The News and Herald

TRI-WEEKLY EDITION.] WINNSBORO, S. C., THURSDAY MORNING, FEBRUARY 8, 1877. [VOL. 1. NO. 4.

WHY HAMPTON IS GOVERNOR.

JUDGE MACKEY INTERPRETS THE CONSTITUTION.

A Review of the facts--The pretensions of Chamberlain Exposed--Sound Law and Sound Policy.

Judge Mackey has rendered a decision affirming the constitutionality of Governor Wade Hampton's election and installation as Governor of South Carolina. The opinion is written out at length and a synopsis only is here given. The decision was rendered in the matter of a *habeas corpus* made by Amzi Rosborough, a colored man sentenced on the 22d September, to sixteen months imprisonment in the jail of Chester, for assault and battery upon a white man. A pardon was issued by Governor Hampton to Rosborough, which the sheriff of Chester refused to recognize. W. A. Walker, Esq., appeared for the prisoner, and Solicitor Gaston for the sheriff. The writ was made returnable on the 31st January. The opinion was filed on the 3d February.

Judge Mackey declares that the issued involved in the petition is three-fold—as to the right of the people to have enforced their will expressed at the ballot-box, as to the right of personal liberty of the prisoner, and as to the right of a citizen to hold, and exercise the duties of an office to which it is alleged he has been duly elected and into which it is alleged he has been installed.

The Court find as matters of fact: That D. H. Chamberlain was elected governor in 1874. That an election was held on the 7th November, 1876, at which there were only two candidates, Wade Hampton and D. H. Chamberlain, and that by the returns of the County Election Commissioners, Hampton received 92,261, and Chamberlain 91,127 votes, being a majority of 1134 votes for Hampton.

That one hundred and twenty-four members were elected to the House of Representatives. That of these fifty-nine having canvassing board certificates claimed to organize under E. W. M. Mackey as Speaker, and fifty seven holding said certificates, and eight having certificates from the Supreme Court, but who had been debarred from entering the hall by the troops, sixty-five in all, met in Carolina Hall and organized with W. H. Wallace as Speaker. That Mackey declared Chamberlain elected by arbitrary thowing out the votes of Edgefield and Laurens, without going through the formality of a contest. That the Supreme Court decided the Mackey House unconstitutional, thereby rendering all its acts unlawful. That Wallace canvassed the votes for governor in the presence of the Constitutional House and of such Senators as attended. That the failure to attend in a body by the Senate after notification from the House was a revolutionary act, unprecedented in history. That Wade Hampton was declared elected, by Speaker Wallace, and thereupon took the oath of office and was qualified.

A LEGAL INAUGURATION.

The vote was declared upon certified copies of the county returns, and upon a certificate of the then Secretary of State, H. E. Hayne, that Wade Hampton had received, including the returns from Edgefield and Laurens, 92,261 votes, and D. H. Chamberlain 91,127. The Constitution provides that when original returns have not been received, certified copies may be received from the Clerks of Courts of the respective counties. Much more should they be received when the Secretary of State, by a revolutionary act, and a flagrant contempt of Court, withheld the returns.

The declaration of the election of Hampton must stand until a formal contest is made, as prescribed by law, before the General Assembly. This Chamberlain has not made, and he is estopped from claiming the gubernatorial office through the Courts.

As to the validity of the declaration of the election notwithstanding the non-attendance of the Senate the principles underlying this have been fully elucidated by all text writers who have treated of the important subject of constitutional interpretation.

Justice Story has held that the first and fundamental rule in relation to the interpretation of all instruments applies to the constitution—that is, to construe them according to the sense of the terms and the intention of the parties; "the context, the subject matter, *the effects and consequences, or the reason and spirit of the law.*" (Story on the Constitution, section 399.)

The central idea of the Constitution is the sovereignty of the people, and any interpretation. Contradicting this is improper. The position that the Court is called on to combat is that after the people have expressed their choice of a Chief Magistrate by their ballots, even though the electors should be unanimous in their choice, one branch of the Legislature, and that the less popular and numerous, should have the power of annulling that choice by merely abstaining from being present at its annunciation. Such an interpretation of the Constitution ought not to receive judicial sanction, unless it follows inevitably from the plain words and manifest intent of the instrument.

That illustrous jurist, Chief Justice Marshall, said in delivering the opinion of the Supreme Court of the United States in the case of the United States *vs.* Fisher (2d Cranch 501):

"That the consequences are to be considered in expounding laws where the intent is doubtful is a principle not to be controverted. Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects."

In accordance with this the Court must hold that the clause of the constitution that says "the Speaker shall open and publish the returns in the presence of both houses" is simply directory, and the voluntary and willful absence of the Senate did not invalidate such publication. Lord Mansfield's rule for determining whether a provision of a statute is to be deemed mandatory has here a striking exemplification. His Lordship said in the celebrated case of Rex *vs.* Locksdale, (1 Burrows, K. B., 447:) "Whether the provision of the statute is to be considered mandatory or not depends upon whether that which was directed to be done was or was not of the essence of the thing required."

The Court of Appeals of New York announced it as a settled rule of construction, (People *vs.* Cook, 8 N. Y.,) that "statutes directing the mode of proceeding by public officers are directory, and are not regarded as essential to the validity of the proceedings themselves, unless it be so declared in the statute."

The provisions of a law which are merely directory are not to be construed into conditions precedent. (Whitney *vs.* Emmot, 1 Baldwin's United States Reports, 303.)

The provision of the city charter of New York that every person appointed to office under the city government shall take the oath of office before the Mayor was held to be merely directory; if it cannot be so taken, it may be administered by some other officer. (Caniff *vs.* the Mayor, &c., 4 E. D. Smith, 430.)

THE TITLE TO THE OFFICE

is derived from the election. The publication by the Speaker is but the formal notice to the person elected, and to both houses and to the public of the fact of such election. The two houses do not act "both together" in the matter of opening and publishing the returns, but are present as mere auditors. The constitution declares that the Speaker shall open and publish the returns. They are delivered to him by the Secretary of State, and at no time are they in the custody of either house. Upon the Speaker alone is devolved the whole duty to be done in the premises. It will hardly be contended that if the Senate had been actually present at the opening of the returns and had objected to their being published, that such objection should have availed to restrain the speaker from performing his constitutional duty of publishing the returns of the election of Governor. The contumacious absence of the Senate after due notice can only be considered in the character of a protest against such publication, yet no greater weight can be attached to it than if that body had been really present and protesting against the publication of the said returns. There are but two contingencies in which the General Assembly can act at all in relation to the election of Governor, and neither of them has occurred in the present case. Section 4 of article 8 of the constitution provides that "the person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, the General Assembly shall, during the same session, in the House of Representatives, choose one of them Governor *viva voce*. Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law."

In this case two or more were not "equal and highest in votes." One received the highest number of votes and was declared Governor. Nor was the election contested according to law before the general assembly.

There is no doubt that our State constitution of 1790 was mandatory as to the presence both of the Senate and House when the vote for Governor was declared, for the Governor under that constitution was elected by the Senate and House of Representatives, and not, as under ours, by the people. The Senate, therefore, having no function to perform at the publication of the vote for Governor, it cannot be maintained that its refusal to be present renders such publication invalid. In refusing to recognize the House of Representatives, after it had been duly adjudged the constitutional House by the Supreme Court of the State, the Senate committed a lawless and revolutionary act which has no precedent in the history of American States.

The Supreme Court of the United States recognizes the decisions of the Supreme Court of any State. Yet this court is called on to annul the will of the whole people expressed at the ballot box, and solemnly recorded and announced.

The people have make the grant, and have set upon it their broad seal, the grantee has complied with all the conditions annexed, and the courts are then called upon to declare it void because the Senate perversely closed its eyes and refused to witness the delivery.

The Court holds that Wade Hampton having been elected governor on the 7th November, and having been so declared by the Speaker of the House, and having taken the oath of office is "the governor of South Carolina." The warrant of pardon issued by him must be respected and the prisoner released from custody.

Cigarette Making.

A newspaper man conversed with a New York chemist the other day on the subject of cigarette smoking, and was told that the growth of cigarette smoking was doing more to undermine the constitutions of the young men of our country than almost anything else. The gentleman said that he was constantly being called in consultation with eminent physicians, who were endeavoring to discover the cause of what to them appeared mysterious diseases among the young men of the families of some of their most influential patients. In nearly every case it was discovered that the primary cause was cigarette smoking. The most deleterious effects of cigarette smoking arise from the paper in which the tobacco is wrapped. In the manufacture of this peculiar paper white lead forms one of the component parts, and this, as is of course known, is a deadly poison. Naturally this poison is absorbed into the system, produces blotches on the face, injures the teeth, and makes sores on the lips. These are but the inevitable results of the mineral poison absorbed, and may be seen time and again in a day's walk—startling warnings against the pernicious custom.

OUTRAGE ON ANOTHER ESTABLISHED PRECEDENT.—The Detroit *Free Press* says: A chap who had, perhaps, read a newspaper item about how a street car was cleared of passengers in short order, when a man in the center of the car announced that he had the small-pox, tried the game on a Gratiot avenue car yesterday. Getting aboard the car on Monroe avenue, he sat down beside a big fisted man and remarked: "I don't suppose you object to riding beside a small-pox patient, do you?" "Not in the least," replied the big man, "but as some of the other passengers may I shall heave you out!" Thereupon he took the joker by the collar and leg, and carried him to the platform, and shot him far out into a big snowdrift.