

The Wilmington Post.

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WILMINGTON POST ADVERTISING RATES.

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Eight (8) lines, Nonpareil type, constitute a square.

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BRUNSWICK COUNTY ELECTION CASE.

The Supreme Court has sustained the decision of Judge Buxton in the Superior Court below. Therefore the Republicans will have to give up the offices to the men who were not elected. We publish the decision below.

SMITH, C. J.

Swain vs. McKee. The object of this suit commenced on the 10th day of August last against the members of the Board of County Canvassers, is to compel them to reassemble and make a recount of the vote cast for Superior Court Clerk in Brunswick county, including the rejected return from Town Creek township. The process originally returnable before the Judge of the District at Fayetteville, in Cumberland county, an exception to the jurisdiction taken and sustained, was amended by making M. C. Guthrie a co-defendant and the summons returnable before the Superior Court of Brunswick in term time, and was heard and decided at the regular fall term of the Court, upon complaint and answer. His Honor refused the writs of injunction and mandamus, and declined to inquire into the merits of the case, on the ground that the writ of mandamus is not an appropriate remedy, and for the further reason that in the opinion of the Court, the Board of County Canvassers, created by law for a single specified purpose, which has been accomplished, has ceased to exist as an organic body, and its members are no longer competent to do an official act.

The appeal brings up the correctness of this ruling for review.

As the cause is now constituted the contestants become adversary parties to the suit, each asserting his claim to the office in dispute, and the coercive power of the court is asked to enforce such action on the other defendants as will determine the controversy and secure the place to the plaintiff. It presents the anomalous case of an incumbent, holding over after the expiration of his term and claiming to have received a majority of the popular vote, in opposition to the declared official count, seeking to restrain his opponent from qualifying and accepting the office until by a recount made under the direction of the Court, his own title thereto can be established. If this mode of procedure to decide a contested election is allowed, it will obstruct the operation of these laws through which the popular will is collected and expressed, and deprive the public of the services of those persons legally declared to be elected, during the pendency of the dispute as to who is rightfully entitled. It is important that all public offices should be filled by the party having a prima facie right thereto, until a better title is shown in some one else. For this reason it is that by a proceeding in the nature of a quo warranto, one entitled to an office in possession of another may recover possession and by a subsequent action, compensation in damages for the time it has been wrongfully withheld, C. C. P. sec. 373. It is the duty of the County Canvassing Board, after concluding their count to declare the person having the greatest number of votes to be elected, and to make proclamation at the court house of the voting in their county for all the persons voted for, and the number of votes cast for each, act of 1876-77, chap. 273, sec. 30 and 31.

This we must assume to have been done on the second day after the election, the time prescribed by law for their meeting. It was then the duty of the County Commissioners to qualify and induct into office those whose election the county Canvassers have ascertained and announced, Battle's Revisal chapter 27, section 8, page 31. The present proceeding aims to obstruct the execution of the law, and if allowed would leave the office unfilled, but for the fact that the plaintiff is the former incumbent, and retains possession. The office of writ of mandamus is simply to impose upon an officer the execution of a neglected duty affecting the interest or rights of the person applying for it. It cannot be extended to each conflicting claim to an office, and thus usurp the place of that special and ample remedy which the law prescribes for adjusting and determining them. We refrain from saying more on this subject as it is fully discussed in O'Hara vs. Powell at this term. It is unnecessary to examine the other ground upon which the Judge rests his decision, to wit, that the Board is functus officio and incapable of further acting. There are conflicting authorities in the print and his ruling is supported by several able decisions in the courts of New York and elsewhere, which are cited in the brief of defendants counsel. Nor do we propose to enquire whether the functions of the newly created Canvassing Board are purely ministerial as those exercised under the former law by the County Commissioners, their predecessors in this service all decided to be in the case of Moore vs. Jones, 79, N. C. 132, and therefore under the mandatory power of the court; or whether they are discretionary, and in some of their features, quasi judicial, and beyond that control. There is a very marked difference in the phraseology which prescribes and defines the duty of these respective bodies; The Commissioners are directed simply to add the number of votes returned, "while the Canvassers are required to open and canvass the returns," Acts 1876-77 chapter 275, section 25.

But we forbear the expression of any

opinion on the point as it is not necessary to the decision of the case; we sustain the ruling of the court in holding that the plaintiff misconceives his remedy and in denying the relief sought in this action. While it is not necessary to the decision of the case, yet as it may facilitate the settlement of the matter in controversy and avoid the delay and expenses of future litigation, we deem it proper to express the opinion we have found, that the County Canvassers, for any reasons assigned, erred in rejecting the vote of Town Creek Township and that it ought to have been added and counted in ascertaining the result of the election. The judgment is affirmed.

CITY ITEMS.

Yesterday was fair but windy.

Marriage license only cost now \$1.50.

Rev. Cutter Colfax was up to the city yesterday.

Senator Chandler will please accept thanks for Public Documents.

If you want to purchase a lot, don't fail to call on W. P. Canaday.

Hon. D. L. Russell, member of Congress, was on our streets yesterday.

Hon. A. M. Waddell, ex-member of Congress, arrived home a few days ago.

Col. I. J. Young, Collector of Internal Revenue, is in Washington, D. C.

Tony Foy, a colored man, died very suddenly on Monday night last, from colic.

Sheriff Manning and all of his Deputies were busy doing nothing last week.

Mayor Fishplate has been having a lively time the past week, with criminals.

Rev. E. A. Yeates, pastor of the Front Street M. E. Church, is absent from the city.

U. S. Commissioner McQuigg continues after the violators of the Internal Revenue laws.

Norwood Giles has his Insurance office on North Water between Chesnut and Mulberry street.

Truck will be cheap this season, according to the number who have embarked in the business.

Our member of Congress, Honor Daniel L. Russell, will accept thanks for copy of Congressional Record.

DIED.—Mrs. Mary J. Burr died at her residence in this city on Monday last, very suddenly. She was 73 years of age.

The beautiful flower gardens in this city should be protected from the depredations of thieves. Where are the policemen.

Dr. W. A. Dick, of Lumberton, N. C., a brother-in-law of our townsman Mr. H. C. McLaurin, died very suddenly on Thursday last.

Complaint is made that a lot of bad boys are in the habit of abusing stock in this city. A few weeks on the streets at hard labor is a good preventive.

Col Geo. L. Mabson, has opened a law office in an office adjoining the Post where he will be glad to meet his friends who desire legal services.

Maj. C. M. Stedman, attorney at law and President of the Bank of New Hanover, left on yesterday's boat for Fayetteville, on a visit to his many friends.

Col. Kellogg, Special Internal Revenue Agent for the Government, was in the city on Wednesday last. The Colonel is doing good service for his Department in the state.

Mr. Samuel G. Hall, the popular job printer and book publisher has received a very select stock of job material. Give him a call. He does work as cheap as any house in the south.

The locals of the Star and the Sun have entirely recovered from the severe shock received at the Little Giant Engine House on Friday night of last week, by an explosion, and are gathering items as of old. We congratulate them.

President, Vice-President, members of Congress, Governor and other state officers, members of the legislature and county officers, are all elected in Nov. 1880. What a grand time it will be for politicians. We never take any in ours.

We understand that there will be a tobacco factory started in this city within the next month. The contract for the building has been made with one of our building mechanics of the city. The firm who intend to engage in this business are able to run it successfully.

Messrs. Bol Bear & Bro's. are receiving their new spring goods in store, and are prepared to sell first class bargains.

DIED.—Mrs. Dora C. Gregory, the wife of W. H. H. Gregory Esq., of Charlotte, N. C., and the sister of Mrs. John E. Lippit of this city, died in Charlotte on Wednesday last. Her remains arrived here on Thursday, and the funeral took place on Friday last, at St. James Church, at 4 o'clock p. m.

RAILROAD ACCIDENT.—News was telegraphed to this city on Friday evening that the rear coach of the eastern bound train, on the Carolina Central Railroad, run off the track just this side of Lilesville, and badly wounded all the passengers in the car, and killed the brakeman, Henry Lewis, a citizen of Charlotte, N. C. Two of the passengers are thought to be severely, if not mortally injured. They are Messrs. Eli Gibson and J. W. Covington. Cause of the accident, one of the wheels of the coach broke down. No blame is attached to the officers of the train.

PUBLIC HEALTH REPORT.

The following is the annual report of deaths to each 1,000, from all causes in various parts of the United States and foreign countries, compiled from the Bulletin of the Public Health, issued by the Surgeon-General, U. S. Marine Hospital Service, under the National Quarantine Act of 1878.

| FOR THE WEEK ENDING MARCH 22, 1879. | |
|-------------------------------------|-------|
| Boston | 21 |
| Providence | 15.6 |
| New York | 16.8 |
| Baltimore | 16.16 |
| Brooklyn | 16.16 |
| Rochester | 16.16 |
| Pittsburgh | 16.16 |
| Newark | 16.16 |
| New Haven | 16.16 |
| Portland, Me. | 16.16 |
| Baltimore | 16.16 |
| District of Columbia | 16.16 |
| Cleveland | 16.16 |
| Chicago | 16.16 |
| Cincinnati | 16.16 |
| Hudson County, N. J. | 16.16 |
| Buffalo | 16.16 |
| Philadelphia | 16.16 |
| Richmond | 16.16 |
| Savannah | 16.16 |
| Louisville | 16.16 |
| St. Louis | 16.16 |
| San Francisco | 16.16 |
| New Orleans | 16.16 |
| Montreal | 16.16 |

GREAT BRITAIN.

| | |
|---|----|
| Oldham | 43 |
| London | 19 |
| Edinburgh | 19 |
| Glasgow | 19 |
| Birmingham | 19 |
| Liverpool | 19 |
| Manchester | 19 |
| Bristol | 19 |
| In 23 large cities the average death rate was 29 per 1,000. | |
| Smallpox caused 17 deaths in London, and 11 in Dublin. | |
| Scarlet fever was very prevalent, and measles exceedingly fatal in several towns. | |

GERMAN EMPIRE.

| | |
|--|----|
| Munich | 31 |
| Dresden | 31 |
| Berlin | 31 |
| Hamburg | 31 |
| Cologne | 31 |
| Frankfurt | 31 |
| Stuttgart | 31 |
| Leipzig | 31 |
| Bremen | 31 |
| In 10 towns the average rate was 28.1 per 1,000. | |

AUSTRIA.

| | |
|--------|----|
| Vienna | 31 |
|--------|----|

CUBA.

Havana: Yellow fever caused 1 death, smallpox 11.

Bermuda—2 cases of yellow fever in hospital.

RAILROADS.—If Wilmington is not the old "Rip Van Winkle" of the world, we cannot point out the place that should be called after that venerable old gentleman. This city is now a hundred and fifty years old; the great metropolis of North Carolina during that whole time, and yet there is not a single park in the city, and the city is located within six miles of the prettiest sea shore on the Atlantic coast, and with no railroad to carry persons who may wish to visit it for pleasure or health. The citizens of the city, as well as the owners of the beautiful places on the seashore have uniformly tried to keep the outside world from knowing that any such places exist as Wrightsville and Greenville sounds, and Live Oak beach.

Beaufort, with all its beauty, cannot hold a candle to this beautiful beach in front of the above named sounds, which is very properly called Live Oak beach. Long Branch itself is a very ordinary place to it, if you take away the many artificial adornments and improvements of the place. Every man who cares for the health of his family should desire a sound railroad, and those who are not able to go to the expense of sending their families off for pleasure as well as health should certainly do all they can for the road. A railroad to this sound will, in point of an investment, be a grand success. The stock will pay at least thirty-three and a third per cent. dividend. The cost of building the road will be very light, and it can be run exceedingly cheap; the travel during the summer months will be all the proprietors will desire, and during the balance of the year it will pay the expenses of running it. We predict that the stock will sell at two hundred per cent. above par in less than two years after the completion of the road. It unquestionably will be the very best investment in or around the city. Wake up, old Rip, and build the road.

LOCAL BREVITIES.

Wood selling at \$1.75 per cord.

Corn, by cargo, selling at 55 cents per bushel.

Every man should have a home of his own.

The weather was very fine during the past week.

Real estate is still improving in price and demand.

U. S. Marshal Hill paid a flying visit to our city a few days ago.

Can not Wilmington build a railroad to Onslow county?

Wilmington is the largest naval store market in the world.

Peanuts are looking up, selling now at from \$1.00 to \$1.15 per bushel.

A good wife is a very great saving, instead of an expense to a man.

Kelly Covelle was accidentally drowned at Rocky Point on Monday last.

U. S. Rev. Marine Engineer, D. McC French, was in our city on Monday last.

With a cheap government property will always sell well That we now have.

Mr. Geo. Z. French, the government contractor, is hard at work filling up New Inlet.

Messrs. Cobb Brothers will build a hotel at the sound if the people will build the railroad.

A large number of our German citizens intend to visit their Fatherland this summer.

Col. J. W. Atkinson and Hon. R. R. Bridges were in Raleigh on Thursday, according to the Raleigh papers.

The Sexton of St. John's Church, J. E. Walker, a very worthy colored man died of pneumonia on Thursday last.

A railroad can be completed to the sound in sixty days, if all hands will join in the enterprise.

Mr. Frank H. Alfriend has received the appointment as Clerk of the Senate Committee on Commerce.

Don't wait for better times before you marry. Go get a wife at once, she will make the times better for you.

WITNESSES IN CRIMINAL CASES.—

The law provides that only two witnesses shall be taxed in criminal cases.

Loafers around Market street corner should spend their time at home with their families, if they have no honest work to perform.

The steamer Clinton has been very greatly improved by her new propeller, and the boat is now doing a very excellent business.

Captain R. P. Paddison has purchased the steam tug Elizabeth, and intends to thoroughly overhaul and repair the boat for river purposes.

Mr. James Walker, Superintendent of the Western Insane Asylum, is spending a few days, for his health, in our city. Mr. Walker is very thin.

Hon. A. S. Seymour will hold court at Snow Hill, in Greene county, and Hon. A. A. McKoy will hold court at Smithville, in Brunswick county, next week.

Col. John W. Gordon, resigned the Colonelcy of the Second North Carolina Regiment, State Guard, and has accepted the Captaincy of the Whiting Rifles.

How a young man, who is only getting \$25 per month, can pay his board, at \$15, buy his clothes and run a lively stable, is a conundrum that we cannot answer.

Two colored men had a dispute on Wednesday last, and being afraid to fight inside of the city limits. They chose their seconds and went over to Point Peter and had an old-fashioned ring fight.

Col. O. H. Blocker is on duty in the city of New York as Special Revenue Agent. He writes that his health is good and he likes the officers who he is associated with.

ATTEMPTED TO HAND IN HER CHECKS.—

Mary Eliza Lively, a very lively colored girl, attempted to draw herself a few days ago on account of the death of her lover.

We have heard that Hon. Curtis H. Brogden intends to start a Republican paper at Goldsboro, N. C. A well conducted paper (Republican in politics) published at that place would pay.

A young gentleman in this city committed forgery, on Saturday last, by signing a merchant's name to a check and getting it cashed. On account of the very high standing of his family in this city, we will not publish his name.

The turnpike is about finished. Now our citizens should all join together and build a railroad to the seashore, so that our hard worked business men and clerks can go to the beach every afternoon, after closing up business, and arrive home in time for late supper.

Old Zach Chandler's return to the U. S. Senate has made our neighborhood in-law, the Star, sick.

The Compresses have not been over busy for the past week. Not very much cotton coming to market now.

There are 23 steamships and steamboats working in the port of Wilmington, and plying between this city and other ports.

Justice Gardner has had a severe attack of sickness for the last ten days, but he is out again, we are glad to see, attending to the criminal docket as of old.

Who will start a paper factory in the city. Don't all speak at one, but let some enterprising man go into the manufacture of paper and he will make a fortune very soon.

Adrian & Volders are the very largest grocery dealers in the state; country merchants can do as well, if not better, by trading with them than they can in any northern House.

Mr. Preston Bridgers is constantly in receipt of "brand" new goods, and sells cheap for cash. He keeps in the new McKee building on Front street, nearly opposite the Purcell House.

Our friend Macks says that "he is much better looking than Darby," but there is not enough of Macks to be good looking; you will have to take a magnifying glass to see him.

Benj. White, Esq., has opened his paper hanging establishment on Market street, between Second and Third streets, where he is prepared to hang paper, make or repair mattresses, frame pictures, &c. Give him a call. Ben is a splendid workman, and a very good fellow, any way.

The Supreme Court has virtually decided that the Republican officers were entitled to the county. They do decide that the Canvassing Board were wrong in throwing out Town Creek; therefore they virtually decide the whole question in favor of the Republicans.

NEW ADVERTISEMENTS.

LIFE IN A BOTTLE.

The Most Valuable Medical Discovery Known to the World—No More Use For Quinine, Calomel or Mineral Poisons—Life for the Blood, Strength For the Nerves, and Health for All.

AN OPEN LETTER TO THE PUBLIC.

Believing that by cleansing the blood and building up the constitution was the only true way of banishing disease and being troubled with weakness of the lungs, catarrh, very much broken down in constitution, &c., and after trying the best physicians and paying out my money for many kinds of medicines advertised without finding a permanent cure, I began doctoring myself, using medicines made from roots and herbs. I fortunately discovered a wonderful Bitters or Blood Cleanser, the first bottle of which gave me new life and vigor, and in time effected a permanent cure. I was free from catarrh, my lungs became strong and sound, being able to stand the most severe cold and exposure, and I have gained over thirty pounds in weight. Feeling confident I had made a wonderful discovery in medicine, I prepared a quantity of the Root Bitters, and was in the habit of giving them away to sick friends and neighbors. I found the medicine effecting the most successful cures of all diseases caused from humors or serofula in the blood, Impudence, Bad Stomach, Weakness, Indigestion, Dropsy, Torpid Liver, &c. &c. The news of my discovery in this way spread from one person to another until I found myself called upon to supply patients with medicine far and wide and I was induced to establish a laboratory for compounding and bottling the Root Bitters in large quantities, and I now devote all my time to this business.

I was at first backward in presenting either myself or discovery in this way to the public, not being a patent medicine man and with small capital, but I am getting braver over that. Since I first advertised the medicine I have been crowded with orders from druggists and country dealers, and the hundreds of letters I have received from persons cured, prove a fact that no remedy ever did so much good in so short a time and so much success as the Root Bitters. In fact, I am convinced that they will soon take the lead of all other medicines in use. Nearly one hundred retail druggists, right here at home in Cleveland, now sell Root Bitters, some of whom have already sold over one thousand bottles.

Root Bitters are strictly a medicinal preparation, such as was used in the good old days of our forefathers, when people were cured by some simple root or plant, and when calomel and other poisons of the mineral kingdom were unknown.

They act strongly on the liver and kidneys, keep the bowels regular and build up the nervous system. They penetrate every part of the body, cleanse out every nerve, bone and tissue from the head to the feet, cleansing and strengthening the fountain springs of life, hence they must reach all diseases by purification and nourishment.

No matter what your feelings or symptoms are, what the disease or ailment is, use Root Bitters. Don't wait until you are sick, but if you only feel bad or miserable, use the Bitters at once. It may save your life.

Thousands of persons in all parts of the country are already using Root Bitters, and they have saved many lives of consumptives who had been given up by friends and physicians to die, and have permanently cured many old chronic cases of Catarrh, Scrofula, Rheumatism, Dyspepsia, and skin Diseases, where all other treatments had failed. Are you troubled with sick headache, costiveness, dizziness, weakness, bad taste in the mouth, nervousness, and broken down in constitution? You will be cured if you take Root Bitters. Have you humors and pimples on your face or skin? Nothing will give you such good health, strength, and beauty as Root Bitters.

I know that jealous physicians will cry humbug because my discovery cures so many of their patients, but I care not. It is now my desire and determination to place my Root Bitters as far as possible in the reach of all those suffering throughout the world. Sold by wholesale and retail druggists and country merchants, or sent by express on receipt of price, \$1.00 per bottle, or six bottles \$5.00. For certificates of wonderful cures, see any circular around each bottle of medicine. Read and judge for yourself.

Ask your druggist or merchant for FRAZIER'S ROOT BITTERS, the great Blood Cleanser, and take no substitute he may recommend because he makes a large profit.

G. W. FRAZIER, Discoverer, 333 Superior St., Cleveland, O. For sale by T. S. Burbank, Wilmington, N. C.

NEW ADVERTISEMENTS.

XMAS 1878 XMAS

Let the Good Citizens of Wilmington pause and think.

THE POPULAR GROCERY HOUSE

GF

BOATWRIGHT & M'KOY.

57 AND 8 NORTH FRONT ST.

HAVE ON HAND OVER

2 Tons Candy 2

1 One Ton Nuts

OF EVERY DESCRIPTION.

Crown, Dehosa, London, Layers, Loose, Muscatel and Seedless Raisins in any quantity

New Citron, New Turkish Prunes, New Crop Currents.

Gordon & Dilworth's Shaker and Ginger Preserves, Marmalades, Fruits, Jellies &c., &c.

English, German and American Cheese.

Pure Old Brandies, Wines and Cordials, Scotch and American Whiskeys, for Egg Nog.

English and American Crackers of every kind.

Apples, Oranges and Lemons in sufficient quantity to furnish every one.

Our Three Dollar Brand "B" Select Whiskey has improved by age.

Our Four Dollar Brand Summerdean Whiskey has no equal in the city. Our Old Rye and Baker Whiskeys are equal to any in America.

Our Goods have been selected with great care especially for the

HOLIDAYS

Remember the best.

CHRISTMAS PRESENT

you can give the poor is a choice lot of

Family Supplies.

Call on us and we promise to give the

BEST AND FRESHEST GOODS

AT THE VERY LOWEST PRICES.

BOATWRIGHT & M'KOY,

5, 7 AND 8 NORTH FRONT STREET.

December 22, 1878