WESTON R. GALES EDITOR AND PROPRIETOR.

BUBLISHED EVERY TUESDAY AND PRIDAY.

SUBSCRIPTION-Five Dollars per annum-half i

ADVERTISEMENTS .- For every 16 lines, first inse tion, One Dollar; each subsequent insertion, 25 cents. Court Orders and Judicial Advertisements will be charged 25 per cent higher; but a deduction of 334 per cent, will be made from the regular prices, for ad-

Advertisements, inserted in the Semi-Weekly Ressarka, will also appear in the Weekly Paper, free of

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. CONGRESS.

WASHINGTON, DEC. 18. Immediately after the Speech of Mr. Rayner, (which is in the course of transcription

Mr. SHEPARD, of North Carolina, rose and said: This debate had already occupied so long a time, that he did not know that he could throw any light on the subject. But as his course had differed in some degree with that of some gentlemen on that floor, he felt it but an act of justice to himself that he should claim the attention of the House for a few moments, while he made a very brief explanation. When the members of this body first assembled here, certain gentlemen from the State of New Jersey appeared with a certificate similar to that which he, (Mr. S.) possessed. And on recurring to the laws of New Jersey, made in pursuance of the Constitution of the United States, he. found that the Governor of that State was authorized to receive the returns of the elecsions in the different townships in the State, whole number of votes. Those gentlemen not entitled to seats here. His opinion then was, that their right to associate with him returning officer of that State. He did not attach any peculiar significance to the Governor acting in his official capacity, but only as the returning officer of the State of New- heard it affirmed, and not denied by the gen-

Now, supposing that the Congress of the officers had failed to return the number of United States should pass a law and take votes given at their respective polls; and from New Jersey its power, or supposing make the returns to this House, it seemed tlemen made an offer to their opponents to to him (Mr. S.) that the argument in that resign their seats and go before the people of his position, but when every one he has blow at the dearest of all popular rights—
wase would be that the returns made by an for a second trial, he felt himself bound to relied on is a positive authority against him, the right of representation. efficer of the Tederal Government, would be have the strongest suspicion about the whole regarded as valid until proved to be false and matter. He then believed that there was unfair. So it was now with regard to a reserring officer in the State of New Jersey .-The officer was appointed by the Governor under the law of the State. He, therefore, acted under the sanction of the Governor, and under the Government of New Jersey itself. Now, it had been the usage both in this Government and the State Governments, as well as that Government from which we derived and the other desired to break through the all our institutions, to regard the acts of the returning officer as valid and binding until proved to be false. This was the view he (Mr. S.) took at the time the gentlemen appeared here, and it was the view he now took. And were the same thing to be acted over again, a regard for what he considered the law and Constitution, would make him. take precisely the same course. He would not go into an argument on the subject, as he had said in the commencement of his remarks. It had already been very fully discussed, and much more ably and efficiently than he was dered as entitled to it until proved otherwise. equal to. And he hoped that he had too much respect for the gentlemen around him. to enter into a long series of harrangues and repetitions of an argument which they had heard a thousand times. He would desist from doing so. But it had been said on the other hand, suppose a fraud had been committed. Now, that was possible; a fraud might have been committed, as frauds often have been on other occasions. But, in his opinion, in a preliminary proceeding, the into that matter. Admitting, for instance, that fraud had been committed, what, he would ask, was the highest evidence that could be received in proof of the election of not a fraud be committed in any other way? the Governor. Might not a fraud be committed in the certificate from the returning officer as well as the certificate of the Governor? Therefore, in an early stage of the proceedings, it was improper to inquire into that and what more could be said about the matmatter; in doing so we should be thrown ter? They had a right to participate in the adduce, and I know that my friend valued subjects of discussion—for he himself has I cannot see how it is the into anarchy and confusion. Something had been said respecting the technicalities of the law. Now he considered those very technicalities the bulwark of justice. In his own political course, that which had passed, and that which had to come, he intended to bind himself down to strict law. however disagree-

able it might be. he would not trouble the House, he had been send for persons and papers, and let them go are not, with one exception, as I have stated induced to vote for the resolution of the gen- into an examination of the whole controver- them?

rather there was a tie vote on the question, and the resolution was lost. On Saturday morning, the gentleman from Virginia introduced a third resolution, and a motion was made to lay it on the table, and he (Mr. S.) voted for the motion. And he had risen at this time, more with a view to explain the by the Reporters, and will be published as reason why he had done so, than for any soon as ready for Press) other purpose. It appeared to him, that suf-ficient time had been spent in the discussion. of this subject, and all had been said which was calculated to throw any light on it. He thought that the dignity of the members of this House, as well as the business of the country, required that we should put an end to this matter : therefore he had voted to lay the resolution on the table, but the motion was lost by four votes. He saw no inconsistency in his course in reference to those two votes. Where the question had been distinetly represented to him, he had voted according to the dictates of his conscience and understanding. But the presiding officer, now in the chair, would remember that the rules and proceedings of this House of Representatives had been established as the rules of the meeting before the Speaker was appointed. Now, it seemed to him (Mr. S.) that,

> votes of New Jersey; and when, too, he something wrong—that some fraud had been committed by the returning officers, and therefore, he said, it was with the greatest reluctance that he obeyed the strict letter of the law in opposition to abstract justice. This was his position, and he spoke the more strongly because one party had used the forms of law to cover up a despicable trick, law to get abstract justice. That was the already said, being a law-loving man, he vo-

He (Mr. S.) had now come down to the proceedings of vesterday; and he must say that he never was so surprised in his life as at them. Immediately after the Speaker took the chair, and the members were being sworn to preserve the Constitution, the gentlemen from New Jersey went up to the Clerk's table to take the eath. He would forbear to make any comment on their conduct. Probably they had a right to do so .-But it seemed to him that they had mistaken members of this house had no right to inquire | the proper course they should have followed. Now, the Speaker was elected; but we all famous as well as infamous case of Moore knew that a great struggle had taken place in reference to the election of that officer; one set of men wanted the gentlemen to come a member who first presented himself and re- in and take their seats, and another said that quired a seat in this House? Again, might they had no right. Did not every one see that the object was that they might vote on face of the paper itself. Besides, the stand-

> organization of the House, and he had voted these authorities as the apple of his eye. - begun that discussion-and I shall, therefore, to give them that right. But now that the He would not give me the volume, for fear consider them, and I think I shall show, if House had been organized, and a Speaker that I might turn up his "dog-eared pages," not to the satisfaction of the gentleman him-

TUESDAY, JANUARY 7, 1840. man from Virginia, (Mr. Wise,) which | sy ? Why not let the whole case be impar- | What has been the practice of that great was, that those gentlemen who had the cer- tially decided upon? The great argument and glorious people from which we derive tificate of the Governor were entitled to be last week was, that we could not inquire into all our institutions, and especially the great, put on the roll. He (Mr. S.) voted on that proposition, which, however, was lost by a majority of three. In the subsequent proceedings, the gentleman from Virginia offered another resolution, which was, that those this reason was now gone-the Speaker was fiament had been that for which he conhaving the certificate of the Governor were elected, the House was organized, the com- tends. Now, sir, I will inform the gentleentitled to seats on this floor until further mittee could be appointed, and he thought it man that directly the opposite has ever been proceedings should be had. He voted with the gentleman on that question. He (Mr. S.) thought they were entitled to their seats; any important vote taken until this question authority quoted from the Lex Parliamenthat they ought to be allowed to vote for a was decided. Even the great financial questaria by my friend from North Carolina. Speaker of this House, and participate, in fact, tion, on which he should go with the Exec- (Mr. RAYNER,) in a speech which I am in the organization of this body. But there utive, and the fate of which probably would sure I express the quanimous sentiment of the found he was in a minority again, or depend on the decision of these contested the House when I call it able and eloquent. election cases, might be laid over until the It is an authority express, unequivocal, and House decided who should take seats as admitting neither of perversion nor reply.— Representatives from New Jersey; and he But, sir, I will state a case of very recent would say, that no man in this country was occurrence in the House of Commons. I more anxious that the great political ques-tions now pending should be decided as member from Massachusetts, (Mr. Abaus.) quickly as possible. But, anxious as he was And I only state it myself from the apprethat a termination should be put to these dai hension that, in the contest for the floor-a ly scenes, he did not desire to accomplish contest purely physical-he may not be able that object at the expense of justice, and by to obtain it to state it himself. A stronger wished gentlemen would at once consent to occurred, infinitely stronger than that which refer the whole subject to a committee for | we are considering. investigation, and then, if it was found that I In the year 1834, there was a vote on a these gentlemen were entitled to their seats, test-question in the House of Commons athey should have them. If any injustice gainst the Ministry. The alternative was had been done them, and they really had a presented, according to a great principle of right to vote for Speaker, why, it could not popular rights-which would to God prenow be helped. There had been a great vailed in this more popular Government of many subjects introduced into the debate on ours-the Ministry must resign or Parliathis question-as, for instance, nullification, ment be dissolved. The King chose the lat-State rights, &c .- which had nothing what ter, and appealed to the People. A new elecever to do with it. No one wanted to distition took place. The seats of six Opposition franchise New Jersey. The only question members were contested; yet they voted in to be decided was, who are the real Repressible election of Speaker. The vote stood for sentatives? No one had said that New Jersey should not be represented on this floor. the account of the votes, and to give a com- according to those rules and proceedings, the of the People of the State of New Jersey. question had been settled finally, as far as | MR. THOMPSON, of South Carolina, rose it could be settled by that preliminary course and said : We are told by the great mastel who appeared here had each a commission of action. Hence, therefore, he voted to lay that the sole use of an exodium is to secure from the Governor of New Jersey, according the resolution on the table. But he must say, the favor of the audience, and I shall therefore to the law of that State, made in pursuance of that he had voted for the two resolutions of make no other than to say that I shall detain the Constitution of the Federal Government, the gentleman from Virginia with the greatest the House but a very few minutes. It may Ministerial party even to question the right It seemed to him, therefore, that he had no reluctance. In what he was now about to be remembered, sir, that I said a few days right to say on that occasion that they were say he was far, very far from impeaching the since that I would follow the usage and pre- though the consequence was the less of their motives of any gentleman on this floor, or cedents upon this subject, wheregoever they any of the gentlemen from New Jersey who might lead me; such has been and is my deand others who constituted the House of held certificates. Nor was he disposed to termination; and when the honorable mem-Representatives was as good and valid as impeach the character of the authorities of ber from Virginia (Mr. Dromgoole) so vaunt the right be himself possessed. The Gov- New Jersey. But when he had heard read ingly said that the precedents were all in his a statement from the Secretary of State of favor, and referred to certain cases, I said to sir, no man has ever dared so far to outrage New Jersey, which was not dealed, that some friends around me that if I found them, popular rights and feelings as to contend for these men did not obtain a majority of the so. I should change my vote. I have since obtained the book quoted by the gentleman, and I assure you, sir, that never have I read I feel a just pride that no drop of blood flows tlemen themselves, that two of the returning any book with as much pleasure; no, sin, never with so keen a zest have I devoured one of Scott's romances. I before thought when also he had heard that the Governor was right; now I know it. If a gentleman of scorn-a profound scorn-for those canting that they should appoint a returning officer | had admitted the fact, and that this House | the acknowledged talents of that gentleman | and jesuitical hypocrites who, with profesfor each State, whose duty it should be to was to rectify the error, and that those gen- after the most laborious research, is not only sions of regard for the rights of the People not able to find a single precedent in support forever on their lips, are striking a deadly I may well say that I know I am right. Igh This, however, is no new thing; it has further; I will put it out of the power of the been so with tyrants and demagogues in all ed current of the precedents is in favor of as one pats a wild horse that he may ride tained by excluding the votes of a count? real state of the question. And, as he had where Paulding's majority would have chang- and virtue, is as much beneath party, as pared the result. Yet Mead took the seat, on ty is beneath patriotism? No, we have had ted to sustain the law-to sustain the gentlethe return; from which he was afterwards men who had certificates from the Governor. evicted by the regular process of reference to He had known cases of this sort to have frequently occurred in private life, and where tions. So much for that. The next was There was then some regard for truth and gentlemen claiming to have legal titles to the case of Herrick, where the member have reason, some little respect for the decencies property have no such thing. A man who ing the commission took the seat, and held of even political life. was in that position could sustain himself at it until the matter was settled in the same least for a time ; for the law says he who is in possession of the property shall be consithe seat, because neither had the commission or certificate of election. Is that a case which can be quoted as authority, in a case where the seat is claimed under a regular commission? The only remaining case was the and Letcher. In that case, on the face of the paper itself was the fact stated which vitiated that commission. It was error patent upon the face of the title, or, to speak more hands of his old enemies and new associates.

Abercromby, the Opposition candidate, \$13; for Sir Manners Sutton, the Ministerial canwards turned out by the House. Yet they the election. And thereupon the Peel Ministry resigned. It never occurred to the of these members to take their seats, al seals and offices. This, sir, in a Government in form less free than ours, where the theoretical rights of the People are not so great as ours ; and who, it is the constant habit to say, are less free than we. There, the contrary. Whilst considering such practices and principles among that great People, in my veins that does not spring from that glorious race, not unmingled with shame and sorrow at what is passing around me, and a

boldest on the opposite side to stand up here time. As has been so well said, they may again and deny that the uniform uninterrup; fatter the people that they may govern them, the opinions I have heretofore expressed .- him. So sacred has this right been regarded, The first case relied on by the gentleman; that no one in the British House of Comwas the case of Mead and Spaulding; a case, mons has ever dared to question it, nor in the in the facts of which there is no shade of dil- American Congress until now. Why has ference with this. In that case, Mead was it not been done? Have we not heretofore returned as elected. This return was of had periods of close and violent party strife -ay, sir, of faction itself, which, in dignity such times, but I grieve to know that although the times were the same, the men who acted and examination by the Committee of Election them were different-very different.-

Some gentlemen admit that the precedents way. So much for that. The next was the all go to establish the right of the member case of Edwards, who had no certificate or having the return rightfully or not to take commission, but a private letter saying that he | the seat, but say there can be no time more was elected. Whilst the House was yet di- fit than the present to change that rule-none, liberating the regular commission arrived, and sir, can be more unfit. Do not gentlemen he took his seat. The next was the Penil- lowe it to their own characters to adhere to a sylvania case, where the Governor refused rule practised upon for centuries in England to decide the question, and would commit- and in this country from the foundation of sion neither of the claimants, but reported the Government, without one exception, the facts to the House; neither could take and not now to change the rule when a present party benefit is to be obtained by thus acting? Sir, we should not only act correctly, but so act as if possible to avoid the imputation even of impure motives. We should not establish a new rule to obtain a present advantage, as a politician who is forced, as the most honest may sometimes be, to change his party position, should neither seek nor receive office and reward at the

Shepard) has thought it necessary to explain

* See Parliamentary Debates, vol. i., page 57.

gentleman forbid that I should impute to him

an intentional error. I will not insinuate it. as I do not believe it. The gentleman's first reason why he should vote against the members from New Jersey taking their seats is, that he will thereby save time. If these members are entitled to their seats, their right is derived from the Constitution; will the gentleman violate that to save time ? Is the sacred-to a freeman the most sacred of all rights—the right to be represented-that right, in defence of which our fathers declared and achieved our national independence - are the rights of two hundred and fifty thousand freemen, and those rights guarantied by that Constitution which we have sworn to support-are these, sir, such small matters that, to save a little time, the member would violate them? But, is it so? Will the gentleman really cave time? The Chair has asked the decision of the House; the House cannot avoid the question; the gentleman must vote ay or no; if it will take him longer to say ay than no, by the difference between the two monosylables, and by that only, will he be able to measure the time which he will save? I hope that the the sacrifice of honor. He repeated, that he case, I do not hesitate to say, cannot have gentleman will rejuice to find that his vote to save from violation the rights of the People of New Jersey, his awn convictions of right. and the Constitution itself, will take no more time than a violation of all these. What is his second reason? It is this: that you have already deprived New Jersey of her vote in the election of Speaker-that step you cannot retrace, and you may as well, therefore, let the matter rest. In other words, you have. as the gentleman himself believes, most incontinently, unjust'y, and unconstitutionally deprived New Jersey of one right-ergo, you are not required to respect any of her rights -you have improperly excluded the State from participating in the election of Speaker. and it is, therefore, proper that you should We want to find out what is really the will didate, 310; a majority for the Opposition of not allow its members to vote in the elections six votes. There were six Opposition seats of Clerk and Printer. A rustian, without to be fold by a just judge, most assuredly he had voted for Speaker, and their votes carried had no right to the horse, but, as the horse is now dead, the thing is past remedy, and therefore I must not resist his seizing my plantation and negroes. That is the argument, stated in terms almost identical. I do not understand the gentleman as claiming that the former decision before the House was organized has any positive authority, but that, as by that decision the State was denied one right of great practical importance, he felt under an obligation to yield other rights. We sir, are not the judges of the importance of rights demanded of us by a sovereign State, but only whether they are rights; if they are, there is an end to our business--we must concede them. If the members from New Jersey had the right to vote for Speaker, it was because that right was secured to their State by the Constitution, and because those members presented the requisite credentials. That Constitution and those credentials are the same to-day that they were on Monday last. If they then had rights, they have them still. But my colleague (Mr. Rhett) does regard the former decision as strictly in Parliamentary law binding upon us. I will, here, in passing, say a few words upon that point. By whom was that decision made? By the House? No, sir, by an unorganized assembly of gentlemen who had the prospect of, as well as the title to, seats in the House when it was formed-no more a House than an egg is a chicken-no more than a leg from one man, an arm from another, and other members from others, is a man-ne more than a handful of broomsedge growing in a a great and vital question. I call upon him. field is a broom-it was not a House, but the I adjure him by all the past struggles for popdisjecta membra of a future House. Its de- ular rights and the rights of the States in boat and so decided. But was it decided? It was not. If it was, and that decision was binding, the present proceeding is out of or- ber of the House of Representatives two itive action of the House—the proposition vored to be guided by what he considered to order at any time to take it up. The vote he had the honor in part to represent. On

league and myself have been brought up. of the gentleman from North Carolina. He out the country, was always dis truly, a glaring, flagrant fraud upon the very | The gentleman from North-Carolina (Mr. | had seen the certificate of the Secretary of up public men to odium. They might think State of New Jersey-an unauthorized, un-There was the certificate and commission of the election of a Speaker? Now, if any ing aside of both the claimants was their the apparent inconsistency of his votes upon official certificate, and therefore no evidence

> influence his vote in the first instance, but, man from South Carolina, he felt so body alone, because it was to this body alone that he had strong suspicion that those

earthly use is such certificate but to assure us of the result of the election? and of what use as to us, if, without one particle of evidence, we may disregard it ? I say here, sir, in my place, and defy contradiction, that as yet we have no particle of testimony to contradict the prima facie evidence of the Governor's commissions; nothing which any man, whether a lawyer or not, will call evidence. What have we? Nothing but the certificate of the Secretary of State. Is the Secretary of State directed or authorized to give such a certificate! The Governor of the State is alone thus empowered; and, being so, no other officer can be-or else the conflict would, or might constantly occur, of different certificates being issued by different officers to different persons. All the officers of the respective States are commissioned by the Governors. Can a Secretary of State commis-sion a sheriff of a county on the ground that he has counted the votes, and found another person than the one commissioned by the Governor to have been duly elected !-No one will say so. Why not in that case as well as in this? He cannot, because he has no power concurrent even with the Governor-much less to ride over the act of the Governor. The Governor has given a commission to certain gentlemen; it is either nothing, or a good commission until invalidated by the House in the regular way. Al the power of the Secretary is to youch that it is the act of the Governor, not a power to act himself. This certificate of the Secretary, then, is an unauthorized, unofficial, and therefore unauthoritative act of the Secretary -the act of Mr. Westcott, a private citizen ; for, although he is Secretary of State, this is no official duty; and, quosd this particular act, he is a private citizen, of no more authority than it one of the numerous family of Smiths had intruded into the office, counted the ballots, and given the certificate. Is this evidence, sir? Why, even the gentleman and pretend that it is, but says that it is sufficient to excite his "suspicions;" and would the gentleman set aside a clear, indisputable title, on mere suspicion ? He says se. He likens this to a case where there is on one side presented to a Judge a clear title, free from all blemish or defect, to a piece of land; on the other side, statements not evidence are made which excite suspicion of fraud, and upon this he would decide against the legal title. We are told of a Judge of another tribunal, (not of this world,) whose maxim was, "castigut auditoue." But this is worse. That was to punish, and then inquire if the punishment was deserved; but this is first to ascertain the truth by evidence, and decide against it on suspicion. Because a suspicion is raised in the mind of the gentleman, he will take from 250,000 freemen their right of representation, and violate the Constitution, without waiting the tedious and unnecessary process of hearing the evidence. These are the gentleman's three reasons. It too often happens in this world of ours that the reason does not dictate the course; but that, the course taken, the reason is afterwards looked for.

In conclusion, Mr. Speaker, I would appeal to my honorable colleague (Mr. RHETT) -(for, although altogether friendly, I have not the same long standing relations with the gentleman from North Carolina)-I would appeal to my colleague, calmly to review his opinions. I have always known, and this House has had a recent example, that he has that high moral courage which is required to resist the importunities of party associates on cision was no more binding than it would which we have stood side by side, to re-exhave been if a majority of the members on amine the subject, and if he finds that he is their way to this place had met on a steam- in error, I doubt not that he will have the firmness to say so.

Mr. SHPPARD said, that he had been a memder. It was not decided-there was no pos- vears, and in his course here be had endeawas not rejected. It dropped, and it is in be his duty to himself and the People whom was a tie. Will gentlemen, dare they dis- various occasions he had taken a course which franchise a whole State on a tie vote, rever- he knew to have been unpalateable to some sing all previous rule and precedent? It is gentlemen on that floor, and they had shown still worse : it is well known that, but for the their disapprobation of it in numerous ways. visitation of God, there is a clear majority on He was not responsible to them, nor any body our side -the side of the Constitution. And else, except to these who sent him here, and if any thing can be added to the picture, it is, to the country at large. And he hoped that, that this is accomplished by the votes of in the discharge of his duties, he was as fearmembers who not only think it wrong, but less as any member in that House; that he believe it in violation of chartered rights .- would neither vield to flattery on the one But suppose it had been decided by the side, ner bullying on the other. He had not House itself, does a decision, do any number risen a few moments ago to make an apology. of decisions, of any body whatever, conse- as the gentleman from South Carolina assertcrate a violation of the Constitution? Not, ed. He (Mr. S.) owed no apology. He had sir, in the political school in which my colents and his country, because he knew that But to return to the "thirdly and lastly" the party organ, which was spread through the election of a Speaker? Now, if any right had been violated, it could not be recalled. He thought their right had been violated in not letting the gentlemen come in and vote for Speaker. It had been done, and what more could be said about the metallic and what more could be said about the metallic and some head and what more could be said about the metallic and some head and what more could be said about the metallic and some head and some head and what more could be said about the metallic and some head and some head and what more could be said about the metallic and some head and what more could be said about the metallic and some head and some head and what more could be said about the metallic and some head and some head and what more could be said about the metallic and some head a had not risen to make any apology. And, I cannot see how it is that these did not notwithstanding the remarks from the gentle as they did not then, I am wholly at a loss with the correctness of his course, and be-to see why they should now. What, sir, is lieved that every honorable and unprejudiced appointed, who, no doubt, was an impartial and that he could not again find them. And, self, to that of every other man on the floor; the present state of the case? We have on man would justify his conduct. He would man, and would, in the appointment of a sir, what are they? They are, every one of that, if he has no better reasons than those he the one side all that is required by the Con- now repeat what he did say. He had said that which had to come, he intended to bind himself down to strict law, however disagreeable it might be.

For these reasons, and others with which he would not tended to bind himself down to strict law, however disagreeable it might be.

For these reasons, and others with which he would not tended to bind himself down to strict law, however disagreethat who he justice to both him. Have I not scattered those authorities direct and positive against has given, he ought not to have changed his stitution and laws; testimony full and comparison and laws; test election to all the world, but really to this election of a Speaker; but he stated further