

NIBLACK vs. WALLS.

ADDITIONAL TESTIMONY

IN THE CASE OF

NIBLACK vs. WALLS, OF FLORIDA.

JANUARY 8, 1873.—Ordered to be printed.

Notice to take testimony.

GAINESVILLE, FLORIDA, *November 10, 1872.*

SIR: In pursuance of law, I hereby notify you that I shall, on Friday, the 20th day of November, 1872, proceed to take the testimony, as contestant of your election and seat as a member of the Forty-second Congress of the United States from the State of Florida, of the following witnesses: E. E. Mizell, John F. Bartholf, N. H. De Coster, and Samuel P. Youmans, residing in the county of Manatee, all of which testimony will be taken before Enoch E. Mizell, county judge of Manatee County, Florida, or, in case of his absence or disqualification, before any other officer authorized by law to take the same, at Pine Level, the county-site of said county of Manatee.

SILAS L. NIBLACK.

Hon. JOSIAH T. WALLS.

I admit legal service of a copy of the within notice on me, personally, at Gainesville, Florida, this 19th day of November, A. D. 1872.

J. T. WALLS.

STATE OF FLORIDA, *Manatee County:*

Testimony in the matter of the contested election between the Hon. Josiah T. Walls, holding certificate of election as a member of the Forty-second Congress of the United States from the congressional district of Florida, and the Hon. Silas L. Niblack, contestant. Taken before Hon. N. H. De Coster, judge of the county court of Manatee County, at Pine Level, in said county, and within said congressional district, on the 20th day of November, A. D. 1872.

ENOCH E. MIZELL being duly sworn, deposeth and answers to the following questions as follows, to wit:

Question 1. Were you a legally-registered voter of Manatee County, at an election held on the 8th day of November, A. D. 1870, for member of Congress from the district of Florida?—Answer. Yes.

Q. 2. Did you hold an official position in the county at that time; and if so, what?—A. I was county judge.

Q. 3. What was your official duty in reference to the election held in Manatee County in 1870?—A. I was, by law, one of the county canvassers of election.

Q. 4. Did you serve in that capacity?—A. I did.

Q. 5. Please examine this certified copy of result of election, as made to board of State canvassers of the election held on the 8th day of November, A. D. 1870, and state whether it is a true and correct copy of the original, as made by the board of county canvassers. (The certificate handed to witness, and admitted as part of this testimony.)—A. It is a correct copy.

Q. 6. Were there any returns from the precincts in said county rejected by the board of county canvassers and not included in the return made to the board of State canvassers, as per copy just examined by you; and if so, what precincts were they?—A. There was one; Fort Ogden precinct.

Q. 7. Please examine this certified copy of the return made by the inspectors of the election at Fort Ogden precinct, and state whether it is a true and correct copy of the original return rejected by the board of county canvassers. (The certificate handed to witness, and admitted as part of this testimony.)—A. It is.

Q. 8. Please state the grounds of the objection to said return.—A. In consequence of so many illegalities; contrary to law.

Q. 9. Was the rejection of the return solely on the ground of illegality, or was there any evidence of fraud?—A. There was no fraud, to the best of my recollection, only more tallies than votes; don't recollect, but think about three.

Q. 10. From the best of your recollection, was the election conducted in your county peaceably and without intimidation?—A. It was.

E. E. MIZELL.

Sworn to and subscribed before me this 29th day of November, A. D. 1872.

N. H. DE COSTER,
County Judge.

JOHN F. BARTHOLOMEW, being duly sworn, deposes and answers to the following questions as follows, to wit:

Question 1. Were you a legally-registered voter of Manatee County, at an election held on the 8th day of November, A. D. 1870, for member of Congress from the district of Florida?—Answer. Yes.

Q. 2. Did you hold an official position in the county at that time; and if so, what?—A. Yes; I was clerk of the circuit court.

Q. 3. What was your official duty in reference to the election held in Manatee County in 1870?—A. I was, by law, one of the county canvassers of election.

Q. 4. Did you serve in that capacity?—A. I did.

Q. 5. Please examine this certified copy of result of election, as made to the board of State canvassers of the election held on the 8th day of November, A. D. 1870, and state whether it is a true and correct copy of the original, as made by the board of county canvassers. (The certificate handed witness the same as preceding witness.)—A. It is a correct copy.

Q. 6. Were there any returns from the precincts in said county rejected by the board of county canvassers and not included in the return made to the board of State canvassers, as per copy just examined by you; and if so, what precincts were they?—A. There was one; Fort Ogden precinct.

Q. 7. Please examine this certified copy of the return made by the inspectors of the election at Fort Ogden precinct, and state whether it is a true and correct copy of the original return rejected by the board of county canvassers. (The certificate handed to witness, same as preceding witness.)—A. It is.

Q. 8. Please state the grounds of the objection to said return.—A. There was no evidence presented to the board that the inspectors, or clerk, had been sworn. The number of ballots returned did not agree with the poll list, in one instance differing as many as six. The words and figures were not written at length, the figures being denoted by a tally. The return was not sent in by one of the inspectors. For these and other minor reasons, occasioning in my mind grave suspicions of possible fraud, the return was omitted.

Q. 9. Were the inspectors of the election at said precinct, and the party that brought the return in, men of fair character?—A. Some of them, I think, were not, from report.

Q. 10. From the best of your recollection was the election conducted in your county peaceably and without intimidation?—A. It was.

JOHN F. BARTHOLF.

Sworn to and subscribed before me this 29th day of November, A. D. 1872.

N. H. DE COSTER,
County Judge, Manatee County, Florida.

STATE OF FLORIDA, *Manatee County:*

We, the undersigned, E. E. Mizell, judge of the county court of the county stated, and John F. Bartholf, clerk of the circuit court of the county aforesaid, and N. H. De Coster, a justice of the peace of the county above mentioned, constituting the board of county canvassers in and for the county stated, do hereby certify that we met at the office of the clerk of the circuit court of the county aforesaid, on the 1st day of December, A. D. 1870, and publicly canvassed the votes given at a general election held in the county of Manatee, and State aforesaid, on the 8th day of November, in the year of our Lord 1870, the same being the Tuesday next succeeding the first Monday in said month, under and by virtue of an act entitled "An act to provide for the registration of electors and the holding of elections," approved August 6, 1865; and an act amendatory thereto, approved February 10, 1870. We do certify, from the returns on file in the office of the clerk aforesaid, that the whole number of votes cast for Representative in Congress was 153, as follows, viz: Silas L. Niblack received 153 votes.

That the whole number of votes cast for lieutenant-governor was 143, of which Samuel T. Day received 14 votes, and William D. Bloxham received 129.

That the whole number of votes cast for State senator was 149, as follows, viz: Walter C. Mulloney received 108 votes, James D. Green received 35 votes, and James W. Locke received 6 votes.

That the whole number of votes cast for member of assembly was 140, as follows, viz: E. M. Graham received 133; Andrew W. Garner received 5 votes, and John W. Whidden received 2 votes.

That the votes cast for constables were as follows, viz: F. M. Platt received 16 votes; David Mizell received 23; Charles A. Turner received 20 votes.

Witness our hands and seals of office at Pine Level, in the county aforesaid, this first day of December, in the year of our Lord one thousand eight hundred and seventy.

E. E. MIZELL,
Judge of the County Court of Manatee County.
 JOHN F. BARTHOLF,
Clerk of the Circuit and County Court of Manatee County.
 N. H. DE COSTER,
Justice of the Peace of Manatee County.

This is to certify that the foregoing is a true copy from the records of this office, as made by me this 29th day of November, A. D. 1872.

JOHN F. BARTHOLF,
Clerk Manatee County, Florida.

STATE OF FLORIDA, *Manatee County :*

We, the undersigned, inspectors and clerk of an election held at Fort Ogden, in the county of Manatee, and State aforesaid, on the 8th day of November, in the year of our Lord one thousand eight hundred and seventy, under and by virtue of an act entitled "An act to provide for the registration of electors, and the holding of elections," approved August 6, 1868, and an act amendatory thereto, approved February 19, 1870, do hereby certify that the result of the said election was as follows, viz:

For Representative in Congress, S. L. Niblack received 39 votes.

For lieutenant-governor, W. D. Bloxham received 33.

For State senator, Walter C. Mulloney received 33, and James D. Green received 12.

For member of assembly, E. M. Graham received 47, and A. W. Garner received 1 vote.

For constable, William McClenathon received 27. E. E. Johnson received 1.

Witness our hands at Fort Ogden, in the county aforesaid, this the 8th day of November, in the year of our Lord one thousand eight hundred and seventy.

F. S. LANIER,
Inspector of Election.
 J. A. YOUMANS,
Inspector of Election.
 ISHAM F. JOHNSON,
Inspector of Election.
 JAMES W. MATHIS,
 WILLIAM H. ALTMAN,
Clerks of Election.

This is to certify that the foregoing is a true copy of certificate on file in this office, as made by me this twenty-ninth day of November, A. D. 1872.

[SEAL.]

JOHN F. BARTHOLF,
Clerk Manatee County, Florida.

STATE OF FLORIDA, *Manatee County* :

I, N. H. De Coster, county judge of the county of Manatee, Florida, do hereby certify that the testimony herewith transmitted was taken before me, and that the accompanying papers, to wit, the notice of taking testimony and the certified copy of official canvass made by the board of county canvassers of said county, and the certified copy of the return made by the inspectors of the election held at Fort Ogden precinct of the election held on the 8th day of November, 1870, was admitted as part of the testimony taken before me this day.

Witness my hand and seal of office this 20th day of November, A. D. 1872.

[SEAL.]

N. H. DE COSTER,
County Judge, Manatee County.