page 86, that Johnson expected 52 votes from other counties. But he says, on page 87, that these 52 votes were absent from the county and were or had been registered voters of the county. These were the voters brought from other counties, at an expense of three hundred and twenty to three hundred and seventy-five dollars, mentioned by him on page 85, so that both bane and antidote as to this matter are furnished by the same Duval Selph. Can we say that these 52 names were not the "*50 names, more or less, written by Carroll*"? (See page 80.)

Again, Duval Selph says (on page 86) that "Johnson asked somebody about 4 o'clock if they could not fix up a trick to capture the Ellisville returns as they were bringing them to Lake City." We submit that this remark of Johnson's, if made, is not evidence in the case, and that Selph is not worthy of credit as a witness, and, further, that the testimony would not be received in any court except upon a cross-examination of Johnson were he a witness.

But Selph was too ready and useful a man to stop so. He brings forward a fact near the close of his testimony, on the 87th page, which had been noticed by no other person, not even by Weeks, Johnson's opposing candidate, or, if noticed, was considered perfectly innocent. Its wickedness had only been discovered by the immaculate villain Selph. "The reason I think the election was conducted unfairly is, that from seventy-five to one hundred persons received tickets from Johnson. He called a name and gave a number, and they put it through an aperture in the wall where the ballot-box stood, and called out the name and number, and the ballot was thus received. This was one of my reasons. Johnson called the name and gave the number which he gave to the parties, from which he told me was a copy of the registration-list, and the parties took the number with the ticket and passed it through the hole to the inspectors." Selph "believed they were voting under fictitious names." If this be true, seventy-five to one hundred men voted under fictitious names right before the eyes of Weeks, Johnson's competitor, and Weeks never conceived there was any wrong in it, and the real owners of the names did not appear—not one of them—and have never been heard of since. But mark, even the villain Selph does not volunteer a word of knowledge that one of these men really used a fictitious name. The reason why the numbers were given to the men and were handed in by them was, that the number to vote was large. The whole registration-list of one thousand three hundred and fifty to perhaps two thousand names had to be looked over, and if the number that the name stood on the list could be stated, the vote was cast in a quarter of the time. A lamer pretense of fraud than that sought to be conjured up against Johnson was never invented.

It is necessary now to look into the charges of illegal votes.

Barnett, on pages 77 and 78, says that "not less than 75" voted whose names could not be found on the registry-list, and who he swears on page 76 did not take the proper oath. He also speaks of 5 whom he knows to have been residents of other counties and one penitentiary convict who voted. But, on 78, he says he only knew that the men were non-residents because of conversations he had with them, and he further says that the penitentiary convict said he had been pardoned. But being convicted of a crime and being sent to the penitentiary does not disfranchise. The conviction must be for "felony, bribery, perjury, larceny, or other infamous crime." (Laws of 1868, sec. 6.)

We need not quote authorities to show that conversations of voters do not prove their residence nor non-residence, especially as they all swear they were residents of Columbia County.

It appears from Tompkins's testimony that the men whose names could not be found were challenged, and took both oaths required by law. So that a conflict is raised between the witnesses as to whether the full oaths were taken by the persons whose names could not be found. These witnesses are called to their memories in August, 1875, nine months after the election, and we prefer to give confidence to the presumption that the officers did their duty. But if the 75 votes were rejected, and either taken wholly from the sitting member or proportionally from the sitting member and contestant, Walls would still be elected.

The doctrine is laid down very fully in McCrary's American Law of Elections, sections 303, 304, and 305, and in the authorities there quoted, that it is very rarely justifiable to reject a whole poll, but if it appears that illegal votes have been admitted, the poll should be purged. We have shown that the evidence in this case fails to show that a single illegal vote was polled at this precinct, and therefore there is no occasion to exert even the power of purging the poll.

The committee recommend the adoption of the following resolutions:

Resolved, That J. J. Finley was not elected and is not entitled to a seat in this House.

Resolved, That Josiah T. Walls was elected and is entitled to a seat in this House.

MARTIN I. TOWNSEND.
JOHN H. BAKER.
WM. R. BROWN.