THE DARLY BALL ONE TRLEGHAPH. PHILADELPHIA, MORENCE OFFICER IN 1863.

THE DAILY EVENING TELEGRAPH-PHILADELPHIA, MONDAY, OCTOBER 18, 1869.

THE ELECTION CONTESTS.

The Court Decides the Controversy by Retaining Mr. Fox as Mayor, and Casting Out the Other Incumbents.... Judge Ludlow Dissents.

The contested election of 1968 has at length been set at rest. For one whole year it has consumed the time and attention of the Gourt, has eaten the public money, and has held in harmful doubt the title to the most important municipal and county offices; but now it is a thing of the past. On Saturday, at 12 o'clock, the Judges of the Common Pleas assembled before a large and excited audience to pass their judgment upon it. Judge Brewster de livered the opinion of the majority, and Judge Ludlow afterwards read an opinion, dissenting from the views of his brethren.

Judge Brewster's Opinion.

After referring to the disfavor with which the Courts of this country and of England have re-ceived contested election cases, which are so vexaceived contested election cases, which are so vexa-tions and intricate, imposing as they do so heavy a responsibility upon the Court, Judge Brewster, de-livering the opinion of the majority of the Court, spoke of the present case in substance as follows;-We have before us petitions contesting the titles of seven offices in this city and county, to wit;-Mayor, District Attorney, City Solicitor, City Con-trolier, Receiver of Taxes, City Commissioner and Protheonotary of the Court of Common Pleas. To each of these an answer has been filed. The peti-tions all charge an undue election and a false reeach of these an answer has been filed. The peti-tions all charge an undue election and a false re-turn, and they all contain numerous specifications charging certain alleged frauds with great particu-Charging certain alleged frauds with great particularity. The answers deny the averments of the petitions, and charge in their turn that the majorities were in fact greater than certified by the election officers. In support of this allegation, a number of specifications of illegal and fraudulent acts are given in detail by cach respondent. Many of the issues thus presented by the pleadings were entirely unsupported by any testimony which would warrant either party in pressing them upon four consideration, and they were with great propriety, either formally or tacitly abandoned upon the respective parties may be thus stated.—
1. The contestants ask us to entirely reject the returns from the Seventh Division of the Third Ward; the Fourth Ward; the Sixth and Seventh Divisions at the Fourth Ward; the Sixth and Seventh Divisions

the Fourth Ward; the Sixth and Seventh Divisions of the Seventeenth Ward, and the Fourth Divi-sion of the Twenty fifth Ward. F 2. To reject the entire vote polled during the last three hours in the Eighth Division of the Ninth

three hours in the Eighth Division of the Ninth Ward, and 3. To give to contestants the benefit of a recount of the ballots in the Sixteenth Division of the Twentieth Ward. The respondents insist that no one of these re-quests shall be granted and in their turn maintain. 1. That the petitions contesting the offices of Dis-triet Attorney and Prothonotary of the Court of Common Picas should be dismissed because the cases have not been determined "at the next term offer the election."

2. That the Court should entirely reject the returns from the Second and Tenth Divisions of the First Ward, and the Tenth Division of the Nine-teenth Ward, because of alleged frands and vio-

That the returns from thirty-nine other divisions should also be rejected, because of the de-signed exclusion by the election officers of certain

signed exclusion by the election officers of certain persons claiming to vote upon naturalization papers issued by the Supreme Court. 4. That fifty-two votes were received from con-testants from persons who, it is alleged, held fraudulent naturalization papers. It is, therefore, claimed that these should be properly charged. 5. That thirty-six naturalized citizens who offered to vote for the respondents, were not allowed to do so, and that the majorities returned should accord-ingly be increased. The statement of these various propositions con-tains the measure of the work which is before us.

tains the measure of the work which is before us, and we shall discharge our duty here as briefly as s consistent with a due regard to the importance f the questions thus presented for our considera

The first point to be considered is the power of the Court, which has been questioned by the re-

we regard then the power to throw out a return in a proper case as existing, and as applicable alike to municipal and county elections. And this brings us directly to the heart of this ' contest-which may be said to lie beneath the ques-tion-when shall a division be stricken out? It is conceded in the able argument of Mr. Sellers, that "a poll should be excluded where it is closed in which of fact or in point of law." This is the principal

self-accusing and so self-condemned that they can a blame no man for saying that it is impossible to make light from such thick darkness, or truth from such a mass of falseboods. When it is added to this that during the first hour votes were received in the most indecent haste and disorder, "that several hands were thrust in the

window at one time when the polls were opened; hat tickets were received very rapidly and placed in the box; that it was an impossibility to tick off the names of every voter, or to see who were vot-ling;" and that at other times challenges were dis regarded, and a band of persons known to be from another city were allowed to vote, some faint per-ception of the truth can be arrived at. It is due to the respondents to say that these allegations are contradicted by one of the officers, but he is un-supported by any of his brethren inside, or friends outside of the noils, he is not sustained by satis. supported by any of his brethren inside, or friends outside of the polls; he is not sustained by satis-factory proof of the integrity of a single attacked vote, and he is so thoroughly contradicted by other witnesses, and indeed by his own record, as to re-quire us to attach little if any importance to his statement. I have tried in vain to establish some theory by which this poil may be simply corrected and not destroyed. I have found this to be im-possible, and in such a state of facts justice seems to require that each party should prove his vote, and that to the extent of his failure herein the poll to be stricken out. The contestants have proved 125 votes. The respondents have proved II, but they were all unassessed voters, and they failed to show any qualification save that of residence.

how any qualification save that of residence. The contestants did not prove the qualification of their voters. Had this been done on either side he legal ballots might have been obtained. It was doubtless supposed that if a man were noted on the assessment list, if was not necessary to do more than to prove for whom he voted. Where, how-ever, a return is attacked for fraud or uncertainty, the party failing to establish the entire qualifica-tions of his voters can claim nothing. By reason, therefore, of the intentional and gross

frauds-the suggestic fals, as well as the suppressio veri, which staid the record of this election divi-sion, and the utter uncertainty of arriving at a cor-

rect result we must reject this entire return. The next division attacked by the contestants is the Sixth of the Fourth Ward. The evidence here the Sixth Division attacked by the condensates is establishes a condition of affairs well calculated to elicit the condemnation of all just-minded men. The flist of taxables was "kept back by the Judge, and by some other means until about devea o'clock." The importance of this book in the con-duct of an election cannot be over-estimated. Judge King laid great stress upon it in Kneass' case (2 Parsons 581), and his remarks have been frequently quoted and always approved. The as-sessment list is the chart by which the officers are to steer. Its accidental loss, its abstraction by a stranger would not endanger a pole honesity con-ducted. But its suppression or fatsification by an officer of the election is one of the strongest badges of frand. Prior to the appearance of this book in the Sixth Division of the Fourth Ward upward of 200 votes were polled. More than one-half of the whole number of

More than one-half of the whole number of otes received in this division were placed in the ox whilst this important record of the election re-uired to be consulted and marked at the reception quired to be consulted and marked at the reception of every ballot was in close confinement in the custody of one of the officers. More than one-half of all the persons who did vote are not noted on this book as voting. Every such omission left while open a door for great frand. Thirty-five persons voted who were not on the list. Forty challenges were disregarded. A gang of twelve or fifteen strangers came up and voted. A citizen endeav-oring to guard the parity of the ballot-box by the exercise of the right of challenge was threatened with personal violence, and when he persevered he was actually arrested and dragged away from the window by a beputy Sheriff. An inside officer the window by a Deputy Sheriff. An inside officer who endeavored to stay this flow of fraudulent votes, was threatened and intimidated. Strangers voted in squads and bunches. Personations were made of a minor, of a pauper in the Alms House, and of the dead. Only one naturalization paper was shown, and that was wrapped up and handed

ack unexamined. This is the case-almost without its parallel even in the history of election frauds—which is made out by a number of the contestants' witnesses. On the part of the respondents there is hardly an atout by a number of the contestants' witnesses. On the part of the respondents there is hardly an at-tempt at contradiction. Some evidence was sub-mitted in defense of the personations, out as to the general conduct of the election only one witness, the Judge, was examined. In answer to the scri-ous case presented by six witnesses, he favors us with answers to three questions on his examina-tion in chief, in which he states that he was the Judge, that no challenge was disregarded, and that all the voters were sworn, with the exception of those whom he knew to be legal voters in the division. This is his whole defense. He was not asked a word as to the suppression of the assess-ment book, the specific frauds, the gaags of stran-gers, the arrest of one challenger, and the silenc-ing of another by terror. On these and the other points of the case he is mute. The whole after an-dorsement he undertakes to give to the poll is de-stroyed by his cross examination. He swears that he knows Levi Fish, and that he did not, to his knowledge, see a man vote in that name: yot the election record, kept under the supervision of this witness, shows that the name Levi Fish was called, recorded and voted on, whilst its owner swears that he was not in the city on election day. He did not vote, but, although personally known to the Judge, was personated. Further comment would seem to be unnecessary. We find here un-contradicted frauds upon the records of the case. to the dudge, was personated. Further comment would seem to be unnecessary. We find here un-contradicted frauds upon the records of the elec-tion—frauds in the reception of votes—and, super-added to all this, the employment of force in fur-therance of a settled design to overwhich the poll with illegal votes. No Court should be asked to perform the impossible task of purging this poll, and we accordingly reject it. The Seventh and Eighth Divisions of the Fourth Ward may be considered together. In both of these Divisions we find :— 1. Direct falsification of the records, not only by Water may be considered together. In ooth of these Divisions we find :
 Direct falsification of the records, not only by the emission to note on the list of taxables the voting of many persons, but also by the actual mark; ing of numbers as having voted when in fact they did not vote. It is, unfortunately, too evident that these books were tampered with in order to give a gloss to numerous and glaring violations of the law.
 We also find that in each of these Divisions a number of palpable frauds were committed. Large numbers of strangers voted, the ballots were taken in so rapidly that there was no time to search for the names given by the voters: "Bunnners, Alms House People," were brought up, and the votes "shoved in." Parties came up to the polls with names written on paper; sometimes the officers did not hear it, the persons outside would worker would where the persons outside would "sing it out." No questions were asked. Votes were were put in the box before the names were an nounced. Many frauds and personations are di-rectly proved. In addition to all this, we also find in the Seventh Division of the Fourth Ward that force was employed to drive of herd voters. One connect if I would vote the tleket they showed me I would have no difficulty. I told them no. I would not. When they found out I was going to vote the licket I had in my hand they commenced upbraiding Mr. Means for going to vonch for me. * " They kept him away from the window, * * and when they found he was coming up, and that he was deter-mined to come up to the window, they knocked him down." Another witness was deterred from voting by a threat against his life and he speaks of "a going at

The contestants do not ask that this entire poll should be rejected, but simply that we should cast out the vote of the last three hours, during which period the frauds above detailed were practised. Besides this, there is proof that during this time 19 Used vote witnesses prove that a number of natuperiod the frauds above detailed were practised. Besides this, there is proof that during this time 19 illegal votes were received, and 14 unassessed persons were allowed to vote, whose names were not added to the list, and who did not comply with a single requirement of the law. During the last three hours 76 votes were polled. The fraudulent votes were largely in excess of the honest ballots; but, applying the test of possibility, we find that the poll can be saved.

Thus-the illegal votes proved amount to 47 The contestant's vote was They have proved

Contestant's vote unproved 2

Balance to be charged to respondents. As to the remaining divisions attacked by the ontestants, but a brief synopsis of the evidence can be given. In this manner a number of divisions, attacked

by the respondents, were discussed, and those in which the proof of fraud was complete were thrown out by the Court, and others, in which the proof possibility of the contest. But we cannot even credit the three hundred to citler side, for the following reasons:— 1st. It nowhere appears that the rejected certifiwas incomplete, were not rejected, but were purged

was incomplete, were not rejected, but were purged of the filegal votes. The Judge then resumed :-Before passing to the consideration of the divi-sions attacked by the defondants. It may not be out of place to notice several objections that were urged at bar against the right of the Court to re-ject a poll. It was insisted.-I. That this ought never to be done, because it leads to an unconstitutional disfranchisement of a voter, and

voter, and

2. That, at all events, polls could not be rejected i this contest, because the facts were exactly pa-diel with those developed in the election cases of (1 Brewster, 162), in which we rafuse to adopt that remedy.

that remedy. It is believed that both of these difficulties can be settled in a few words. As to the constitutional objections, it is a suffi-cient answer to say that we do not disfranchise a single voter. If he is so injured, it is not by our act, but by the frauds and wrongs of the servants of his own choice. Suppose the election officers close the poll for an hour, as in the State of Ohio vs. Bitt. (7 Am. Law Reg. 83), or two hours before the time fixed by law, as in the Penn District. Election (2 Parsons, 526), or that they throw in Election (2 Parsons, 520), or that they throw in bundreds of vates—in all these instances the lega hundreds of vates—in all these instances the legal voter is distranchised. The polls we have rejected stand precisely upon the footing of the last case supposed, save that instead of placing the hun-dreds of fraudulent ballots in the boxes thomselves, the election officers suffered others to do so, which is in effect and consequence the same wrong. That parties may be injured by the acts of their servants is no new doctrine, and has been filus-trated to the sad experience of many, as is well attested in the frauds practiced upon the New attested in the frauds practiced upon the New Haven Railroad Company (Bridgeport Bank vs. New York and New Haven Railroad Company, Am. Law Reg. 210), and in numerous other cases. The remedy of the legal voter is also very simple. Whenever there is a contest let him come forward Whenever there is a contest let him come forward and insist upon proving his vote. The Court will always see to it that his fullest rights are secured. It is not then to produce, but to guard against, disfranchisement, that we reject these polls. In every case of the hundreds of frauds and persona-tions which swarm in these divisions, some legal voters have been disfranchised. If the fraud is sanctioned by us, it has the victory, and the honest voter is not only disfranchised but these over-whelming frauds affect majorities in other poils. If we reject the division we do some partial good, for we whenhing frands affect majorities in other poils. If we reject the division we do some partial good, for we teach fraud and force that they shall no longer tri-umph; that they cannot possibly gain, and may lose. We take away the reward from crime, and make honesty not only the best, but the sole policy of the majority in every division, and when we shall have done that we may magonable here we shall have done that we may reasonably hope to have recovered our city from the violence and wrong which have marked its polls for many years. and have made all good citizens wonder whether the day would ever come when we should enjoy an honest and fair election. In the face of frequent contests by citizens, and

In the face of frequent contests by cliizens, and of repeated warnings from this Court, these frauds have increased to an extent which may be said without a particle of exaggeration, to endanger the existence of the principle which underlies our ga-vernment. When the majority can be repeatedly and successfully overcome by wrong, the cond-dence of all in the prosperity of our institu-tions must be impaired, if it is not destroyed, and when election officers, in the light of all this truth and of all past admonition, increase and multiply and of all past admonition, increase and multiply these frauds, courts of justice may perhaps be ex-ensed if they grow intolerant of the evil. Quo usque tandem abutere Cutatina patientia nostra? guena ad finem sese effrenava jactabli au-

We now pass to the consideration of the posi-

The respondents ask us to reject the returns from the Second and Tenth Divisions of the First Ward, and the Tenth Division of the Nine-teenth Ward, because of alleged frauds and vio-

He

First. Unless the vote of whole divisions is re-jected absolutely in the computation of majorities, each of the respondents received a majority of votes at the election in October, 1868. Second. Adopting even the rule of the majority of the Court, and adding to the majorities not con-tested the unascessed votes proved or accounted for, Furman Sheppard was elected District Attor-ney, and Daniel M. Fox was elected Mayor. Third. If every illegal and unascessed vote is re-jected in the final count, the respondents, with the possible exception of the Receiver of Taxes, re-ceived a majority of the votes cast in October, 1868. Fourth, If in every case (in which the majority of votes were cast for respondents, and are now attacked) the returns are rejected, unless the ne-

attacked) the returns are rejected, unless the ne-cessary steps are taken to ascertain the legal votes cast at the election in 1808, this Court cannot can-not decide these cases upon their merits. Fifth, Without proof of the number of legal votes of unnaturalized citizens illegally rejected at the October election of 1808, this Court cannot de-cide these cases on their merits, and we ought to make an honest effort to ascertain this vote, and thus under a scent wear sis undo a great wrong. Sixth. Without the proof above specified, the

court cannot legally ascertain the majorities for and one of the contestants, and cannot, therefore,

declare either of them elected. I therefore dissent from the opinion of the ma-ority of the Court, in so far as results are ascer-tained and declared.

Opinion of Judge Allison.

I desire to add but a few words to what my rethren have said. Last year, when the contested sections were before the Court, I desired to secure elections were before the Court, is desired to seen re the adoption of the rule which is now advocated by my brother. Ludlow, with so much earnestness and zcal. In this I was unsuccessful. Judge Peirce, agreeing with me in the view which is expressed at length, in the opinion which I then delivered (Brewster's reports), but differing with me as to the number of election divisions to which, under the proofs, it ought to be applied. Judge Brewster did not see his way clear to assent to the principle which Judge Peirce and myself agreed to adopt. Judge Ludlow, who did not sit with us in the argu-ment of the cases then before us, for a reason which we all agreed was a proper reason, was nevertheless invited by his brethren to Join them in their consultations, and assist them by his ad-ylee. At that time his view was most decided, and the expression of it as emphatic as it could be vice. At that time his view was nost decided, and the expression of it as emphatic as it could be made, against the adoption of a rule that would send an election contest back to the Examiners to take proofs of the legal vote, for the purpose of re-storing to the count and adding it to the undis-puted vote as returned for the several candidates. This advice had doublicssly much influence in pre-venting the adoption of the rule which he now ad-vocates, and which I hoped to see applied to the then pending cases, and to subsequent cases as they should arise. The persons going into office under the certifi-cates of election would have remained in office until the proof of the legal vote had been taken, they asserting their ability to show by such a course of investigation their right to the several offices in contest, claiming that they were legally elected.

tion of the proper authority. Lastly-The respondents claim a credit for the thrity-six naturalized citzens who would have voted for incumbents, but who were not permitted

The refusal of the Court to give them the opportunity to make such proof, furned the contestants out of Court without further remedy. We are ad-yised that it would be proper to give the present incombents an advantage which we denied to the

ontestants last year. My brother, Ladlow, thinks we ought now to idopt the rule which was then rejected, which yould be to hold that that which was bad in prinwould be to hold that that which was bad in prin-ciple and vicious in practice a year ago, is sound in principle and wholesome in its application a tweive-month later. My objection to this is not to the first portion of the proposition : but I do object to the Court doing that, which, in my opinion, would make them justly chargeable with unfair dealing to sultors in the contested elections which we are now deciding. now deciding. We ought not to say that a given principle will

We ought not to say that a given principle will not be applied to the determination of election cases: to keep silence for a whole year; giving suitors no intimation of a change of purpose, and at the last hour spring on them, as it were, the ap-plication of the very rule which the Court, in the cases which preceded those now in coutest, had re-fused to adopt. This would be to mislead the con-testants, to spread for them a snare by which they would be entrapped; to dig a pit, and keep it con-cealed, into which, by that contectment, they would fall. This I do not propose to do, and there-fore cannot consent to the proposition of our brother Ludlow, to send these cases back to the Examiners. If we should be so unfortunate as to Examiners. If we should be so unfortunate as to have other cases of this kind to consider and de-cide, in the future, we can at the start give such notice to the parties as will prevent injustice to any one, should we then conclude to apply the rule which Judge Ludlow thinks ought now to be en-tored forced.

AUGTION SALES

LAT THE TIPE OF AN AN

M. THOMAS & SONS, NOS. 139 AND 141

ATA • S. FOURTH STREET. Sale at No. 2055 Wallace street. HANDSOME FURNITURE, HAIR MATTRESSES, EOOKCASE, FINE BRUSSELS AND OTHER CARPETS, FTC. On Tuesday Morning. Octoter 19, at 10 o'clock, at No. 2028 Wallace street, by catalogue, the entire household, furniture, comprising walnut parlor furniture, covered with hair cloth, walant chamber furniture, superior walnut bookcase, founge and extension table, walnut ideboard, China and giansware, fine hair mattresses, feather bedg, en-gravings, fine Brunels carpets, refrigerator, kitchen utensils, stoves, etc. be examined on the morning of sale at 8 be examined on the morning of sale at 8

SALE OF REAL ESTATE AND STOCKS,

Oct. Oct. 19, at 12 o'clock noon, at the Exchange -WALNUT, No. 1210 - Valmable Brick Residence, DELAWARE COUNTY, PA.-COUNTY Soat, Magnion,

Acres. ELEVENTH, south of Filbert-Genteel Dwelling. GROUND RENTS-2150, \$160, \$06, \$72 25, \$94, \$75 96,

73, and 845. MARKET, Nos. 1743 and 1744 Vainable Store. WALNUT, No. 1743 and 1744 Vainable Store. LYNDALL Stable and Coach house.

LYNDALL-Stable and Coach-house. SFRUCE, west of Thirty-ninth-Valuable Lot, GLOUCESTER COUNTY, N. J.-Country Seat, 456

GLOUCESTER COUNTY, N. J.-Country Seat, 4M screes. ST. JOHN, No. 434 - Tareers and Dwelling. MINTH (North), No. 235 - Valuable Residence. ARCH, No. 1921 - Valuable Residence. TWENTY SIXTH, North Penn Village - Large Lot. EROAD and BUITON WOOD, N. E. Cornier - Valuable Lot and Buildings. BRANDYWINE, No. 1215 - Genteel Dwelling. NOUTH PENN SQUARE, No. 1413 - Modern Residence. TWENTY FOURTH (North), No. 775 - Modern Dwel-ling.

TWELFTH (North), No. 1831 - Modern Residence.

TWELFTR INORCE, NO. 2020-Modern Residence. SUMMER, NO. 222-Shore and Dwelling. THOMPSON, No. 1227-Modern Residence. SFRING GARDEN, NO. 2113-Modern Residence. CHERNY, NO. 1226 and 1227-Valuable Livery Stable. CHERNUT HILL -Three destribute Tracts. THURD (South), NO. 243-2 Valuable Buildings. SIXTH (North), NO. 255-3 Valuable Buildings. THURTY FIRST and MARKET, southwest corner-Vormand Dwelling.

Charlet Collid. No. 225-Modern Residence.
THIRT FIRST and MARKET, southwest corner-Tevern and Dwelling
LOME ARD, No. 1736-Genteel Dwelling.
TENTH (Rorth), No. 246-Modern Dwelling.
TENTH (Rorth), No. 246-Modern Dwelling.
Tentra Second and Third Stroots Pass. Mailway Co.
60 shares Fennsivenia Fire Insurance Company.
60 shares Catasatenza Manufacturing Company.
5 shares Academy of Manie, with ticket.
60 shares Central Transportation Company.
5 shares Academy of Manie, with ticket.
60 shares Central Transportation Company.
61 shares Contant Alfe Insurance Company.
7 shares Academy of Manie, with ticket.
7 shares Neutorn Entomble States.
8 shares No. 2010 States.
8 shares Scather Fanner Streets Pass.
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91 shares Second and Third Streets Pass.
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90 shares Second and Third Streets.<

Sale at No. 331 S. Third street. NEAT HOUSEHOLD FURNITURE, FRATHER BEDS, CARPETS, ETC. On Wednesday Morning. October 20, at 10 e'clock, at No. 331 S. Third street, the

bet bearshald turniture, comprising subnat parlor furni-ture, covered with rops, cottage chamber furniture, wal-nat excession table, fine feather bed, mattresses, china and giassware, imperial, ingrain, and other carpais; ro-ingerator, kitchen utensils, etc. [16182; May be examined on the morning of sale at 8 o'clock.

Persuptory Sale at the Fairmount Iron Works, VALUAPILE ROLLING-MILL MACHINERY, STRAM ENGINES, ROLLS, BOILERS, FURNAURS, ANGEN AND TEE IRON, ETC. Ou Wednesday Morning, October 20, at 10 o'dock, at the Fairmount Iron Works, Goales street wharf, river Schuylkill, will be sold at public suce, without reserve, this entire valuable machinery, steam cogines, etc. Particulars in catalogues now ready. If 13 6t

DUTCH FLOWER ROOTS. On Wednesday Morning. "October 20, at 11 o'clock, at the Auction Rooms, one case, comprising a general assortment of superior sufacted byscinths, tulips, crocus, narcisaus, tris, dracunculus, palanthius, cic., from Varderscheut & Son, Harrison, Holland. IN 18 25

We will sell at Concert Hall, Chesaut street, above

Twelith, On the evenings of Wednesday and Thurgday, October 📦

THE CHOICE AND ELEGANT COLLECTION OF PAINTINGS BELONGING TO MR CHARLES F. HASELTINE. NOW ON EXHIBITION FREE UNTIL DAYS OF SALE, AT HIS GALLERIES, NO. 125 CHESNUT STREET. The collection, with other choice works by great men. bas free specimens of the following -J. L. Genome, Willems.

has five specimens J. L. Gerome, Coomens, Baughoiet, B. C. Kockkock, Carl Becker, Loyouz,	of the following:- Willems, Ohavet, Carand, Lejenne, Schaffels, Dargelas,	Merle, Plassau, Verboeckhoven, Hamman, Moulinet, Hoguet,
Prudhon,	Levy,	Herzog,
Roszczewski,	Herbsthoffer,	Kacosura,
Castan,	Briesot,	Seignac,
Compte Calix,	Amberg,	Trayer,
Lobrichon,	Accard,	Ktc. etc. etc. 193 121

DUNTING, DURBOROW & CO., AUCTION-Bank streat. Successers to John B. Myers & Co. SALE OF 2000 CASES BOOTS, SHOES, HATS, CAPS, On Tuesday Morning, Oct. 19. at 18 o'clock, on four months' credit. 19 13 5t LARGE SALE OF BRITIFH, FRENCH, GERMAN, AND DOMESTIC DRY GOODS. On Thursday Moraing. Oct. 21, st 10 occlock, on four months' credit. 19 15 56

My brather Judge, Ladlow, dissents from the views above stated, and will express his opinion. My brethren, President Judge Allison and Judge Peirce, do not agree to the *impossibility* test. They think that the evidence may show a general ne-glect of duty on the part of the officers of the elec-tion, violence at the polis, fraudulent voting, &c., which, in the language of the law, renders the election undue, and yet it may be possible to purge the poll. This they do not think they are required to do in all eases, but to ascertain if the election to do in all cases, but to ascertain if the election was a due election-that is, a legal and proper election-or whether the return is a true or false return. The views above stated lead to the following results:-

to do so. For the reasons already stated, this de-mand should be allowed. Before the act of April 17, 1869, no election officer could go behind a genu-ine seal and signature, and he meurred the lia-

lity of a severe penalty by arrogating to himself

My brather Judge, Ludlow, dissents from the

1838

rejected

1874

.1063.1505

cates were genuine. They are not produced, and their authenticity—which could, perhaps, be alone established by inspection—is not referred to by any witness as within his knowledge. 2d. The mere holding of a genuine paper would not establish the right to vote. There must also

not establish the right to vote. There must also have been an assessment, payment of a tax and re-sidence in the division. As to all of these points, the case is barren of proof. 3d. The greatest difficulty in the way of crediting these three hundred to any account is that there is no proof that they would have voted for any par-ticular candidate, or for whom? Can we conjecture that these papers were genu-ine, that the bolders thereof had all the other qua-lifications of voters, and that beyond all this they would have voted for the incumbents? No Court was ever asked to decide a question upon such a multiplication of guesses. The next point presented by the respondents is, that 52 votes were received and counted for con-testants from persons holding fraudulent natural-mic more there they discuss the decide and the all the starts from persons holding fraudulent natural-

The proofs establish this allegation, and the in-cumbents should receive the credit claimed. Most, if not all these voters should be prosecuted and if not all these voters should be prosecuted and severely punished. It is often said in the argument of these cases that the only remedy for fraud is to punish the wrong-door. So far as that fallacy is designed to paralyze the arm of the law in these investiga-tions, it should be rejected. So far as it asserts a sound truth, it should be accepted. Unfortunately, however, with the exception of very rare and com-mendable prosecutions, fraudulent voters have gone unpunished. Success brings with its satis-faction, leniency for friends and magnanimity for foes, and thus great wrongs, amounting to treason -the only treason it seems of our ago-go un-punished. That no blame may attach nerein to the Court, we commend these 52 and all the other trandulent voters named on our record, and every officer who violated his oath, to the prompt atten-tion of the proper authority.

a point of fact or in point of law. This is the princi-ple laid down in the Penn District case (2 Parsons, 526.) But it must be admitted that this does not present the true boundary line of the power. In the Blockley election (1b, 534) ballots were rejected because the tickets contained one name too many, although the additional name was stated to be for a vacancy which did not exist. If all the votes in a division were so misprinted, clearly the whole poll would have to be rejected. In Mann vs. Cas-sidy (supra), Judge Thompson held that where the whole proceedings are tarnished with fraud the en-tire returns will be rejected. In Thompson vs, Ewing (supra), the same judge said "the whole conduct of election officers may (though actual fraud be not apparent), amount to such gross and culpable negligence, such a disregard of their offi-cial duties as to render their doings unintelligible oint of fact or in point of law." This is the princi-

jority of votes." In speaking of another return, he

"If " it had appeared that because of a dis-"In that appeared that oscillate of a dis-regard of the directory provisions of the election laws, a frand or mistake had been committed, tending to cast a doubt upon, endanger or destroy the rights of the respondent, we would instantly veject every vote cast, because then we would be unable to discover the true majority of the votes." the rights of the respondent, we would instantly reject every role cast, because then we would be unable to discover the true majority of the votes." In Weaver vs. Given (supra). President Judge Allison reaffirmed the doctrine above quoted from Thompson vs. Ewing, and in the contested election of 1867, (supra) the same learned Judge gave addi-tional emphasis to the principil thus announced. In the same proceeding T took occasion to say that the remedy should never be applied except in the extremest case, and that "impossibility" was the test. My brother, Judge Pierce, also concurred in the views of the President Judge — From this review of the decisions of our prede-cessors and ourselves, there would seem to be an unanimous conclusion that wherever a Division Return is attacked, and the result cannot be ascer-tained, the poll is to be rejected. And this, whether the disturbing cause be fraud, or gross and cul-pable negligence, or even in the hanguage of my brother Judge Ludiow, "mistake." It matters not, then, what has produced the mis-chief, the question is, after all, can the Court sift out the result? Can we separate the pure gold from the dross? Is it possible to create certainty or even an approach to certainty? — With this principle for our guide, firmly esta-blished by authority, and commending itself to our reason and our love of justlee, let us approach the settlement of this controversy. — The first periodipte for our guide, firmly esta-blished by authority, and commending itself to our reason and our love of justlee, let us approach the settlement of this controversy. — The first periodicing carried on sail elec-tion with a wiful disregard of all the require-ments of the laws regulating elections, by means of said division frandulently carried on sail elec-tion with a wiful disregard of all the require-ments of the laws regulating elections, by means of which only the true votes and will of the people could be ascertained." To this general averment are attached specifications which may be

law was omitted. This is emphatically denied by the answer.

tensed into a charge that every duty dujoned by missiscentrified. The second duponed by the answer. A careful examination of the proofs shows that provide of one-tenth of the entire vote of this duponed of one-tenth of the entire vote of this duponed to the entire vote of the proofs shows that due to the entire vote of this duponed to the entire vote of the election was transled by marking persons as voting who it is conceded, did not vote, and that a large one sixth of the entire list, and from these three one sixth of the entire list, and from these three sources of attack nearly one-third of all the votes cast are destroyed. This, it will be understood, is one sixth of the entire vote of the list with be understood is the result of urge the poil, but the faisification of the list of taxables to the extent presented by the proofs before us, is a feature peculiar to this or the list of taxables. In such cases it has without predimenting the proof exacted by the statute, and to the list of taxables. In such cases it has been on the list without on the list of taxables. In such cases it has been on the statute, and on the list of taxables. In such cases it has been on the statute of the predimenting the wrong doers: but the difficulty presented by this record is the impossibility of at presented by this record is the impossibility of at presented by the faisfications of the register of specific votes. When the officers marked oppo-pring any known rule for the purpation of the privide elearity not be a decision on the merister of specific votes. When the officers marked oppo-site the name of a qualified voter the list, the register of specific votes. When the officers marked oppo-site the name of a qualified voter the poils, they did the its the scores of cases, they for their the record side the scores of cases, they for the presented of the scores of cases, they for the presented of the scores of cases, they for the presented of the scores of cases, they for the presented o

As normalized with this life and he speaks of "a gang at threat against his life and he speaks of "a gang at the polls all day." We also find a number of per-sonations in both of these divisions. As to the Eight Division of the Fourth Ward, the respondent's brief does not furnish the name of a single witness as called by the defense, and in the Seventh Division but one witness was evaluated in Single witness as called by the determs, and in the Seventh Division but one witness was examined in answer to all these charges. He simply states that only one challenge was disregarded, and that sev-eral were not allowed to vote because they had

The frauds upon the records, the frauds inside the box, and the force outside, are all uncontra-dicted and unexplained. Three such elements, affecting large proportions of the entire vote, are presented for the first time in these cases. No man presented for the first time in these cases. No man can, with a reasonable hope of arriving at the truth, attempt the impossible task of separating the good from the evil in these polis. A few scattered grains cast upon the surface of clear water may easily be removed, and a filter may enable us to deprive it of still greater accumulations, but when the earth is applied in such excess as to solidify the mass, the find disappears, and it is beyond the power of man to recall it. So here, the few honest votes that may possibly lie in the boxes of these divisions are so covered up with francis that they are buried far out of sight and past all judicial redemption. "The returns from these predicts are therefore

returns from these precincts are therefore

rejected. In the Eighth Division of the Ninth Ward, a very The Eighth Division of the Ninth Ward, a very daring first was discovered by a mere accident.
 A Mrs. Andrews, hearing volces in the alkey adjoining her residence, looked out of the window and have a number of men-she indged to be twenty-six-asking one of their party, who held a printed systement list in his land, for different pieces of the paper. One said. "Give me a shoemaker," another asked for "a tailor," see. As they spoke, they were accommodated with strips from the list, which held a printed by Wrs. Atkinson. He estimates their number at fourleen, and it is proved by Mrs. Andrews and the party volad in the Eighth Division of the Ninth Ward. Mr. Andrew & suith swithes we then with a Ninth Ward. Mr. Andrew & suith the withes was "shoved against" several times.
 No officer of the election, or other porcea, has here nailed to contradict these statements.

lence. The Second and Tenth Divisions of the First Ward may be considered together because of their vicinity to each other, and the probable identity of the wrong doers in each precinct. It is distinctly in proof that between 1 and 2 P.

M. in one division, and an hour later in the other St. In one division, there was great disorder at these polls. Several voters were muracrously attacked and driven away. Many others were deterred from voting ind from challenging. A large number of naturalization papers were rejected; a squad of seven strangers were seen at one poll who appeared to be acting in concert with the Judge; handsful of rotes were thrown into the window, though none reached the ballot boxes; several voters standing peaceably in the line were arrested by the police, dragged from the poll, and one of them was con-fined in the hall for two days. Besides all this there were in one division seven personations, six of which occurred after the hour

mentioned.

It is said, in answer to these serious charges, that It is said, in answer to these serious charges, that there are some contradictions in the statements of the witnesses called by respondents, and that there is conflicting testimony. It is also urged that the returns show that the respondents' vote was at one poil greater than it had ever been before or since and as to the other division, that it reached within four votes of the highest number ever there polied.

A comparison of election returns would indicate that the respondents had received but little. If any damage from the acts complained of. But we do not regard this as the true test in such a case. The not regard this as the true test in such a case. The unestion which specially concerns the public and the law is the freedom and the purity of an elec-tion. We find the fact to be that unoffending citi-zens were shot at beaten and arrested at these polls, simply to prevent the exercise of their right of suffrage. From many pages of testimony to this effect, I quote but a few lines. Martin Cavenaugh swears that he "was dragged out of the lines and handed over to a polleciman or special constable. He was taken up to Southwark Hall, and kept there for two days to feed on water. No charge was made against him. He had been living in that division thirtcen years, and had been a voter since lyision thirteen years, and had been a voter since

Charles MeBride states that a crowd threatened Charles McBride states that a crowd threatened his life, and that Alexander McBride was driven away while attempting to vote, and was shot at. This is corroborated by Alexander McBride, James Ericson, and others. A few hours later the oppo-site party had full possession of the poll, and the votes during that interval, between four and five o'clock, were 13, all on one side. This was in the Second Division, but in the Tenth matters assumed the same complexion, the only difference being that the violence commenced later.

the violence commenced later. Ecrnard Devine saw no fighting but witnessed three arrests of persons in the line. Earnest Steubing was cruelly beaten because he attempted to vonch for his son, and other persons testify to more or less of violence and wrong. We have no hesitation in condemning all these brockedings and our reproduction should be area.

We have no hesitation in condemning all these proceedings, and our reprobation should be espe-cially marked of the police, who so shamefully vio-lated the law it was their duty to preserve. The evidence establishes that after one o'clock in the second Division, and after two o'clock in the Tenth Division, there was at all events an amount of violence which renders it impossible for us to say what was the legal vote, and we therefore apply in favor of the respondents the same principle which has been invoked against them elsewhere, and we reject all votes received in these divisions after the hours named.

reject all votes received furthese divisions after the hours named. The respondents also attacked the Fourth of the Seventh, Lighth of the Tenth, Ninth of the Tenth, Third of the Eighteenth, and the Seventh Division of Twenty-sixth Ward. Although they did not press any objections to these divisions upon the argument, we have felt it to be our dury to examine the testimony as to each of these polls. We dismiss them with the remark that we have found nothing which would justify their rejection or purgation. The oplinon here touched upon the Tenth Divi-sion of the Nineteenth Ward, attacked by respond-cuts, and finding no sufficient proof of fraud re-

The optimion here four here upon the Tenth Divi-sion of the Ninetcenth Ward, attacked by respond-ents, and finding no sufficient proof of fraud, re-tained the returns. The respondents ask us, in the next place, to re-lect the returns from thirty-nine other divisions because of the designed exclusion by the officers of certain persons claiming to vote upon certificates of anturalization issued by the Supreme Court. It pon this point a great many witnesses were ex-mitted on their testimony to the Court. It is es-tablished by thirty six persons that their votes were referented, athough they were duly matural-ized, and that they would have voted for the ro-spondents. Beyond all question their votes should new be credited to the meumbents. The papers they produced were genuine certificates based by the Frothonotary and moder the seal of the highest court in our State. No other tribunal should or

polls:-In the 5th Division, 9th Ward. In the 6th Division, 17th Ward. In the 7th Division, 17th Ward. In the 4th Division, 25th Ward. The error in favor of Mr. Tyndale in the 12th Division, 16th Ward. The loss to Mr. Tyndale by the fraudulent count in the 16th Division, 20th Ward. 100

20th Ward.....

1025

110

Leaving the actual majority for Mr. Fox.. 68

1595

and there is to be deducted therefrom :--

Ward.....

1811

II. By the illegal votes charged62 148

Total deductions. Mr. Sheppard's majority as above was.

Alexander McChen as City Commissioner. Gpinion of Jusige Pierce. I do not assent that where a poli is thrown out for fraud, the vote legally cast can be proved. The taint of fraud, where so general as to render un-certain the will of the electors, vitilities like whole poll, and in the language of the law there is an pole.

poli, and the the language of the which there is an undue election. To pursue any other course would be to offer a premium to fraud, and give the perpetrators a pos-sibility of having the advantage of their fraud, while in no possibility could they suffer from it. I admit that this doctrine is an advance beyond the opinion entertained by me last year, to which it have been frought by an increased observation of the effect of these frands upon the elective tranchise as illustrated by the election frands of last year. last year. Judge Ludlow's Opinian. Judge Ludlow then read his opinion, dissenting

Reply of Judge Ludiow. I took no part in these cases officially, and for the reason that I had been a candidate at the elec

tion. When asked as an individual. I did say that those when asked as an individual. I did say that those cases ought not to go back to the Examiner; and a majority of the Court also thought so; but to say that as a legal principle I even heid that they could not be sent back by the Court, and ought not in any

case so to be, is a clear mistake. Had I enterialned any such opinion, these cases would at once have changed it, for I have been laught that in no way, except by a reference back to the Examiners, can the merits of these cases be beforemend. determined.

Mr. Sheppard's Case in the Supreme Court. After the Judges had concluded the reading of the Opinions, Mr. Sellers, for Mr. Sheppard, called the attention of the Court to the fact that a certio-The attention of the Court to the fact that h certain rari had been taken in that case, for the purpose of removing the record to the Supreme Court. This applies only to the District Attorney. Whether Mr. Sheppard retains the office while the case is pending in the Supreme Court, will probably be de-recommend to day. termined to-day.

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in the sum of six hundred dollars will be required for the faithful performance of the contract.

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