be they in a city, town, village, or in the country, without special organization. To the property derived from the source named the citizens of Kansas City generously added, until to-day they possess magnificent school buildings and schools. To the suggestion that the property belongs to School-District No. 7, or the board of school directors, the citizens of Kansas City would readily and truthfully reply, "We are School-District No. 7, and the school board is ours. Neither can deprive us of our property, nor affect its character." To such argument there is no answer; nor is it invalidated by the fact that a fraction of territory outside, but adjoining, the city, may for convenience and its own benefit have connected itself with the school organization of the city, as under the law may be done.

The conclusions reached are that the verbal agreements made by the board of school directors in behalf of School-District No. 7 with the water-works company, to pay for water used for public schools, was without consideration and void; that the public school-houses of Kansas City are public buildings of the city, within the meaning of the water-works ordinance; and that the water-works company is bound to furnish water for their use free of charge, other than provided in the ordinance. Motion to set aside nonsuit denied.

In re DAVENPORT, Chief Supervisor of Elections.

(*Circuit Court, S. D. New York.* October 11, 1880.)

1. ELECTIONS — MISCONDUCT OF CHIEF SUPERVISOR — INSTRUCTIONS TO SUPERVISORS — REGISTRATION OF VOTERS.
   Under Rev. St. U. S. § 2025, which provides that chief supervisors of elections shall discharge the duties imposed upon them "so long as faithful and capable," the issuing by a chief supervisor to his subordinates of instructions that are substantially and materially the same as others previously issued, and approved *ex parte* by the district attorney for the United States and the judge of the United States district court, is not a ground for his removal from office. Such approval is sufficient to repel any imputation of bad faith.

2. SAME.
   A United States chief supervisor of elections instructed his subordinates that, under certain circumstances, "you will * * * require" the statutory oath to be put to an applicant for registration, and "you will make of him" certain inquiries. *Held*, that this should be construed as a direction to request the state inspectors to administer the oath and make the inquiries as provided by the New York election laws, and hence the instruction was a proper one.

3. SAME — REGISTRATION — PROOF OF NATURALIZATION.
   The following questions may be proposed by a federal supervisor of election to state inspectors of election as proper to be put to applicants for registration, since they tend to elicit proof of the applicant's naturalization, as contemplated by the election laws of New York, (Laws N. Y. 1872, c. 675:) (1) His age; (2) whether he has served in the army, and been honorably discharged; (3) whether his parents, or either of them, have resided in this country, and, if so, whether they are naturalized, and the time, *i. e.*, whether they, or either of them, were naturalized before the applicant became of age; (4) whether he procured his first papers before receiving his certificate, and, if so, whether it was two years before; (5) whether he appeared in court, or whether his certificate was sent to him, or given him elsewhere; (6) whether he took a witness with him when he received his certificate, and, if so, how long he had known such witness.

4. SAME—CHALLENGING APPLICANTS FOR REGISTRATION.
An instruction from the chief supervisor of elections for the southern district of New York to the election supervisors to challenge an applicant's right to register is not improper, since Rev. St. U. S. § 2012, authorizes the supervisors to do so, and section 2028 requires them to be voters, and voters are given said authority by Laws N. Y. 1872, c. 675.

5. SAME—PREVENTING REGISTRATION.
An instruction that, if it shall appear that an applicant has in his possession a certificate of naturalization improperly issued or granted or improperly obtained, "you will see that such person is not allowed to register," is not improper, since it merely advises the use of proper means to prevent his unlawful registration.

6. SAME—INVALID CERTIFICATE OF NATURALIZATION.
An instruction that in such case you "will take from him" his certificate, and attach thereto a statement of the facts as given by the applicant, etc., is improper, since it may be construed to require the supervisor to take the certificate without the applicant's consent, or even by force, which he has no authority to do.

At Law. Application for the removal of John I. Davenport from the office of chief supervisor of elections for the southern district of New York.

His removal was asked under Rev. St. U. S. § 2025, which provides that chief supervisors of elections "shall, so long as faithful and capable, discharge the duties" imposed upon them; and a want of fidelity and capacity such as is contemplated by the statute was alleged to exist because, as chief supervisor of elections, he had issued instructions to the supervisors of election as follows:

"INSTRUCTIONS TO SUPERVISORS OF ELECTION.

"OFFICE OF CHIEF SUPERVISOR OF ELECTIONS, SOUTHERN DISTRICT OF NEW YORK, ROOMS 100 AND 101, FOURTH FLOOR, UNITED STATES COURT-HOUSE.

"NEW YORK, October 4th, 1880.

"*To Each Supervisor of Election in the City of New York:* You will see to it that every applicant for registration who is possessed of a so-called certificate of naturalization purporting to have been issued from the supreme and superior courts in this city in the year 1868, unless the same was issued by the supreme court under date of October sixth, 1868, and that day only, is notified that his said certificate is believed to be false and fraudulent; and, if he then persists in registering himself, you will challenge his right to register, and require the statutory oaths to be put to him. Upon such challenge, after the party is sworn, you will make of him the following inquiries: *First.* What was his age when he came to this country. *Second.* Whether he has served in the army, and been honorably discharged. *Third.* Whether his parents, or either of them, have resided in this country, and, if so, whether they are naturalized, and the time of such naturalization, *i. e.*, whether they, or either of them, were naturalized before the applicant for registration arrived at the age of twenty-one. *Fourth.* If the answer to question one shows that the applicant for registration was over the age of eighteen when he came to this country, and the answers to questions two and three be in the negative, he should then be inquired of as to whether he procured his first papers before receiving his certificate, and, if so, whether it was two years before. *Fifth.* Whether he personally appeared in court when he obtained his certificate, and was sworn, or whether it was sent to him, or given him elsewhere. *Sixth.* Whether he took a witness to court with him when he received his certificate, and, if so, how long he had known the person who was his witness. If the board of inspectors decide thereafter to register any such person, you will note your compliance with these instructions in your supervisors'

book, against the name of the applicant, under the column headed 'Remarks.' Such entries will be made in the following manner: 'Challenged and examined, and oath taken.' You will also note in the back leaves of your book a memorandum of the several persons so notified and challenged, and of their answers to above inquiries. Your rigid compliance with these instructions will be required. You are further directed: (1) That whenever, upon your examination of any person applying for registration, it shall appear that such person has in his possession a certificate of naturalization improperly issued or granted, or improperly obtained, you will see that such person is not allowed to register, and will take from him his certificate, and attach thereto a statement of the facts as given by the applicant, together with his name and address, and return the same with your book to the assembly district aid, to be forwarded to the chief supervisor. (2) It has come to the knowledge of the chief supervisor of elections that many persons possessed of fraudulent and void certificates of naturalization issued by the superior and supreme courts in the city of New York in the year 1868 have torn up or destroyed their certificates. Some of these persons have heretofore been allowed to register upon their claim to have been naturalized, but to have 'lost their papers.' Where a person seeks to be registered by reason of his having been naturalized, he must produce his certificate, or be required to obtain a duplicate thereof. If, for any substantial reason, such as that the records of the court where the applicant was naturalized have been burned or otherwise destroyed, so that he cannot obtain a duplicate, then the evidence of any one who knows the fact of the naturalization of the applicant, or who has seen his certificate, may be received; but the court, and the date of the naturalization, as nearly as possible, and the time and circumstances under which the certificate was lost, must be stated. (3) Each supervisor will be careful to inspect each naturalization certificate presented, and observe its date, as set forth in the forepart of the certificate. The date at the close is frequently the date of the issue of a duplicate, and you must be careful, and not be misled by it. (4) The most rigid compliance with these instructions, and those contained upon the last page of the supervisors' book, is urged. The chief supervisor expects each officer to fully discharge his duties. The office of supervisor of election is no sinecure, and any appointee who feels himself unable to properly perform its duties had better resign. (5) The yellow-covered book sent you is the chief supervisor's copy, and must be written up upon each of the stained lines, beginning with the first, and must be a copy of the other book kept by you, save that it must not be spaced, and no regard must be paid to any order of arrangement by streets or house numbers, as in your other book. In other words, it must be written up as the parties appear for registration, line by line.

"Respectfully, JOHN I. DAVENPORT,
"Chief Supervisor of Elections."

E. E. Anderson and *G. W. Wingate*, for the application.
E. W. Stoughton and *E. Root*, opposed.
Before BLATCHFORD and CHOATE, JJ.

BLATCHFORD, J. We are prepared to dispose of this matter now. The two judges concur entirely in their views upon the subject, although the decision must be considered as being made by the circuit judge sitting alone, with the advice and concurrence of Judge CHOATE. We do not think a case is made out for removing Mr. Davenport, under this petition. The instructions, so far as the substance and materiality of them are concerned,—everything that precedes the second further direc-

tion,—appear to be the same which were issued previously, and approved, so far as such approval went, although *ex parte*, by the district attorney and by Judge WOODRUFF. Under such circumstances, this court would not be authorized to say that the reissuing of these instructions was evidence of want of fidelity or want of capacity on the part of the chief supervisor. Certainly, these circumstances repel all imputations of any bad faith on his part, while at the same time they may not be conclusive upon this court, sitting judicially, as to the propriety of the instructions.

Now, as to the instructions themselves. The question of their propriety has been argued to us, and we have been asked to express an opinion in regard to them. The decision not to remove Mr. Davenport disposes, perhaps, of the prayer of the petition; but we deem it proper, in view of the questions involved, and of the arguments of the counsel on both sides, to give our views upon the instructions, as the views of the court, without making any order whatever in the premises, except to deny the prayer of the petition for the removal of Mr. Davenport.

We regard the inquiries which the instructions direct shall be made of the person presenting an 1868 certificate of naturalization as proper ones to be made. We do not understand that there is anything in these instructions which is intended to interfere in any manner with the proper prerogatives and duties of the inspectors. The inspectors are to decide whether the applicant is to be registered or not. If they refuse to register him, the remedy is by *mandamus* from the supreme court of the state; and, if they improperly put his name upon the registry, undoubtedly there is a remedy. We do not see anything in these instructions which in any manner militates against this proposition. If these inquiries, or any other inquiries, are asked of the applicant, and he refuses to answer one way or the other, the consequence will be that his name will not be registered. If he says that he will not answer the inquiries because the answers may tend to criminate him, that will make no difference. He does not answer, no matter what the reason is; and, if he says he will not answer, he assumes the consequence.

These instructions were made with reference to the registration and election laws of the state of New York, (Laws N. Y. 1872, c. 675;) and we consider the inquiries or questions to be inquiries running *pari passu* with the questions which are authorized and required by those laws to be put to a person offering to vote as a naturalized person. The inspectors are not only required to put certain questions, but they are authorized to put such other questions as affect the right of the person to vote. Such is also the purport of the oath.

The instructions direct the supervisor to challenge the right to register of a person who persists in registering on an 1868 certificate. We think sufficient is shown to warrant an inquiry into these 1868 papers. We cannot go behind the affidavit of Mr. Davenport. We have not the facts before us upon which he acted, and must take his affidavit upon that subject as showing sufficient grounds for an inquiry in regard to persons offering to register on 1868 papers. The right of the supervisor

to challenge any person offering to register is expressly given by the statute of the United States, (Rev. St. § 2017;) and that statute (section 2028) requires that the supervisor shall be a voter. The statute of the state gives the right of challenge to any voter.

The instructions then direct the supervisor to require the statutory oaths to be put to the applicant. That is no more than asking the inspector to put the statutory oath. The inspector is the proper person to put the statutory oath, and he is, under the state law, required to do so. When the oath is put, the applicant is to be examined. How is he to be examined? The state law provides that the inspector shall put the questions. These instructions say: "Upon such challenge, after the party is sworn, you will make of him the following inquiries." Further on, they say: "Whenever, upon your examination of any person applying for registration, it shall appear that such person," etc. It does not follow at all, from this language, that the questions are to be put directly by the supervisor to the applicant. They are to be put in the usual lawful way,—through the inspector. That is the meaning, although the language might be made more accurate. The inspector, being by law the person who is to administer the oath and put the questions, may not put the questions proposed by these instructions. He may have his attention called by the supervisor to the advisability of putting these questions, and he may refuse to put them; but nevertheless they are proper questions for the supervisor to ask to have put.

The theory of the statutes of the state of New York in regard to registration is that the right of a naturalized person to vote, even though he presents a certificate of naturalization, is to be inquired into by the inspectors; and there is nothing in the decision of this court in *In re Coleman*, 15 Blatchf. 406, which conflicts or interferes with this view.

The instructions then proceed:

"That whenever, upon your examination of any person applying for registration, it shall appear that such person has in his possession a certificate of naturalization improperly issued or granted, or improperly obtained, you will see that such person is not allowed to register," etc.

That is not an instruction of prohibition. If the inspector is about to put down the name of the applicant as a registered voter, this instruction does not mean that the supervisor is to seize the pen, and take it from the inspector's hand, and thus prevent the registering. It merely means that the supervisor is to use proper means to see that the inspector does not register the applicant. But, of course, the inspector may still register him. The form of expression is, perhaps, not as accurate as it might be, but at the same time it is a form not improper to have been used; and we do not understand that it conflicts in any manner with the freedom of action of the inspector.

The instruction proceeds:

"And will take from him his certificate, and attach thereto a statement of the facts as given by the applicant, together with his name and address, and return the same, with your book, to the assembly district aid, to be forwarded to the chief supervisor."

That portion of this instruction we regard as unwarranted, and not to be supported. We regard it as tending to a breach of the peace, and as totally unauthorized under the circumstances in respect to which it is given. If a person is arrested, under section 2022 of the Revised Statutes of the United States, by a deputy-marshal or a supervisor, for illegally attempting to register, and, in connection with that arrest, the incriminating and inculpating certificate is taken, together with the person, before a magistrate, that may be a proper proceeding; but it will be a very different proceeding. We do not think that the words, "will take from him his certificate," are capable of the modified construction sought to be given to them by one of the counsel,—that the supervisor is merely to receive the certificate if the person gives it up. It is capable of a different construction. Moreover, in the petition in this case, it is stated that in several cases the certificate has been taken from the applicant, and on his demanding it back the supervisor has refused to return it. If it is submitted to the inspector, and the inspector passes it to the supervisor, and the applicant then asks to have it returned to him, the withholding it then by the supervisor amounts to the same thing as if he had taken it forcibly from the applicant. We do not think that that portion of the instruction can be upheld.

In regard to the point raised by Mr. Wingate, in his last observations to the court, about the evidence to be submitted as to naturalization,—either the original certificate or some substituted evidence,—it would seem that perhaps the instruction goes a little beyond the intent of the state statute. The state statute seems to be that the applicant is to produce the original certificate of naturalization, if he can, but that, if it is lost, he may show the fact of his naturalization by other evidence than the production of a duplicate of such certificate. This instruction seems to proceed upon the principle that the best attainable evidence must be produced,—either the original certificate or a duplicate. It says:

"If, for any substantial reason, such as that the records of the court where the applicant was naturalized have been burned or otherwise destroyed, so that he cannot obtain a duplicate, then the evidence of any one who knows the fact of the naturalization of the applicant, or who has seen his certificate, may be received."

This is stated as the opinion of the chief supervisor of elections. It may or may not be acted upon by the inspectors. It would seem, so far as the court now perceives, to be a departure somewhat from what is required by the state statute. We have not had an opportunity to examine it with care, and it has not been commented upon by the counsel for the chief supervisor. But the departure is not a very grave or serious one; and the matter is, unquestionably, to be regulated by the inspectors. If the supervisor sees fit to say to the inspectors, under these instructions, that the state law is so and so, and it is not, the inspectors know better, for they have the guidance of the state law, and of the instructions to them thereunder; and they will continue to act as they see fit. The instruction in question, though it may be erroneous, is not sufficient ground for removal, and does not require more serious comment.

These are our views on the subject, in which both judges concur. They cover the whole ground; and my associate, Judge CHOATE, says that he has nothing to add.

COMMISSIONERS OF THE SINKING FUND OF LOUISVILLE *et al. v.* BUCKNER *et al.*

(Circuit Court, D. Kentucky. December 1, 1891.)

1. CIRCUIT COURTS—JURISDICTION—SUIT TO RECOVER INTERNAL TAXES.
   A suit against an internal revenue collector to recover taxes alleged to have been illegally collected is cognizable in the circuit court, both under Rev. St. U. S. § 629, giving that court jurisdiction of causes arising under any law providing internal revenue, and under Act Cong. March 3, 1887, giving it jurisdiction of causes arising under the laws of the United States.
2. LIMITATION OF ACTIONS—DEMURRER.
   In a suit to recover internal revenue taxes alleged to have been illegally collected, where the complaint shows that more than two years have elapsed, and it is therefore barred by Rev. St. U. S. § 3227, the bar may be raised by demurrer, since that section contains no exceptions.
3. INTERNAL REVENUE—ILLEGAL TAXATION—SUIT TO RECOVER.
   As the right to sue the United States through its collectors, to recover taxes alleged to have been illegally collected, is only a remedy given by statute, no such right exists, unless the conditions prescribed by Rev. St. U. S. §§ 3226, 3227, are strictly complied with, namely, that an appeal must first be taken to the commissioner of internal revenue, and the suit must be brought within two years from the date of his decision.
4. LIMITATIONS OF ACTIONS—CLAIM BY CITY.
   The rule that statutes of limitation do not run against the state does not apply in favor of a city, in virtue of the governmental powers exercised by it, in respect to a claim of the city against the United States for taxes alleged to have been illegally collected.
5. SAME—REMOVAL OF BAR.
   Act Cong. June 16, 1890, authorized the secretary of the treasury and the commissioner of internal revenue to audit and adjust the claim of the city of Louisville "for internal revenue taxes on dividends on shares of stock" owned by the city in the Louisville & Nashville Railroad Company, "to the extent that such taxes were deducted from any dividends due and payable," and to pass upon the claim "in the same manner as if said claim had been presented and prosecuted within the time limited and fixed by law." *Held*, that this removed the bar of the statute of limitations against the claims specified, in respect both to taking an appeal from the collector to the commissioner of internal revenue, as provided in Rev. St. U. S. § 3226, and to the time of bringing suit, as provided in section 3227.
6. SAME.
   But the words of the act, "taxes on dividends on shares of stock" owned by the city, do not include taxes paid by the railroad on its gross receipts and on undivided profits, and the bar is not removed as to a claim therefor.
7. SAME—INTEREST ON ILLEGAL TAXES.
   As the taxes were originally paid without protest, and no appeal was taken to the commissioner of internal revenue, and no demand made for repayment, no interest would have been allowed on the claim, under the general policy of the government, if it had been prosecuted before the statute had run to completion; and therefore, as the act of 1890 authorized judgment to be rendered on the claim "in the same manner and with the same effect as if said claim had been presented and prosecuted within the time fixed by law," no right to interest was given thereby.

At Law. Action by the commissioners of the sinking fund of Louisville, Ky., against Lewis F. Buckner, as executor of James F. Buckner, and others, to recover taxes alleged to have been illegally collected by