

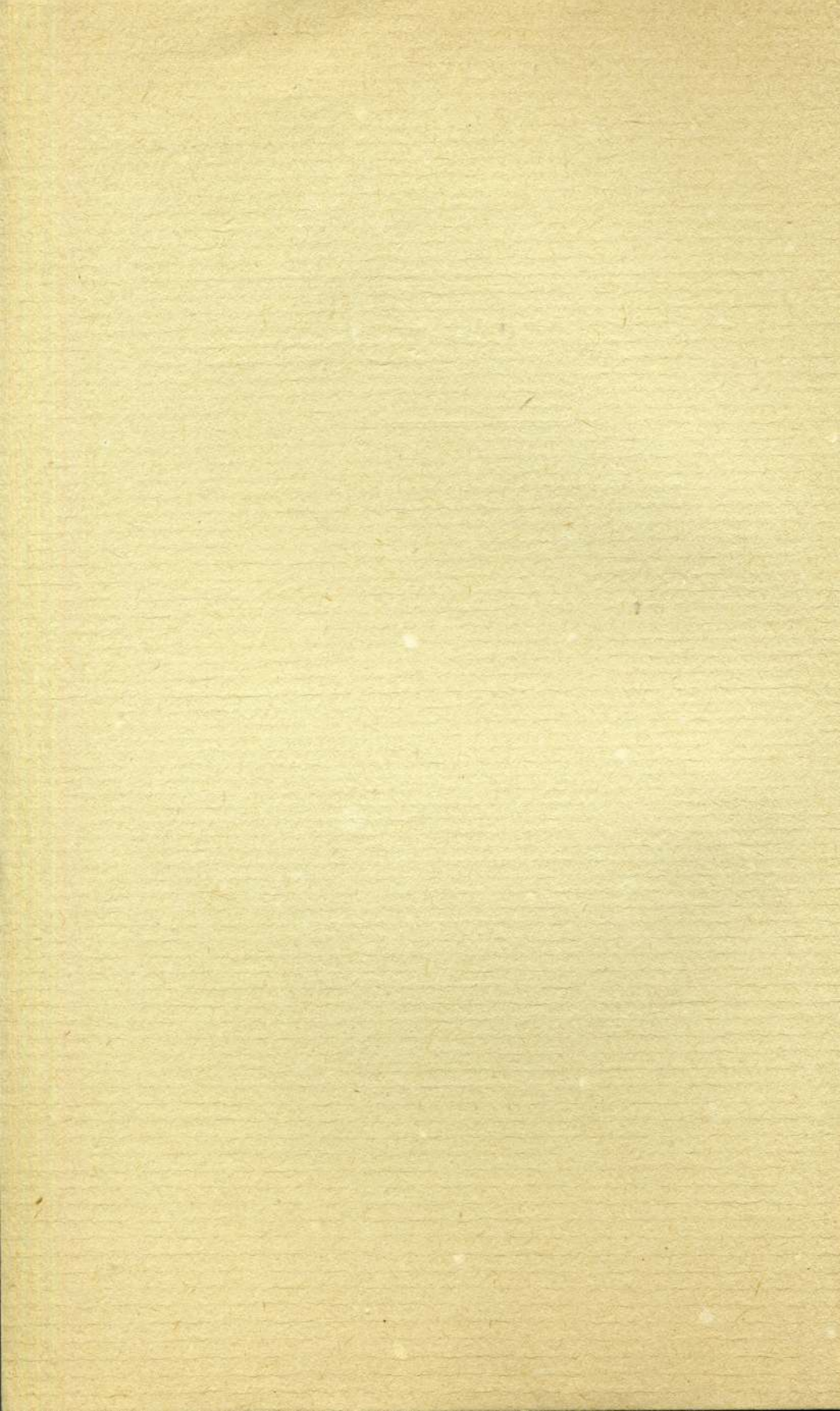
P6201

In the 51st Congress.

CONTESTED ELECTION CASE
OF
Charles B. Smith vs. James M. Jackson
FROM THE
FOURTH CONGRESSIONAL DISTRICT
OF
WEST VIRGINIA.

COLE & COLE,
W. N. MILLER,
Attorneys for Contestant.

J. M. WILSON,
of Counsel.



In the 51st Congress.

CONTESTED ELECTION CASE

OF

Charles B. Smith *vs.* James M. Jackson

FROM THE FOURTH CONGRESSIONAL
DISTRICT OF WEST VIRGINIA.

BRIEF FOR CONTESTANT.

This is a case in which the Governor gave a certificate of election contrary to the face of the returns.

The contestant received according to the returns made to the Governor 19,837 votes, and the contestee 19,825. Yet the Governor by a bold, deliberate, unmistakable usurpation of power gave the certificate to the contestee.

The contestant in his notice, has placed his claim to a seat in this Congress upon the ground that by the face of the returns as made to the Governor, and the record thereof preserved as required by law in the several counties of the district, he received a plurality of the votes cast for representative in Congress from the Fourth West Virginia District on the 6th of November last.

The Contestant has a Prima Facie Case upon the Face of the Returns.

The contestant has procured from each clerk of the county court of the several counties of the district, who by law is the custodian of the returns, his certificate showing the result of the election for Representative in Congress in each of said counties. He also called witnesses in each of the counties to prove the original records.

These certificates will be found printed in the record, pages 855 to 865 inclusive.

The contestant also put in evidence a copy of the order made by the Governor, assigning his reasons for issuing the certificate of election to Jackson. Said order will be found on pages 866, 867 and 868 of the record.

It will be seen from a comparison of the several clerk's certificates, with the Governor's order, that there is no question or controversy as to the result of the election, according to the face of the returns, in any of the counties, except Calhoun, Pleasants and Ritchie. It will, therefore, be unnecessary to examine the proofs in relation to the returns in any but these three counties.

The vote of Calhoun County appears from the testimony of George W. Silcott, the clerk of the county court and custodian of the original returns, found at pages 70, 71 and 72 of the record. (See also his certificate, pages 856 and 857).

The vote of Pleasants County appears from the testimony of John L. Knight, clerk of the county court of said county, found at pages 127 and 128 of the record. (See also his certificate, pages 859 and 860).

The vote of Ritchie County appears from the testimony of George W. Amos, clerk of the county court of said county, found at pages 139, 140 and 141 of the record. (See also his certificate, pages 862 and 863).

It will be seen from the Governor's order that he refused

to recognize the corrections of returns made by the commissioners of Calhoun and Ritchie, although in the latter county it appears upon the face of the certificate sent to him that the error was discovered upon a recount of the vote in that county demanded by Jackson. It was the duty of the commissioners upon the demand of any candidate voted for at the election, to open, examine and recount the ballots in order to ascertain the true result. (See acts 1882, Ch. 155, Sec. 21.

Of what use is a recount, if the commissioners are without power to correct errors that they may discover? If they have sent a certificate of the result to the Governor before a recount is demanded, as seems to have been done in this instance it is hard to perceive any legal objection to their sending another to correct an error that might be discovered upon a recount, or discovered in any other manner.

In *Archer vs. Allen*, 34th Congress, it was held that where the judges of election discover a mistake upon a recount of the ballots, their supplemental return is entitled to be received.

Errors, whether fraudulent or accidental, may be corrected at any time, even after certificate of election issued by the Governor.

Butler vs. Lahman, 37th Congress.

Morton vs. Daily, 37th Congress.

If the certificate from Pleasants County was not intelligibly written as to the number of votes returned for Jackson, as the Governor alleges in his "order," no one can doubt his right to have the misspelling of the word, or other merely clerical error, corrected by the officer who wrote it. If he did not choose to do so it was his manifest duty to reject the unintelligible word, instead of forcing it into shape and proportions which it does not suggest. "Twe" is not

a recognized abbreviation of any word. If forced to perform that office it would as readily suggest twenty as twelve. No person, whether learned or illiterate, ever attempted to abbreviate the word twelve, and nothing but the most desperate partizanship could have enabled the gubernatorial eye to have discovered the word twelve disguised under the mantle of the alleged "twe."

This extraordinary fete of political legerdemain is appropriately characterized by the language of one of the distinguished judges of the Court of Appeals of West Virginia, in *Bazie vs. The Commissioners* :

"He who, by fraud or by willful disregard of his sworn duty, defeats the will of the people as expressed by their votes, commits a political crime next to treason and nearly akin to it."

Opinion by Snyder, J., 25 W. Va., 225.

But this House is not bound by the Governor's action in the premises. If he lacked the power, as well as disposition, to correct manifest errors, this House certainly lacks neither. The result of the election does not depend on the action of the Governor, but may be ascertained from the record of the returns preserved in the several counties.

Switzer vs. Anderson, 40th Congress.

Switzer vs. Dyer, 41st Congress.

Sheafe vs. Tillman, 41st Congress.

Cofuth's Case, 39th Congress.

From the proof, it appears clearly, and it is not controverted in any manner, that the result of the election, according to the returns, is as follows, to wit:

COUNTIES.	JACKSON.	SMITH.
Pleasants.....	802	697
Wood.....	2,824	3,275
Ritchie	1,403	1,973
Wirt.....	1,047	926
Jackson.....	1,886	2,272
Roane.....	1,629	1,452
Mason.....	2,246	2,717
Putnam.....	1,384	1,555
Cabell.....	2,404	1,952
Lincoln.....	1,242	955
Wayne.....	2,039	1,431
Calhoun.....	919	632
	<hr/>	<hr/>
	19,825	19,837
Smith's plurality.....		12

Upon these facts, clearly and conclusively proven—facts which the contestee has not attempted to controvert—the contestant bases his right to the seat, and in his notice of contest he invited his opponent to rest this contest solely upon the face of the returns. The contestee, however, was unwilling to rest his case upon this issue, and insisted upon going into an investigation as to illegal votes polled, and alleged technical errors in conducting the election and making the returns.

Thus, the contestee discredits the act of the Governor in giving him the certificate, and has recourse to technicalities wholly without merit; and to a scrutiny of the polling lists to discover, if possible, an illegal vote here and there throughout the district sufficient to overcome contestant's majority, which the Governor had the power to disregard, but not to destroy.

Illegal Votes Polled for the Contestee.

A careful examination of the testimony shows that the following named persons who voted for Jackson at said election were not qualified voters under the constitution and laws of the State of West Virginia.* The names of the illegal voters are arranged by counties, and the reason of disqualification is briefly stated, with a reference to the pages of the record where will be found the proof relating to each vote.

WOOD COUNTY.

C. W. Meyers—†Non-resident of the State.

Pp. 219, 224, 229, 230, 231, 235, 244, 245, 580, 582, 584, 601, 602, 604, 606, 607.

Wm. Fallen—‡Non-resident of the county.

Pp. 219, 220, 222, 223, 224, 229, 230, 245, 575, 581, 582, 601, 603.

John Cochran—Pauper.

Pp. 220, 221, 222, 223, 224, 229, 230, 245, 582, 583, 584, 600, 601, 603, 605, 607.

Frederick Schwall—Pauper.

Pp. 225, 226, 227, 228, 234, 235, 236, 245, 582, 597, 598, 599, 600, 602, 605, 611.

John Lockhart—Non-resident of the State.

Pp. 226, 228, 230, 234, 236, 237, 238, 245, 583, 584, 585, 586, 587, 595, 597, 599, 605, 607.

*The statutes of the State referred to in this brief will be found in the Appendix attached hereto.

†This word is used to designate both non-residents and those who had not been residents of the State one year before the election.

‡This word is used not only in cases where the voter was actually a non-resident of the county; but in cases where he had not lived in the county sixty days preceding the election.

James Lemley—Non-resident of the county.

Pp. 232, 245, 258, 259, 260, 638, 639, 640, 641, 642,
811, 812, 822, 823, 824, 825, 826, 827, 828, 829,
830, 831, 832, 834, 848, 849, 850, 851, 852, 853,
854, 855.

J. E. Carle—Non-resident of the county.

Pp. 232, 233, 247, 630, 631, 632, 633.

William Milstead—Non-resident of the county.

Pp. 259, 262, 263.

Henry Yearing—Non-resident of the county.

P. 261.

Michael Holbut—Non-resident of the county.

Challenged by James M. Jackson, the contestee, and proven by him to have voted illegally for him.

P. 609.

Joseph Starling—Non-resident of the State.

Challenged by J. M. Jackson, and proven to have voted illegally for him.

Pp. 617, 618, 619, 621, 686, 687.

PLEASANTS COUNTY.

J. B. Cunningham—Non-resident of county.

Pp. 106, 107, 108, 128, 389, 393, 394.

J. B. Courtney—Non-resident, county and State.

Pp. 108, 109, 126, 128, 396.

A. Kaminsky—Non-resident of the State.

Pp. 113, 114, 115, 128.

Aaron Thomas—Unsound mind.

Pp. 115, 116, 117, 118, 119, 128, 398.

Cassius Ruckman—Unsound mind.

Pp. 115, 116, 117, 119, 120, 128, 398.

J. C. Adair—Non-resident of the district.

Pp. 121, 122, 123, 124, 128, 386, 397, 398.

James Powell—Unsound mind.

Pp. 121, 122, 123, 124, 128, 385.

Wm. Ruttencutter—Unsound mind.

Pp. 110, 111, 112, 125, 126, 128, 385, 391, 392
394.

M. Wade—Non-resident of the State.

Pp. 112, 125, 126, 128.

CABELL COUNTY.

W. R. Surratt—Non-resident of the county.

Pp. 58, 61, 62.

Ephraim Hensly—Non-resident of the State.

Pp. 59, 61, 62.

William J. Gilmore—Non-resident of the State.

Pp. 60, 61, 62.

CALHOUN COUNTY.

William Gibson—A minor.

Pp. 63, 66, 70.

John Starcher—A minor.

Pp. 63, 66, 68, 70.

C. D. Stalnaker—A minor.

Pp. 65, 69, 70.

William Wix—A minor.

Pp. 70, 71, 72, 73.

JACKSON COUNTY.

I. N. Worstel—Non-resident of State.

Pp. 74, 78, 87.

M. E. Polsern—Non-resident of State.

Pp. 74, 78, 87.

- A. A. Walters**—Non-resident of district.
Pp. 75, 76, 77, 78, 87.
- S. F. Lockhart**—Non-resident of district.
Pp. 75, 87.
- H. C. Williams**—Non-resident of State.
Pp. 76, 87.
- John C. Deaton**—A pauper.
Pp. 78, 87.
- Charles Cline**—A minor.
Pp. 79, 87.
- Andrew Myers**—Non-resident of State.
Pp. 79, 80, 87.
- E. E. Higgs**—Non-resident of county.
Pp. 79, 80, 87.
- John Kimma**—Unsound mind.
Pp. 82, 87.
- Jacob L. Starcher**—Non-resident of State.
Pp. 82, 87, 89.
- J. J. S. Hassler**—Non-resident of State.
Pp. 82, 87.
- H. G. Armstrong**—Non-resident of county.
Pp. 82, 83, 87.
- John Carney**—Unsound mind.
Pp. 83, 87, 88, 89, 91.
- O. J. Simons**—Non-resident of State.
Pp. 83, 87.
- N. M. Bowles**—Non-resident of county.
Pp. 83, 84, 87.
- Oliver Burns**—Non-resident of State.
Pp. 84, 86.
- Henry Jacops**—Not naturalized.
Pp. 85, 86.

- George Jacops**—Unsound mind.
Pp. 84, 85, 86.
- P. W. Jack**—Non-resident of county.
Pp. 85, 86.
- Charles Reynolds**—Non-resident of county.
P. 87.
- S. C. Dailey**—Non-resident of county.
Pp. 87, 91.

LINCOLN COUNTY.

- Reece Stratton**—Unsound mind.
Pp. 93, 94, 95.

MASON COUNTY.

- J. M. Lewis**—A Minor.
Pp. 96, 105.
- W. A. Pariner**—Non-resident of State.
Pp. 97, 105.
- James McDaniel**—Non-resident of State.
P. 98.
- E. J. Long**—Non-resident of State.
Pp. 98, 99, 105.
- W. S. Reese**—Non-resident of State.
Pp. 99, 105.
- John Sayer**—Non-resident of district.
- Absolem Sayer**—Non-resident of district.
Pp. 100, 101, 105.
- G. W. Shamlin**—Non-resident of district.
- Wm. R. Shamlin**—Non-resident of district.
- Wilson Shamlin**—Non-resident of district.
Pp. 101, 103, 104, 105.

Wilson Ward—Non-resident of State.

Pp. 102, 105.

W. N. Dixon—Non-resident of State.

Pp. 102, 105.

Wm. Drake—Non-resident of district.

Pp. 104, 105.

ROANE COUNTY.

Henry Reynolds—Non-resident of State.

Pp. 145, 146, 160, 161.

J. D. Summers—Non-resident of county.

Pp. 146, 148.

Alex. Gibson—Non-resident of county.

P. 147.

N. B. Armstrong—Non-resident of county,

Pp. 149, 151, 155.

Abe Hoge—Non-resident of State.

Pp. 150, 155, 156.

J. D. Fose—Unsound mind.

Pp. 157, 160.

John Ball—A minor and unsound mind.

Pp. 157, 158, 159, 160.

A. M. Ball—A minor.

Pp. 157, 160.

WAYNE COUNTY.

Napoleon Adkins—Voted twice.

Pp. 162, 163, 165.

Abram Jones—A pauper.

Pp. 162, 163.

W. S. Napier—Non-resident of district.

P. 164.

- W. W. Bromfield**—Non-resident of district.
P. 164.
- Alderson Watts, jr.**—Non-resident of district.
P. 164.
- William Noe**—Non-resident of State.
Pp. 167, 203.
- Anderville Newman**—Non-resident of State.
Pp. 168, 169, 202.
- Thos. Stinson**—Non-resident of county.
Pp. 170, 202.
- J. M. St. Clair**—Non-resident of State.
Pp. 170, 171, 198, 202.
- J. M. Marcum**—Non-resident of State.
Pp. 171, 173, 174, 175, 190, 192, 198, 203.
- James Dillen**—Non-resident of State
Pp. 176, 202.
- Walter Dillen**—Non-resident of State.
Pp. 176, 202.
- C. O. Bellomy**—A minor.
Pp. 176, 177, 178, 183, 184, 202.
- Ali Artrip**—A minor.
Pp. 179, 202, 204.
- John Pauley, jr.**—Non-resident of district.
Pp. 180, 181, 188, 189, 202.
- John Cox**—Non-resident of State.
Pp. 181, 195, 196, 197, 202.
- John Stroud**—Non-resident of State.
Pp. 186, 187, 198, 202.
- Ezekiel Counts**—Non-resident of State.
Pp. 189, 190, 203.
- Alford France**—A minor.
Pp. 191, 192, 203.

Elias Browning—A minor.

Pp. 193, 203.

George W. Crabtree—Non-resident of district.

Pp. 190, 203.

WIRT COUNTY.

E. D. Lewis—A minor.

Pp. 208, 209, 214.

W. T. Woodring—Non-resident of State.

P. 210.

Noble Hunter—Convicted of felony.

P. 212.

Lewis Mattoch—Unsound mind.

Pp. 216, 217.

James Bolyard—A minor.

Pp. 216, 217.

RITCHIE COUNTY.

George Dean—A Minor.

Pp. 131, 132, 133, 134, 138, 141.

Grant Griffith—A Minor.

Pp. 136, 139.

George Dotson—Non-resident of county.

Pp. 137, 138.

John Merritt—A Pauper.

Pp. 134, 135, 139, 141, 142, 143.

Whole number of votes polled for Jackson.....	19,825
Deduct therefrom the illegal votes above specified..	101
	<hr/>
Legal votes polled for Jackson	19,724
Votes polled and returned for Smith.....	19,837
	<hr/>
Smith's plurality.....	113

When the contestee shall have filed his brief showing what illegal votes he claims were cast for the contestant, we will make such reply thereto as may seem proper.

COLE & COLE,
W. N. MILLER,
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J. M. WILSON,
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APPENDIX.

The following are extracts from the Constitution and Laws of the State of West Virginia in relation to the qualification of electors, the conduct of elections, and the returns thereof.

FIRST.

Extracts in relation to qualification of voters.

“The male citizens of the State, shall be entitled to vote at all elections held within the counties, in which they respectively reside; but no person who is a minor; or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote for sixty days next preceeding such offer, shall be permitted to vote, while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.”

(Constitution, Article IV, Sec. 1. See published acts of 1872-3, page 8).

“The male citizens of the State shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or of unsound mind, or a pauper, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the State for one year, and of the county

in which he offers to vote for sixty days next preceeding such election, and who is not, at the time of the election, an actual and *bona fide* resident of the district in which he offers to vote, shall be permitted to vote in such district while such disability continues. And no person in the military, marine or naval service of the United States shall be deemed a resident of this State by reason of his being stationed therein; nor shall any person in the employ of an incorporated company, or of this State, be deemed a resident of any county, or of any district therein, by reason of being employed in said county or district."

Acts 1882, ch. 155, sec. 9.

See published Acts of 1882, p. 493.

SECOND.

Extracts in relation to conduct, returns and declaring the result of elections.

See Acts of 1882, ch. 155, pages 492 to 501, both inclusive.

Places of Voting.

"5. There shall be at least one place of voting in every magisterial district, and the elections provided for in this chapter shall be held at the places of voting therein which have been or shall be appointed for the purpose according to law. The County Court on the petition of twenty or more voters residing in any such district, may by an order entered of record change or discontinue any place of voting therein, and appoint other or additional places of voting therein, and the clerk of said Court shall immediately after the adjournment of the term at which such order is made, make and deliver to the sheriff, or one of his deputies, three certified copies of said order, and it shall be the duty of said

sheriff, or deputy sheriff, to post the same at three of the most public places in the district at least four weeks before the succeeding election ; or in lieu thereof, if a newspaper be printed in the county, a copy of such order may be published therein at least once in each week for four successive weeks prior to such election."

" Commissioners of Elections.

"6. The County Court of each county shall before the general election in each year in which such election is held, appoint three voters, one of whom, at least, shall be of opposite politics to the others, to act as commissioners of the election at the court house, and the like number and in like manner to act as such commissioners at every other place of voting in the county, and it shall be the duty of the persons so appointed to attend at the place of voting for which they are so appointed, and to superintend the election, to be held at such place and return the result thereof as required by this chapter. *Provided,* That for each place of voting in any county at which five hundred or more votes were cast at the last preceding general election for state officers, said Court shall appoint in addition three canvassers to canvass the vote given at such place of voting as hereinafter provided. Any one or more of said commissioners or canvassers in the absence or refusal, or inability of the others to act may call to his or their assistance any qualified voter or voters present to act as such commissioner or commissioners, canvasser or canvassers, and it shall be the duty of the person or persons so called upon, to act as such. The said commissioners for each place of voting shall appoint two clerks to assist in holding said election as hereinafter provided. And if none of the commissioners or canvassers so appointed attend at the place of voting for which they were appointed, or if in attendance all of said commissioners or canvassers fail or refuse to act, any three voters of the district may be appointed by the voters present to act as such commissioner or canvassers (as the case may be)."

" Counting the Votes at the Several Places of Voting.

"18. As soon as possible after the polls are closed at each

place of voting for which no canvassers are appointed, the names entered on the poll books shall be counted by the commissioners and clerks, and the number thereof be set down in words at length at the foot of the lists, which shall then be signed by the inspectors and clerks, the ballot-box shall then be opened, and one of the commissioners taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled and the names of the persons voted for, for each office, and hand the ballot to another of said commissioners, who, if satisfied that it was correctly read, shall string it on a thread. The contents of the ballots, as they are read, shall be entered by the clerks, under the supervision of the commissioners, on tally papers for the purpose, by suitable marks made opposite to or under the name of each person voted for, so as to show the number of votes received by every person for any office to be filled. The ballots shall be counted as they are strung upon the thread; and whenever the number shall be equal to the number of voters entered upon the poll books, the excess, if any, remaining in the ballot-box shall be immediately destroyed, without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof."

"Return of the Result of the Election at Each Place of Voting.

"20. As soon as the results are ascertained, the commissioners, or a majority of them and the canvassers (if there be any), or a majority of them, at each place of voting shall make out and sign two certificates thereof in the following form or to the following effect. (Here follows the form).

"The said two certificates shall correspond in all respects with each other, and each shall contain complete returns of the polls taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots shall be enclosed by the commissioners in an envelope, which they shall seal up, and write their names across the place or places where it is sealed, and endorse on the outside of the said envelope as follows: 'Ballots of the election held at —, in the district of —, and county of —, the — day of —.' The commissioners, or one of them,

shall within four days, excluding Sundays, after the day on which the election was held, deliver the ballots so sealed up, one set of the poll-books, and one of the said certificates, to the clerk of the county court, and the other certificate and set of the poll-books to the clerk of circuit court."

"Meeting of Commissioners to Examine Returns.

"21. The commissioners of the county court shall convene in special session at the court house on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose custody the ballots, poll-books and certificates have been placed shall lay the same before them for examination. They may if deemed necessary, require the attendance of any of the commissioners or canvassers or other officers or persons present at the election, to answer questions under oath respecting the same and may make such other orders as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from time to time, and when a majority of the commissioners is not present their meeting shall stand adjourned till the next day, and so from day to day till a quorum be present. They shall, upon the demand of any candidate voted for at such election, open and examine any one or more of the sealed packages of ballots and recount the same, but in such case they shall seal up the same again, along with the original envelope, in another envelope, and the clerk of the county court shall write his name across the place or places where it is sealed, and endorse on the outside: 'Ballots of the election held at —, the district of —, and county of—, the — day of —.' When they have made their certificates and declared the result as hereinafter provided, they shall deposit the sealed packages of ballots in the office of the clerk of the county court, and said clerk shall carefully preserve the certificates and poll-books deposited in his office. The sealed package of ballots and poll-books shall be preserved by him for one year, and if there be no contest pending as to any such election they shall then be destroyed without opening the sealed package of ballots, and if there be such contest

pending, then they shall be so destroyed as soon as said contest is ended. If the result of the election be not changed by such recount, the costs and expenses thereof shall be paid by the party at whose instance the same was made."

"Certificate of the Result in the County, etc.

"22. When an election is held in the county or district for any of the following officers, that is to say: For Governor, State superintendent of free schools, treasurer, auditor, attorney general, judge of the supreme court of appeals, judge of a circuit court, delegate, senator, clerk of the circuit court, clerk of the county court, commissioner of the county court, prosecuting attorney, sheriff, surveyor of lands, assessor, justice of the peace, constable, representative in the congress of the United States, or electors of President and Vice President of the United States, the commissioners of the county court, or a majority of them, under the regulations prescribed in the next preceding section, shall carefully and impartially ascertain the result of the election in their county, and in each district thereof, and make out and sign as many certificates thereof as may be necessary, in the following form or to the following effect: 'The commissioners of the county court of the county court of ——— having carefully and impartially examined the returns of the election held in said county in each district thereof, of the ——— day of ———, do hereby certify that in said county, for the office of ———, A ——— B ——— received ——— votes, C ——— D ——— received ——— votes, and E ——— F ——— received ——— votes. That at said election held in the district of ———, in the said county, for the office of ———, G. ——— H ——— received ——— votes and I ——— J ——— received ——— votes. In witness whereof we, the said commissioners, have hereto signed our names this ——— day of ———.' The said commissioners shall sign separate certificates of the result of the election within their county for each of the offices specified in this section which is to be filled: and in the said certificates shall be set forth, according to the truth, the full name of every person voted for, and in words at length the number of votes he received for any office."

“Commissioner’s Certificates; To Whom Sent; How Disposed of; Proceedings Thereon.

“23. The certificates of the commissioners, made pursuant to the preceding section, shall be by them disposed of as follows: * * *

“Of the certificates respecting the election for judge of the supreme court of appeals, judge for a judicial circuit, representative in the congress of the United States, and electors of President and Vice President of the United States respectively, the commissioners shall transmit one in each case to the governor, who shall ascertain who are elected and make proclamation thereof. In every case the said certificates shall be transmitted, as aforesaid, by mail, or some other safe and expeditious mode of conveyance, to the proper officer, or person, on or before the fifth day, Sundays excepted, after the result of the election is ascertained, in an envelope under seal, and one of said commissioners shall write his name across the place where it is sealed. * * *

THIRD.

Extracts from the law concerning County Courts.

See ch. 5, Acts 1881, pages 21 to 37, both inclusive.

“The Court a Corporation.

“1. The county court of every county shall be a corporation by the name of ‘The county court of — county, by which name it may sue and be sued, plead and be impleaded, and contract and be contracted with.’”

“Court; By Whom Constituted; Quorum.

“2. The county court of every county shall consist of three commissioners, as provided for in the eighth article

of the Constitution of the State, as amended, any two of whom shall constitute a quorum for the transaction of business."

"Record Books to be Kept.

" 46. The county court of every county shall provide two record books for the use of the court, in one of which shall be entered all the proceedings of the said court in relation to contested elections; all matters of probate; the appointment of appraisers of the estates of decedents and the appointment and qualification of personal representatives, guardians, committees, and curators, and the settlement of their accounts; all matters relating to apprentices; *and in the other of said books shall be entered all the other proceedings of the said court.*"

