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THE COURTS.

THE REGISTRY LAW.

DECISION OF THE SUPREME COURT

THE LAW CONSTITUTIONAL

THOMPSON AND SHARSWOOD DISSENT

Death Blow at Election Frauds

Patterson, et al. vs. Barlow, et al. In this case, brought to test the constitutionality of the Registry Law, Justice Agnew, this morning, read the following opinion:

Agnew, J.—We regret that the necessity for an immediate decision in this case has allowed so short a time for the preparation of our opinion; and that the public character of the questions demands a treatment too full to be compatible with brevity.

The plaintiffs are private citizens, electors of the Commonwealth, tax-payers, and holders of real estate in the city of Philadelphia. By their bill they ask us to declare illegal and void an act of the General Assembly passed the 17th of April, 1869, supplemental to the election laws of the Commonwealth, and to enjoin the Councils, Aldermen, Commissioners, Controller and Treasurer of the city from carrying its provisions into effect. The defendants deny the standing of the plaintiffs as proper parties and the jurisdiction of the Court over the subject. In view of the danger to the peace and quiet of the people if the constitutionality of this law should be left in uncertainty, we shall pass by the questions of standing and jurisdiction in order to reach the all-important one upon the validity of the law. In passing them by we do not mean it to be inferred that we have not grave doubts of the rights of the plaintiffs to represent the public, and of our own jurisdiction to enjoin against one of the political systems of the State in its entire scope, because of the invalidity of some of its provisions. We doubt the right of the plaintiffs to call for an injunction beyond that portion of the law which they, as private citizens, can show to be injurious to their own rights, and it is more than doubtful how far, as private citizens, they can impugn the law in its public aspects, and ask us to restrain its execution on public grounds. This is the only system to regulate elections intended by the Legislature to be left in force; all laws supplied by it and all inconsistent with it being expressly repealed. If, as a Court of Equity, we can lay our hands on the whole system, because of the illegality of some of its parts, we can, on the eve of any election, arrest the entire political machinery of the Commonwealth, which is set in motion by a general election. This is a stupendous power; and to see its true aspect, we have only to suppose the act of 1839, and its supplements, to be still in force, and that this bill is filed to enjoin against it on the ground of the alleged illegality of some of its provisions. As a question of power, we would have the same right to enjoin against it, and thus to stop the wheels of government. See the *State of Mississippi vs. Andrew Johnson*, 4 *Wallace*.

We come now to the important question, whether the act of 17th April last, called the Registry Law, is constitutional? It is admitted that the Constitution cannot execute itself, and that the power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the Government. The Constitution appoints the time of the general election, prescribes the qualifications of voters, and enjoins the ballot; and for all the rest the law must provide. The precincts and places, the boards of election, the lists of electors, whether called a list of taxables or register of voters, and the evidence of persons and qualifications, must all be prescribed by law. This undoubted legislative power is left by the Constitution to a discretion unfettered by rule or proviso, save the single injunction "that elections shall be free and equal."

But to whom are the elections free? They are free only to the *qualified* electors of the Commonwealth. Clearly, they are *not* free to the unqualified. There must be a means of distinguishing the qualified from the unqualified, and this can be done only by a tribunal to decide, and by evidence upon which a decision can be made. The Constitution does not provide these, and therefore the Legislature must establish the tribunal, and the means of ascertaining who are and who are not the qualified electors, and must designate the evidence which shall identify and prove to this tribunal the persons and qualifications of the electors.

How shall elections be made equal? Clearly by laws which shall arrange all the qualified electors into suitable districts and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth.

But how shall this freedom and equality be secured? The Constitution has given no rule and furnished no guide. It has not said that the regulations to effect this shall be uniform. It has simply enjoined the duty and left the means of accomplishment to the Legislature. The discretion, therefore, belongs to the General Assembly; is a sound one and cannot be reviewed by any other department of the Government, except in a case of plain, palpable and clear abuse of the power which actually infringes the rights of the electors. It is not possible, nor does the Constitution require that this freedom and equality of election shall be a perfect one. No human law, affected, as it must be, by obstacles and a difference of circumstances, can devise a system of perfect equality—it can only approximate it; and mere errors in the execution of the power cannot make the execution unconstitutional. Individuals may experience difficulties, and some may even lose their suffrages, by the imperfections of the system, but this is no ground to pronounce a law unconstitutional, unless it is a clear and palpable abuse of the power in its exercise. Then, that election is free and equal where all of the qualified electors of the precinct are carefully distinguished from the unqualified, and are protected in the right to deposit their ballots in safety, and unprejudiced by fraud. That election is not free and equal where the true electors are not separated from the false; where the ballot is not deposited in safety, or where it is supplanted by fraud. It is, therefore, the duty of the Legislature to secure freedom and equality by such regulations as will exclude the unqualified and allow the qualified only to vote. A free and equal election is the end; regulations to attain it are the means. If the end be attained, it is evident no question of constitutional law can arise on the uniformity or diversity of the regulations by which the end is reached.

Of a necessity, laws passed to promote a given object must be controlled or modified by the circumstances surrounding the object, and must be framed to meet the exigencies standing in the way of the end to be reached. If uniformity of regulation be unsuited to different localities, the end must be attained by diversity. If, in one part of the State a system secures to electors a free and equal election, but fails to secure it in another part, because of the difference of circumstances, what principle of constitutional law makes it unlawful to enact other provisions to counteract the circumstances and secure the true purpose of the Constitution? Good sense, good order and sound morality require this diversity of regulation when it secures the end; and it is a great fallacy to substitute uniformity of regulation, for a free and equal election.

This is not a new question—a registry law for the city and county of Philadelphia was passed on the 16th day of June, 1836. The list of voters corrected and certified on the first Tuesday of October, one week before the election, was made "*the only and conclusive evidence of the qualifications of the electors thereof, except in the cases of naturalization hereinbefore mentioned.*"

No attempt was ever made to question the constitutionality of the Registry Law of 1836, though enacted under the provision of the Constitution of 1790, now in force. It was in force when the Convention to amend the Constitution sat in 1837-8, and entered largely into its discussions. The attention of the Convention was thoroughly aroused to it. In Committee of the Whole on the report of the Committee on the 9th article, Mr. Sterigere, of Montgomery, moved to amend the 5th section by adding a provision for *uniformity* in the regulations for elections. It was voted down, and when the report came up on second reading, Mr. Sterigere again offered it. The amendment will be found on the 249th page of the 11th volume of the Debates of the Convention, in these words:—"The fifth section being under consideration, which reads in words following, viz., SEC. 5. *That elections shall be free and equal*, Mr. Sterigere, of Montgomery, moved to amend the said section by adding to the end thereof the words as follows, viz.—*The election laws shall be uniform throughout the State, and no greater or other restrictions shall be imposed upon the electors in any city, county or district than are imposed on the electors of every other city, county and district.*"

Mr. Sterigere stated that this amendment was offered in Committee of the Whole, and was rejected by a small majority. John M. Scott, of the city of Philadelphia, said this amendment was fully discussed in Committee of the Whole. It should be understood, he said, *that its effect would be to destroy the Registry Law in the city and county of Philadelphia.* Mr. Charles Brown, of the county of Philadelphia, said he knew no reason why the law should be different in one part of the State from what it is in another. The previous question was then called, cutting off the amendment, and was sustained by a vote of 69 to 42—a number of the political friends of Mr. Sterigere and Mr. Brown voting in the majority. Thus the 5th section of the 9th article was left as it stood in the Constitution of 1790, to wit: "That elections shall be free and equal." This was no party vote—the relative strength of parties in the Convention being 67 and 66, and it should put an end to all argument on the constitutionality of the Registry Law.

The question of uniformity of regulation was conclusively settled by this vote. The very purpose of the amendment of Mr. Sterigere was to destroy the Registry Law, then existing under the identical provision in the Constitution of 1790, that elections shall be free and equal. This purpose was brought distinctly to view by Mr. Scott, and the convention by this vote decided against uniformity of regulation and against imposing restrictions upon legislative power.

Last year the question upon the power of the Legislature to pass a Registry Law was brought before this court in the case of *Page et al vs. Allen et. al.*, and a majority of the court (composed of Justices Strong, Read and myself) held that the power existed; but Justice Strong thought the act of 1868 unconstitutional in a single, but essential, particular, by requiring proof of a residence in the district longer than the constitutional period of ten days. *That* law was, therefore, held to be unconstitutional by a majority, Justice Read and I dissenting. The decision, therefore, has no bearing on the general question.

That a Registry law to identify and distinguish true electors is constitutional we cannot doubt, and that uniform regulations are not enjoined by the constitution is beyond all dispute.

But is there a necessity for local legislation adapted to the city of Philadelphia, not suitable to other parts of the State? If not, why is a city charter granted, with all its large powers of local government, its special provisions for police and for conduct? Where population greatly abounds vice and virtue have their greatest extremes. A simple rural population needs no night police and no lock-up. Rogues and strumpets do not nightly traverse the deserted highways of the farmer Low inns, restaurants, sailors' boarding houses and houses of ill-fame, do not abound in rural precincts, ready to pour out on election day their pestilent hordes of imported bullies and vagabonds, and to cast them multiplied upon the polls to vote. In large cities such things exist, and its proper population therefore needs greater protection, and local legislation must come to their relief The freedom and equality of the ballot-box must be protected from the local causes which mar and destroy a free and equal election. What crime have the freemen of Philadelphia committed, that their voice at the ballot-box may be stifled by the fraud or force which springs out of their local circumstances, and yet the Legislature be powerless to relieve them? In the language of another, that would be "to place the vicious vagrant, the wandering mobs, the Tartan hordes of our large cities, on a level with the virtuous and good man—on a level with the industrious, the poor and the rich." Is that a wise and just interpretation of the Constitution which opens the polls of a large city to such imported hirelings and vagabonds without a home, by adhering to an uniformity of regulation unsuited to the city on the one hand or to the country on the other? Is the Constitution of Pennsylvania so deformed and sterile that her laws cannot protect the ballot-box of a city from falsehood and fraud because they admit of but one unbroken system for the State? Such an interpretation of the Constitution is wanting in merit, and can only operate as an incentive to fraud. How, then, can the freedom and equality of elections be secured in a great city if from the force of local circumstances the places of the real electors are usurped, if the ballot-box can be stuffed with impunity, or if suffrage can be exercised only at the risk of violence or life?

Thus the ground on which the case was placed at *Nisi Prius* is swept away; the postulate of the learned Judge being that uniformity of regulation throughout the State is a demand of the Constitution as the equivalent of equality of election. But when it is shown that the constitution nowhere demands uniform regulations, and on the contary, that the very equality of elections demands a difference in regulation to overcome the obstacles to equality and fairness in the city, his fundamental position is overturned, and with it the entire argument built upon it. Then of what service is it to display the differences in this law between the regulations made for the city and those for the State? Let them be ten, or ten times ten, it is not their difference which proves their unconstitutionality—difference in regulation is not want of equality in the election. He who would prove them to be unlawful must show wherein they subvert the rights of the electors themselves. If the prevalence of fraud, corruption or force in the city makes the law more rigid and exacting in order to determine the rights of the lawful electors, it may be a hardship, but it is not caused by the law, but by the crimes which make the law necessary for their protection.

When the Legislature possesses an undoubted authority to regulate, such as in this case, its discretion is not the subject of review. This is expressed by Black, J., in Sharpless vs. the City of Philadelphia, 9 Harris, in these words: "There is another rule which must govern in cases like this, viz.: That we can declare an act of Assembly void only when it violates the constitution *clearly, palpably, plainly*, and in such manner as to leave *no doubt* or hesitation in our minds. This principle is asserted by judges of every grade, both in the Federal and in the State Courts, and by some of them it is expressed with much solemnity of language." He refers then to 6 Cranch, 87; 4 Dallas, 14; 13 S. & R., 178; 12 S. & R., 339; 4 Binney, 123. See also the opinion of Woodward, J., in Givin vs. Commonwealth, decided at Harrisburg in 1868.

We come now to the question, what provisions of this law for the regulation of the city elections, if any, are subversive of the rights of city electors? The number of these objected to is few, after having disposed of the difference between city and State regulations. Much stress has been laid on the right of the people to elect the officers of the elections, and much said upon popular rights, which might well be addressed to the Legislature in making or reforming the law. But unfortunately for the argument the people have by their Constitution disposed of all such appeals when addressed to us. What clause of the Constitution forbids the officers of election, the canvassers or even the assessors to be appointed by a board constituted by law, whether it be a Board of Aldermen or a Board of Commissioners? Let the Constitution itself answer. Art. 6, Sec. 8.—"All officers whose election or appointment is not provided for in this Constitution, shall be elected or appointed as shall be directed by law." Here then is a law made under the direct sanction of the people themselves, expressly given in the Constitution. But it is said that the law is unconstitutional because the Board of appointment in this case (the Aldermen) have a majority in it of persons belonging to a particular political party, and the argument omitted to say, a majority which is the result of popular elections. This ground of unconstitutionality of a law because a Board created by it is composed of individuals of different political opinions, with a majority in a certain way, the result of popular elections, seems to belong to an age fruitful in discovery. How is it possible that any board composed of men can be organized without a majority in political opinion in one way or another? To the party in the minority such a board must always be unconstitutional, if such arguments were to prevail.

But clearly it is not unconstitutional and not unfair to designate a Board of gentlemen chosen by the people to administer the laws among them. If these men be unfit agents it is not the fault of the Legislature, but of a people who will elect such men to administer justice to themselves. The law binds the Board of Aldermen to appoint the officers of the election so that the political parties having a majority in the election division shall have a majority of the Board. It requires the canvassers to be appointed, so that each party will be represented in the several boards of canvassers, adding a supervising power in the courts to correct errors. What fair mind can pronounce this an *abuse* of Legislative power, so gross, so palpable, and so plain as to become an unconstitutional act? Said Chief Justice Marshall: "All power may be abused, and if the fear of its abuse is to constitute an argument against its existence, it might be urged against the existence of that which is universally acknowledged, and which is indispensable to general saefty."—*Brown vs. Maryland*, 12 Wheaton, 441.

The argument that the Aldermen, being judicial officers, cannot be compelled to act, is of no weight, and was so regarded by the whole Court in *Page et al. vs. Allen et al.*, decided last year. The position would overturn our own acts as judges in the appointment of prison, penitentiary and building inspectors, commissioners to take testimony, and other officers. The practice is sanctioned by a century of use. The lower courts fill all vacancies in county and township offices, such as commissioners, auditors, surveyors, district attorneys, constables, supervisors and overseers of the poor. The Associate judges constitute a part of the military boards under the Bounty and Provision laws, and the boards for the revision of taxes, and the judges of the Judicial Districts appointed the Revenue Commissioners. Besides, the aldermen have not refused, and it is not likely they will refuse; and what authority have these plaintiffs to gainsay their right to act, or to put in a refusal on their behalf? The truth is, the whole weight of this objection consists in the fact that the majority of the Board, representing the popular majority, hold opposite opinions to the plaintiffs, and when a new deal of the popular cards turns up a different majority I suppose gentlemen of the opposite party will use the same argument.

The next objection urged with equal, perhaps greater zeal, is that there is no provision for assessing persons in the city after the 20th of September. The purpose of this regulation is obvious; it is to cut off the unqualified persons who are imported into the district to displace the votes of the true electors, by taking a period for the latest assessment sufficiently distant from the day of election, to render it inconvenient and difficult for these hirelings to obtain a false qualification. But what clause of the Constitution requires the assessment of taxes to be extended to any period? It is a new discovery that the system of taxation must be subordinate to that of election. Neither the Constitution of 1790 nor that of 1838 prescribed any time for the exercise of the powers of taxation, though both use the *payment* of tax within two years as the means of distinguishing the true elector, and as an evidence of his residence and membership in the community. It is a great error in constitutional law to mistake a restriction for an injunction. When the Constitution provides that the elector shall have paid *within two years* a State or county tax, which shall have been assessed at least ten days before the election, its purpose was to restrain the assessment so that voters might not be fraudulently made at the very polls; but it did not require the tax power to be altered so that assessments should be compulsory down to the tenth day before the election. There is no express injunction, and it is not even a fair implication. The rights of the true electors were well protected when they were allowed two years pending for the *payment* of a tax to secure their qualification, a period including certainly two, and it might be three, annual assessments. To this the law adds an *extra* assessment at any time before the 20th of September. The time of the assessment of taxes is part of a different system—that of taxation; and the Constitution has nowhere said it is to be subordinated to the system of election. This time belongs to the sound discretion of the Legislature, and should be regulated with a regard to what they believe the best interest of the citizens. If the Assembly believe that the best means to prevent frauds in the city elections is to increase the period for the last assessment, it may be done—the only constitutional provision being the *restriction* that the time shall not be *less* than ten days before the election.

The alleged double taxation scarcely deserves notice. The system of annual taxation has marked the whole history of the Government. He whose name is on the annual list, and on whom a tax is assessed, is clearly not to be listed a second time for *taxation*. He is to be listed for the election.

The first list of electors is to be made before the 1st of June, and being made by the same officers, is evidently intended to be made in connection with the original assessment. If an elector has been already taxed, his tax will be transferred to the list of electors; if not, the tax will then be assessed in order to perfect his qualifications as a voter. When the law is so easily harmonized, it is a forced construction which exacts a second tax from one whose name is on the original list.

The *extra* assessments on the subsequent lists are evidently required to perfect the elector's qualifications.

It is argued that the provision of this act which requires the assessors to omit from their lists all boarders at hotels, taverns, sailors' boarding-houses and restaurants; and all persons not qualified electors having a fixed residence in the division, is unconstitutional. It is said that a large class of electors is thus excluded from the list. This is a palpable error. The law forbids the assessor to take down the names of such persons, to prevent the frauds known to result from taking down lists of persons given in as boarders when no such persons are residing at the hotel or boarding-house. But it nowhere forbids these omitted persons from being placed on the registry at the proper time, and on proper evidence. On the contrary, a mode is provided to enable every lawful elector to be registered by application to the assessors or to the canvassers. Clearly, the feature complained of is a useful provision to protect the rights of the true electors of Philadelphia, and to reach the unqualified persons found at such convenient places just upon the eve of an election, when their votes are needed by unscrupulous men. Its purpose is to exclude this fraudulent element, by compelling all persons not known householders and fixed inhabitants to come personally before the proper board and make proof of their right. True, the omission requires of single men, clerks, journeymen and transient boarders a greater vigilance to secure their suffrage, but the hardship is not imposed by the law, but by the necessity which required it, in order to protect them and all other honest electors from being supplanted by fraudulent votes. What clause of the Constitution forbids this power to be exercised according to the exigencies of the circumstances? When the population of a locality is constantly changing, and men are often unknown to their next door-neighbors; where a large number is floating upon the rivers and the sea, going and returning, and incapable of identification; where low inns, restaurants, and boarding-houses constantly afford the means of fraudulent additions to the lists of voters, what rule of sound reason or of constitutional law forbids the Legislature from providing a means to distinguish the honest people of Philadelphia from the rogues and vagabonds who would usurp their places and rob them of their rights? I cannot understand the reasoning which would deny to the Legislature this essential power to define the evidence which is necessary to distinguish the false from the true. The logic which disputes the power to prohibit masquerades in elections on the ground that it affects their freedom or equality, must also deny the power to repress the social disorders of a city, because the same Bill of Rights declares that all men are free and equal and independent, and have the right of pursuing their happiness. The power to legislate on the subject of elections, to provide the boards of officers, to determine their duties, carries with it the power to prescribe the evidence of the identity and the qualifications of the voters. The error is in assuming that the true electors are excluded because they may omit to avail themselves of the means of proving their identity and their qualifications. It might as well be argued that the old law was unconstitutional because it required a naturalized citizen to produce his certificate of the fact, and expressly forbade his vote if he did not. What injustice is done to the real electors by making up the lists so that all persons without fixed residences shall be required to appear in person, and thus to furnish a true record of the qualified electors within the district?

In connection with this subject another feature is mentioned as a hardship, requiring the proof of residence by two witnesses, who must be householders and electors. But hardship is not the test of the constitutionality of a law. This case is no harder than the law which requires a will to be proved by two witnesses before a man can exercise his more precious right of disposing of his property among his children when he comes to die. Both laws have the same purpose—protection. One would protect electors against fraudulent voters; the other would protect the dying man against a fraudulent will.

Another complaint is made of unconstitutionality, on the ground that the canvassers are required to strike off the list the names of all *unqualified* persons, if, upon *due* inquiry and investigation, they shall find them to be *unqualified;* but, in the absence of the person, they can only do this on the testimony of at least two reputable citizens, who are private householders.

The argument is that the law is unconstitutional because the canvassers might abuse their powers. They are not permitted to strike off any unqualified voter, and if they do he has his remedy at law to compel them to restore his name. The canvassers are a legal tribunal established to decide on evidence of qualification, are sworn officers, and are required to proceed in a due and proper mode, and decide on sufficient evidence. But a law can be pronounced unconstitutional only when the law itself subverts the true elector's rights, and not because the tribunal acting under it may make mistakes or even abuse functions. All tribunals of every kind could be set aside upon such an argument. The language of Chief Justice Marshall may be again referred to on this point.

Another ground much urged is that the proper time for the proof of the qualifications of electors is the day of election, for then only, it is said, the period of residence is complete, and from the nature of the facts this cannot be shown before. Grant it. But this position is taken in mistake of the very law before us. By this law it is on that day, the election day, the Election Board sits to receive the vote and the proof; then the elector appears before them and proves his franchise; then the evidence is produced and the decision made upon it. But what clause in the Constitution forbids the means to be provided beforehand which furnishes evidence of the fact? What clause forbids the making up of a record ten days before that shows that the person offering his vote to the Board was *an actual* resident in the precinct ten days before, and was then set down as entitled to claim his privilege on the day of election? Why is such a record not good evidence that his residence actually began in the district or pre-existed there ten days before the election? It certainly does not diminish the true elector's right, but, on the contrary, tends to secure it. It is better evidence than the testimony of some irresponsible and base perjurer, brought to prove a false residence at some low boarding-house. The record has the merit of truthfulness, and it relieves the true and honest electors of those unfounded and malicious objections to his vote made by partisans of either side. Here is the legal proof that his residence in the district began in the due constitutional time. What better proof can there well be of a residence complete on the day of election than the personal appearance of the elector on that day, claiming his vote, with his ballot in one hand and the register in the other? It is good evidence, for the legal presumption of residence arising from such proof is violent.

But it is unnecessary to discuss this subject at greater length. The want of time to condense the argument has made this opinion already too long. Enough has been said to show that free and equal elections are the true end to be secured, and that the system of laws regulating the elections is only the means of securing the end; that this system of regulation is the subject of legislation over which the Legislature exercises a sound discretion; that no clause in the constitution requires uniformity of regulation, or prohibits legislation according to the obstacles which different localities present to prevent a free and equal election; and that it is a mistake to substitute uniformity of regulation for the free and equal election which it is the object of the regulation to secure. We have also shown that none of the features of this law subverts the rights of the true electors of this city, and that is the only test of the constitutionality of any provision contained in the law.

It is true there is a kind of liberty this Registry Law will destroy. It is that licentiousness, that adulterous freedom which surrenders the polls to hirelings and vagabonds, outcasts from home and honest industry; men without citizenship or stake in the government; men who will commit perjury, violence, and murder itself. To prevent this is the purpose of this law, and it should have the aid of fair men of all parties to give it a fair trial, and secure its true end. It may have defects—doubtless it has; and what system devised by the wit of man has not? But its defects, if any, should be remedied as they are disclosed by experience. The law is not unconstitutional. It is a part of the political system of the State, on which its offices and its very continuance depend; and we, as a Court, have no right to put hands upon the whole system on the grounds of more hardship, and for defects of regulation which are not clear or palpable violations of the letter or very spirit of the Constitution.

The decree of the Court of Nisi Prius is reversed, and the special injunction dissolved, and the case remanded for further proceedings.

Thompson, C. J., and Sharswood, J., dissent.

SUPREME COURT.—Chief Justice Thompson and Justices Read, Agnew, Sharswood and Williams.—The following judgments were entered this morning:—Commonwealth of Pennsylvania Ex. rel. Attorney-General vs. James Gamble:

July 1, 1869, this case came on to be heard at an adjourned term of the Court holden at Philadelphia, and was argued by counsel on demurrer plead on the part of the defendant; and now, July 7, 1869, it is considered and adjudged that judgment be and is hereby ordered to be entered in favor of the defendant, and against the Commonwealth, and that the defendant be discharged hence with his lawful costs.

The Chief Justice announced that a written opinion would be filed hereafter. The judgment entered this morning determines in fact that the act of Assembly passed at the last session, repealing the act creating the Twenty-ninth Judicial District, and transferring Lycoming county to the Fourth District, is null and void, being unconstitutional. Judge Gamble therefore retains his office as Judge, to which he was elected by the people of the Twenty-ninth District, as created by the original act of Assembly.

THE GRAND OLD ARMY OF THE POTOMAC ONCE AGAIN IN MOTION.

[Correspondence of the Phila. Evening Bulletin.]

NEW YORK, July 5, 1869.—The grand old Army of the Potomac is once again in motion. It certainly could not be said that "all was quiet" along the lines of this army to-day. For never was there more hearty rejoicing, fun-making, and I might almost say tears-shedding, in camp or in garrison. Why, imagine such a congregation of brave, true soldiers! In entering the Grand Opera House, this morning, I saw a scene which I shall never forget. The hall was festooned with flags and bunting; the magnificent battle-scene of Gettysburg, by Walker; shields, sabres, cannon, muskets, bugles, drums, adorned the hall; but, above all, here were the true and the brave. On the floor we would meet an old companion with a wooden leg or an empty sleeve; but he even could not help being cheerful to-day.

About eleven o'clock the hall was filled, and Gen. George B. McClellan called the comrades to order. Many in that hall had not heard him give a command since Malvern Hill or Antietam, and it did them good to see once more their brave and loved commander. And here were our corps, division, brigade and regimental commanders. Yes, and here was our captain and our lieutenant, here our bugler and our "bunky;" all on the same level to-day—all happy in seeing one another again.

Imagine such men as McClellan, Sheridan, Meade, Burnside, Wright, Hartsuff, Torbert, Chamberlain, Heintzelman, Ruggles, Jackson, Hunt, Slocum, Franklin, Ingalls, Webb, Butterfield, Pleasanton, Owens, Myers, Shaler, Cochran, Locke, Newton, Davies, Mott, and a hundred other braves—all here, all together, and all happy. Yes, and here were representatives of the Army of the Cumberland, the Tennessee, and the Georgia, to grasp hands with the boys of the Army of the Potomac.

Of course there was feeling in regard to the candidates.

Here was a McClellan man who well remembered Malvern Hill and Fair Oaks; Fredericksburg and East Tennessee were not forgotten by the soldiers under Burnside; the genial, chivalrous and noble Hooker had his true friends here, while the victorious Meade had his friends everywhere. And let me ask, why should he not? From first to last ever with his comrades. And here comes a heavy column of the "Boys in Blue," shouting for Sheridan, and of course his name is sufficient; and the shout spread, and became so heavy that Philip H. Sheridan is unanimously elected the first President of the Army of the Potomac. Many believed, and still do, that General McClellan, the *real* organizer of this old army, should have been elected; but such was not the case, and our brave "Little Mac." says to "Little Phil.": God speed you!

The initiation and annual dues are such that every one can become a member who has been identified with this Grand Old Army, and who loves its associations, cherishes the memory of those good old days, and who saves but the paltry sum of one dollar a year.

The forenoon was spent in organizing, hands shaking, and, I must say, a real, downright, honest, love meeting. (I don't mean to reflect upon the Sorosis.)

The afternoon was spent in balloting for President, which resulted in Sheridan.

And now here comes the evening; and what a glorious evening it was (I am afraid it was a glorious night for some.) At seven P. M. the Academy of Music was filled with the brave and the fair. Gen. Chamberlain's oration touched the heart of every comrade here. All knew him to be brave, all knew him to be eloquent, but it seemed to-night that the God of Battles inspired this loved hero.

The banquet was, in every sense, a success. Around the *groaning* tables of Delmonico these comrades mingled, eat, *drank*, sung, laughed, spoke, toasted—and I don't know what they did not do. Suffice it to say they had a good old time, and all went home happy.

General Sheridan presided at the feast, and around him sat nearly all of the braves who were in Convention. Speech-making was somewhat out of the question, but toasts were responded to by General Fairchild, General Chamberlain, Admiral Farragut, General Burnside, Generals Meade, Stannard, McCandless, Colonels Sharp, Church and Hutchins.

To-morrow the comrades meet again, and the same harmonious spirit and good feeling will prevail.

BEN.

THE FRIENDS AND THE INDIANS.

The Savages on Friendly Terms with the new Agents.

To the Editors of the Evening Bulletin:—In order to show that all the Indians to whom the Friends have been sent as agents do not hold the same opinion of them as expressed in a notice published in your paper a few evenings since, I ask you to publish the following extract from the speech of Ar-ke-ke-ta, the head chief of the Otoes, in reply to an address of the agent recently placed in charge of that agency:

"There are many white people in the world, but it has pleased our great father at Washington, from among them all to select you that he might send you to be a new father to us. Our braves have long been looking for you, and even little children rejoice that you have come. We know that you will deal justly with us; for you belong to William Penn's band, and they are a people that love the Indians."

W. P.

FACTS AND FANCIES.

Fourth of July Ode.

BY RALPH WALDO EMERSON.

O tenderly the haughty Day
Fills his blue urn with fire,
One morn is in the mighty Heaven,
And one in our desire.

The cannon booms from town to town,
Our pulses are not less,
The joy-bells chime their tidings down,
Which children's voices bless.

For He that flung the broad blue fold
O'er mantling land and sea,
One-third part of the sky unrolled
For the banner of the free.

The men are ripe of Saxon kind
To build an equal state;
To take the statute from the mind,
And make of duty fate.

United States! the ages plead—
Present and Past, in under-song—
Go, put your creed into your deed,
Nor speak with double tongue.

For sea and land don't understand,
Nor skies, without a frown,
See rights for which the one hand fights
By the other cloven down.

Be just at home, then reach beyond
Your charter o'er the sea;
And make the broad Atlantic pond
A ferry of the free.

And, henceforth, there shall be no chain,
Save, underneath the sea;
The wires shall murmur thro' the main
Sweet songs of liberty.

The conscious stars accord above,
The waters wild below,
And under, thro' the cable wove,
Her fiery errands go.

For He that worketh high and wise,
Nor pauses in His plan,
Will take the sun out of the skies
Ere freedom out of man.

—Miss Kellogg goes to Europe in August.

—Susie Galton is singing in Boston.

—The Queen of the Greeks gave birth to a son June 24th.

—Albert Grisar, a popular composer of light French operas, died at Paris lately, aged 61.

—Madame Ristori will return next spring to the United States.

—The Austrian War Department favors the use of the bicycle by orderlies.

—King Victor Emmanuel said recently that he feared his dynasty would not survive him.

—Of 860 applications for velocipede patents, 100 have been granted.

—A Charleston incendiary put a kerosene lamp under a bed and roasted a whole family.

—It is said that Lake Erie has a seven-inch tidal wave.

—The last season of opera in Havana cost the manager $60,000.

—The price of the *Pall Mall Gazette* has been reduced to one penny. Heretofore it has been two pence.

—Beecher thinks that, at breakfast-time, the sound of the breakfast-bell is sweeter than all the music of morning birds.

—Fashionable people in Paris have tabooed railway travelling this season, and are wandering over Europe in their private carriages.

—The British Parliament has spent £20,000 to discover that the coal supply of the kingdom is sufficient to last forever.

—A Washington paper informs us that "the Great Eastern still keeps on her *eastward* course with the French cable."

—A man named Cash was sent to jail in Nashville, last week. A jail is an unusual, but should be a safe place for Cash.

—Thomas's operas, "Hamlet" and "Mignon," had very small success at Leipsic, and their production at Berlin is consequently postponed indefinitely.

—General Magruder says that he got so drunk at the Democratic Convention in New York last year he has "schwore off" inexorably.

—One of those singular optical phenomena known as the mirages was lately seen at Port Dalhousie, the north shore of Lake Ontario, thirty miles distant, being plainly visible to the naked eye.

—A tragedian on the St. Louis stage was enabled to die with most natural throes of agony the other night, owing to the fact that the dagger of the theatrical assassin penetrated his flesh about two inches. He received great applause.

—A German *savant* predicts a big celestial transformation scene soon. He propounds the unique theory that the Zodiacal light is a gaseous ring surrounding our planet, and becoming gradually cool will presently concentrate and give us another moon.

—The French Government papers intimate that the recent riots in Paris were instigated by the liberal distribution of Prussian gold; the French Liberal papers, on the contrary, state that the gold probably came from Imperialist pockets.

—By a really inspired genius a man in Kentucky has found a way to induce crows to commit suicide. He strings several grains of corn on a horse hair, which, when swallowed, causes a tickling sensation in the crow's throat. In his efforts to get it up, the crow invariably scratches his head off.

—The ingenious mutilations which the Dog Indians recently practised upon their victims are explained. By scalping they prevented their entrance to the happy hunting grounds, and by cutting strips of flesh from the thighs pinning them behind with telegraph wire and hanging the boots of the murdered man thereon, they fixed him so that in the next world he must go on his hands and not on his feet.

—Miss Tinné, of Holland, the famous African explorer, has reached Mourzouk in safety, and was awaiting the chief of the Tarou to escort her to the starting post of the caravan for Soudan. Miss Tinné, recently imported into the Barbary States a velocipede, but finding it not adapted to the sand of the Great Desert, she presented it to the Pasha of Tripoli, who is very much pleased with the bicycle.

—A letter from Baden-Baden says that an amusing accident happened to an American lady a few days ago at the waters. She, who is endowed by nature with a lovely complexion, she thinks it necessary to enhance her charms by a free application of "poudre de riz," having incautiously leaned over one of the wells the gas by some chemical means ignited the bismuth used in the powder, and in contrast with her rosy cheeks, as a Frenchman remarked, "Rouge et Noir."