



GIVEN BY

The Struggle between the Civilization of
Slavery and that of Freedom, recently
and now going on in Louisiana.

AN ADDRESS

DELIVERED

By EDWARD C. BILLINGS, Esq.,

OF NEW ORLEANS,

AT HATFIELD, MASS.,

Oct. 20, 1873.

“Since the truth should harm no man,
let us have the truth.”

NORTHAMPTON, MASS.

GAZETTE PRINTING CO.'S STEAM PRESS.

1873.

The Struggle between the Civilization of
Slavery and that of Freedom, recently
and now going on in Louisiana.

AN ADDRESS

DELIVERED

By EDWARD C. BILLINGS, Esq.,

OF NEW ORLEANS,

AT HATFIELD, MASS.,

Oct. 20, 1873.

“Since the truth should harm no man,
let us have the truth.”

NORTHAMPTON, MASS.
GAZETTE PRINTING CO.'S STEAM PRESS.

1873.

CAGE

F375

B59

1873

ADDRESS.

FELLOW CITIZENS AND FRIENDS:

I am overcome by a throng of personal emotions, as I come into your picturesque valley and your quiet and beautiful village. It is not merely the awakening of the holy associations which cluster around one's place of birth; it is not merely the recollecting the opening of life with the fondest of parents whose precious dust rests in your churchyard, and the nameless tokens of kindness, received in childhood and youth here, from all—from the living and the dead; it is not merely that I stand in a spot to which in all hours of individual disaster or triumph my mind with special fondness reverts; but there is also with this hallowed affection a feeling of gratitude and reverence, coming from the fact that I stand amidst a community which has been so true to the cause of humanity, whose fidelity to that cause has contributed so much to strike the shackles from the slave throughout our broad land. I am, for a moment, again a child; I bow my head again with you in the hushed circle of family and social worship; I hear again your father's and my father's fervent prayer that "the enslaved may go free." I humbly and devoutly realize that that prayer, after the lips of so many who uttered it have been sealed in death, has been answered, and that the God of all wars has, by his own wisdom and power—by a gigantic civil war—by a fraternal war, in magnitude and far reaching consequences, and above all, in solidity and strength brought to popular government, unequalled, brought it about, that by constitution and law slavery is forever eradi-

cated throughout the Union, and that, in theory, there can be nowhere, here, exclusion from the full enjoyment of the great rights of the man and the citizen on account of the unmeritorious accidents of life—race, color or previous condition. This magnificent political protection and this grand political fellowship, founded upon principles no less universal than those of Christianity itself, owe much, for this their dissemination and prevalence, to the men who inhabited, or whose fathers inhabited, New England. Coming from a land just rescued from the blight and curse of *the law* of slavery, whose hope is, that the onward march of free principles will soon deliver it from its moral weights and fetters, I recall with pious devotion that prophetic inspiration, that prayer of faith, of our revered and beloved fathers.

You have destroyed the visible temple of a gross heathen deity; but the heathen idolatry has survived the destruction of its palpable shrine. You have abolished slavery; but you have not destroyed the civilization—the moral and social ideas, born of slavery; nor can you destroy them save by the added ameliorations and incisions—the most constant and vigilant protection, coming with all the power and sanction of the National authority. I shall not have spoken in vain if I shall succeed in demonstrating to you that where your fathers rested from their labors, you should take them up; and that that great national party, whose history is but the record of our national disenthralment and purification, and which bears with it so much of the good and the hope of our Republic, shall continue to make it chief among its great objects, to see to it, not alone that constitutions suddenly abolish the worst form of slavery, and that where it had balefully overshadowed a people for generations, not alone that laws, *in words*, give equal rights, but that the central and alone effective power, the federal power, shall give a *practical and operative equality of right and opportunity to all races and classes and conditions of citizens*.

I propose to speak to you of Louisiana; and, first, to give you an accurate account of the political and public events which have recently transpired in that state, and, secondly, to state the progress and promise of her colored population.

First, the political and public events. In November of last year an election was held in our State for Governor and all other State officers as well as for Presidential electors and members of Congress. The Democratic party felt the sheer impossibility of electing their candidates, and made an alliance with Governor Warmouth; the only ostensible result of which was to put within their control the whole machinery of election—a machinery which placed in the Governor's hands unprecedented and enormous power and which had been execrated by some of the ablest and most eloquent democratic orators as perfect only in its enormity and its capacity for misrepresentation and falsification. With this alliance it was easy to see how the Democratic party might obtain some sort of evidence of having carried the state, and then, by physical force, which their combination with the Governor would enable them to wield, install their candidates in office, and thus gain a full control of the state for at least four years. But the immense Republican majority in Louisiana could not be overcome even by such a combination and such machinery, and the plan of the party failed. I ask you, because a party fails in such a scheme, which some of their own number denounced as infamous, is that any reason why it should abuse, throughout the press of the country, almost every good man in the state who had, directly or indirectly, aided in defeating it?

I do not believe that any candid and well informed citizen of Louisiana doubts that Mr. Kellogg and the Republican State ticket were elected by nearly 20,000 majority. It could not have been otherwise. The colored population, if we allow for their greater increase since the census, must be in excess of the white population by several thousands. Their voting population is undiminished by constitutional disqualifications, and has not been depleted by the war to the same extent as has been that of the whites. It can be safely said that the colored voters in the State outnumber the white voters by from 12,000 to 15,000. The white Republican vote is at least 20,000. It is known that the colored voters cast their votes unanimously for the Republican candidates, and that the 20,000 white Republicans came to the polls and voted.

If a reduction of 12,000 is allowed from the honest Republican majority, by way of fraudulent exclusion from Registration, there would still be left a Republican majority of 20,000. The general, and for the most part undisputed facts, would satisfy any one conversant with them, that Mr. Kellogg and the State Ticket, including the Legislature, were elected by a very large majority. But now we have the direct testimony of Brainard P. Blanchard, State Registrar of voters, through whose hands all the returns must have passed, and two of his clerks, who give details and tabulated statements, and depose positively, that the State went for the Republican ticket by a majority of 18,000. I give the concluding paragraph to Mr. Blanchard's affidavit, which is most full and explicit, occupying twelve double columned pages :

“And deponent further says that he has reason to believe, and knows that the Republican National and State tickets received a considerable majority of the votes actually cast at the election held on the fourth day of November, A. D., 1872, in the State of Louisiana.”

This testimony is conclusive. It comes from the fusionists' own officers. It comes from those who had every opportunity of knowing the facts, and who had no motive to misstate them; it is consistent with and corroborative of the known general facts; it fixes the Kellogg majority at just about the figures arrived at by the Board of Canvassers. I think the claim of the Republicans that they carried the State true and overwhelmingly established.

The election having resulted in a Republican majority of ballots as actually cast, it became of vital importance to the fusionists to oust the legal board of canvassers, and that Gov. Warmouth should create one of his own. For, under our State Law, the Board of Canvassers not only tabulate and compile the local results, but they have discretionary power, under certain circumstances, to reject the returns from any poll or precinct, where they are satisfied there has not been a free election. Governor Warmouth attempted to make a new Board, by the introduction of enough members to give him a working majority. This gave rise to two Boards, the Lynch and the Warmouth, and the question as to the legitimacy

between these two Boards, found its way into the State District Court, and was there decided against the Warmouth board, and in favor of the Lynch board, which decision has been confirmed by the Supreme Court of the State. Upon the rendition of the decision in the District Court, adverse to Gov. Warmouth's Board, the judge who pronounced it was forcibly ejected from his Bench, and a candidate who had run on the fusion ticket, but whose votes had not been canvassed by any board whatever, was forcibly installed in his place.

Thus it was, when the State was, through the instrumentality of the Executive, being pushed into the most lawless violence, which threatened to submerge all rights, so far as State Courts were then concerned, that the Power of the Circuit Court of the United States was invoked by Mr. Kellogg, by a Bill in Equity, and a hearing was had before Judge Durell. Upon the Bill and certain affidavits, two interlocutory orders were made. There has been no trial of the cause. To my mind the statement of the case renders argument unnecessary to show incontrovertible jurisdiction and warrant for all that was done and for much more. But as certain Senators for whom I have the highest respect, have expressed a different opinion, I shall go into this matter.

I lay aside the fact that but for the intervention of the authority of the Circuit Court, an era of ruthless violence for the whole State was inevitable; I lay aside the fact that the wrong Judge Durell was called to arrest was a wrong against the great majority of voters of Louisiana,—was a wrong against a race which every good and humane person should desire to protect in every relation and walk in life. I lay all this aside. I put the case upon naked legal grounds, and I say upon these grounds the jurisdiction of Judge Durell over the case brought before him, was complete, and his action therein fully authorized. To prove this I have but to put before you, side by side, the statutes which confer jurisdiction, and the Bill of Complaint, of Governor Kellogg; for, when the terms of the statute are fixed, the jurisdiction is to be determined by the allegations of the Bill.

The foundation for these statutes is laid broad and deep in the 15th Amendment to the Constitution of the United States.

The 13th and 14th amendments had failed to secure for the freedmen of the South, equal benefit of the laws, and the enjoyment of their fundamental rights. The corrosion of slavery had been too deep, and its prejudices were too bitter. For, since the abolition of slavery, the hatred towards the former slave, has not sprung from interest, on the part of his former master, but from self-reproach, the consciousness of having been in the wrong, from the rancour, at seeing his former chattel emancipated and enfranchized, one of the sovereigns of the people, from the bitter animosities of slavery. The freedman, as at a former time, I had occasion to show by a collection of the laws of the Southern states on that subject, which had been enacted from 1866 to 1868, was still treated as a vagabond, was tried by a separate court, was put up at auction in January and sold for a year. He was still in the wretchedness of quasi slavery. He had little of protection, still less of opportunity. This was the calamitous result of the unjust policy of President Johnson, of reconstructing the rebellious States while keeping the political power in the hands of the slave owners. Then came the 15th amendment, which prohibited the abridgment, by any state, of the right to vote on account of race, color or previous condition, and vested in the Congress the power to enforce that amendment. The idea of the amendment is, that if equality in the right of voting is secured to all voters, they will maintain their rights in other respects. The power to regulate, therefore, by all legislative means, the whole subject of voting, so far as to prevent any invidious abridgment of the right, is thus delegated to the Congress. That body has passed two acts popularly called the "Enforcement Acts" from their having been designed to put into operation this provision; one entitled "an act to protect all persons in their right to vote," and a second supplemental thereto. These acts regulate all state elections, even down to those of counties, towns and school districts, so far as to prohibit exclusion of voters, on account of the grounds specified in the amendment; they render criminal, and follow with heavy penalties, any violation of their provisions; and they invest the candidates with the right to resort to civil proceedings in the circuit courts of

the United States for themselves and the voters. Among the rights declared is the following in Sec. 23, of the original act:—

“ Whenever any person shall be deprived of his Election to any Office except Elector for President or Vice President or Delegate or member of Congress or member of a State Legislature, by reason of the denial to any citizen or citizens, who shall offer to vote, of the right to vote, on account of race, color or previous condition of servitude, his right to hold and enjoy such office, and the Emoluments thereof, shall not be impaired by such denial.” *“ Ubi jus ibi remedium.”* But since, in the first act, the civil jurisdiction conferred was confined to that given in the same 23d Section, over a direct action to try the title to office, but for the supplemental act, the circuit courts of the United States would have been without power to entertain any other, and the statutes would have established a right, without giving jurisdiction over the class of actions which might spring from it. This deficiency seems to have been perceived, and the supplemental act, vastly enlarges the jurisdiction and makes it extend to all cases arising from the rights established or declared, for, in the 15th section, it is provided that *“ the jurisdiction of the Circuit Courts of the United States shall extend to all cases in law or equity, arising under the provisions of this act, or the act hereby amended.”*

Now the substance of Mr. Kellogg's bill of complaint was, that an election had been held, that he had been voted for as a candidate for the office of Governor, that he had been deprived of his election to such office, by the denial, on account of race, color and previous condition of slavery, of the right to vote, to citizens who had offered to vote, viz: to 10,000 citizens, by refusing them the right to deposit their ballots, and to 10,000 other citizens who had deposited their ballots, by refusing them the right to vote effectively, their ballots having been subsequently rejected or suppressed; and that his right to hold and enjoy the said office of Governor would be impaired, unless the equity power of the court was interposed, and he asked the court to restrain from interference with the returns of said election, a body of men, who had no right even to their custody, and to direct that they should be

delivered to the Clerk of the Court, and by him retained until they could be copied, so that they might be preserved as evidence for him. Is this not a case in equity? Is it not one of the commonest cases in equity, one for the preservation of evidence? Was it not a case arising under the original enforcement act? Was not a person, according to the allegations of the bill, deprived of an office, and that too, the highest in the state, by the denial to citizens, offering to vote, of the right to vote, on account of race, color and previous condition, and was not his title to such office, and to its emoluments, about to be impaired thereby? Was not this a case *ex vi terminorum* within the provisions of the act?

When the law and the Bill are thus put side by side, I hold it to be beyond all fair controversy, not only that the case made by the Bill gave the Court jurisdiction, not only that it was a case manifestly and emphatically aimed at in the enlargement of jurisdiction in the Supplemental act; but also that, if the law had been framed on purpose to include the case contained in the Bill, it could not more precisely and at the same time more fully have comprehended it.

Now with reference to the order to the Marshal to take possession of the Mechanic's Institute, and hold it subject to the order of the Court. The jurisdiction over the cause existing, the issuance of this order was not only no abuse, but was a most salutary and an imperatively demanded exercise of the Court's discretion.

Gov. Warmouth had by force deposed the State Judge, when he decided against him; that more force and more confusion might be created whereby to thwart the Circuit Court in its pursuit of these returns, he had convened a pretended legislature, and in violation of the Courts restraining order, notoriously used the returns, while withholding them from the Court, in defiance of its mandate, for the purpose of declaring elected this same pretended legislature, which was designed to augment the material for forcibly resisting the action of the Court. The Court had ordered him not to interfere with the returns, and also to deposit them with the Clerk. He defied alike the restraining and the mandatory order of the Court, and paraded boastfully his defiance. He

thus flagrantly and offensively avowed his purpose of defeating these most proper orders, by the creation of a public confusion, and by plunging the State into violent disorder, to the end that his open and insolent purpose might be carried out midst a reign of lawlessness which should engulf the Court and its suitors and their rights. This scheme of unparalleled gross and continuing disobedience, a disobedience which was seeking to entrench itself by a wide combination, could only be defeated by some measure on the part of the Court which should preserve at once public order and its own authority. To effect this no means was so adequate as to direct the Marshal to seize and, subject to the Court's order, hold, the building in which these returns, of which the Court or rather its process was in pursuit, were known to lie concealed,—a building which was in no sense a State House, but which was owned by the Mechanics' Fair Association, and of which this same Mr. Warmouth, who was making ostentatious and menacing show of his disobedience, was the sole lessee. Would not a Court, clothed with the whole power of a Chancellor—a power well nigh unlimited save by right and justice—have been culpable, if in such an emergency in this case, in its nature extraordinary—a public case, involving such manifold interests, it had hesitated to rebuke and check such high-handed and wholesale contumacy and affront by the issuance of this order, so analogous to the process of sequestration, so exactly fitted to the vindication of the authority of a Court of Chancery, and so clearly in aid of the ends of justice in the cause?

There was a case quite like this in England. In July, 1868, Parliament passed an act, "amending the Laws relating to Election Petitions," and providing that a Judge of the Court of Common Pleas should hear and determine the cases of contested elections for the House of Commons. A case arose in Ireland, and an Irish Judge decided it. His decree was presented to the House, and there was a great outcry that a Judge should attempt to decide as to who was elected to Parliament. But Mr. Disraeli on the one side and Mr. Gladstone on the other, ended the discussion, by saying "it is the law and the Judge has but followed it."

With political consequences the Court had nothing to do. In simple justice to Judge Durell it should be said that there is no proof, no, nor hint nor suggestion, that he was anywhere actuated by any personal or political motive. The case is one of a choice of measures, where a Judge sought simply to maintain the dignity of his Court, and preserve the rights of the parties litigant. It was a case substantially between the former slaves and their former masters. If he refused to issue the order he would win plaudits from the former masters who, to a large extent, controlled the material wealth of the State and the press of the country, and would do injustice chiefly to a lowly race, whose voice could not be raised high nor heard far against him. If he granted the order he knew, for he had been informed by a score of letters that malignity and rancour would be so bitterly aroused against him, that his assassination would be attempted. When the case of this Judge is properly stated, it is seen to be that of a man with immense responsibility pressing upon him, doing right, with temptations around him to induce him to swerve, so tremendous that with most men they would have become successful intimidations. The fair-minded and fully-informed will not inquire where they can commence to censure, but where they can cease to praise him. I honor him not that he did an act so clearly permitted and so fully authorized—so proper in itself and in its relations to the cause, such an act a judge would have been delinquent not to have done. I honor him not that he did an act which put back the dark waves of the civilization of Slavery, and made Louisiana the abode of free principles for a generation, for results pertain to law-makers and to the Author of all laws; but I honor him that he did not in the exercise of his high authority succumb either to blandishment or threats, and, that as judge and chancellor, he did his plain duty, though disagreeable and dangerous, with utter fearlessness.

This case was but an illustration, an epitome of the contest, which was being waged throughout the whole state. The civilization of slavery which had swayed our nation for fifty years, with its narrow-minded, intolerant, but imperious dictation—with its opposition to free discussion—with its con-

stant and ever recurring appeals to violence, with its strength and hope residing in violence—stood on a field where it had hoped for a restoration to so much of its old supremacy and saw that it had lost; that it had lost, too, where it had sacrificed even its own self-respect to win. It saw a state snatched from its grasp just as its greedy fingers were clutching it. Overlooking the fact that the Judge was but the law speaking in its integrity, refusing, too, to see in its disastrous set-back the work of that sleepless vengeance which pursues great wrongs, it turned like a fury upon Judge Durell. Its supporters and minions have flooded the country with attacks upon him. The old sympathizers with slavery all over the country tried to forget their discomfiture at the defeat of their strangely selected presidential candidate by joining in this detraction.

With the malignity of fiends they have assailed his character. When in a rendition of a judgment, in my hearing, he aptly quoted from Lord Bacon's essay on judicature, wherein he says that "the judge who sits in God's seat should level down the hills and fill up the valleys," should bear even handed justice, they falsely quoted him, as blasphemously saying that he "was God's Vicegerent." They have accused him of intoxication, and that, too, when the order of which I have spoken, was issued. I shall speak plainly on this subject. Judge Durell has no excesses, he has no ungentlemanlike habits. I myself drew that order word by word as he dictated. He was as self-possessed, as deliberately circumspect, as free from every extrinsic excitement, and too, moved by as exalted motives, as was Mr. Lincoln when he signed the Emancipation Proclamation. Could his defamers be assembled in a room together, and he with his commanding presence, and a bearing, carrying with it a loftiness of character, which of itself refutes their calumnies, should enter, you would see them, self-convicted and shame-faced, flee away, as Swedenborg in his spiritual vision, saw the wicked, with writhing, escape, even by a voluntary plunge into torment, when the love of God was put into their bosoms. He is a most highly cultivated, polished gentleman, abounding in the amenities and charities of life, passing his time

when off the bench, within a sparely furnished room, with the simplest habits, even with great self-denial, that he may from his modest and scanty income, support and educate a poor colored boy, whom as a waif, he found in want upon the streets. Reading, and that most choicely selected and of a most exhaustive character, is at once his occupation and his delight. Thus has he lived during the ten years that he has been upon the bench. For that period has he administered the laws of the United States, in a state and community where the civilization of slavery had most fully culminated, where it had blossomed out in all its sensualism and luxury and where its passions and bitterness had taken deepest root. With a firm hand has he administered there these laws, many of which were specially obnoxious to this community. He was the first judge in the United States, who seated side by side in the jury box the former slave and his master. He enforced the test oath statute and the confiscation acts, he gave the broadest construction to the "civil rights" act no colored person ever sought the protection of his court, over whom he has not readily thrown it, when he could lawfully do so, and he has now applied without abatement the enforcement act.

He has few peers in the extent of his learning or in his acumen in its application. Great in his power of analysis, symplifying the most complex case, great in his memory, which is well nigh unerring, and which reaches through all learning for precedent or illustration, great in a most sincere love for mankind, he has also been great in the well-considered purpose to enforce to the last degree within proper limits the power of the government which appointed him. It has been for this that all the gall and venom of a bad civilization has been poured upon him. But he is a man of such great parts, he has been so true to freedom in its great struggle, even when it shook the land like an earthquake, he has been so spotless in his great work, that not more truly did the armed sentinels who, prudence required should surround him for months by day and night, shield his person from attack than will the viewless guardians of the good, quickened by the prayers of an entire race, for the protection

of whom he has been assailed, cause this attempted vilification to recoil upon its authors and to blazon his fame.

Let me read to you a short biographical sketch of this much abused judge, taken from one of our most respectable Journals, published in the year 1868. [*See Appendix.*]

In our Louisiana case is seen the need of just such a constitutional provision as the 15th Amendment, and of just such statutes as the Congress have passed to apply it. If there are statesmen who see in any thing short of the construction given to the law here any adequate protection to the former slave's right of suffrage, I dissent wholly from their view. If there are any statesmen who fear such a construction, I do not share their fears. It is a quick and sharp but a just assertion of the rights of the weak against the strong. Nothing short will give protection to the citizens of all races, who now make up our nation. In this case it was but the government of the United States with all the forms of constitutional law, saying, "You shall not deprive the colored man of his vote and of his majority." It was the greatest blow ever struck in our country at race exclusion. It worked a righteous result. It installed a government which was elected. It put aside one that was not elected. Without just such a statute enforced by the whole power of the United States, the enfranchisement of the colored men would have been in vain, and worse than in vain. We need not falter when we stand on such solid ground. That amendment declares the equal citizen rights of races. It breathes the spirit of Christianity. As a political impractical truth it found a place in the Declaration of Independence, and from the inception of the government through the efforts of the good it has grown continually in moral power, and at last after a terrible, and terribly bloody war, it is for all time made a structural, fundamental part of the government. While occasioned by the wants of the freedmen, its breadth and amplitude apply to all races, colors, and previous conditions. It protects all classes of the native born and of the foreign born citizens. It strikes a blow at Native Americanism, and at all combinations of foreign born citizens, at all who would oppress or proscribe on account of the accident of birth or previous condition. Viewed in this

light, how much of the national elevation and national liberalization, of the permanent advancement of our own republic, and, so far as we are experimenting for the world, for all republics, does that provision suggest! And shall the heavens be hung in black because the constitution and the law have been applied, to effect just the result in just the way intended? The amendment was right, the law was right, the application was right; and, thank God, all were in the interests of humanity.

You, who dwell in these secure New England homes, where the statutes of your several Commonwealths, freely administered, are implicitly obeyed, where correct principles, imbedded in the public mind, propagated and maintained by the church and the school-house from generation to generation, would for the most part control and regulate individual conduct, independently of the consequences which the law establishes, cannot readily picture to yourselves a community where the civilization, the controlling ideas have been begotten and educated under the domination of American Slavery. Well might such a community have hung a man for the utterance of the eternal truths of freedom; for with free speech down went slavery. It was wholly a thing of force. It had no merits, nothing but enormities, and so free enquiry could not be tolerated. It was physical force, commencing with making it a crime to teach a slave to read and write, and ending with making it unlawful to emancipate him. So with the civilization which, born of it, still survives it. It relies upon the blow and the bullet, and not upon the argument. Human life is held most cheaply. Murder and assassinations crop out continually. Without the moral power and the sanctions and penalties which come to us from the laws of Congress, the contest in Louisiana would be most bloody. Even with these, it is in some respects a most terrible struggle.

Do you think I exaggerate? I call to your attention the riot of 1866 in New Orleans, when a body of inoffensive men were, in broad daylight, attacked and decimated in the most bloody manner because they sought to meet in a harmless convention; I call to your attention the hundreds of Republicans, black and white, who were openly or secretly slain during the Presidential Campaign in 1868; I call to your atten-

tion the slaughter at Colfax in this present year, when, emboldened by the strictures of some of our friends in the Senate, to whom the side of the Kellogg government seems not to have been properly presented—a band of men organized and armed, fell upon two hundred harmless colored men and slew them, leaving their bodies unburied, and there they were found with hands which had been clasped in supplication to their murderers, and which in the rigidity of death attested that supplication. The details of this last massacre, in bloodiness and blood-guiltiness only equalled by that of St. Bartholomew, sicken the heart. I have seen two men who acted as a sort of ambassadors between the two gatherings. They assured me that there was no hostile purpose on the part of the colored people. They were being hunted for slaughter and remained together solely for the purpose of self-protection, asked only that the party which assailed them would sign a paper that they should not be molested, that they might be put in communication with the military forces of the United States, and then they were willing to disperse, each to his place of business and his usual avocation. But no, the report of four of our friends in the Senate had come out; the case of the Republican party went by default before them and therefore, as I think, they had censured it; Grant Parish thought an opportunity had come for unpunished murder, and so two hundred men were most brutally killed, most mercilessly killed, and their bodies left to putrify, unburied. In the later New Orleans newspapers I see chronicled the murder of Judge Crawford, a gentleman who was well known by me and who was a most worthy man and judge.

Let me call to your attention the numerous unchronicled and unpunished murders of freedmen, which month by month occur. The spirit of brutality and implacable hatred of freedom which felled to the floor, even in the Senate chamber, one of your own Senators in the midst of his immortal labors, still lurks in and even stalks forth on the fields of the South.

More than half our population are colored. They avoid violence almost to a fault. Hardly ever do they provoke an attack. Whenever you read of a skirmish between the for-

mer slaves and the former masters, in ninety-nine cases out of a hundred, you may know that the masters compelled it. I raise my voice here tonight to tell you, that, for years to come, you must protect the former slave in the exercise of the rights of the citizen, by legislation on the part of Congress. The United States armies and the United States courts must stand between him and over-awing violence, or you have but mocked him by making him a citizen. All his succor thus far has come from the general government; none of consequence from the governments of the states. The features of slavery, its effects upon enslaver and enslaved and the recency of its abolishment render it certain that the same thing will be true in the future. If then the lives of the freedmen are to be preserved, and their rights guaranteed, the preservation and guaranty must come from Congress.

I pass on to the aspect of our government as presented by the decisions of our Supreme Court. Directly and indirectly, in at least twelve cases—cases where the most subtle ingenuity, overtaking itself, can find no ground to question their jurisdiction, the Supreme Court of Louisiana have solemnly decided that the Kellogg government was the lawful government. Here then was an election for state officers, and a contest, springing up about it, has been finally settled by the court of last resort of the state. Where is there room for federal legislation on this case thus situated? In what I say here, I exclude from immediate consideration the power of the Congress under the fifteenth amendment. For, while it is clear that under that amendment it has no direct judicial power, it is equally clear that it can, by all means fairly within the scope of legislation, regulate, revise, and correct elections. Still, it can exercise this power only so far as to prevent or remedy exclusion from voting on account of race, color or previous condition. But in this case, no voter dissatisfied with the existing state of things was excluded. The party against whom the exclusion was practiced, is, in spite of that attempt, in possession of the offices of the state.

How then can Congress interfere to oust or install any one? Is not the case, just as it stands, purely a matter of State controversy and state decision, except so far as the Con-

gress has made it a judicial question, for the federal tribunals? And, the matter having been decided by the Supreme Court of the State, upon what pretext shall the Congress interfere? Why, say some, "in order to give a republican form of government." When the constitution of the United States says that "the United States shall guarantee to every state in "this Union a republican form of government," it does not mean that the Congress should determine who had been elected the governor or the legislature of the State, but the framers, casting their eyes upon the monarchies of the old world, from their own experience dreading the power of kings and the oppressions in kingdoms, and as well to produce a homogeneity in the various state governments, intended by this provision to shut out such forms of government here, and to secure to each state a government which should be in form a republic, a representative democracy.

Now, you must judge of the form of a government by the manner in which its functions are derived, and exercised, and, when the fundamental law is expressed in a written constitution, by that constitution. No government was ever in form more republican, than that of Louisiana. Yours in Massachusetts is not so radically republican, for, not only is the government of Louisiana, according to its constitution, representative, and of the people, but the source of power must be the whole people, for class and race distinction in voters are prohibited. So its use is to be for the whole people, for our constitution ordains that all public institutions and places shall be open to all its citizens alike. When under such a constitution, no race or class, urging that they have been excluded from the polls, Smith and Jones claim the office of Governor and the Supreme Court decide in favor of Smith. I know of no authority in Congress to put out Smith or put in Jones, or to order a new election. It is a judicial question and belongs to the internal regime of a state, with which Congress cannot meddle. I am confident that no Democrat, who, I do not say, reveres his ancestral doctrine of State rights, but I say who respects any part of it, who is not willing to recant and trample upon the whole theory of state rights, to abandon it altogether, will attempt to reverse the

decision of the Supreme Court of a state upon such a question. I am equally confident, now, that the facts of the case are well established, and the decisions of our Supreme Court have taken such an unmistakable and unmistakably final shape a proper regard for the constitutional apportionment of the powers of our government, will in the minds of statesmen of all parties preclude interference with it.

The officers of the government of Louisiana thus elected and established, are performing their duties as well as any officers could. For years to come, there must be a strong element of military power in any government there. In order to make it obeyed, to have it rule the whites, while it protects the colored people, it must be understood beyond a peradventure or a doubt, that, in case of resistance, the general government will supply the force to compel obedience. Gov. Kellogg has had a post of exceedingly great danger and difficulty. He has been in all sorts of ways abused and has been pursued even to the attempt of open assassination. I hesitate not, to say he has filled his post nobly and well. At first I supported him from the conviction of duty toward the principles which he represented; now I sustain him because, having seen him under all circumstances, I have seen in him an unfaltering purpose to administer the government in the interests of the whole people of the state; to protect the interests of the colored people and of the property-holders. He has fearlessly signed a sweeping civil rights bill; he has reduced the current expenses of the state far below those of any corresponding period since the adoption of our constitution in 1868; he has quieted a disorder, which, prompted by party hatred, and fed by the hope of support from Congress at one time, took on alarming proportions; he has collected taxes to an amount exceeding three millions of dollars, a greater amount than was ever collected in the same time, in any preceding year; and he will meet all the obligations of the state, for his policy is most decided that the state must pay its just dues, even if unwisely incurred; and he has done all this in the midst of hindrances and embarrassments which would have made men of ordinary capacity and assiduity despair.

The part which, in our Louisiana matters, has devolved upon the President, has also been grossly misrepresented by this same virulent partizan press. Not until after a state government which he well knew had been elected, had been established, and not until after it had made application to him in the precise manner pointed out by the constitution, did he recognize it and give it the support of the military forces of the United States. Only when called upon by the United States Marshal for troops to enable him to execute the orders of a circuit court in strict conformity with the statute, did he furnish them. He did no more than did President Tyler in the case of Rhode Island. In this, as in all things else, he has acted with scrupulous obedience to the constitution and the law. Whenever anything has been asked which was not warranted by the statutes, he has refused it. Whenever anything has been asked which the statutes authorized, and the public good required, he has unhesitatingly complied. In connection with our Louisiana affairs, I have had some opportunity of personally observing this man. The workings of his mind have astonished me. He is as great as our President, as he was as our General. Men, methods, generalities, details, all are understood by him. Not only is he obedient in word and deed to the law of the land, but he grasps the broad principles of natural justice upon which our government is, in theory, at last placed. To his firmness, sagacity and fidelity to principle, the freedman and the Union men dwelling in the South owe much. He has striking individualities, and, like all great men, has strong prejudices. But, take him all in all, I regard him as one of the safest men for a whole people, who has ever held great executive power. When the Mississippi flows up stream, then shall I look to see him take one step towards the overthrow of popular government.

This talk of Cæsarism amuses me. Why, if the war has developed one fact with reference to the government of the United States, it is that the great, overshadowing attributes of government are vested in the Congress, and that the judiciary and executive, if both combined, must go down before the power of the legislature. Can there be any Cæsarism in the power of

Congress? of which the whole of one house, and one-third of the other, are elected once in two years, the first by the people, the last by legislatures, who in turn are chosen by the people? To my mind it is a Cæsarism of the people to which we are coming; that is, the people, so far as under our political organization they can be distinguished from the government, are becoming more and more absolute every day. All the later amendments of the constitution aim to protect popular rights, and well nigh to universalize them. The movement now headed by one of the greatest statesmen in our land, is to have the constitution so changed that the President will be elected by a direct popular vote. Why, in these days when knowledge flows, like the rivers, through our land, when kings are voluntarily fleeing before the hoarse murmurs of their peoples, I do not believe a person suspected of secret sympathy with absolutism could be elected field-driver, for I think you have such an office in New England; and upon a President, tainted with even a like suspicion, would leap a whole people's wrath, like lightning from a surcharged summer cloud. No. The power of our people is such that I believe our form of government will last as long as does our civilization, and will, in distant years, give place to another form only when the ideas of the nation then expanded almost beyond our calculation, which now guard its rights with such intelligent and unslumbering zeal, shall have become enfeebled. By a combination of auspicious circumstances, we have reached a point in self-government from which there can be no retrograde, till the vigor of the nation is exhausted, till the "eye of the nation shall have become dim, and its natural force abated."

While the lovers of free government in Louisiana, and, I believe, throughout the country, are grateful to all the President's Cabinet, they feel special gratitude to the Attorney General, Mr. Williams, for the manly and statesmanlike support which he has given to them. Broad and clear in his reasoning, never over-refining, while profoundly learned in the law, never elevating law above sterling sense, reaching his conclusions with infinite pains and implicitly trusting his conclusions when reached, carefully distinguishing the lawful

from the simply available, he has throughout our whole struggle stood like a tower for constitutional law and at the same time for a people's rights. Some of the ablest state papers which any administration ever produced, have emanated from him. *Serus in Cælum reddeat.* May he long occupy positions in which his intellectual acumen and legal acquirements may be felt for the good of his country and his race.

I should have left unsaid, something which lies near the heart of every loyal Louisianian, did I omit to mention one of the sons of Massachusetts, who in the recent crisis of our Louisiana liberties, has proved himself one of their staunchest friends, Gen. Benjamin F. Butler. I need not speak of his throwing into oblivion every party prejudice, buckling on his armour and going forth for his country in her hour of extreme peril, nor of the value of his vigorous support and untiring exertions for the Union, not alone as commander in action, but in his fertile and consummately wise suggestions, all through the war, from the bombardment of Sumter down to the furling of the last Confederate flag. As a military governor, a civil administrator, we in Louisiana best know, and best know of him. He fed the poor; he furnished labor to the unemployed; he kept at a distance the pestilence "which walketh in darkness;" he prepared the way for our finest boulevard; he originated a bureau system of government for the city of New Orleans, since adopted by law, at once most simple and most masterly; he solved the great questions of finance, with the ability of a Hamilton; by his energy and boldness, and by his finding measures exactly suited to the rapidly occurring emergencies, in the very hot-bed of disunion, he made Unionism respected. As commander of the Department of the Gulf he has left a series of general orders, which operate as laws, and which, therefore, I have been compelled to study and construe. In originality, depth, grasp, foresight, in one word, statesmanship, they are unapproached by the labors of any of our civilians during the war, unless it be those of Mr. Secretary Seward, and prove him to have been, beyond all question, the administrative genius of the war. Not more did he command by the majesty of his intellect, than did he

endear by the gentle qualities of his heart. The poorest Union woman ever found him accessible, and found him kind as her own sex; the most desperate confederate, while he found him hard to circumvent, found him also inflexibly just. No friend or cause ever trusted him to find in him hesitation or betrayal. His very greatness leads him to scorn hypocrisy or concealment. Truly to him, may be applied the words which Edmund Burke used with reference to himself: "He has no arts but manly arts." I do but utter the admiration and the love in which every Louisiana Republican holds him, when I say that, where the lines of his life in the future shall be cast, is of more consequence to the nation than to him.

I have said that more than one half of our population is colored. Let me briefly characterize them, as a close observation of them enables me to do. They are kind, delight to exhibit kindness, and are exceedingly sensitive to it from others. They are naturally religious, and have almost universally, a belief that God will ultimately confirm them in all their rights. They have the most profound veneration for the government of the United States, and a warm and even touching gratitude, towards all who have in sincerity, labored for their amelioration; and they discriminate readily between honesty and pretense, in professions of interest in their welfare. They shrink from violence, and it will require a generation of freedom, before they can be relied upon to give back blow for blow. They have the deepest reverence for law, its heaviest exactions, I suppose, seeming to them light in comparison with the insupportable dictation of their former masters. They have an instinctive love for the comeliness of order. They are lovers of music and admire the elegancies of language. They are coming to comprehend more and more economy and thrift. They are ambitious for political distinction, and, considering their old oppression and absence of opportunity, have surprisingly correct judgments on all political questions.

They are industrious. Almost all our cotton is raised by them, and they now own in the vicinity of fifty millions of dollars' worth of property in the state. Our agriculture will not reach its easy possibility in productiveness until our plan-

tations, which now include from 2500 to 5000 acres each shall be divided up into smaller tracts, like your New England farms, and shall be owned by the actual tillers of the soil ; but there has come to be a noticeable increase, year by year, in the amount of crops raised.

They have an eager thirst for knowledge, both the old and the young. Outside of New Orleans the public schools are attended almost exclusively by them. There are now 110,000 pupils attending the schools throughout the state, more than two thirds of whom are colored. Our State Superintendent is colored, and is pushing forward the work of having school houses and teachers furnished to Parishes hitherto without them, and, I believe, is filling his office to the satisfaction of all, except the bitter partisans. Many are in office, and in my judgment are discharging their duties quite as well as the whites who have had no better opportunities. In a word, while of course, they have shortcomings, I think history furnishes scarcely a parallel to the tremendous effort they are making to come up fully to the standard of their new and suddenly acquired duties and responsibilities. Their progress during the past eight years has been truly wonderful and is full of promise.

I am not the special advocate of their race, nor of any race. I desire a fair and equal chance for all races. A war of races is with us an impossibility, the colored race lacks the requisite barbarity ; nor have they a disposition to trespass upon a single right of the white man. What they desire is, to possess their own. The problem in Louisiana is to unite in effort, those who are really united in interest—the former slave and the former master. To accomplish this, all the arrogance and intense prejudice of the master must give place to a practical, complete recognition—in form and spirit—of the equal political rights of the former slave—of the properties of the chattel transformed into the rights of manhood. It is about like the leopard changing his spots. It needs the help of some outside power. There are some noticeable and most creditable exceptions, but the mass of those formerly in the interest of slavery, regard the progress of the colored people as carrying with it little except ruinous

disaster to society and the state. Nor will they soon change. Though proud of the achievements of the Anglo-Saxon race, I should have read history to little purpose not to have learned that the arc, in which nations vibrate, is vast and extends through cycles of time. The Egyptian looked with contempt on his Hebrew slave, his hewer of wood and drawer of water; but as the ages have passed, even the civilization of the Egyptian has left few marks save the Sphynx and the Pyramid; while the Hebrew mind has been the vehicle through which the world has received almost all its Spiritual truths. The native Englishman, when, fifty-four years before Christ, the Romans under Tiberius invaded his island, was regarded as an arrant coward and as utterly ignoble; and yet how humbly of himself, how admiringly of the Englishman, would the Roman have spoken, could his eye have looked forward and seen that, after his race, then conquerors of the world, should have declined until it had scarcely a place on the world's map, and even the language of those words of terror and power, *Romanus civis sum*, should have become disused, the despised inhabitants of the "Island of Tin," with a history before which even the annals of Rome would pale, foremost in the world's commerce, its jurisprudence, its literature and its useful arts, would in accents fast becoming universal, roll a well-grounded and well-defined doctrine of personal liberty and personal rights round the entire globe. Verily God breathes upon the nations, and they start up into life; He touches them, and they fade and perish.

I see a race kidnapped from the Coast of Africa by our race, brought into our midst and for more than three generations subjected to a type of slavery which, so far as was possible, sought to extinguish their minds and dealt with them as animals. I see them suffered to increase in the heart of a Republic—thus giving the lie to its every assertion in behalf of human freedom, and at last, by the force of a war, sent like the plagues of Egypt, with its devastation and horrors, made free, then made citizens. I see them adapting themselves with wonderful facility to our institutions and our civilization. I believe that, in the economy of God, they have a future commensurate with this gigantic and in one

sense awful preparation; I cannot with my short vision foresee it. I leave it with Him. Your duty and my duty, fellow citizens, is clear; it is to urge upon the Congress to carry through the work without shrinking or doubting, which our government has so nobly begun, that living laws may be kept upon our nation's statute book adequate for the protection of this race and of all races from oppression and proscription, and to stay up with united strength and voice the hands of presidents and judges who fearlessly execute and administer those laws, to the end that violence and terrorism may cease, that free discussion may obtain, and that the justice and the majesty of constituted and responsible authority may control.

Our nation, as a nation, had enough to do with Slavery, both in its origin and abolition, to lay upon it most solemnly the duty to protect the freedmen. They are by every consideration of justice and expediency its wards. They can have help from no other source. The government of the United States should, with the firmest hand, protect their lives, should take upon itself the whole business of conducting their education, should guarantee them their civil rights, and above all, as laying at the basis of all, should give them the surest and most visible protection in the exercise of the right of suffrage. Such a policy, fixed as permanent on the part of the general government, would not only meet its moral duties, but would render certain for us an era of great material prosperity. Property-holders who have in their midst, well nigh annually, massacres and where murders are frequent and punishments few, need not wonder at stagnation in trade nor that rents are small nor that taxation seems enormous. It is idle to attribute all this to any accidental or transient cause. The real cause is a sense of insecurity, a dread of violence.

Let the reign of law be as absolute as the Congress can almost immediately make it, and the whole face of society would be changed as by the dawning of a new day; capital, which is more sensitive to violence than is even human life, would cease to fly from us on such swift wing, real estate would cease to depreciate, but the inventor and the operative, coming with the capitalist, would bring with them the quickening

noise of machinery, and our valley, filled with labor, which needs but the consciousness of security, with its exhaustless alluvial fertility, its almost spontaneousness of production, and its capacity for products of such immense price, would not only yield a great revenue to its occupants, but would by direct and indirect means, pay a considerable tribute to the government and greatly enrich the nation.

APPENDIX.

HON. EDWARD H. DURELL OF LOUISIANA.

The subject of this sketch was born in the town of Portsmouth, New Hampshire, in the year 1811. He entered Harvard University in the year 1827, and throughout his four years' course was remarkable for his eager desire for general literature, especially that of the old masters. Here it was that he laid the broad and deep foundation for his vast and varied learning. After graduating he studied law in the office of his father, Hon. DANIEL M. DURELL, who had then removed to Dover, for two years, when under the auspices of Mr. Polk, afterward President, he went to New Orleans and commenced the practice of the law.

His twenty-five years' life in New Orleans prior to the rebellion may be briefly stated. It was the old narrative presenting a trial under which the pluck of most men yields—namely, that of large capacity and unfitting opportunity. With an ardent love for mankind, and a keen perception of the derangement and demoralization wrought by slavery, he saw little in Southern society or institutions with which he felt a sympathy. He therefore devoted himself almost exclusively to the study of books. In the conduct of his cases he was noticeable for the thoroughness with which he searched all the lore of the law for precedent or authority, but especially for the unrelenting grasp with which he clung to the great principles which they embodied. Once or twice he was drawn into the conduct of public affairs. He was the author of the present charter of the city of New Orleans, which was adopted in 1856, and which as a municipal constitution is, in all its details, a model; and now and then he made a draft of a statute, striking at some evil or introducing some good, which the public mind at first opposed, gradually traveled up to, and ultimately adopted. He made, in 1854, a vigorous effort to ally the South more closely with the great and free West, and for this purpose prepared and published a pamphlet of most elaborate statistics showing the connection and mutual dependence of the two sections. But for the most part he lived in a world of laborious and wide-reaching study.

The result of all this was that the year 1862 found him a most extensively and profoundly read lawyer, conversant to an extent allotted to but few men with literature and history, and not only fresh in his reading of the ancient classics, but also a thorough scholar in the French, German, and Spanish.

The year 1862 brought General Butler to New Orleans, and developed that this man of books had not read in vain, but had nurtured in his heart of hearts a reverence for the grandeur and beneficence of free institutions as represented by the Federal Government. This quality, together with manifest ability to understand men and judge of measures, led the commanding general to place him at the head of the Bureau of Finances of that prostrated and depleted city. To say that he re-established its credit does not do him justice; he re-established it swiftly and by methods which enabled it in its emptiness and absence of commerce to meet its liabilities with a promptness not surpassed in its extreme prosperity.

June, 1863, saw him placed upon the Bench of the United States District Court, where, sitting unaided both as District and Circuit Judge, were cast upon him the whole of Chancery, Common Law, and Admiralty Jurisdiction, together with the construction and application of the non-intercourse and confiscation acts and the settlement of the numerous delicate questions arising under the law of nations, on land and sea, in time of civil war. Truly these were the labors of Hercules, and performed, too, in the midst of a community for the greater part bitterly unfriendly to the Government whose interests he guarded and whose laws he enforced. But with firmness and kindness to all, following Lord Bacon's precept to Judges, he "raised the valleys and took down the hills." Not cumbering himself with authorities, except those of the leading cases, which seemed ineffaceably branded upon his mind, patient beyond praise in listening to well-digested and suggestive argument, curt to severity when sophistry would seek to pervert facts or principles, with a memory which seems never to have let go any material fact, he has unweariedly and exhaustively analyzed the perplexing questions brought before him, and with gigantic strength and upon broadest grounds solved them, until political foes listening to his luminous reasoning—so simple that a child could comprehend it—were compelled to admit its conclusiveness. "His very statement is argument; his inference seems demonstration." The common-sense justice of a case being always to him its atmosphere, he rests his decision upon principles which, when enunciated by him, are so evident that the wonder is that any one should have missed them. The force of his influence as Judge has changed the manner of reasoning, and more or less the practice in his own courts, and indirectly those of the State Courts of Louisiana. For while he has preserved all the spirit of equity with which the civil law abounds, he has substituted, and prepared the way to substitute, for its looser methods the more clearly defined forms and modes of the common law.

The spring and summer of 1864 placed upon him fourfold duties of great magnitude. He was acting-Mayor of the city of New Orleans; he sat daily as Judge in his own thronged courts; he sat as Chief of the Finance Bureau, and from the chaos which had there reigned was steadily evoking system; and he presided over the Constitutional Convention of 1864, assembled under the orders of President LINCOLN, and largely through the weight of his personal character, notwithstanding their turbulence and acrimony in discussion, secured harmonious and, in a high degree, wise action in the Constitution promulgated; and as executive officer, financier, statesman, and jurist made his official duties appear rather as ornaments than burdens. He passed from one to the other as readily as a master musician changes the air or the

strain—not perplexed by even these multiform demands—and performing all with wondrous ease and consummate ability.

It is unfortunate for the profession that his decisions have as yet not been reported. Involving as they do so wide a range of subjects, reached with such intellectual strides and elaborated with such research and learning, they are worthy of the age which produced a MARSHALL, and would be invaluable as a permanent element of American jurisprudence.

There is to be derived from his experience a lesson for the young and aspiring. The twenty-five years of his retirement, instead of being wasted in idleness or frivolity or mean pursuits, were day and night assiduously devoted to drawing from the sources of law and literature, what has proved a magnificent preparation for the high career toward which he was possibly unconsciously but surely advancing, and which he now finds to be powerful auxiliaries, all the tributes which he so patiently and earnestly levied from the whole realm of reading. Let, then, native talent take courage and labor without cessation or weariness for the opportunities which, though unseen and undeveloped, near or far off, God by his appointments ever vouchsafes to the great and greatly industrious.



