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In the Court of Quarter Sessions of Cambria County.

In the matter of the Contested Election for County Commissioner, at the General Election, held on the Second Tuesday of October, 1858.

OPINION OF THE COURT.

TAYLOR, P. J.:

On the 16th of October last, the petition of Lewis Cassiday, J. P. Scott, and twenty others, representing themselves to be qualified electors of the county of Cambria, formally verified by two of their number, was presented to this court, complaining of an undue election for county commissioner, at the last general election; and setting forth "that Abel Lloyd and Lewis Fisher, both citizens and electors of said county, were severally voted for at the said election in connexion with said office, and as it appears by the return of the return judges of said county of Cambria filed of record "in" this court, on the 15th day of October, A. D., 1858, the said Lewis Fisher received *two thousand and six votes*, and the said Abel Lloyd received *eighteen hundred and ninety-four votes*, and the said Lewis Fisher thereby having a majority of *one hundred and twelve* (112) *votes*, over the said Abel Lloyd, was thereupon declared duly elected to the said office of county commissioner;" and further complaining and setting forth "that the said election was fraudulently and fundgly held and conducted *in the township of Washington*, in the said county of Cambria, and that *a large number of illegal and fraudulent votes were poled thereat for the said Lewis Fisher*; and further, that the return of the said election, so as aforesaid held in the said township of Washington, was falsely and fraudulently made to the said return judges, and *that thereby the said Abel Lloyd* was unlawfully defeated of the said office of county commissioner;" and further "that the officers who conducted said election in the said township of Washington, as well by acts of omission as commission, violated the several duties imposed upon them in that behalf by the laws of the commonwealth of Pennsylvania:" and specifying, under this general allegation, amongst other things, 1. Gross irregularities and frauds in the organization of the board of officers and in the manner of conducting the election of Washington township: 2. That a large number of illegal votes were polled at the said election, and that they were poiled with the knowledge and connivance of the officers who conducted the said election. And, under this last general allegation, it was specified among other things, that legal voters in said township "voted more than once;" that "a large number of non-residents," and "a large number of unnaturalized foreigners voted;" and that their votes were received, counted, and returned: that "there were votes returned and names on the list of voters of persons dead, and who have removed from the township;" and "that there are names on the list of voters of persons who do not reside, and never have resided in Washington township or any where else."

Incredible as it seemed that there could be persons in Washington township, not only sufficiently depraved, but silly enough to undertake to concoct and carry out a scheme of fraud so gross and startling, in a rural district, too, where it might easily, and would certainly, be detected, the petition was signed by more than the number of electors required by the act of assembly, many of them known to the court, and known to be of the most respectable citizens of the county, and verified by two of them, and it was an imperative duty to institute an investigation, and appoint a time for the hearing.—We accordingly fixed the first day of the present term for such hearing; and, as we deemed it utterly impracticable to hear the witnesses at the bar of the court, since it would probably occupy the greater portion of the whole term, when we would have issues to try in the Oyer and Terminer, Quarter Sessions, and Common Pleas, and other business belonging to the term which could not be deferred, and as we had no doubt whatever of our right and power to do so, we appointed Philip S. Noon, Esq., a member of this bar in whose capacity and integrity we reposed entire confidence, a commissioner to take charge of the ballot-boxes, and to take and report the evidence and all the facts in the case. He was sworn in open court at the time of his appointment; was clothed with all the power we were authorized to confer upon him to compel the attendance of witnesses, the production of papers, &c., at such time and place as he should fix, and of which he should give due notice, and to report to the court at the time fixed for hearing, the testimony taken, and all facts elicited by him touching said complaint. His report, the reading of which occupied four hours of our time, affords ample evidence of the industry, ability, and fidelity with which he executed our commission; and this we are happy to be able to say is justly accorded to him by the counsel, on both sides, who have argued the case. And now, after this statement and history of it, and after having listened patiently an entire day to the argument of it by counsel, we proceed to pronounce the unanimous opinion of the Judges, and the judgment of the court, upon the merits of the complaint.

The evidence taken and reported by the commissioner, after due notice, and the fullest and fairest opportunity to both parties to adduce their evidence, and have it embodied in the report, and upon a careful examination and cross-examination of witnesses by counsel, establishes clearly, in the first place, the most gross irregularities (to call them by no harsher term) in the organization of the board, and in the manner of conducting the election.

One of the officers, A. F. Cantwell, the judge, was a Postmaster, who, as he swears before the commissioner, resigned the day before the election, and mailed his resignation the morning of the election, (although it appears never to have reached the General Post Office, and must either have been un-mailed before it started or miscarried); but who, however this was, undertaking to act as a judge before his resignation could have reached Washington, or have been accepted, and when he has since been acting as Postmaster as his own testimony shows, was incapacitated to sit and act as one of the officers in the election board. Charles Geisman, who was deputy Postmaster, and also ineligible, was one of the clerks at the election. The two inspectors, one of whom was appointed by Mr. Cantwell in the place of Michael Moyers who had been elected at the spring election, and who appears to have been at the election on that day and voted, are Germans who can neither read nor write English, and, of course, were utterly incompetent to discharge the duties enjoined by the law. Both of them were examined by the commissioner through an interpreter. One of the Germans on the board, moreover, as it appears in evidence, was unnaturalized. In addition to all this, the board were sworn by F. M. George whose commission, though he had once been a Justice of the Peace, had expired, and he had no authority whatever to administer the oath. Such was the board of officers and its organization! Its mode of procedure showed a still wider deviation from the requirements of the law. No naturalization papers, as it appears by the evidence, were inquired for or produced that day: no one who presented himself as a voter, though more than one half of those who *apparently* voted could legally do so without such examination, was sworn or examined as to his right to vote: no list was kept, or if kept, preserved, as required by the law, to show who voted "on age," or upon proof of the payment of a "tax:" the votes were neither received, called out, or counted, in the manner enjoined by law. The Assessor whose duty it is made by the law to attend and be present with the board through the day, when he appeared there to discharge that duty, was ordered out of the room by one of the officers, and yet when the time come to count off the votes, Richard White, A. M. White, Francis McConnell, and F. M. George, the non-commissioned Justice who had sworn them, were all, contrary to the practice everywhere else, and to the impression of every body as to what is right and proper, admitted into the room. And when all was over, the explicit and important requirement of the law,—designed as a safe-guard against fraud by providing evidence for its detection,—that the ballots, list of taxables, &c., should be put into the boxes and sealed, and preserved in the specific manner directed, was utterly disregarded; and the tickets for the office in controversy were produced to the commissioner by the aforesaid F. M. George, in an old segar-box, without even a lid upon it. All these things appear in the evidence. In a word, if Squire George had sworn these officers to disregard every requisite of the law, instead of swearing them to observe it, they would merit more commendation for their fidelity to their oath, if not to the law. It is to be observed, also, that none of the officers examined can or will give any account of the list of taxables which they had before them; and that neither of the clerks could be found or procured to testify before the commissioner, and that one of them, Geisman, in the opinion of the officer, and as is evident from what the officer states, evaded the process of the law.

These deviations from the requirements of the law are clearly proven and not denied but they are defended or attempted to be excused, on the ground that the several provisions of the act of assembly violated, or not complied with, are merely directory, and that whilst departures from them may be censurable, and even subject the officers to penalties, the result, if it appear to be right, should not, on that ground, be disturbed. As to some things, and when there is no allegation or proof of fraud, and only those who had a right to vote appear to have voted, and legal votes only appear to have been received and returned, this is undoubtedly correct. Honest citizens should not be deprived of their suffrages on account of a mere slip or on merely technical grounds, or for unsubstantial reasons. A failure on the part of election officers to comply with what is merely formal in the directions of the law, where nothing more is charged or proven, should not be seized upon as ground or occasion to cast away legal votes. But to this there must be some limit. There are provisions of the law which must be regarded not as matter of form merely but of substance. Those which fix the time and place of holding an election; or define the number and qualifications of officers; or how votes shall be cast, as by ballot or otherwise; or prescribe the mode in which ballots shall be received, counted, and returned, and the tests which shall be applied to persons presenting themselves as voters, are the means established and fixed by the law of ascertaining, and constitute the criterion, and the only criterion of determining *what are legal votes*. No votes except by ballot, and no ballots, except those received at the time and place, in the manner, and by the officers appointed or chosen and qualified as required by the law, can be legally recognized as such: and, unless thus ascertained to be legal, they must be rejected as illegal.

In the present case, it cannot surely be said that no substantial requirement of the law was disregarded in the organization of the board of officers, and in the mode and manner of conducting the election. Some things complained of, and proven, we might view and treat as irregularities merely. We might, for instance, overlook the fact that the oath was administered to the officers by one who had no more right to administer it than any other citizen of the township, if there was reason to suppose they believed at the time he had, and therefore assumed the moral if not the legal obligation of an oath. But two of them, at least, were disqualified to act; one of them not ignorant or forgetful of the fact, but as his own testimony shows, wilfully intruding himself into the place; and every required test of the qualification of voters, and of the legality of the votes received, or returned, was disregarded. In fact there was scarcely a direction of the law strictly, and in all things complied with, except that which required the voting to be by ballot, and that fixing the time and place of holding the election. And, if this were the whole case, we do not see how we could avoid the conclusion, that the election in that township was undue and illegal, and to be treated as null and void.

But it is not at all necessary to rest our decision on that ground. In addition to the numerous and gross irregularities noticed, which, though they might and we think would be sufficient to invalidate the election, might not criminate the officers, if nothing appeared which disclosed a motive to wilful lawlessness and fraud, we have before us the most conclusive evidence that more than one half of the names of voters on the list were fictitious, and the corresponding votes returned, fraudulent.

The first prominent fact going to prove this, which arrests the attention, is the discrepancy between the list of taxables and the list of voters. It is well known that every list of taxables; comprises the names of females, aliens, and non-resident property holders who have no right to vote. It is well known, moreover, that all who have a right to vote, are never at any election. These together seldom fail to outnumber largely those whose names are put on what is called the "ten day list," and those who vote "on age;" so that it very rarely happens that the list of voters equals the list of taxables. Generally, it falls far short of it.—And of this, every, one can be convinced by instituting a comparison with respect to all of the other election districts in the county.—Here, however, there are 311 taxables; while, on the list of voters we have 437; showing an excess of 126; or more than 40 per cent.!—This fact alone, unexplained, is convincing proof of something foul and fraudulent.

But further,—of these 437 names on the list of voters, we find in the assessment, or list of taxables, only 158; showing that no less than 279, if they voted at all, must have done so on a residence of ten days and a proof of the payment of "tax," or on age; and, if so, it was the duty of the officers to scrutinize, require the specified proof, and preserve the evidence of their right to vote.

"*No person*" the act of assembly expressly declares, "*shall be admitted to vote whose name is not contained in the list of taxable inhabitants furnished by the commissioners*," unless he make proof of his having paid a state or county tax within two years, or the required proof of his right to vote by being an elector between the age of twenty-one and twenty-two years:—"Where-upon," it is further expressly required and provided, "the name of the person so admitted to vote shall be inserted in the alphabetical list by the inspectors, and a note made opposite thereto by writing the word "tax," if he shall be admitted to vote by reason of having paid a tax, or the word "age," if he shall be admitted to vote on account of his age; and in either case the name of such voter shall be called out to the clerks, who shall make the like notes on the list of voters kept by them." By another section of the act, it is made the duty of each inspector who shall receive the ticket of an elector, to call out aloud the name of such elector which shall be inserted by the clerk sin separate lists, and the name shall be repeated by each of them, and the inspector shall insert the letter V in the margin of the alphabetical list opposite the name of such voter; and, *if such elector shall have been sworn or affirmed, or produced a certificate or other evidence as before provided of having been naturalized, the inspector shall also note the same on the margin of such list, and when proof of residence is made shall also note the name of the person making such proof.*"

While, therefore, the law explicitly declares that "no person shall be admitted to vote whose name is not *contained in the list of taxable inhabitants*," without making the specified proof of his right to vote, and without which his vote would be illegal, it provides the evidence of compliance with this indispensable requisition of the law, viz; *the enjoined notings of the officers upon the lists.* And it explicitly provides for the careful preservation of this evidence for the purpose of settling any dispute or controversy respecting the legality of such votes;—"As soon as the election shall be finished, the tickets, list of taxables, one of the lists of voters, and one of the certificates of the oath, or affirmation, taken and subscribed by the inspectors, judge and clerks, shall be carefully collected and deposited in one or more of the ballot-boxes, and such box or boxes being closely bound round with tape, shall be sealed by the inspectors and judge of the election, and together with the remaining ballot-boxes, shall within one day afterwards be delivered by one of the inspectors to the nearest justice of the peace who shall keep such boxes containing the tickets and other documents, *to answer the call of any person or tribunal authorized to try the merits of such election*; and the other list of voters, tally papers, and certificates, shall be enclosed by the said inspector and judge in a sealed cover directed to the prothonotary of the court of common pleas of the county, and shall by one of them be delivered into his office within three days thereafter when the same shall be filed."

These lists, then, should contain the evidence of the right of the 279 whose names are not on the list of taxables, to vote. They are *the evidence* which the law requires, and their preservation was a positively enjoined duty for the very purpose for which we here want them.—But the list of taxables which should have been, was not thus preserved. It cannot be found; and the officers can or will give no account of it. And the other lists contain no *notings* by the officers which show that any of these persons were examined, or produced any proof of their right to vote. On the contrary, it appears in the testimony taken and reported that *no one was sworn and examined upon oath, and that no naturalization papers were demanded or produced.* The conclusion is unavoidable, that the 158 whose names are found on the assessment list, *were the only qualified electors there.* And this, by the way, accords with the testimony of some of the witnesses who estimated the number of persons voting that day, at about that number; as well as with other evidence, to the same point, yet to be noticed. We have no evidence of the qualification of any others; nay, the evidence which the law requires as to the 279 whose names are not on the assessment, *has no existence*, and we are warranted in the conclusion that, if they were there, and did vote, their votes were illegal.

The ruling and reasoning of the court of Quarter Sessions of Philadelphia, in the District Attorney case, are so precisely in point here, that we extend our own by quoting at length that part of their opinion.

"The alphabetical lists produced in this case," says that court in relation to that case, "for the divisions enumerated, showed that, as far as these lists were concerned, the inspectors had utterly neglected or evaded the duty which the law requires them to perform. No one is marked admitted because he had paid a tax, or voted on age, and no oath appears to have been administered to any one, or any other proof required as to qualification. If this omission or neglect extended to a few votes only, it might be regarded as a mere irregularity, affording no reason to infer that the election officers acted in bad faith, as was said in Bolleau's case. But when the omission extended to hundreds of names, in some cases to nearly one half" (more than one half here) "of all the votes received, the conduct of the officers *can only be regarded as an intentional neglect of their sworn duty*; such a neglect, to call it by no harsher name, as appears to be utterly inconsistent with that good faith and integrity which is required to render the proceedings of election officers reliable, and without the appearance of which, *the evidence made by them is utterly unworthy of credit.* For these reasons, which are entirely consistent with the rule applied in all former cases, that the evidence offered must be free from circumstances savouring of fraud or contrivance, *we feel bound to disregard entirely the evidence of the lists of votes returned* in each of the eight divisions named, *so far as every name is concerned which does not appear on the list of taxables.*"—And all such votes (over 1700) were accordingly, thrown out.

We arrive at the same conclusion, upon different ground; whilst the reasons which influenced the Philadelphia court, has more force in this case, than in that. For both reasons, therefore, the names on the list of voters, not contained in the assessment list, must be rejected as spurious. And here we might rest this case. But suppose we merely treat this as affording a reasonable presumption that no other votes were legally polled, than evidenced by the official list; and that, which is the most favorable view of the case for the respondent which can possible be taken, would cast upon him, and those who would defend or stand forth as the apologists of that day's work, the *onus* of showing that these 279 names, are the names of persons who were at the polls, qualified to vote, and did vote on that day:—at least to show, that they were living men, resident at that time within the township of Washington. Nor, in this, do we exact of them what is either unreasonable or difficult.

If these 279 names are the names of men who were in the township on that day, under circumstances which gave them any pretext to claim the right of voting there, nothing would be easier than to show it by affirmative evidence. Of this, any one can readily convince himself by recurring to the list of voters at the same election in his own borough or township. Let him take it up, and enquire how long it would take him to find witnesses who know all upon it that he does not know himself. Let any one try it. It might not be so easy, we admit, to find persons who were not there! But any one can readily see how very easy it is to find out any and every actual resident in a township containing only 311 taxable inhabitants. While, moreover, it was an easy task to show it, if these 279 were actually residents of Washington township on that day, there existed the strongest inotive to do so, if it could be done. A fraud of such character and magnitude as here charged if established, must fix and fasten upon all implicated in it, the blackest stigma. To practice a deliberate fraud upon the right of suffrage, cheat honest citizens out of their votes, and poison and pollute the very fountain of government, is moral treason. No one surely, who has any regard for social duty, any self-respect, or any appreciation of the respect of others, would be willing to incur the odium of being suspected even of complicity in such a crime, if he could possibly avert it. Nor is he exposed alone to the denunciation of public opinion.—The law expresses its condemnation, and threatens its penalty. In addition to the specific penalties for the violation of particular provisions of the act of assembly, it is enacted, that "if any inspector, judge, or clerk of an election shall be convicted of any wilful fraud in the discharge of his duties, he shall undergo an imprisonment for any term not less than three nor more than twelve months, and be fined in any sum not less than one hundred dollars, nor more than five hundred dollars, and shall be for seven years thereafter disabled from holding any office of honor, trust or profit in this Commowealth, and shall, moreover, be disabled for the time aforesaid, from giving his vote at any general or special election within this commonwealth.

Here, indeed, are suggested powerful reasons for the production of evidence, if within the reach or power of the parties implicated, to repel any presumption, or even suspicion of fraud. And, as we have seen, it was easy to do so, if there was no fraud. And yet we have not one word of evidence produced or offered to show that these 279 names returned as legal voters, were in the township at the time of the election. We learn from the report of the commissioner that he proclaimed his readiness, to take on their part, any evidence they might offer; and yet none is produced. Nor, when the time for hearing this complaint arrived, were we asked for further time to procure such evidence. We have heard no allegation even, that such evidence exists. It is a rule of law, and of reason, "that if on the supposition a charge or claim is unfounded, the party against whom it is made has evidence within his reach by which he may repel that offered to his prejudice, his omission to do so, supplies a strong presumption that the charge or claim is well founded; as it would be contrary to every principle of reason, and to all experience of human conduct, to form any other conclusion. How, then, are we to regard this, but as a tacit admission of what it cannot be doubted is the truth, that these 279 names are fictitious, and the corresponding votes returned, a fraud?

But this is not all. The evidence does not stop here, although we might have paused, and disposed of the case, long ere this. The witnesses, several of them in number, whose attention was called to this subject, are unable to give any account of these 279 persons, except that it is stated by a witness of one, that some six or seven years ago, he was at his funeral; or, that, of a few others it is said, they once lived in the township, but have left it; or that they live elsewhere. This is all the information obtained of 275 of these 279, after diligent inquiry, and actual search, by those who would be likely to know, and could easily find them, if there.

Arthur Storm, who, as he testifies, has resided in Washington township fourteen years, and who has been constable, assessor, and collector, and who has had ample means and opportunity of knowing the people of that township, with this long list of names before him, and when his attention is particularly called to every name upon it, one after another, knows none of them, except three, as residents of Washington township, or as in Washington township, at the time of the election. A few are recognized as persons who resided there once, but who live in other places now. Of most of them,—of all of them, indeed, but a very few—he has no knowledge whatever.

James Conrad who has been a resident of Washington township for nine years,—who was collector of school tax for 1852 and 1853, collector of county poor, and State tax for 1856, and assessor the same year, and who made the assessment in 1857, is examined upon oath, and as he passes from name to name on the long list, can give no more information respecting them than Mr. Storm. Of all of them, except a few, he has no knowledge.

Matthew M. Adams, too, another intelligent witness, who was born within the limits of the township, and has lived there all his life, over forty years, examines this list of names in the same manner, and with the same result. His testimony corroborates that of Mr. Storm and Mr. Conrad. With the exception of a small number whom he recognizes as having resided in the township at a former period, or as now residing elsewhere, he has no knowledge of any of the names upon the long list. The mass of them, he does not know at all.

Jacob Burgoon, too, an old and veritable citizen of the township—who, as he swears, has lived there twenty-two years, who has been supervisor six years, assessor six years, and overseer of the poor six years, and has been a collector of tax; who swears that he has a general acquaintance with the land-holders in the township; and who swears, as well he might, that "it would be a mystery to him if all these names could be voters in that township without him knowing it"—and that he "could not come to the belief that they were there unbeknown to him"—when the list is submitted to his examination, can only recognise *nine* of the names upon it.

And a subpœna for all these persons, or with all the names on the list inserted in it, was issued by the commissioner, and put into the hands of constable M. S. Harr, to be served.—In his effort to serve it, he traveled day after day through the whole township, and every part of it, accompanied by Arthur Storm, an old citizen and well acquainted in the township, and with its citizens, as we have seen;—and, as he testifies that, after the most diligent search, he only found *four* persons answering to names on the list.

We have then, all this additional evidence,—(and, if this were all, who could entertain a doubt upon the question?—) that 275 of the 279 *on the list of voters*, which are not found *on the assessment list, or list of taxablas*, are not in the township, and were not there on the day of the election. This is called "*negative testimony*" by the respondent's counsel, because it is here introduced to show, that these alleged voters were *not* and are *not* in the township. It would be *affirmative* testimony, if adduced to show that they *were*, and *are*, in the township. The force of it, is the same in either case, the result depending on the fact as it exists. The proposition is embraced in the inquiry, WERE *and* ARE *they* THERE? No one can doupt for a moment that the knowledge of Storm, Conrad, Adams, and Burgoon, of the township and its citizens, would have discovered, and the diligent search of Harr and Storm have found if not all, at least the greater portion of this large number of alleged voters, *if in the township, and to be found there.* Had they been there, the testimony would have shown it, and would be affirmative. Had they been there, this evidence would have proven it, instead of proving, as it does, that they were not. Whatever you choose to call it, it is therefore, the force of positive or affirmative testimony. The existence of 275 voters in a township containing 311 taxable inhabitants, as we have already noticed, and as every one feels and knows, is very easily shown. An appeal to the knowledge of old citizens, and diligent search, must and will discover them, if there, as it must fail to do it, *if they are* NOT *there.*—The truth is, it is impossible, in a district like this, to practice a fraud upon the ballot-box like this fraud—by introducing 275 unreal or fictitious voters—and hide it. The attempt is as silly as that of the ostrich to conceal its huge body by thrusting its head into the sand.

But it is unnecessary, as it is sickening, to dwell upon the evidence in this case. The large and suspicious discrepancy between the *list of taxables* and the *list of voters*—the fact that only 158 of the 437 names returned as voters are found on the *assessment list*, and that, consequently, 279 of them had no right to vote without being sworn or examined by the board—the absence, if not the suppression, of the evidence required by law that this was done—nay, the fact, affirmatively proven, (so to speak) that it was *not* done,—the total absence of any evidence, or of any attempt or offer, on the part of the respondent, although incumbent upon him and them who would sustain or defend a result thus impeached—when, if it had been the truth, it was so easily shown, and so much depended upon it,—*that these 279 names represented persons in the township at the time;*—the fact, on the contrary, that old citizens of the township, with the most ample means of knowledge, know nothing of them, and that the most diligent search cannot find them:—these prominent facts and features of the case, we say, impress visibly and indelibly upon it the impress of fraud. We treat it as a fact, brought out by the evidence into clear day light, so clearly established as not to admit of a moment's doubt, that 275 of these names on the list of voters, are fabricated or fictitious, and the corresponding number of ballots *that* kind of fraudulent votes. This and this only, accounts satisfactorily for the very suspicious irregularities and departures from the requirements of the law in organizing the board, and conducting the election, which, though so numerous and glaring that it would be hard to impute them to ignorance or negligence, might *possibly*, if the result appeared to be right, be ascribed to some other than an intentionally corrupt or fraudulent motive. It is plain, however, that they were "means" adapted to the attainment of this "end;" and part and parcel of one fraudulent transaction.

It requires, therefore, very little calculation to dispose of this complaint upon its "merits." In any view of the evidence, we would be bound to treat the names on the assessment,—158,—as the only legal votes cast. It is contended on the part of the complainants, upon the evidence adduced, that 70 votes were actually cast for Abel Lloyd. It is shown, at all events, beyond doubt or cavil, that he did receive the number returned for him—44. This would leave 114, instead of 338 returned, for Lewis Fisher.—This would elect Mr. Lloyd by over 150 votes. But the facts in our judgement, disclose such fraud as renders the whole poll undue and void. Throwing away, therefore, the whole vote of Washington township, the result stands thus;—

Abel Lloyd,	1850
Lewis Fisher,	1622
Lloyd's majority,	228

To the case thus made out by the complainants, by more than sufficient evidence, the only answer by the respondent, and those who are behind him, is *a motion to quash* the petition and proceedings, for three reasons assigned in a paper filled since the case came on for argument; and which, reversing the order in which they appear in the paper filed, we shall now take up and consider.

1. One of the reasons is, "that the petition does not set forth the existence of facts which, if true, would change the result of the election."

No court, we agree, should entertain a complaint, and subject parties to the trouble and expense of an investigation, when the result upon the face of the complaint, would be fruitless. This reason, however, is filed and urged upon the attention of the court, after the labor has been undergone, and when there is evidence before us which proves beyond a doubt what does change the result as it respects the vote for county commissioner. Whatever consideration we might have felt inclined to give this had it been urged in an earlier stage of the proceedings, we would hesitate to arrest them now for that reason, if true. But is it true? The complaint, already quoted, asserts that "*a large number of illegal and fraudulent votes were polled for Lewis Fisher*, and that the return of said election so as aforesaid held in the said township of Washington, was falsely and fraudulently made to the said return judges, and that *thereby the said Abel Lloyd was unlawfully defeated of the said office of county commissioner.*"—This we think sufficiently explicit; particularly at this stage of the case, when we have before us a superabundance of proof to substantiate the complaint.

2. Another of the reasons is, "that the allegations of fraud, irregularities, &c., in the petition, are vague and general in terms, uncertain as to persons, and therefore should be quashed by the court."

They are not, we admit, as specifically set forth in the complaint as they are made out by the evidence; but it was not requisite that they should be. The different kinds of fraud and fraudulent votes proven, were complained of in general terms. It is impracticable, generally, to be more specific. It has been admitted in the argument that it was not practicable, or requisite, to set out the *names* of illegal voters; although it has been very earnestly insisted that, as an exception or what should be an exception, to the rule, the names of *dead men* alleged to have voted, should have been set out. As, however, the votes of not more than *two or three* dead men, if we recollect the evidence correctly, appear to have been returned, that was quite an immaterial averment, and might have been at any time heretofore, or might now be, stricken out, without at all affecting the result. The mass of these spurious voters were happily exempt from liability to *death*, and every other "ill that FLESH is heir to." They appear to have been paper men merely.

3. A third reason, and one which has been argued and urged with more earnestness than the others, is "that the petition is not verified as required by the act of assembly, not having been sworn to by two qualified voters of the township or country."

It is painful to find it so fully verified by the evidence in the case. Still, difficult as it is to treat seriously a mere technical objection interposed to the judgment of a court in a case clearly made out upon its merits, the party making such objection, especially when it is his all, and he rests his case upon it, is entitled to a fair consideration of his plea in arrest of judgment.

The petition is signed by twenty-two who represent themselves as qualified electors of the county of Cambria; and verified by two of them. The evidence shows that one of these two, J. P. Scott, a young man about twenty three years of age, was not legally entitled to vote on that day, because, and only because, he had not paid a state or county tax within two years; although, as it appears, he did vote in Washington township on that day. As it was his first vote depending on the previous payment of a tax, and as his father owned property in the township, it is not difficult to suppose that he may have voted thoughtlessly; and the officers of the election whose sworn duty it was to inquire and see to it, are more censurable than he. But the question is not, whether he did vote or had a right to vote, on that day. One who was not at the election at all, if he had a right to vote there, it cannot be doubted, might sign or verify such a petition. This young man possessed all the general and inherent qualifications of a voter. He was not a minor, an alien, or a non-resident. He labored only under the casual or accidental disqualification arising from not having paid a tax. If, however, any citizen of the township who was not at the election on that day, whether he had paid tax within two years or not, if otherwise in all respects entitled to vote, and who might qualify himself to vote before another election, or at any time, by the payment of his tax, had verified the petition, whose deliberate judgment would conclude that he was not "a qualified elector" within the meaning of the act of assembly, upon a reasonable construction of it?—or that a petition on that ground, and especially after the truth of the complaint is fully established, should be quashed?

If the objections to this election suggested mere irregularities, or what might be considered undesigned departures from what is merely directory in the election law, and no fraud were proven, and no one appeared to have voted but those who had a right to vote, we would feel inclined to require the utmost strictness in a proceeding which aimed at overthrowing an election on technical and unsubstantial grounds. But when gross and flagrant frauds are clearly established, to require this would be little less than to make ourselves *particeps criminis*, and render this court, instead of being what every court should be, "a place where justice is judicially administered, a refuge and sanctuary of fraud and crime.

We have been told in this case, that this proceeding was got up by disappointed office-seekers, and should not, therefore, be encouraged. If this were so, it would but illustrate the adage, "when rogues fall out honest men get their dues;" and, in the aspect in which it is before us, it would still be our duty to deal with the case as made out by the proof. As we have already remarked, however, we recognise to this petition the names of some of the most respectable citizens of the county; and we doubt not they have been actuated by the purest and most patriotic motives. The necessity of requiring great strictness and formality in such complaints, has also been very strenuously urged upon our attention, as of all-absorbing and paramount importance. To give undue consideration to technical strictness here, when the act of assembly requires us to decide upon merits, though the effect might only be to stifle wholesome investigation, would be to "tithe the mint, cummin, and anise," and neglect "the weightier matters of the law." But to hesitate in the consideration of any reasons here presented and urged for quashing this petition, when the effect would be to sanction and sustain the most appalling fraud upon the ballot-box and with plenary proof of it staring us in the face, would be to "strain at a gnat, and swallow a camel." "Courts of justice," as Judge Thompson observes in the District Attorney case, "would deserve to lose all confidence and respect,"—nay, we add to it, would deserve the contempt of everybody,—"if they were astute in devising technical rules under which the dearest rights of the people would be destroyed by unworthy men."

The only difficulty which we have felt in this case, has been in determining whether it is our duty to take other or further notice of it, than to record our judgment upon the merits of the complaint with regard to the election of county commissioner. Offences against the law, indictable in this court, in which the officers of this election are implicated, are clearly proven in the evidence before us. But whatever a court may feel to be duty, when such disclosure is made against a party in its presence, yet as those impeached are not before us, or strictly parties to the proceeding, we deem it proper to leave any ulterior action against them to those to whom it more appropriately belongs to exert an active agency in instituting and carrying on public prosecutions for crimes and misdemeanors,—the District Attorney, the Grand Jury, and such private citizens of Washington township, or the