

WHO IS GUILTY OF USURPATION?

The Radicals are greatly rejoicing over the decision of the Supreme Court, sustaining the action of Gov. Caldwell in making appointments for Directors of the Railroads, and for the Penal and Charitable Institutions of the State.

The decision of the Supreme Court ousts the Directors appointed by the acts of the Conservative Legislature of 1871-72, on the ground that these appointments were illegally made, and that the only proper mode of filling the several positions, is for the Governor to nominate and the Senate to confirm.

In the opinion of the Supreme Court, the Legislature had no authority in law to make appointments, and what is known as the Legislative Boards of Directors are declared not entitled to hold the places which the law of 1871-72 conferred upon them.

We publish to day a communication over the signature of PUBLIUS, written by a leading Conservative in the Legislature of 1871-72, which shows incontrovertibly that the interpretation put on the language of the Constitution by the Conservative Legislature was precisely the same of Governor Caldwell, and the Radical Legislature of 1868-69!

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The Bar of the State was astonished at the novel principle established by the Supreme Court, in Clark vs. Stanley, as to what constituted an office in North Carolina, for under the old law no such latitude had ever obtained in the definition of the term, and it was an innovation for which the Radical Carpet-Bag Constitution is responsible.

The Conservative Legislature of 1871-72 had no judicial authority. They simply acted in conformity with the act of the previous Radical Legislature—presuming that the Radical party were acting in conformity with their own pet organic law, which has been so aptly termed a bundle of absurdities.

If there has been any usurpation in the matter of the Legislative appointments, as is now so boldly charged by the Radical papers, Gov. Caldwell and the Radical party set the example, and they are responsible for it; and we shall hold them responsible before the people of North Carolina for all the trouble that has grown out of these several appointments.

Let us glance at the facts, and see if we are not sustained in making this charge. Take, for example, the appointment of the Penitentiary Board. The Supreme Court, in its late decision, says that the Directors must be nominated by the Governor and confirmed by the Senate, and that the Directors appointed by the act of the Legislature of 1871-72, to wit, Messrs. Dockery, Bledsoe, Boylan, Thompson and Coffield are therefore illegally appointed, but that Gov. Caldwell's appointees are the legal Board.

It is true the Conservative Legislature by act ratified on 1st April, 1871, abolished the Board of Commissioners and substituted the Board of Directors, but the offices were the same in law, having similar powers. According to the opinion of the Supreme Court, the Commissioners were officers as well as the Directors.

On the 12th April, 1869, the Radicals passed an act appointing C. L. Harris, Alfred Dockery, S. F. Patterson, G. Wm. Welker and Alfred Howe, colored, Commissioners to have the Penitentiary

constructed. Under the law these Radical officers, appointed by the Legislature, made a contract with the Coleman Brothers for stone work for the Penitentiary, which contract has been recently rescinded by the Conservative Legislature, at a saving to the State of over two hundred thousand dollars!

Then above granted. The other point in determining the meaning of this section, is to ascertain what words are to be interpolated at or the words provided for.

Up to the decision of the Supreme Court in 1872 it was conceded that the ellipsis after "provided for," is to be supplied by inserting the words "by law."

So it was the understanding up to that decision that the Governor shall nominate and the Senate confirm all officers, (not placements, such as directors, proxies, trustees, &c.) whose offices are established by this Constitution, or which shall be created by law, and when appointments are not otherwise provided for by law.

It is true, after Gov. Holden was deposed and Gov. Caldwell succeeded to his place, the latter made his own appointments for the Railroads and Public Institutions, for the purpose of ousting the appointees who held under the act of the Conservative Legislature of 1871-72; yet it is apparent that the Governor's mind had suddenly undergone a very singular and remarkable alteration.

For in making these appointments as Governor, he placed himself in an attitude of direct opposition to the construction impliedly put upon the Constitution by himself and by the Radical Legislature of 1868-69, to whose laws he subscribed his own sign manual as President of the Senate, and which did not recognize the appointing power of the Governor, with the confirming power of the Senate, in accordance with the late opinion of the Supreme Court.

We would not intimate that any new light, in regard to the proper manner of making these appointments, was thrown upon Governor Caldwell's mind by any of the Judges of the Supreme Court. Oh, no! We would not be considered as charging any Justice on the Supreme Court Bench with having hinted to his Excellency, then Accidental, that these appointments had heretofore been made irregularly and illegally, and hinting farther, if he would make some new appointments, giving his Radical friends the offices, he would be sustained by the Supreme Court!

Oh, no! Such conduct would be unbecoming to the judicial ermine, and, of course, no such intimations ought to be made by any one! We only know that the Governor changed his mind suddenly, and flew in the face of the acts of the Radical Legislature, which had been signed by himself.

We only say there was a very remarkable change in the Governor's opinion, and he proceeded immediately to act in contravention of the statute law made by his own party, and for which his own party is amenable.

The Conservatives followed the Radical interpretation of the Carpet-bag Constitution, and if there has been any usurpation of power in the Legislative appointments of officers, the Radical Legislature must be held primarily responsible.

The Legislature of '71 and the Governor's Appointments. The Supreme Court has decided that the act of the Legislature of 1871-72, taking from the Governor the authority to appoint the State Directors in Railroads, Asylums, etc., is unconstitutional. "We always thought that the Legislature of 1871-72 did wrong in interfering with the Governor's authority."

The whole point in the controversy about the Governor's power to appoint hinges on the following clause in the Constitution: "The Governor shall nominate, and by and with the advice and consent of a majority of the Senators elect, appoint all officers whose offices are established by this Constitution, or which shall be created by law, and whose appointments are not otherwise provided for, and no such officer shall be elected or appointed by the General Assembly."

This section provides for the appointment of officers—not placements. The first question then is, who is an officer? The Constitution requires that all officers shall take an oath to support the Constitution and laws of the United States, and of the State of North Carolina.

As it was said by the Supreme Court in Worthy against Barret, in 1869: The test, in deciding who is an officer, is whether or not this oath is required to be taken?

Directors, proxies, trustees, &c., have never been required by law to take this oath. The Supreme Court in 1869 mentioned by name each position whose incumbent was obliged to take this oath, and among them do not mention either directors, proxies, trustees of asylums, &c., &c. The oath has never been taken to our knowledge by any such placements.

from blame, for not knowing that in 1872 the Court would express a different opinion. If the Legislature of 1870-71 had declared these placements to be officers, they would have flown directly in the face of the Court. So they considered them to be not officers, but mere placements, and as such not embraced in the section of the Constitution above granted.

The other point in determining the meaning of this section, is to ascertain what words are to be interpolated at or the words provided for.

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AMUSEMENTS. TUCKER HALL. TWO NIGHTS ONLY. Monday and Tuesday, March 17 and 18. The First Appearance in Raleigh of the Original and Only BERGER FAMILY SWISS BELL RINGERS!



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Miss ANNA BERGER, Gold Cornet Soloist. Miss ETTIE BERGER, Staff Bell Player. Miss NELLIE KNAPP, Violinist. ERNEST THEISE, Soprano. FRED. G. BERGER, Violinist.

All the Favorites will appear! Admission, 75 cents. Reserved Seats, \$1.00. Gallery, 50 cents. Seats can be secured at BRANSON'S BOOK STORE.

REPORT OF THE CONDITION OF THE CITIZENS' NATIONAL BANK, of Raleigh, North Carolina, at the close of business, 28th February, 1873.

Table with 2 columns: RESOURCES and LIABILITIES. Includes items like Loans and discounts, Capital stock paid in, and various bank assets and liabilities.

I, P. A. WILEY, Cashier of the Citizens' National Bank, do solemnly swear that the above statement is correct to the best of my knowledge and belief.

Correct-ATTEST: W. E. ANDERSON, P. A. WILEY, W. J. HAWKINS, Directors.

NEW ARRIVALS. SPRING STYLES, 1873. MOLESKIN HATS.

PERCALLS AND CAMBRICS. 2 cases new Spring Styles of PERCALLS FOR LADIES AND MISSES SPRING DRESSES.

SPRING ARRIVALS. BOOTS! SHOES!! and HATS!!! We are receiving daily one of the most complete stocks of BOOTS and SHOES ever brought to this city.

SAVE LIFE AND PROPERTY. REYBURN, HUNTER & CO'S CELEBRATED Galvanized Lightning Rods.

ORNAMENTAL PLANTING. MAGNOLIA GRANDIFLORA. The subscriber will remain in Raleigh a few days, and those desirous of conferring with him in regard to Ornamental Planting, and those who wish to obtain Plants, are requested to leave their orders with Messrs. W. H. Jones & Co., as early as possible.

EVERYTHING USUALLY FOUND in a First-Class Drug Store. At 112-114 W. HAYWOOD, Notary Public.

WAREHOUSE TOWN POINT, NORFOLK, VA. COTTON FACTORS General Commission and Shipping Merchants. Established in 1815.

C. W. GRANDY & SONS, SPECIAL AGENTS FOR GILHAM'S 'COTTON' FERTILIZER.



EVERY BAG STAMPED WITH THIS 'TRADE MARK.' MANUFACTURED BY THE SOUTHERN FERTILIZING COMPANY. AT RICHMOND, VA.

At Warehouse of C. W. GRANDY & SONS, NORFOLK, VA. Cash Price Per Ton of 2,000 lbs. \$60. Time " " " " 2,000 lbs. \$65.

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Your attention is called to the 'Opinions of the Press,' and the reports of disinterested Newspaper Correspondents from various sections throughout Eastern and Middle North Carolina, and Southern Virginia, where it has been extensively used.

19,500 LBS. SHIP STUFF. 10,000 Lbs. White Bolted Meal. 200 Boxes Clear Rib Side Bacon, 5 Rib Side, 20 Half Hogs Lard, 5 Hogs Lard, 25 Boxes H. Welch's Laundry Soap.

50 BOXES CANDY AND TEN Barrels Crackers. 25 Boxes meat and a large lot of Salt, at Jan 1-11. M. A. FALKER.

LUBIN'S PERFUMERY AND TOILET POWDER. CANNED OYSTERS, MACCARONI, Wax and Adamantine Candles, Starch, Toilet and Laundry Soaps.

A LARGE LINE OF FLUID EXTRACTS and ELIXIRS. A SET OF SUPREME COURT REPORTS FOR SALE.

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AN ACT TO PROHIBIT THE SALE OF INTOXICATING LIQUORS IN CERTAIN LOCALITIES.

Section 1. The General Assembly of North Carolina enacts, That it shall be unlawful for any person or persons, to sell or give away any intoxicating liquors in any way or manner, or in any quantity, so as to receive any compensation for the same whatever, either directly or indirectly, in any of the following places, to-wit: in Alleghany county; Bluff Presbyterian church, in Cumberland county; Ashpole Missionary Baptist church, in Robeson county; of Yopp's Meeting House, in Onslow county; or within three miles of the following places, to-wit: Mount Pleasant Academy, in Cherokee county; Cumberland Union church, near Walkertown, in Cumberland county; Blockers store, in Creeks Village, in Cumberland county; Jackson Female College, in Henderson county; Collocksville in Jones county; Laurel Hill church, in Richmond county; Big Branch Baptist church, Beauty Spot church, Ashpole Presbyterian church, Zion's Tabernacle Baptist church, Asbury church, Howard Methodist church, or Mount Mariah Baptist church, in Robeson county; or within two and one half miles of Rocky Mount church, in Cabarrus county; or within two miles of the following places, to-wit: Piney Grove church, Lanesville church, Hill church or School house, in Anson county; Christian Relief church, or Comfort church, in Beaufort county; French Creek Baptist church, Brown Marsh Presbyterian church, in Bladen county; Ednor or Flouring mills in Lockville, in Chatham county; Methodist church, Presbyterian church, or Baptist church near Fort Hembri, or Hick's High School, near north's camp ground, in Clay county; Pleasant Christian Relief church, or Comfort church, in Johnston county; Zion church, in New Hanover county; Lumber Bridge Presbyterian church, in Robeson county; Elderber Springs, in Richmond county; Little River church, in Transylvania county; in Duplin county, the corporate limits of the town of Wilkesboro, in Wake county; the Court House in Wilkesboro, in Wilkes county; or within the corporate limits of the town of Lumberton, in Moore county; or Lumberton or New Bridge church, in Duplin county; the corporate limits of Lumberton to grant of a license within its corporate limits, or within one and a half miles of Cherry Grove Baptist church in Columbus county; Red Farm Presbyterian church, colored, Harris depot, Methodist church, of the Spring camp ground, or Methodist church at Bethel Camp ground, in Cabarrus county; or Marchion Factory, in Manchester, Cumberland county; or within one mile of Goose Creek; Island church, in Beaufort county; the Baptist church in Albemarle county; in Bladen county; Newton Academy, or Fair View school house, in which J. S. Schuford taught school, in Johnston county; Pioneer Mills Post office, in Cabarrus county; Cypress Creek church, or the Baptist or Methodist church in Hailville, Lupton county; Vine Hill Academy, in Halifax county; Bethel church, in Pitt county; the Court House in Randolph county; Turnersburg church, in Fredricks county; or Union Chapel Methodist church, in Robeson county.

Sec 2. Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, for each and every offense, shall pay a fine not less than ten nor more than fifty dollars or be imprisoned, in the discretion of the Court not to exceed thirty days.

Sec 3. The Secretary of the State shall furnish a certified copy of this act, immediately after its ratification, to the 'Star,' 'Sentinel' and News for publication.

Sec 4. This act shall be in force from and after the first day of May, A. D. 1873. In General Assembly read three times and ratified this 3rd day of March, A. D. 1873.

J. L. ROBINSON, Speaker of the House. C. H. BROGREN, President of the Senate.

I, William H. Howerton, Secretary of State, hereby certify that the foregoing is a true copy of the original act on file in this office. WM. H. HOWERTON, Secretary of State.

1873. 1873. SPRING CLOTHING, CLOTHIERS, R. B. ANDREWS & CO., 27 Fayetteville Street.

Have just received another lot of GENTS FINE DRESS SHIRTS OF THE NEWEST STYLES, which for FIT, DURABILITY and COMFORT cannot be surpassed in this country. NOW OPEN!

A full stock of MENS', YOUTHS' AND BOYS' Black and Colored Felt Hats, embracing all the most desirable shapes and colors. R. B. ANDREWS & CO., 27 Fayetteville Street, Raleigh, N. C.

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