Attorney General Taft's Defense of His Circular.

We printed, yesterday, a dispatch from our regular correspondent at Washington conveying the complaint of Attorney General Taft that the *Herald* has done him injustice, and defending his circular against the criticisms which have been directed against it. We are constrained to say that Mr Taft's arguments and citations fail to convince us, but we are not sorry that he has given an occasion for pointing out what we conceive to be his mistakes of law and faults of logic. We are aware that his position as the chief law adviser of the Government creates a strong presumption that he is correct and we are in error. We ask no reader to accept our assertions, but only to examine our proofs.

We will first show, by evidence so clear as to forestall contradiction, that Attorney General Taft, in preparing his circular, proceeded with slovenly haste, which precipitated him into gross and glaring inaccuracies. In the very beginning of his circular he asserts that "elections at which members of the House of Representatives are chosen include by law elections at which electors of President and Vice-President are appointed." There is no statute which gives the least countenance to this opinion, and it is in flagrant repugnance to the constitution. The authors of the act giving the Federal Government supervision of elections were too sound and well instructed as lawyers to make any allusion to the appointment of Presidential electors in the bill which they prepared. They were careful to limit it to "an election for Representative or Delegate to the Congress of the United States." The reason of this limitation lies in that section of the constitution which declares that the electors shall be appointed by each State "in such manner as the Legislature thereof may direct." The Federal Government has not the slightest right of interference. Any State that chooses may appoint its Presidential electors by its Legislature, and this method was actually adopted by several States at an earlier period and was continued by one of them down to the time of the civil war. Many States will choose no members of Congress next November, but only Presidential electors. Vermont and Maine have already elected their Congressmen; Ohio, Indiana and several other States will elect theirs in October; New Hampshire chooses hers in March and Connecticut hers in April. Does Attorney General Taft really think that the Federal Government has a right to interfere with the November election in those States when they are to choose Presidential electors? The choice of electors stands on the same footing as the choice of State officers and is subject to federal interference in no other way. Why then, does Mr. Taft include them within the scope of the statute? Such looseness and inaccuracy show with how little care or discrimination his circular was prepared and justifies us in inquiring whether other parts of it are not equally at variance with law.

The Attorney General asserts that the decisions of the Supreme Court last March declaring the Enforcement law unconstitutional referred only to State elections and not to federal elections. Now, it is true that the offence charged in both of those cases, was committed in connection with a State election, but the reasoning of the Court was equally applicable to elections of every kind. Mr. Taft instructs the marshals in relation to "the peace of the United States, which you are to preserve, and whose violations you are to suppress." But the Supreme Court said: — "Certainly it will not be claimed that the United States have the power or are required to do mere police duty in the States. If a State cannot protect itself against domestic violence the United States may, upon the call of its Legislature or Executive, lend their assistance for that purpose." Mr. Taft's instruction to the marshals to preserve the peace and prevent its violation without any call from the State Executive or Legislature is in open defiance of the decision of the Supreme Court, which said, in another part of its opinion, that "the powers of internal police are not surrendered or restrained by the constitution of the United States." The Court recognized no exception to this principle in the case of federal elections, but applied it alike to all cases in which no application has been made by the State authorities after their own power to preserve or restore internal order had been exerted in vain.

On the subject of elections the Supreme Court was very explicit. "We have decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States." "The right of suffrage is not a necessary attribute of national citizenship, but exemption from discrimination in the exercise of that right, on the ground of race, &c., is." From these principles the Court deduced the conclusion that federal interference for any other purpose than the single one of preventing discriminations on account of race or color is a plain violation of the constitution. But in the Attorney General's circular the instructions are not confined to protection on that single point. On the contrary they cover everything relating to elections in which members of Congress and Presidential electors are to be chosen. He instructs the marshals to "secure voters against whatever in general prevents or hinders them from a free exercise of the elective franchise." The circular thus strikes at the very foundation of the Supreme Court decision. It is the very gist of that decision that the United States cannot interfere "in general," but only for the one specific object of preventing discrimination on the ground of race. In the face of the emphatic declaration of the Court that the United States have not conferred and cannot confer the right of suffrage on anybody, Mr. Taft insists on their authority "to enforce the right to vote which they have given."

But the most surprising thing of all is the list of references to the Revised Statutes which Mr. Taft gave to our correspondent to be communicated to us. In that list he refers for authority to sections which the Supreme Court have explicitly declared to be void in whole and in every part! The position maintained by the Supreme Court is that the Enforcement law is unconstitutional because it mixes up provisions giving protection to voters in general with provisions relating to race and color. The Court declared that it had no power to disentangle and separate the constitutional from the unconstitutional features of the law and that the whole is made null and void by the unconstitutional parts. And yet Mr. Taft cites these nullities in defence of his circular! If a law is void *in toto* it is, of course, void in its application to federal as well as to State elections. After deciding that Congress has no power to interfere at all except for the one purpose of preventing discriminations founded on race or color the Court concludes by saying:—"We must, therefore, decide that Congress has not, as yet, provided by appropriate legislation for the punishment of the offence charged in the indictment." As the only thing it has a right to punish in connection with the suffrage is its denial on the ground of color it is clear that there is at present no constitutional law on the subject. The principle applies equally to all elections, whether members of Congress are to be chosen or not.

In conclusion we will subjoin some pertinent excerpts from the Supreme Court decisions:

"It remains now to consider whether a statute so general as this in its provisions can be made available for the punishment of those who may be guilty of unlawful discrimination against citizens of the United States while exercising the elective franchise, on account of their race, etc. There is no attempt in the sections now under consideration to provide specifically for such an offence. If the case is provided for at all it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute enacted by Congress with its limited powers, which provides in general language, broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction, so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, if there be such, from that which is not." * * *

"The question then is whether we can introduce words of limitation into a penal statute so as to make it specific, when as expressed it is general only." * * * "This would to some extent substitute the judicial for the legislative department of the Government. Within its legitimate sphere Congress is supreme and beyond the control of the courts; but if it steps outside of its constitutional limitations and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings must, annul its encroachments upon the reserved power of the States and the people. To limit this statute in the manner now asked for would be to make a new law, not to enforce an old one." The whole was therefore declared void by reason of repugnance to the constitution. We wish Attorney General Taft would tell us how it can be dead for all purposes and yet alive for controlling federal elections. It is true that the decision was not pronounced in a case growing out of a federal election, but the reasoning of the Court is fatal to the annulled act in every application.— *New York Herald, September* 20.

The Work in Ohio.—We clip the following from the *Democratic Mirror*, published at Marion, Ohio, of a recent date—

"The Mormons of Marion County held their last general meeting at the residence of President Hill, of this city, last Friday evening. It is expected of those who embrace the Mormon faith "to gather from out Babylon," and locate at Salt Lake as soon as they can fix up their business affairs. We understand that in accordance with this usage a majority of the Mormons will emigrate westward within the next six weeks. Mr. Hill, President of the Marion County Branch of the Mormon Church, will resign his position as night operator the first of September for the purpose of going to Utah at once, and the remainder of the Saints will follow as fast as they can make the necessary preparations."

DIED.

At Logan, Cache County, Sept. 23d, 1876, of old age, ALICE SADLER FARRELL, born August 26th, 1796, at Ashton Kain, Wiltshire, England.

Deceased was baptized into the Church of Jesus Christ of Latter-day Saints at Newport, Monmouthshire, South Wales, in 1849, and emigrated to Utah, with her family, in 1859. She was a faithful Latter-day Saint, and respected by all who had the pleasure of her acquaintance. The funeral took place Sept. 25th.—Com.

Millennial Star, please copy.

In the 2nd Ward of this city, Oct. 5th, of summer complaint, MARY ANN, infant daughter of Ludvig and the late Mary Christensen, born Sept. 14, 1876.

NOTICE TO TAX-PAYERS.

NOTICE is hereby given to all Tax-payers in Tooele County, U. T., that their Taxes, both Territorial and County, are now due for the year 1876. All owing taxes are therefore requested to pay the same, or they will be collected as the law prescribes.

D. W. RENCH,
Assessor and Collector.

Office, Court House. w31

TO JOHN HUTCHINS.

YOU WILL PLEASE TAKE NOTICE that we have expended in labor for you Eighty Dollars ($80.00) on the Midday mine in Ophir Mining District. That unless the same is paid within ninety days from the date hereof, together with our costs, your interests in said mine will be forfeited to us by law.

H. D. CONVERSE.
CALVIN KIRK.
I. I. GREENEWALD.

Ophir Mining District,
Sept. 29th, 1875. w30

LOST!

STRAYED from 19th Ward, Salt Lake City, a span of ponies, middle aged, one a light bay or sorrel, branded figure 2 and letter J on left hip; the other a brown; both newly shod in front. The horses recently brought from Soda Springs, and were once owned by Antoine Jensen, Weston, Idaho. Finder will please return them to me and be compensated for trouble.

W. H. HOOPER.

NOTICE.

TO DANIEL TOVIA, your assignees or legal representatives, are hereby notified that you are owing assessments to the amount of $83.54 (eighty-three dollars and fifty-four cents) for work and money expended on the Norris Mine, in the Blue Ledge Mining District, Wasatch County, U. T. If not paid within three months your claim, amounting to 100 feet, will be forfeited to me, as provided by law.

BENJAMIN A. NORRIS.

Heber City, July 26, 1876.

NOTICE.

TO J. W. Snyder.—I hereby notify you that I have expended in money and labor the sum of Fifty Dollars, being the amount of legal assessments due by you for the past year on your interest on Three Hundred and Seventy-five (375) feet in the Clara Lode, situated in Blue Ledge mining district, Wasatch County, Utah. Should you fail to pay said sum within the time prescribed by law your interest in said lode will become forfeited to me as co-owner, by virtue of the Act of Congress approved May 10th, 1872.

FREDERICK REICH.

April 29th, 1874

NOTICE.

TO A. W. Bullock. I hereby notify you that I have expended in labor and money the sum of one hundred dollars, being the amount of legal assessments due by you for the past year on your interest of seven hundred and fifty (750) feet in the Emma Lode in Blue Ledge Mining District Wasatch County, Utah. Should you fail to pay said sum within the time prescribed by law, your interest in said lode will become forfeited to me as co-owner by virtue of the act of Congress approved May 10th, 1872.

FREDERICK REICH.

April 29, '74.