s such plenary powers as to enable

Question of Jurisdiction.

Mr. Holgate said the question was

one entirely of jurisdiction, and he was

firm in his belief that a state court has

no right to attempt to enjoin a federal

the province of the federal court.
The three judges consulted for som

cided to refuse the request for the in-

"I dissent from the view of the ma-

jority of the court," said Judge New-comb. "Regardless of the doubtful

validity of the order of the federal

to have the ballot boxes taken by the

mission was to open the boxes at the

places where they were kept, under the

law of this state, and there remove

Judge Kelly's View.

prima facie, he said, an injunction to

restrain the commissioners from per-

sume, in an application for a prelimin-

ary injunction, that the United States

to issue. There is a sort of comity be-

tween courts which implies that they

shall support, rather than resist, one

Judge Kelly then made a short state-

property of the state."

commission, my view of the order was

the case under consideration.

to confiscate the property of the

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INJUNCTION **WAS REFUSED**

WANTED TO ARRAY COURT AGAINST COURT.

George Howell's Attorney Asked for an Injunction to Prevent the Commissioners in the Connell-Howell Election Contest from Performing the Duties the United States Court Assigned to Them-A Majority of the Court Refused to ation of the gravity of the proposed Issue the Restraining Order.

The court of this county was yesterday asked by Attorney C. Balentine, acting for George Howell, who is absent from the city, to issue an injunction restraining the commissioners appointed under the order made Monday by Judge R. W. Archbald in the United States court, from bringing in the pallot boxes containing the ballots cast

it the election of Nov. 4. These ballots will be needed to determine the contest now pending beween Mr. Howell and Hon. William connell for the office of congress. Under the law, unless otherwise ordered, the ballots would have to be destroyed hat the boxes may be used at the February election. The contest will not be it developed later, the name of George disposed of by that time and it became Howell signed to it. They refused to necessary to officially preserve the bal-

On Mr. Connell's petition Judge Archbald, of the United States court, where the name of Mr. Balentine was then all federal matters are heard, Monday nade an order directing that the conestant and respondent each name a commissioner to have the power to open the ballot boxes in the several election districts and remove and seal ip the contents, properly marking them for identification, or to bring in the ballot boxes. The boxes or ballots were to be deposited with E. R. W. Searle, clerk of the United States court.

An Objection Raised.

Mr. Howell's attorney wanted the pallots deposited in the court house, but as Judge Archbald has no authority over county property or over county officials he had to decline to accept he suggestion and named the clerk of the district court, the legal custodian of all its papers, as the proper person to take charge of the ballots.

On Tuesday Mr. Howell named Attoriey John J. Toohey as his commissioner, and Mr. Connell named Attorney P. W. Stokes. The appointments were confirmed by Judge Archbald.

When Mr. Connell's appointee was announced Mr. Balentine objected to him and read a paper which made a savage attack upon Mr. Stokes. It was not in the form of an affidavit and was unsigned and Judge Archbald refused to consider it.

"I have known Mr. Stokes for twenty-five years," he said. "He was a student in my office and I have known him ever since at the bar. I do not believe the things which you have said

Having failed in their effort to deny Mr. Connell the right they had taken advantage of themselves, namely to States judge, and the proper custodian appoint a commissioner who would of the ballots the United States offiwatch his interests in the gathering and sealing of the ballots the Howell-ites turned to other fields.

Yesterday Messrs. Stokes and Toohey began the work of gathering the Their first step was to call upon the county commissioners and ask for the keys of the ballot boxes.

Wouldn't Give Them Up.

John J. Durkin, Democrat, and minority member of the board of commissioners, is the chairman and has the custody of the keys. He refused to give them up, notwithstanding that John C. Morris and John Penman, the other members of the board, requested him to do so.

Messrs. Stokes and Toohey then ap-plied to Judge Kelly for an order to compel County Commissioner Durkin to hand over the keys. He consulted with the other judges and they unanimously decided that the court had no authority to make such an order. The court would only have power to direct the commissioners to do something as the result of proceedings regularly brought against them.

Not being able to get the keys, the contents of the boxes could not be re-moved and scaled by the contest com-missioners, and they forthwith, in accordance with the order under which they were acting, proceeded to bring in the ballot boxes.

This action of Commissioner Durkin means that the ballot boxes will not be available for use at the February election, and the county will have to spend \$1,000 to replace them.

Part of the Plan.

The refusal of Commissioner Durkin was in accordance with a plan of operations that had been laid out by Howell's chief adviser and which was being carefully developed step by step. If the contest commissioners could not get the contents of the boxes they must, of course, take the boxes in pursuance to the order they were acting

"That's where we will have them," said the chief adviser. "The United States may have the right to take the contents of the boxes, but when it tries to confiscate the boxes, which are the property of the state, things will be in shape for the local courts to lock horns with the United States court and then there will be things doing. We can restrain them by injunction, and the ballots will stay just where they are, since our commissioner has the

keys and won't give them up." Messrs. Stokes and Toohey having no differentive, started after the ballot boxes, and Mr. Balentine proceeded, in accordance with the plan of campaign, o place in his coat pocket the injunction papers he had prepared and hasten to the court house to apply for an injunction. Judge Newcomb was on the bench in the main court, so he went to Judge Kelly, who is in chambers this week. The latter, with a full realiz-

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step-the enjoining of the United States gate if he believed the United States court-suggested that the matter be discussed before the full bench, and at 4.15 the formal application was made before Judges Edwards, Kelly and that it was what was being done in Newcomb in the main court room,

Howell Absent from City.

In applying for this remarkable injunction—the like of which was never before asked for in this country so far as is known-Mr. Balentine said that Mr. Howell is absent from the city and court in a matter that is strictly within state, and as his attorney he had prepared the injunction petition and sworn to it, believing he had that right. Mr. time, and Judge Edwards announced Howell, he said, had no knowledge of that a majority of the court had dethe proceedings.

The first petition for the injunction junction. served on Mr. Connell's attorneys, R. H. Holgate and Ezra H. Connell, had, accept service of it, observing that the court and the doubt as to the powers signature was only an imitation of that court to make the order by that of Mr. Howell, and the petition in which the contestant claims the right

Mr. Balentine told the court that if that the only power it gave to the comthe commissioners were allowed to take possession of the ballot boxes, great and irreparable injury would be done Mr. Howell. He did not specify what their contents and after sealing them the injury would be, but proceeded at up in separate packages to deliver once to make an assault on the characters of E. R. W. Searle, clerk of the the federal court. The object of the United States court, and Commissioner bill was to restrain the commissioners United States court, and Commissioner P. W. Stokes. Judge Edwards stopped from taking the ballot boxes themhim with the remark that the court selves and depositing them with some was only interested in the question of custodian in the federal building. That its jurisdiction in the matter of grant- I regard as mere confiscation of the

ing the injunction prayed for. The Revised Statutes.

Mr. Balentine read the revised United States statutes with reference to elec- ment of his view of the case. It was tion contests, and maintained that they nowhere gave Judge Archbald the authority to make such an order as he forming the duties required of them by issued to the commissioners, and as his virtue of an order of the United States act was without authority it was the District court. "If we granted the induty of the county court to issue the junction," he continued, "we would be injunction prayed for and prevent the nullifying and reviewing the judgment confiscation of the ballot boxes of the of the district court. I would not asstate, which, it was alleged, would be to the irreparable injury of Mr. Howell. still no specification of the nature of the injury the taking of the boxes would entail. The contents seemed to have been relegated to a secondary

Mr. Holgate, in reply, said that in his opinion the local court had no jurisdiction in the matter whatever. The election of congressmen and the procedure as to contests are regulated by federal laws and nothing in connection with them can come up in the state courts. The proper person to appoint the commissioners was the United

Mr. Balentine maintained that the judge or other official appointed to hear the testimony in the contest was the one authorized to take possession of the ballots or appoint anyone to do so, but Mr. Holgate combatted this view and said it was undoubtedly the right of a judge of the United States

court to do It. "What powers do these commissioners have?" asked Judge Newcomb. Mr. Holgate replied that under the order of Judge Archbald they have the right to take the ballot boxes and their contents.

"Do you mean that any court has the right to take these ballot boxes and them away to Harrisburg?" asked Judge Newcomb. "If you do, you will have to bring up some strong authorities to convince me that you are correct," he added.

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ranted in saying that the United States court had exceeded its powers, after a full and complete hearing of the case," Mr. Balentine took an exception to the decision of the court. The refusal of the injunction has prevented a most unpleasant conflict between the local and federal court that could only have a bad effect and tend to most distressing results. It would place the commissioners in the position of having to refuse to obey the order of some one of the two courts, and thereby place

themselves in contempt. The commissioners went to Winton yesterday afternoon and brought in the ballot boxes of the three wards of that borough. They were delivered to Clerk Searle in the federal building at 5.30 last evening.

IS AN OLD OFFENDER.

s ate of Pennsylvania, and suggested Former Convict Saw Morgan in Trenton Penitentiary—Was There Under the Name of Jones.

> There seems to be no question but hat Frederick Morgan, who was senenced to twelve and a half years' imprisonment for forgery on Tuesday, s an old offender and ex-convict. One



FREDERICK MORGAN.

of the keepers at the county jail said last night that Charles Kuhlman, rebreaking into the Abington Dairy company's office, knew Morgan.

Kuhlman said that he saw him at he penitentiary in Trenton where he (Morgan) was serving a sentence under the name of Tom Jones. Kuhlman was positive that Morgan was the man. Morgan takes his long sentence philosophically and doesn't appear to be in the least worried at the project court issued an order it had no right ahead of him.

Morgan is engaged in writing a letter to Judge Newcomb, in which he will endeavor to convince the judge mother, and I would only feel war- that his sentence is too severe

中的一个大学的工程。1915年,1915年的第二年的1916年的1916年的1916年,1916年,1916年,1916年,1916年,1916年,1916年,1916年,1916年,1916年,1916年,1916年

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