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NEW ORLEANS:
FRIDAY MORNING, APRIL 10, 1868

WILL THE MUNICIPAL ELECTION BE VALID?

Mayor Heath transmitted to the Board of Assistant Aldermen, at their session on Tuesday evening last, a message setting forth that the Commander of the District, Major Gen. Buchanan, had requested the opinion of the Council on the question as to whether the Constitution lately framed by the Dryades street Convention contained any provision inconsistent with those of the city charter respecting the time for holding the election of municipal officers, and also requested information as to the regular day for such election established by the charter. The Mayor stated to the Council he had sought the opinion of the City Attorney, Judge A. M. Buchanan, and Mr. J. S. Whitaker, as additional counsel, on the points respecting which the Commander of the District had requested information, and accompanied his message with the written opinion of those gentlemen. Judge Buchanan holds:

1st. That the regular day established by the city charter for the municipal election is the second Monday of March, and

2d. That the new Constitution (Art. 154) requires an election to be held for city officers at the same time and place as the election upon the question of ratification or rejection of the Constitution itself, viz: the 17th and 18th April inst. This, of course, contains, says Judge Buchanan, the act of the Legislature above quoted, (the city charter) in case the Constitution shall be ratified; and if it be rejected at the election held the same day, then the other election on that day for State, judicial, parish and municipal officers will be a nullity.

On the other hand Mr. Whitaker holds that the new Constitution did not provide for a municipal election, although the word "municipal" is included in the enumeration of officials to be chosen on the 17th and 18th inst. He believes this reference to have been unintentional on the part of the Convention, or as he terms it, "an oversight," as such officers are not elsewhere alluded to in the Constitution, and especially are not referred to in Art. 156 which provides for the entrance of the officers elect upon the discharge of their duties and for the date of the terms of their offices. Mr. Whitaker maintains further, that as the late Convention adopted the Constitution on the 2d day of March and adjourned on the 9th of March, three days before the Act of Congress empowering that body to provide for an election of officers to act under it, at the same time as the election on the ratification, could be had, Congress did not confer power on a body that had ceased to exist. The Act of Congress referred to, says Mr. Whitaker, declares an election may be held for all elective officers provided for by the proposed Constitution, but he contends city officers are not provided for in that Constitution.

The MAYOR's message was referred by the Assistant Board to a committee of three, consisting of Messrs. Sullivan, Joubert and Perkins, who were instructed to report on the subject, and that report is now before us. The majority of the committee (Sullivan and Perkins) are of the same opinion as Mr. Whitaker, and think that no election can be held for city officers, on the 17th and 18th inst, for the following reasons:

1st. The City Charter fixes the day of election—[second Monday in March] in Act Feb. 26, 1866; Lecky's Digest, p. 59. The only law which could change the day is the Act of Congress of March 4, 1867, and the Supplementary Act of March 12, 1868. Neither contains nothing on the subject, the last declares that the registered voters may vote for all elective officers provided for by the Constitution—(the new Constitution.)

2d. "The simple question," say the committee, "then is: are city officers provided for by the Constitution?" The Committee decides not "provide" for the city government in the sense of the act of Congress; the words "provide for," meaning to create or institute. But the proposed Constitution neither creates nor continues, nor does it even designate any officer or office of the city of New Orleans. It does not, then, provide for their office, in the sense in which those words are used in the Reconstruction act. True it does provide for a convention, by an ordinance, did declare that municipal officers might be elected at the same time the Constitution was voted upon; but the difficulty is that the Constitution does not wise provided for the municipal offices, and it is only in reference to officers provided for by the Constitution itself that the election can be held.

It is needless to remark that the Constitution is the fundamental law of the State, and no one thing, and an ordinance passed by the Convention is, like an act of the Legislature, quite another thing, and Congress in the Reconstruction Act has made it a condition precedent to elections of those officers provided for in the Constitution, and not in the ordinance promulgated by the several Conventions.

The proposed Constitution is entirely silent on the subject of municipal officers, and there fore can not have provided for them. The ordinance authorizing the election, it is true, has any warrant in the acts of Congress, and is entirely void.

The confusion that would result from any other view is apparent at a glance; for if city officers were to be elected at the coming election, their term of office would be not, whether undefined, as well as regards the officers themselves be without a proper limitation as respects their duties.

The third member of the Committee dissented from the foregoing report, and the subject was postponed until the next regular meeting.

The arguments of Mr. Whitaker and the Committee of the Board, (drawn up doubtless by Mr. Sullivan, who is a lawyer by profession) ignore entirely Art. 149 of the new Constitution which provides for the continuance of "all laws in force at the time of its adoption and not inconsistent therewith," *including of course the City Charter*, changing only *the day* of the municipal election, to con form with the day set apart for the election for State and parish officers. The Committee are therefore inaccurate when they assert that the proposed Constitution "neither creates nor continues any officer or office of the city of New Orleans."

Mr. Whitaker and the Committee are both of the opinion that the Convention did not know what it was about when it ordered an election for city officers. The former says it was guilty of an "oversight" in embodying the word "municipal" in art. 154 and would obliterate it entirely from the article according to some new rule of construction with which we are unacquainted and as if the term were inconsistent with some other provision of the Constitution. He also asserts that the Convention has "ceased to exist" in face of the resolution which we find on page 314 of the journal, and which provides that it shall adjourn "subject to the call of a quorum of the members." The committee of the Assistant Board are of the opinion that art. 154 and the ordinance of which it forms a part do not properly belong to the Constitution, and being unauthorized by Act of Congress are "null and void." Now we are perfectly aware that the Constitution can have no force until it shall have been ratified by the voters of the State and accepted by Congress, but it was adopted by the Convention *as a whole*—ordinance and all—and it is presumable will be ratified and accepted *as a whole* if ratified and accepted at all. We know of no rule of interpretation which would authorise a court of law in eliminating any article or any word in any article not inconsistent with the Constitution of the United States.

It seems to us, then, that the opinion of Judge Buchanan is sounder than that of Mr. Whitaker and Mr Sullivan because, it is based upon the Act of Congress of March 12, 1868, and upon Art. 154 of the new Constitution, which is in conformity therewith. As to the quibble that the Convention had adopted the Constitution and adjourned before that act had become a law, it is scarcely deserving of notice in view of the paramount authority claimed by Congress and the illimitable power which that body exercises in passing all laws for the Southern States conceived by it to be necessary whether prospective or retroactive, and in view of the declared purpose of Congress to recognize or set aside as it shall think proper, on p of the doings of these Conventions, and entirely to govern these States. The present State, Parish and Municipal governments of Louisiana are merely "provisional" and subject to be set aside by the military authorities whenever they may in their discretion see fit to do so. How ridiculous then it is for us to question any of the Acts of this unscrupulous and domineering faction! If the city election shall result in the success of the Radical candidates, the probability is it will be suffered to stand. If, on the contrary, the Democrats carry the day we may count upon it as one chief pretext upon which to found for declaring the election null and perpetuating Radical control.

THE FRENCH OPERA.—The comedy, in three acts, of "La Papillonne," by Victor Sardon, author of "La Famille Benoiton," will be performed at this house on Sunday evening next, after which the Vaudeville of "Un Mari Dans du Coton."

On Monday the grand opera of "Jerusalem," by Verdi, will be performed by the lyric troupe, now on their return from Galveston.

A branch of profitable care for $100,000 is under way in Rhode Island.

The New Orleans Bee.

OFFICE 73 CHARTRES STREET. NEW ORLEANS, FRIDAY MORNING, APRIL 10, 1868. Vol. XLI.—Whole—14,412

Political Advertisements.

Political advertisements, to be inserted, must be settled for in advance.

Thanks to Mr. E. B. Townrow, purser of the steamship Star of the Union, for a file of late Havana papers.

The steamship Kensington, Capt. Hedge, sailed last evening for Boston, via Havana, with a full freight and the following passengers:

For Boston—Capt. Watts, Capt. Adams, S S Russell, Fee Havana—Prince Philippe de Coburg, Duke de Fernthiers, C pt Tornes, L Fallgod, T Brewsel and others in the steerage.

Washington Items.

A BLUNDERING APOLOGY FOR A COWARDLY COURT.—The action of the United States Supreme Court in the McCardle case has been generally misunderstood. The case was argued on Friday afternoon and the following conference day the Court adjourned. The conference day is on Saturday of each week. The other working day had been fully occupied in hearing the argument of cases in order on the dockets. On the first conference day, after the argument, the case was not reached, although the conference occupied all day. The next conference day, Congress had already passed the act to repeal jurisdiction in such cases, and the act was before the President.

Gentlemen practitioners at the bar, without respect to politics, say that the Court could not have anticipated legislation, and, if it had, could not possibly have run a race with Congress; that it would have been ridiculous affectation not to take notice of it, and it would hardly have been consistent with the dignity of Courts, and the respect due to the other branches of the Government, to proceed with the matter until the President had either approved or vetoed the bill. On the reception of his veto, it was passed by the required majority in both Houses.

When Mr. Black, for McCardle, moved to be heard upon the question of the effect of the law, the Court, although it had several weeks before fixed Tuesday, 31st of March, for closing of the docket, agreed to hear the argument in the case on Wednesday, 1st of April. Of that, however, the counsel did not take notice, not having appeared in Court until after the subject had been postponed.

PLAN OF THE PRESIDENT'S DEFENSE.—*Washington*, April 6 — The counsel for the President are under the impression that they could with safety demand the dismissal of the impeachment case, the managers having utterly failed to maintain any charge of crime or misdemeanor; but, after consultation with Mr. Johnson, it was ascertained he is well satisfied with the defense, as a *prima facie* case had been made out against him. Judge Curtis will therefore open for the defense on Thursday, after which the evidence will be given in. Messrs. Evarts and Stanbery will conclude on the part of the defendant, and Butler and Bingham for the management. If, the Court don't remove the restrictions as to the number of counsel to speak on each side. It is probable this may be done.—*Special Dispatch to Cincinnati Enquirer.*

GEN. HANCOCK.—The idea that Gen. Hancock will make a general change of his subordinates in this department, without the advice or special prerogative of the President, who, it is understood, will at the same time remove Gen. Emory, who commands this city, and who has done, but for what he is aimed to do in acting in party interest against the President.

The impeachment trial, it is more apparent from day to day, is but a dreveling farce. The inconsequential proceedings of yesterday make but little interesting matter for the telegraph or press, even in condensed form, not being worth the space it occupies. The following, from the New York *Tribune* of yesterday, shows how desperate is the case, even in Radical eyes:

We have assurances from Washington that Gen. Grant finds it not inconsistent with his duty as a soldier to announce it as his opinion that the only hope for the peace of the country is the success of the pending impeachment trial. He feels that national security demands the removal of the President. If the trial should fail, the people can only expect more assumptions of power, and more determined resistance to law. When the General of our armies entertains this conviction there is no room for doubt as to the course the Senate. The loyal nation demands the President's removal.

THE PRESIDENT'S LINE OF DEFENCE.—It is understood that among the theories of the defense in the impeachment trial, will be one that there has been a conspiracy formed among certain parties to depose the President, and that efforts to induce Congressmen and others were at one time to be summoned as witnesses to effect this end. The defense will cite the fact also that President Buchanan appointed Judge Holt *ad interim* Postmaster General, and refused at the time to notify the Senate to that effect, although that body called on him for an explanation. The documentary evidence being prepared for the defense is very voluminous.

THE IMPEACHMENT TRIAL.—The prosecution, being the managers of impeachment on the part of the House of Representatives, in the trial of the President, close their case on Saturday last, with the exception of some cumulative evidence yet to be offered; but that very one, yet positively calling for impeachment as a party measure, really believes that there has been anything developed in the evidence to warrant the removal of a President of high crimes and misdemeanors, it would be an insult to common sense to suppose. On the request of the President's counsel for three days' time the Senate adjourned as a court of impeachment until Thursday next. The counsel indicate that their testimony on behalf of the President is entirely documentary, which it requires some little time to get together and arrange. The opening for the defense will doubtless awaken new interest in the trial.—*Balt Sun.*

MRS. GAINES' CASE.—There was quite a scene in the Supreme Court over the decision of Justice Miller against the claim of her friends wept and laughed alternately over the joyful result. Thus, after thirty years of litigation, this plucky lady has again come off victorious and trampled over obstacles which would have appalled the stoutest hearts. The decision is so broad and comprehensive as to preclude the further attempt to deprive her of those just rights she has so bravely earned.

THE CASE FOR THE PROSECUTION CLOSED.—Butler's announcement that the case was substantially closed on the part of the House of Representatives, astonished a great many in the galleries, who have been waiting all along for evidence of criminality in any of the President's acts. It was generally expected that the managers would call Gen. Thomas. They summoned him, but declined to call him, lest on cross-examination it should come out that he had no authority to use or threaten violence. The defense will summon him to prove this.

DISAPPOINTMENT AT THE WEAKNESS OF THE CASE.—There is a general sense of disappointment at the weakness of the case made out by the prosecution, and the impression to-night is that the President cannot possibly be convicted on what has been proven. Notwithstanding this, the Radicals are making a strong and determined effort, and are using all the influences they can bring to bear to stiffen up the weak brethren. The President's counsel are urged to introduce testimony to prove this, but do not deem it necessary. Mr. Stanbery feels confident, and says that, if it was an ordinary case, he would expect to be dismissed without any defense for want of proof of criminal intent.

THE PRESIDENT'S COUNSEL CONFIDENT OF A VERDICT OF ACQUITTAL.—Mr. Stanbery feels very confident, and says that if it was an ordinary case he would expect it to be dismissed without any defense, for want of proof of criminal intent.—*Washington Correspondence Chicago Times.*

THE CASE AS MADE OUT.—The prosecution have closed their evidence before the Senate, sitting as a Court of Impeachment. We but pronounce the secret consciousness of every impeacher, that there is not a word or thing in it, from beginning to end, upon which a vagrant could be committed, upon a charge of petty larceny, by a Justice of the Peace—*National Intelligencer.*

The Rebel Dead.

We utterly fail to sympathize with the sentiment of those who would forbid the rebel dead to be buried side by side with our own. When the great debt is paid, surely it cannot all our great claims. When we compare the life bravely in the front of battle, no matter in how bad a cause, if not admiration, at least forgiveness and pity are the natural tribute of all generous hearts. These remarks are suggested, or rather compelled, by observing that Rush C. Hawkins, colonel of one of those regiments which made the name of Zouave detestable during the war, took occasion in his speech at the Union League rooms at New York, Thursday evening, to attack a member of the club who had expressed himself in favor of a common burial of the Union and the rebel dead. Such a man misrepresents in every sense the feeling of the great army—we do not allude to a secret organization by that name. It should be left to Southern women and Radical politicians to exhibit such animosities.

No Northern father lamenting his son need feel wronged to know that a darling of a Virginian home lies by his side; and if the soldiers, bravely as they contended in life, should become conscious of that neighborhood, we have no fear their long last rest would be disturbed. Rather would they clasp their warring hands, put face to face, and sleep like brothers reconciled. Shame upon such unmanly bitterness. No true soldiery, no true Christian can endorse it by rebuking every manifestation of this hate, that descends into the grave, and makes separation between the bones of friends who, but upon the thought that the rank and file of the Southern army were traitors and criminals! They fought honestly and earnestly in a bad cause, enduring in many cases privation of which our own troops knew little They marched barefoot when our boys were well shod. They went hungry when our boys were full