# NEWS & TIMES.

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SATURDAY, MARCH 24, 1877.


No news of any importance from Washington up to going to press.

## Judge A. B. Knowlton for U S. District Attorney.

Congress will meet again the 1st of June when President Hayes will be called upon to nominate a suitable and proper person for the United States District Attorneyship for South Carolina, Mr. Stone's nomination having been twice rejected by the Senate. As the office should be filled by a man thoroughly identified with the interests of this State and at the same time holding views in harmonious sympathy with the Reform policy of the President, we place before the public for the position the name of Judge Augustus B. Knowlton, formerly a prominent member of the New York bar, but who, since 1868, has been practising law in South Carolina and is now one of the leading members of our legal fraternity.

Judge Knowlton was the orignator of the Hayes and Hampton movement in the last campaign in this State, having, sometime previous to the election, published a strong letter supporting the idea, and is a gentleman of undisputed culture and refinement. His knowledge of the law is extensive while he speaks fluently several languages. Judge Knowlton, although a Republican, has, by his gentlemanly bearing and scholarly attainments, enjoyed the confidence and esteem of our entire people through every campaign he engaged in in this State; and while stumping for Hayes and Hampton in the last contest, made many lasting friends and admirers. His appointment to the position of United State District Attorney would bring honor to the office and do credit to the court. If President Hayes really means to give us acceptable Republicans where they can be found to fill Federal offices in the State, here is a chance for him to make good that promise. Judge Knowlton will be agreeable to both parties and we trust that his friends will succeed in convincing the President of the wisdom of sending his name into the Senate when it meets in June.

Notwithstanding the fact that Wm. Stone's name was placed before the Senate twice for confirmation as United States District Attorney for South Carolina, he failed of success, and his name goes over to the next meeting of Congress. This announcement will make our citizens breath easier. Stone is not only objectionable as a man but is also incompetent for the position. His subornation of witnesses to make out a case against the whites in the Hamburg Massacre, damned him for ever in the eyes of all fair-minded men of both parties. He not only aided in carrying out the damnable conspiracies of the wiley usurper, Chamberlain, but was actually more active, if possible, against the good name of South Carolina, than that mas er scoundrel was. Stone is thoughly obnoxious to our citizens and is not fit to be township constable.

Those who come to you to talk about others are the ones who go to others to talk about you.

Solicitor Baltz returned from Washington on Monday last. He is said to be in favor of Governor Hampton.

## THE LAST PROP GOES DOWN!

### Judge Reed Decides That Chamberlain is not Governor.

**Wade Hampton Elected and Duly Inaugurated Governor According to the Constitution—The Jury-List Selected Under the Sham Authority of Chamberlain Declared Irregular and Void—The Prisoner Flynn, held Under a Warrant from one of the Sham Trial Justices, Released by Order of the Court—End of the Chamberlain Usurpation in Charleston and Orangeburg Counties.**

Judge Reed filed on Tuesday last his decision in the Flynn *habeas corpus* case, which we print below. This decision establishes Hampton's Government in Orangeburg and Charleston Counties. Any process hereafter issued by a Trial Justice appointed by Chamberlain will be illegal and should be resisted:

*Ex Parte James Flynn—Habeas Corpus.*

The relator states that "he is illegally detained in the custody of one Wm. F. Dover, of the City of Charleston, and prays that a writ of habeas corpus be granted to bring him before the Court, that the cause of his detention being seen and known, such proceedings may be had therein as are agreeable to law and justice." The writ was accordingly granted, but before it was delivered, W. F. Dover appeared and stated that the relator was not in his custody, but had been committed by him to the Jail of Charleston County. Whereupon it was ordered that the writ be directed to J. H. Symmes, a deputy of the sheriff, the sheriff himself being absent from the State, and keeper of the Jail, who made the following return: "I hold the prisoner by commitment of W. F. Dover, trial justice, charging him with assault with a deadly weapon, which commitment is herewith submitted. Signed C. C. Bowen, S. C. C." The relator by his counsel, insists that he is illegally detained because W. F. Dover, upon whose warrant he was arrested and by whom he was committed, is not and was not, at the date of the arrest, a trial justice, and had no lawful authority to order his capture or detention. The object of this proceeding is to induce a recognition of one of the two persons claiming to be Governor of the State, and is the first case involving directly the question as to who is Governor that has arisen or been argued on this circuit. Hitherto the opinion has been held by the Court, acquiesced in by the Bar, and the practice as far as practicable conformed thereto, that the public weal would be best conserved in this jurisdiction by preserving the *status quo* until a decision should be made by some authority that would be generally recognized throughout the country as settling the question. But, pending such anticipated settlement, there have been so many adjudications directly and indirectly by Judges on other circuits, and by the Justices of the Supreme Court, that a recognition by this Court of the influence they are entitled to as contributing to a final determination of the controversy is imperatively demanded and, on account of the conflict of as sumed official authority, cannot be safely delayed longer. To this end the case before the court has been brought, and although a circuit decree can have but little influence in determining who is Governor, it must for the time being settle local conflicting claims to official recognition, and lead to the harmonious working of the judicial system ordained for the preservation of the public peace and the protection of persons and property. Having heard argument for the first time, and on but one side of the question, I have deemed it proper, so far as a very limited opportunity permitted, to give it such consideration as its importance demanded, and I now proceed to state briefly the conclusions I have arrived at, from a review of the facts before me and the law applicable thereto.

By the act of February, 1873, 15th Statute, 355, it is provided that "the Governor do appoint, by and with the advice and consent of the Senate, five trial justices for the City of Charleston," which number was reduced to four by the act of March, 1876, 16th Statute, 153. Upon inspection of the commission of W. F. Dover, which was produced in court, it appears that he was appointed to the office he claims on the 3d of January, 1877, by D. H. Chamberlain, styling himself Governor of South Carolina. It is denied by the relator that Mr Chamberlain was then Governor of he State, and insisted that, by virtue of the election held on the 7th of November, 1876, and of proceedings had in the General Assembly and the courts, Circuit and Supreme, subsequent to that date, Wade Hampton is, and was, the lawful Governor, and alone authorized by law to appoint trial justices.

The Constitution in Section 2, Article 4, provides that "the Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for two years, and until his successor shall be chosen and qualified," and in Section 4 of the same Article it is *declared* that "*he person having the highest number of votes shall be Governor*," and that * * * "contested elections for Governor shall be determined by the General Assembly."

There are other provisions in the same section directing how the result of the election shall be ascertained and declared, but I regard them of form merely, not of substance, excluding other modes under all circumstances; and it has not been pretended, so far as I am informed, that a neglect of duty, or an improper or fraudulent discharge of the duty imposed on them, by any of the officers through whose hands the ballots or returns have to pass, can vitiate the election and defeat, either the expressed will of the electors or the right of the person having the highest number of votes. An election for Governor of this State was held, according to law, on the 7th November last, at which Wade Hampton and Daniel H. Chamberlain (the incumbent) were the candidates, and on opening the returns of the county convassers, which cannot be gone behind, (see the Report of the Presidential Electoral Commission in the case of Florida,) except by a contest as prescribed by the Constitution. It was ascertained as is in proof before the Court, and has never, to its knowledge, been denied, that there were in the ballot-boxes a majority of 1,134 votes for Wade Hampton. This would seem to have settled the question, unless a contest had been made before the General Assembly, as provided for by the Constitution, and there was no contest. But, nevertheless, the qualification of the person elected was necessary before he could enter upon the duties of the office, and in the meantime the incumbent would have held over under the Constitution, if he had elected to do so. Did he do so? When the General Assembly met in Columbia in November last the members of the lower House divided into two sections. One of these, consisting of a less number than a lawful quorum of the House of Representatives, as had been previously adjudged by the Supreme Court in the case of Morton, Bliss & Co. vs. the Comptroller-general—4th S. C. Reports, 430—proceeded to organize by electing E. W. M. Mackey Speaker, whilst the other, containing a lawful quorum, including certain persons who, it was charged, secured their election by fraud and violence, but who having been returned by the county canvassers as receiving the highest number of votes, were *prima facie* entitled to their seats, was organized by the election of W. H. Wallace as speaker. On the 5th of December, 1876, E. W. M. Mackey, in the presence of the Senate, whose organization was regular, and of the body over whom he had been chosen to preside, styling themselves the House of Representatives, proceeded to open the election returns which had been delivered to him by the secretary of State, and after throwing out, upon motion, the entire vote of two counties, without protest or investigation, upon ascertaining the result in the other counties, made formal declaration that "D. H. Chamberlain had received a majority of the whole number of votes cast, and was duly elected Governor of South Carolina for the ensuing two years." Previous to these proceedings a resolution which was still pending had been introduced in the Senate, as appears by its journal, calling in question the legality of the organization of the House, with which they were then acting; and on the same day the question as to which of the two bodies that had been organzed as stated was the constitutional House of Representatives, was submitted to the Supreme Court in the case of ex rel. W. H. Wallace against H. E. Hayne, secretary of State, and E. W. M. Mackey. On the next day, 6th December, a decree was rendered and published by that tribunal, deciding that the body over which W. H. Wallace had been elected to preside as Speaker was the legal House of Representatives of the State of South Carolina, and that E. W. M. Mackey, claiming to be Speaker, was a private individual, not amenable to the mandatory process of the Court. Here again, without reference to what had gone before, it would seem the controversy should have been regarded as ended. That decision, from the moment it was made public, was the supreme law, which all persons were bound to respect and yield obedience to. And yet on the following day, 7th December, 1876, with a full knowledge, as must be presumed, of all these facts, Mr. Chamberlain, in pursuance of the declaration of his election by E. W. M. Mackey, who had been adjudged to be a mere private citizen, appeared before the body of citizens over whom he was presiding, the Senate being present, took the oath of office as Governor, was intalled in the usual form, and entered upon the duties of a *new term*, as was manifested by his acts, and in substance announced, in the opening sentence of his inaugural address.

By suffering himself to be thus installed for a new term, not withstanding it was as his own successor and without regard to the illegality of the body he appeared before, I am of opinion, from the analogies of the law, that he abandoned the constitutional right to hold over until his successor had qualified; and, in the language of Lord Somers, in King James's case, "disowned and abdicated" his former office, to all intents and purposes, and was thereby estopped forever after from questioning his own deliberate act. Bigelow on Estoppel, 502; Bank U. S. vs. Lee, 13 Peters, 118; 5th Cranch, Cir. Ct., p. 320; Vermont vs. Society for Propagation of Gospel. 2 Paine, 310.

If this be true, Wade Hampton, who had been elected by a majority of the votes cast, would from that moment, upon taking the oath of office, have been Governor *de facto* if not *de jure* without regard to any formal declaration or installation. But has Hampton at any time, been lawfully inducted into office and is he now Governor *de jure* of the State of South Carolina? On the 13th December 1876, the body which had adjudged by the Supreme Court to be the Constitutional House of Representatives as is in proof before me, sent a formal notice to the Senate, which was placed in the hands of the presiding officer, who for some unexplained reason failed to publish it, that they would on the next day, 14th December, at 2 P. M., proceed to open and publish the returns of the election for Governor. The Senate did not attend as a body on that occasion, but a number of the members were present, and as the notice was published in the journal of the House for that day, it is fair to presume they all had actual notice, as they certainly had of the illegality of the House they had before been acting with. At the hour appointed the returns, which were sworn transcripts from duplicates of the originals which were withheld from them, obtained from the offices of clerks of the court where they are filed by constitutional direction, and also a certificate and statement of the votes cast from the office of the secretary of State, as taken from the originals, were opened and examined, when it was ascertained that Wade Hampton had received a majority of 1,134 votes, as before stated, whereupon he was formally declared Governor of the State of South Carolina. On the same day he was duly qualified and entered upon the duties of the office, which he has continued to discharge so far as permitted by surrounding adverse circumstances, up to the present time. It has been stated that the returns used by the lawful House of Representatives in ascertaining and declaring the result of the election for Governor, were transcripts from duplicates filed in the offices of clerk of court, and it does not appear whether any effort was made, by process of attachment or otherwise to compel the persons claiming to be officers of what is popularly known as the Mackey house to deliver the originals. It is possible that by such a proceeding, which was legitimate and proper, after the decision of the Supreme Court had determined the lawful House, the primary evidence of the election might have been obtained, which would have avoided one of the objections raised to the declaration of Hampton's election. If suppose, however, that the state of affairs existing in Columbia at the time was a sufficient excuse for resorting to secondary evidence, and therefore justifies the action taken. However that may be, I do not regard it as affecting the result. The transcript of duplicate returns, with the official certificate of the secretary of State, although secondary evidence, was, it may be presumed, the best that could be had, and I am of opinion was sufficient under the terms of the Constitution. And so, too, with regard to the presence of the Senate at the opening of the returns. If not actually, it must be held to have been constructively present. Otherwise, after the recognition of the lawful House by the Supreme Court, it would have willfully ignored a plain constitutional duty, thereby giving sanction to a great wrong, and tending to defeat the will of the electors as expressed through the ballot-box, which would have been repugnant alike to good law and good morals. To enforce a right or prevent a wrong the law will, as to details and mere matters of form, presume that to have been done done which ought to have been done.

I am of opinion, therefore, that Wade Hampton was made Governor in and over the State of South Carolina, through the ballot-box, in accordance with the Constitution, at the election held on the 7th November last. That he qualified, if not following the letter, in the spirit and intent of the Constitution on the 14th December last. That he has been since that time, and is now, the lawful Governor of South Carolina, and should be obeyed and respected accordingly. It follows from these views that D. H. Chamberlain was not Governor on the 3d January, 1877, the date of the commission of W. F. Dover as trial justice for the City of Charleston, and that his appointment and commission were without lawful authority and void.

It is, therefore, ordered that the relator, James Flynn, be discharged and go hence without day.

J. P. REED.

March 20, 1877.

JUDGE REED'S INTERPRETATION OF HIS OWN DECISION.

In an informal conversation with the legal reporter of the *News and Courier*, last evening, Judge Reed very decidedly stated that if any of Chamberlain's trial justices attempted in the face of his decision to make any arrests, they should be dealt with as assailants who committed assaults on their own responsibility. The Judge further stated that he had no idea that the jailer would receive any of the bogus justices' prisoners, and that if he did, he did so at the risk of punishment for false imprisonment.—*News and Courier.*

## Governor Hampton and the Judges.

One of the papers submitted to the President by the Hampton Committee sets forth the fact that the entire Judiciary of the State, with but two exceptions, have received and receipted for their salary from the Comptroller-General and Treasurer, and in so doing recognized General Hampton as Governor. The exceptions were Judges Wiggin and Carpenter, both of whom have recognized the Hampton Government in other forms.

The following are copies of the receipts, with a statement of Comptroller-General Hagood attached, explaining the circumstances, &c.:

OFFICE ACT'G COMP. GEN.,
AND TREASURER,
January 20, 1877.

Received of Jonson Hagood, Acting Comptroller General and Treasurer, three hundred and four 91-100 dollars on account of my judicial salary.

$304.91. T. J. MACKEY,
Circuit Judge.

OFFICE ACT'G COMP. GEN.
AND TREASURER,
January 20, 1877.

Received of Johnson Hagood, Acting Comptroller General and Treasurer, two hundred and ninety-one 66-100 dollars on account of my judicial salary.

$291 66. T. H. COOKE.

OFFICE ACT'G COMP. GEN.
February 23, 1877.

Received of Johnson Hagood, Acting Comptroller General and Treasurer, two hundred and ninety-one 66-100 dollars on account of my official salary as judge of Third circuit.

$291.66. A. J. SHAW.

OFFICE ACT'G COMP. GEN.
AND TREASURER,
February 23, 1877.

Received of Johnson Hagood, Acting Comptroller General and Treasurer, five hundred and eighty-three 63-100 dollars on my judicial salary.

$583.63. J. P. REED.

OFFICE ACT'G COMP. GEN.
AND TREASURER,
January 30, 1877.

Received of Johnson Hagood, Acting Comptroller General and Treasurer, two hundred ninety one 66-100 dollars on account of my judicial salary.

$291.66. C. P. TOWNSEND,
Judge of Fourth
Judicial Circuit.

OFFICE ACT. COMP. GEN.
AND TREASURER,
January 20, 1877.

Received of Johnson Hagood, Acting Comptroller General and Treasurer, two hundred and ninety one 66-100 dollars, on account my salary as circuit judge.

$291 66. L. C. NORTHROP.

COLUMBIA, February 13, 1877.

I hereby assign to Carolina National Bank my quarter's salary as associate justice, ending 1st February inst., being eight hundred and seventy-five dollars.

$875. A. J. WILLARD.

(Indorsed,) Carolina National Bank, by C. J. Iredell, Cashier.

COLUMBIA, February 11, 1877.

For value received, I assign and transfer to C. J. Iredell my quarter's salary from November 1, 1876, to 31st January, 1877. as chief justice of the Supreme Court of South Carolina, the amount being one thousand dollars.

F. J. MOSES.

(Indorsed) C. J. IREDELL,
Cashier.

COLUMBIA, S. C.,
January 20, 1877.

*The Comptroller General and Treasurer of South Carolina:*

Please pay to Mr. E. J. Scott & Son, two hundred and ninety-one 56-100 dollars, on account my judicial salary. J. J. WRIGHT.

Received, 20th January, 1877, amount of above draft, of Johnson Hagood, Acting Comptroller General and Treasurer of South Carolina.

$291.56. EDWIN J. SCOTT & SON.

OFFICE OF ACTING COMPTROLLER
GENERAL AN TREASURER,
SOUTH CAROLINA,
COLUMBIA, March 13, 1877.

I hereby certify that the foregoing are copies of vouchers on file in my office for payments on account of salary to six of the eight circuit judges of the State and to the three members of the Supreme Bench. I also certify that the vouchers for the three supreme judges (differing in form from the others) were so drawn in the cases of Judges Moses and Wright, after a personal conference by each of them with me to know if I would pay them in that shape, and in the case of Judge Willard, that I put his voucher in the same shape without consulting him. The variation in the form of receipts given by the judges of the Supreme Court was because Judges Moses and Wright stated to me that they did not desire to draw directly from the Hampton government while the case involving its title was pending befor them.

JOHNSON HAGOOD,
Acting Comptroller General and Treasurer of South Carolina.

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Cox's Gelatine English Piccalilli.
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Roasted Coffee (try it.)
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FAMILY GOODS

My stock of DRY GOODS (being replenished) Lady's and Men's Straw Hats, Parasols, etc., etc., will be sold as Low as Cash purchases will allow.

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