The Daily Crescent.

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THE DAILY CRESCENT.

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NEW ORLEANS:
THURSDAY MORNING, MARCH 29, 1849.

Correspondence of the Crescent.

Branch Mint at New York—Editors and Post-master General—Ship Franklin—Case of False Pretences—Common Council Delegation to Albany—New York City Oppression—Old Zack on Duelling—Capt. Bradley—Case of Walker.

NEW YORK, March 18th, 1849.

Eds. Crescent—It is gratifying to us New Yorkers to see the Honorable George E. Badger catching "jesse" from the newspapers of his own State, for his unworthy course with respect to the bill establishing a Mint in this city. Meanness or selfishness enters not into the character of North Carolina or Louisiana, and Messrs. Badger and Downs fail to represent the wishes of their constituents when they oppose measures of public advantage, on the grounds of womanish jealousy.

It is true that a Branch Mint ought not to be established in New York; it is the point at which *the* Mint should be located, but as that seems at present impossible of accomplishment, the next best measure has been proposed, approved by a majority of the Representatives of the States and of the people, and defeated by the most contemptible of tactics.

Our new Postmaster General has brought a hornet's nest about his ears, by a hasty intimation of his views as to the appointment of editors to the postmastership in our large cities; and notwithstanding the fact that his first nomination to such an office was that of an editor, the buzzing increases in intensity. On this subject the Express says: "Whoever undertakes, as a rule, to proscribe the Press, and to *deal with them as with other men*, heaps coals of fire on his head." (!)

The Boston papers bring accounts of the examination held in the case of the ship Franklin, of which I have before spoken, before the United States Commissioner of that city, on Friday. The letters there read, show conclusively that Wilson is guilty of the charges preferred by the insurance offices, and there seems but little reason to doubt the participation of Craft in the design of procuring the destruction of the vessel. The guilt of the Captain is not proven by the fact of having received the letters, nor even by the circumstances under which the ship was stranded, although there are strong grounds of suspicion against his honesty. Guilty or not, he is beyond the reach of the Commissioner.

A case of false pretences, which has excited some interest in this city, for the whole of the past week, was yesterday closed in the Court of General Sessions, by a verdict of guilty brought in by the jury. The parties were all of the family usually called Dutch—that is, they belonged to various districts of Germany—and such swearing in court I never before heard; that of "our army in Flanders" could have been nothing to it. Perjury was evidently committed on both sides, and yet the fact passed almost without comment from the judge. I suppose he is "used to it." The law of the judge's charge, too, struck me as remarkable. He said if a man should represent himself as worth $10,000, and credit for goods be given to him on such representations without previous examination into the truth of his statement, no false pretence could be charged against him! Each of our numerous city courts seems to have a code for its exclusive guidance.

Our Common Council has taken upon itself the office of sending supervisory committees to both the Federal and State Legislatures, for the purpose of overlooking the course of our representatives on bills of interest to the city. In Washington one of these committees was *fêted* and lionized, to the especial delight of its members, and the envy of many city fathers who staid at home. The latter, however, got up a committee for Albany, and got themselves into it, expecting some few of the good things so lavishly bestowed upon their brethren in the Federal City. To their mortification, however, they find that the people in Albany will hardly look at them, to say nothing of giving them a dinner, and they resemble, in feeling and treatment, more the sheep than the lion.

Yesterday, in the Senate, an important bill relating to our city courts was taken up, but the gentleman who had reported the bill stated that he would not ask for a vote on it, nor would he upon any New York City bill, so long as a committee of the Common Council of that city remained in Albany.

The city of New York aspires to a position that does not belong to her. She desires to be to the State what Paris is to France—the State itself. With a population of one-sixth, she thinks herself entitled to control the interests of the whole by means of her immense wealth; but there is too deep a spirit of intelligence and democracy spread over the State, to allow submission to her arrogant pretensions for a moment. Venice was no greater tyrant than is this city, as Brooklyn can testify, and as Williamsburg is now beginning to feel, as she grows in importance. I hope to see Brooklyn and Williamsburg become one city, at an early day, and unite cordially in resisting New York oppression.

The corresponding editor of the Express says it is the official determination of the cabinet, that every officer of the army and navy, and *every man connected with the civil service* of the government, shall be removed if he engages in a duel. Old Zack says he served in the army for forty years, and during all that time got along without fighting. [If Old Zack said so, he did not speak truth.] He (Old Zack) says that nobody but a blackguard would insult a gentleman; and such a fellow is not worth the powder it would take to shoot him, even if there were no moral guilt in the act of *honorable* murder.

A New Haven paper states that Capt. Bradley, the murderer of Fanny Young in your city, is a citizen of that town, *where he has a wife and seven children.*

The examination of Thomas A. Walker, charged with shooting his wife, Martha E. Walker, on the 27th ult., took place yesterday. He tells a lame story as to the relations of himself and the deceased, and a lawyer-like one of the circumstances attending her death-wound. He says she shot herself, but how the pistol found its way to his pocket he cannot tell. Respectfully yours, INDICATOR.

The Mercury and the Bowery—Broadway—The Sun's Lottery—Mr. Webster and the Originals—Law case—California news in Boston.

NEW YORK, March 19, 1849.

Eds. Crescent—A row is confidently anticipated to vary the entertainments at the Bowery Theatre this evening. The Sunday Mercury announces that the press has been insulted in the person of one of its (the Mercury's) editors, by two "ruffians" connected with the above named theatre, who called upon him with a tomahawk and Bowie-knife to demand satisfaction, or to inflict punishment, for some remarks which appeared in a late number of his paper. The editor says, in his yesterday's impression, "we shall be at the Bowery Theatre to-morrow evening, with a number of our friends, for the purpose of driving Messrs. Duff and Stevens [the persons referred to as ruffians] off the stage, and of vindicating in our own person, the dignity of the press. *We call upon the public to support us.*"

This editor has a queer idea of what constitutes the dignity of the press. Hamblin will make a good thing of it, for I have no doubt that his house will be well filled. Such may have been the object of the Mercury article.

Broadway is itself again. The recent fine weather, and the near approach of the charter election, have done wonders for our streets, and the fashionable tide again begins to set along its favorite channel. The streets are in excellent order for New Yorkers, although [visitors from other cities might consider them "on the contrary just the reverse." Such people are not entitled to an opinion on New York matters, especially with reference to cleanliness of streets. We, who are accustomed to wade from place to place, with California mining-boots on, are the only competent judges in that regard. We make an exception, of course, in favor of citizens of Cincinnati who wander into these *diggings*.

The conductors of the Sun newspaper of this city, so prolific in new fancies, have now struck out a novelty in the shape of an extensive lottery, by which to work off a few extra thousand of their heavy weeklies. The proposition equals in liberality the recent offer of literary prizes, made by the same parties, and to which I have referred in a previous letter.

There is a good deal of whispered dissatisfaction afloat amongst the Original Taylor Men of this section of the country, with regard to the position that has been awarded to Mr. Webster by the administration, and the *consideration* given for the use of his great name and influence. All would have been well enough, perhaps, but for the offices lost to the Originals, by the appointment of Mr. Le Roy and Fletcher Webster.

A case of some interest to banks has just been decided in the Supreme Court of this city. A New Orleans bank drew on the Bank of Commerce in this city, for $120. The draft was altered to $1000, and forwarded through the Bank of Charleston to the Union Bank here, and by the Union Bank sent to the Bank of Commerce, where it was paid for its face, $1000. The alteration was discovered after the Union Bank had credited the amount to the Bank of Charleston, and the Bank of Commerce brought a suit against the Union Bank for recovery of the difference, $880. The court gave judgment in favor of the plaintiff.

We have later news from California, through the Boston papers, [illegible] than [illegible] but [illegible] the [illegible] January. Very respectfully, yours, INDICATOR.

[From the N. Y. Literary World.]

A Manhattaner in New Orleans.

RAIN AND MOSQUITOES.

My word for it, that if Professor Espy would take a front room on the second floor of any frame house in Marais street, in the First Municipality of New Orleans, and live within it six months; or hire an office near the corner of Poydras and St. Charles streets, within a minute's hail of Sol Smith's box-office or the cracked trumpet of the itinerating circus opposite; he would acquire a lasting disgust of rain water, and leaving his theories of winds, clouds, and storms, betake himself to shingle whittling, or any other Yankee recreation, which is as soothing to troubled nerves.

I have been on the Catskills when the roof of the Mountain House reverberated with the peltings of the rain, and when my spasmodic dreams were crowded by floating visions of drowning men and images of diluvian arks. I have worn out several umbrellas in my day; and overshoe-shod I have paddled the causeways of various cities; and so seen something of rain. But I never realized the capacity of the clouds for water until "going through a course" of the wet season in New Orleans. When there was little squeamishness, or modesty, or gentlemanly consideration in the rain drops. When the latter rarely gave due and generous notice of intention to commence action. When small glimpses of hope for an early cessation during progress were afforded. When the rain was now dogged, obstinate, and persevering; and now the rapidly succeeding showers charged the earth like reserve after reserve of cavalry in a battle.

The soil of the Crescent City, in the driest time of the season, is filled with humidity (and this to its utmost capacity, at two feet from the surface); and under favor of these aforementioned showers, soon overflows. Shunning the river, the choking gutters send their burdens swamp-ward, littering the angles of pavements with clumps of cotton and wool, heads of barrels, hogsheads sometimes: broken paper boxes, bits of pasteboard, twine and bagging rope; all which the ever-thirsty swamp licked, in course of time, into its capacious maw.

If you are a stranger in the city, and the clouds have liberally dispensed their favors all the night—and, all unconscious to yourself, the monotony of the falling rain has beguiled you into a late nap—and you arise at 10 o'clock to view the prospect without, and then "to breakfast with what appetite you may," you have queer sights to look at. And queerer ones, if business or curiosity draw you out. Pedestrians are standing on divers corners in a dreadful state of uncertainty, looking gloomily from their boots to the surging floods before them; now and then consulting watches, making feints to jump, and balking, until urged on by the still more dreadful visions of protested bills, undunned accounts, and lost bargains, "accoutred as they were, plunging in." Astonished Eastern men gazing from office-windows, and turning to their Bibles (if any they have) for statistics respecting Noah's Ark. Piano strumming misses in the by-streets are executing "Home, sweet Home" (how soothingly the melody vibrates the out-door air. Valiant bank runners and collecting clerks wading (apparently) unconcerned through Canal street, jostling nicely-poised umbrellas, or skilfully navigating them (aerial machines) about the tall heads and wide brimmed hats (the latter sometimes knocked off with provoking ease), and low balconies, and projecting signs, and nuisances of awning posts. Here and there fat men who are victims of circumstance are seen with large umbrellas—canopies, more like, of silk and whalebone—in narrow streets, caught and brought hard up by a pile of bricks or a stack of boxes. The unemployed cab-horses everywhere are in melancholic attitudes winking and blinking, martyr-like, from behind their cosy headstalls, and smoking vigorously the passers-by. The drivers, with oilskin capes (as if one needed to be so cruelly reminded of the state of the weather), standing under dripping corners, and dexterously dividing the pouring streams about them with their whip lashes; or peering, aggravatingly, from the back seats of their vehicles through the leathern curtains.

Anon, the earth would seem tired of "staying herself with flagons," and as if by telegraphic direction the heavens would suspend their rain-drops. Then the air would become chilly, and the ascending moisture hang in fog as low as the lamp posts; the chimney-tops, and the St. Charles's Dome, and the tops of flag-staffs skulk in a misty obscurity.

And again, when brisk allusions to that clearing-up shower had circulated through the city, the rain would once more descend in torrents, and set at defiance all deductions and calculations of meteorology.

I never take up a newspaper, and read from the price-current of the day the words "in consequence of the weather yesterday out-door, operations were suspended, and sales of produce were limited," but I know directly that the said "yesterday" was a day like the one above described.

I often roar with laughter, even in my bluish, dumpish moments, at thoughts of a ludicrous scene once witnessed by me, an incident of a rainy day; when, as one may well imagine, the slightest incident is worthy of being booked (for a rarity), like one of Prince Albert's jokes. The water was six inches deep on the corner of St. Charles and Canal streets, and my pedestrianism was at a stand-still in a fruiterer's shop. Cab-horses were splashing and spattering along like country nags in shallow meadow creeks; and timid clerks in patent leather boots (caught untimely with them on by a bit of deceptive sunshine at early morning) waded shiveringly by, looking grimly at the "Musson granite buildings" opposite, that just as grimly looked back at them. The stands of the fruiterer on the curb (the shelves running from awning post to awning post) were filled with high-priced oranges and water-melons (*sunny* May, by good rights, reader). A knot of lazy negro boys on the opposite corner showed their white teeth on the black prospect about them, and wistfully eyed the palatable merchandize across the surging currents.

Presently a cabman turning the corner, deceived by the overflowing gutter, drove a wheel upon the curb, and with the lurch of his vehicle turned over some shelves of the fruit-stand. In a moment the miniature maelstroms and gulf-streams all about had caught in their embraces hundreds of oranges and scores of watermelons, that went floating towards the swamp. The fruiterer was paralysed; an Italian, too, and Monsieur Cabbey within tongue and fist distance! Not so the knot of negro *garçons* opposite. The knot quickly untied and plunged in hot pursuit of the escaping fruit; and with a strict observance of the laws of political economy regulating the division of labor; since no two seized the same melon or clutched the same orange. A group of boys on an upper corner also wished to share the spoils; and a struggle followed their arrival, with a probability of soon testing the swimming qualities of all the party. This aroused the owner of the commodities, fast becoming, in a legal sense, flotsam and jetsam; and the now enraged fruiterer rushed after the predatory bands. But they had two blocks of flooded causeway the start, and much of the spoils was already appropriated. Thinking more of punishment than of his property, he caught an orange at every step and hurled it at the retreating enemy, to the astonishment of quiet lookers-on from drawing-room windows, until at last, what with the captures and his own reckless expenditure of ammunition, he was bankrupt in melons and oranges.

The latter, if there is any value in the old saying regarding stolen fruit, were sweet morsels to many a palate in the Faubourgs that night. * * *

Of course, where such a swampy soil and so much rain is found, that eighth plague to modern Egyptians, the mosquito tribe (insect, and not Indians,) are to be discovered without great scrutiny. Your mosquito is a sad drawback in the sunny days and pleasant nights of a New Orleans exile. The mosquito! whose bark is perhaps more disagreeable than his bite.

The month of March in the Crescent City, whether he comes in lamb-like or lion-like, brings mosquitoes, which by April have completely colonized bed-rooms, drawing-room, and saloons; nay, "all out-doors" besides. And of two classes: One for night duty, one for the tasks of daylight: both equally systematic in all the details of their operation. When twilight deepens, the class that have slept all day in obscure retreats behind curtains, and in wardrobes, and in the shadows of furniture, sally forth and dance about with a noise like the humming of a boarding school of tops.

Then is reading a suspended recreation. Old gloves are a treasure. The presence of a veteran cigar-smoker is a prize. Fans are a luxury. Woe to that person who becomes immersed in thought, or interested in conversation, or overcome by drowsiness in exposed situations. In ten minutes' time mosquitoes have duly marked him as a rash man; and on the morrow his mirror will become suggestive of small-pox; and his cologne bottle and flesh-brush will find active employment in the duties of the toilet.

One retires to rest, and, with as much of the rapidity of lightning as can be employed by nervous fingers, draws his bar of netting and duly tucks it in; forming a wall secure against the assaults and mining and sapping operations of the whole mosquito army. Behind this he lies until morning, and can sing to his heart's content "beneath cool shades reposing" with an orchestral accompaniment whose only fault is its monotony.

There is much of science to be displayed in getting beneath this netting of the bed so that none of the hungry swarms accompany you. I found it no bad plan to institute a feigned attack upon one side, thus drawing thitherward every insect in the room; and then, making a rapid march for the other side, escape them thence into the snug quarters of your bed. Or taking a corner seat for a few moments as if about to read; and when the wily insects are beguiled towards you make the same rapid march for the further corner of the bed. Perhaps often there will be a few mosquitoes who have already obtained an entrance (admitted to the bar under some new constitution and without an examination), after ingeniously plotting and planning through the daylight like the burglars they are. These must be carefully assassinated, while some good friend without or your body servant holds the light in assistance of the tedious search that must sometimes supervene before the prey be ensnared. In default of the friend or the body servant, a little experience, and an attentive ear, will make you a sharp-shooter even in the shade of night, as, guided by the humming of the enemy, you track him to execution.

Old jokers will tell you of mosquitoes who contemptuously spurn bars and netting, and who will crib your bed of straw, or even mattress hair, and suck you, julep-wise, from without. But this is *scan. mag.* against the whole insect tribe, and Porter of the "Picayune" should long ago have been assessed in damages for the story.

Cunning and sagacity are eminent characteristics of the mosquitoes of New Orleans. Those who in the daylight most do congregate, know a cane-backed chair a room's length off. They can detect a slight break of leather in your boots as soon as brought within their reach. They are sworn enemies to holes in the elbows, or short arm coat-cuffs, or low shoes, or bare necks, or gaping shirt-frills. And a man in their company need examine well his hat before tipping his head with it, or combing and brushing of hair will become rather an exercise than a mere duty of the toilet.

But joking and metaphor aside, the mosquitoes of New Orleans deserve a distinct niche in the temple of its history. They are parts and parcels of its population; coming between the negroes and the mules in nuisance valuation; and far before all men, women, and children in point of numbers. They are differently sized, and differently shaped, and differently armed, and differently aged, and differently educated, according as they are in different sections of the city. The first municipality possesses its mosquito denizen who has become torpid, sluggish, and lazy. Then there are the mosquitoes of the second municipality, who are active, energetic, enterprising; who get fat on borrowed capital, who serve and receipt their own bills, who are always active and vigilant. Some of them are dainty, and associate only with fat people whose nightmares are based upon turtle steaks and oyster pies. Others have a promiscuous appetite, and cling to draymen, hoosier, and banker with equal tenacity. Some are deficient in instinct, and suffer, or die unknown and unregretted in damp corners of closets and on dusty window panes, while their more shrewd and crafty brethren get fat and audacious. Some live through many seasons; seemingly smelling a frosty day twelve hours off, and duly housing in some cast off garment which prudent observation has taught them will not be called into active service; or seeking the friendly aid of a warm chimney corner whither no dust cloth or broom of vigilant housemaids may track them. Some have eyes keen as their bills (these are on the day watch, who are old the moment they come into this breathing world, to judge from the greyness of their moustache and hair) and will watch from a corner of the room until you are absorbed in reading or writing, or in reflection, then making a sudden dash, lance you, take a long pull (like a thirsty man at an iced ale), and withdraw to a rumination; whilst you are left to scratch and rub at leisure the small sized mountain raised upon the place of their small visitation by the poison left behind. These do not expose themselves to assassination; but are wary and watchful. Speaking *à la militaire*, if you are eyes right, they have left; if you are eyes front, they fall on your rear; if your eyes are all over, they are nowhere. If you strive at any time to clutch or imprison them in the closing palms, you will find that, Macbeth-like, you had but clutched an airy and unsubstantial vision.

So much for rain and mosquitoes in New Orleans. But I advise you, reader, neither on the faith of my representations (true as gospel though they are) nor on those of any one else, to throw either topic in the teeth of your true blooded Crescent citizen. He rather likes them than otherwise; and calls them agreeable peculiarities of climate, as your Gothamite speaks of mud, and your Bostonian of zero weather or easterly winds over Cambridgeport bridge.

Supreme Court of Louisiana.

Condensed Decisions—NEW ORLEANS, March 26, 1849.

[Reported for "The Crescent."]

Where A purchased merchandise in the shop of B, and the former acted in such a way as to deceive the public with regard to the ownership of the property, and to entrap the Sheriff who entered the premises to make a levy in virtue of a *fi. fa.* against B, all the surrounding appearances being deceitful and violently opposed to the naked assertion of the parties that A was the owner, the selling himself, acting as salesman, his sign remaining on the outside of the shop, the boxes and packages marked with his name in full, or by his initials, the purchaser's name appearing nowhere, and he neglecting to exhibit his bill of sale or mercantile books to the Sheriff, who, when sued for the value of the goods and damages for illegally seizing them as the property of B, brings them into Court to abide the decision; *held*, that the Sheriff was properly decreed to restore the goods to A, reserving to him his right to sue the Sheriff for whatever damages, if any, the goods may have sustained while in custody.

JAMES P. McDONALD *vs.* JOHN L. LEWIS, Sheriff. No. 606...*Appeal from the Third District Court of New Orleans.*—[His honor, Chief Justice Eustis, dissented from the opinion of the majority of the Judges. His opinion is given *infra.*]—SLIDELL, J., Justices Rost and King concurring...*Per Curiam*: The Court below was of opinion that the plaintiff had proved a *bona fide* purchase of the goods from Tillotson. I do not feel entirely convinced upon that point; but I will give the plaintiff the benefit of the District Judge's opinion, and assume that the sale was real and in good faith. But what are the facts, so far as the Sheriff is concerned!

This sale, it is said, was made on the 16th Feb., 1847, upon which day the written bill of sale purports to be signed. Tillotson, the vendor, an embarrassed debtor, remains in the shop, acting as salesman, down to the time of the seizure. The Sheriff's deputy goes on the 9th April, 1847, to the shop, finds Tillotson there, and demands payment of the amount of the execution. Tillotson tells him he cannot pay. The officer replies, "Then I must seize the goods here." Tillotson answers, "They are not mine." The officer retires, and in a little while returns, and threatens again to seize. At the second visit McDonald comes into the shop while the officer is parleying with Tillotson. They both tell him Tillotson has sold the goods to McDonald; but all the surrounding circumstances contradict the naked assertion of the parties. Tillotson's sign is still on the outside of the shop; the boxes and packages are marked with his name either in full or by his initials; McDonald's name appears nowhere. The attorney of the plaintiff in execution insists that the alleged sale is a mere pretence, and that the officer should proceed. The plaintiff not exhibiting his bill of sale, nor his books, and proffering nothing but his naked assertion, the officer seizes the goods and takes them away, and then this action is brought. The plaintiff's title is produced for the first time at the trial of the cause, and then the Sheriff brings the goods into Court, and says he is ready to deliver them immediately, if the Court should so direct.

It seems to me, if we hold the Sheriff liable in this case as a trespasser when he was willing to restore the goods, it would be a great hardship upon the public officer, and would be in reality enabling a party to take advantage of his own wrong. The plaintiff, even if he was a real purchaser, acted in such a way as to deceive the public, and this deliberately and for his own supposed interest. When Tillotson's clerk was about leaving the shop, shortly after the sale, he asked McDonald whether he was to erase Tillotson's name from over the door. McDonald replied "that he would let it remain, that it would be of some advantage to him." It seems to me such a course of conduct should be discouraged. It held out the vendor in a false light to the public, and gives him a false credit. In the case before us it led the public officer into an error, the consequences of which the plaintiff now seeks to impose upon him.

I think the plaintiff was bound in good conscience to give the officer something more than his naked assertion, thus violently opposed by all the surrounding appearances. Why was not the bill of sale shown, and the plaintiff's books, upon which he now relies?

The position of a Sheriff is one of great responsibility. If he refuses to make a levy and the plaintiff in the suit can show that the goods found in the possession of the defendant in execution, were in truth his property, he is entitled to recover his debt *pro tanto* from the Sheriff. And it seems that in an action against the Sheriff for a false return of "*nulla bona*," it is sufficient to put the Sheriff on his defence for the plaintiff to show that the defendant in execution was *in possession* of property sufficient to satisfy the execution. Magne *vs.* Lyman, 5 Wendell, 311. I do not find any textual provision in our laws authorizing a sheriff to demand a bond of indemnity, and I have doubts whether he has a legal right to do so. If, on the other hand, he is to be held liable, as a wrong-doer, for taking property which the owner has been surrounded by deceitful appearances which entrap the sheriff, his double responsibility becomes grievous to a degree that appears to me unreasonable. I think very great weight is to be given to what was said in argument, by counsel, respecting what is properly characterized by the Chief Justice as a defect in our jurisprudence. At common law, when the sheriff is met by the assertion of an adverse title, he may impanel a jury to inquire in whom the property is vested; and their return will excuse him in an action of trespass. Bacon's Abridg. *verbo* Sheriff. Bailey *vs.* Bates, 8 Johnson, 143. With us a sheriff has no such power, and ought not to be held with the same severity to a party whose conduct was imprudent and well calculated to deceive the officer.

If this case were tested by the rules and principles of the common law, which has been invoked in argument by the plaintiff's counsel, I incline to the opinion that the sheriff would be permitted to return the goods upon payment of costs and mere nominal damages. I question if the action of trespass would lie in such a case; for, to sustain that action it seems the *taking must be unjustifiable.* Hence it is declared, by respectable authority, that if a sheriff take the goods of A, under a writ of *fi. fa.*, after he has committed an act of bankruptcy, and afterwards the goods are assigned under a commission of bankruptcy: an action of trespass does not lie against the officer, although the goods do by relation become the property of the assignees from the time of committing the act; for as the officer might not know that A. had committed an act of bankruptcy, or that an assignment of the goods would be made, and as it was his duty to execute the writ, it would be unreasonable to punish him as a wrong-doer. Bacon's Abridg. *verbo* Trespass. So if A. mix his corn or money with the corn or money of B., so that they cannot be distinguished, and B. takes the whole, trespass does not lie, as there was fault on the part of A.—*Ib.* And so I should think a party would not be entitled to bring an action of trespass against the sheriff who had left his goods in the possession of the defendant, in execution, in such manner as to give him all the appearances of ownership.

Then, if the *taking* was not unjustifiable, the plaintiff would be driven to an action of trover; and I find it asserted by the same author that in some cases in that action it is allowed to bring the thing into Court. "But herein," he remarks, "this distinction is to be observed; if trover is brought for a specific chattel of an unascertained quantity and quality, and unattended with any circumstances that may enhance the damages beyond the real value, but that its real and ascertained value must be the sole measure of damages, then the specific thing demanded may be brought into Court. But where there is an uncertainty either as to the quality or quantity of the thing demanded, or there is any tort accompanying it, that may enhance the damage above the real value of the thing, and there is no rule whereby to estimate the additional value, there it shall not be brought into Court." So in Browne on Actions, it is said: "If the defendant return the goods, the plaintiff will only recover such damages as he has actually sustained; but he is at all events entitled to nominal damages, as the return of the goods does not cure the conversion, but merely goes in mitigation of damages; and if there be a dispute as to the quantity of the goods converted, and the plaintiff refuses to receive back the portion offered, the Court will, upon application for that purpose, stay the proceedings on delivery of such portion of the goods, and payment of costs and damages, and if the plaintiff refuse to accept such terms, will permit the defendant to deliver up the goods, the plaintiff to pay the costs incurred subsequently to such delivery, in the event of his not recovering in respect of some other articles than those delivered up, or more than nominal damages in respect of those delivered up."—Browne on Actions; Trover, p. 425.

The power of our Courts cannot be less than that of those of common law to mould the remedy to the justice of the case.

To these remarks I may add, that I am not prepared to say that there was such a legal change of possession as would perfect the sale against creditors, even supposing the sale to be real and *bona fide.*—See Hoffman *vs.* Clarke, 5 Wheaton, 549.

In that case, which was trespass against a constable for taking a horse alleged to belong to the plaintiff, by virtue of an execution against A, the plaintiff's brother, it appeared in evidence that the horse had been delivered to A, who testified that he had sold him to the plaintiff, before the execution, for a full price. Another witness, produced by the plaintiff, testified that the plaintiff and A lived together, and that after the sale the plaintiff kept the horse in the same stable in which A had kept him. The Court there said, the law in order to make sales of personal property good against creditors, and to prevent property being deceived by appearances, requires that there shall be an actual transfer of the possession, so far as the nature and condition of the property will admit of it. The circumstance of the seller and buyer of the horse boarding together in the same house, furnishes no ground for dispensing with such actual change of the possession as will render it *distinct and visible*, so that it may become notorious. It was surely practicable for the plaintiff to have taken possession of the horse, by placing him in a different stable, and either feeding and taking care of him himself, or to have procured some third person to have done so. So here the plaintiff might have changed the sign, etc.

ROST, Justice, and KING, Justice, being also of opinion that the judgment should stand, it is therefore decreed that the judgment of the District Court be affirmed, and the costs of appeal be paid by the appellant. [The decree of the lower Court was "That the plaintiff, James P. McDonald, recover from the defendant, John L. Lewis, Sheriff, the goods described in the bill annexed to the plaintiff's petition, reserving to said plaintiff his right to sue the said Lewis for whatever damages (if any) the said goods may have sustained from a want of proper care and attention whilst in the possession of said Lewis. It is further ordered that defendant pay the costs of suit."]...Elmore & King for plaintiff and appellant; John R. Grymes for defendant and appellee.

EUSTIS, C. J.—*Dissenting.*—The defendant, who is Sheriff of the Parish of Orleans, is sued by the plaintiff to recover the sum of $1332 25 damages for an alleged tort committed by him in taking and carrying away the plaintiff's property, consisting of a lot of shoes, trunks, etc.

They were seized under an execution against one Tillotson, which was, including costs, for a less sum than $200.

After the evidence was given in and the trial finished, the defendant offered to restore and tendered the goods seized, if the Court should be of opinion that the plaintiff had made out his claim to the property. The District Judge decreed that the plaintiff should recover the goods, reserving his right to sue the defendant for whatever damages he might have sustained from a want of proper care and attention to the goods while in the defendant's custody, and ordered the defendant to pay costs. The plaintiff has appealed.

The suit was instituted on the 12th April, 1847, and in the petition the value of the goods taken was alleged to be $832 25, and the incidental damages are laid at $500.

By the minutes of the trial it appears that the offer to restore the goods was made on the 4th June following. We have not been favored with any authority, or precedent of any case determined in this State, by which the responsibility of parties to a suit of this kind has been held to be affected by a tender made at the time and under the circumstances attending this.

A Sheriff, under an execution against A, has no warrant or right to seize the property of B. In this case the defendant, under color of an execution against Tillotson, seized property which the District Judge was satisfied belonged to the plaintiff. As the case stands before the Court in relation to the property itself, the seizure and removal of the defendant's goods was a tort, for which he is responsible. The only question is as to the extent of his responsibility. Under our laws the Sheriff has no authority to call a jury, in the event of his having reasonable ground to doubt whether the goods to be seized be really the property of the debtor in execution. The responsibility in all cases appears, by the uniform decisions of the Supreme Court, to rest on that officer, whose only protection is in the bond of indemnity which in doubtful cases is usually asked from the creditor. The embarrassments which surround the performance of the duties of Sheriff, particularly in a great commercial city like this, in consequence of the shifts and devices of fraudulent debtors in putting their property beyond the reach of their creditors, by sham sales and otherwise, are very serious: the interests of the administration of justice call for some remedy for the evil by means of legislation. None better, in all probability, can be devised than that which has been found necessary and practical, and is in operation, in England and most of our States. A law empowering Sheriffs to summon a jury to determine, on doubtful questions relating to the ownership of property, which is directed to be seized in execution, modified as it there is by a settled jurisprudence, would be of great public benefit and no more than a just protection to the public officer in the discharge of his difficult and important duties.

We have kept this case a long time under advisement in order to ascertain if, as the law stands, there was any principle on which the responsibility of the Sheriff can be modified, in which we could all concur, and I am satisfied there is none.

The Sheriff's officers, in the present case, acted without malice, and I think the defendant is only liable to the plaintiff for the value of the goods taken away. The officers, in seizing, did not close the store, or interfere with the current business, and the goods were removed in the after part of the day to the depot of the Sheriff. There is no evidence of any aggravation or wantonness attending the seizure. The name of Tillotson was over the door on the street. The boxes were marked in his name. It appears that the plaintiff had bought out the stock of Tillotson in this store, on the 16th February previous, and Tillotson remained with him in the capacity of a clerk; and under the evidence, according to all external appearances, there was good reason for believing that Tillotson was still the owner. The facts, however, turned out otherwise, and I am impelled to consider McDonald, the plaintiff, as the owner of the goods, and the defendant as guilty of a tort in seizing and removing them. My opinion is that the plaintiff is entitled to judgment for the value of the goods seized.

It is particularly to be desired that on questions of this kind, which determine the responsibility of the executive officers of the law, the opinions of the judges of this Court should be unanimous; and it is with great deference that I dissent from that of my brethren in this case. The judgement of the District Court having found the sale of the stock of goods from Tillotson to the plaintiff of the 16th of February, previous to the issuing of the execution, to be real, valid and *bona fide*, (from which opinion this Court does not dissent,) and having given judgement for the goods in consequence of the tender made in Court; and not concurring with the District judge as to the validity and effect of the tender as made, I am forced to the conclusion that the Sheriff is liable to the plaintiff for their value, according to what I conceive to be a legal principle, which is a necessary safeguard of the right of property.

BOARDING.
THREE OR FOUR Single Gentlemen can be accommodated with BOARDING and LODGING, at No. 236 Baronne street. o23 tf

GOLD ROCKERS FOR CALIFORNIA.
ANY person wishing to purchase GOLD ROCKERS, such as are recommended in this paper, apply at No. 26 Tchoupitoulas street, or at No. 93 Carondelet. fy29

FOR SALE.
A SODA MANUFACTURING APPARATUS, complete, comprising a number of Fountains, Coolers, Charging Pump, etc., etc. For particulars or inspection, enquire of
mh14 M. H. DEVEREAUX, 26 Tchoupitoulas st.

AN OFFICER OF COM. JONES' SQUADRON SAYS IN A LETTER which has appeared in the Papers of this City, that during a visit which he paid to the mining region of the new found El Dorado, he sold his HAT, which he originally paid a very trifling sum for, for the sum of *Sixty-four Dollars*!! What a field for speculation this fact for! Parties about going to California would do well to call at a single store and buy themselves an indifferent HAT sold for $64.
WILLIAM BOOTH, Hatter.
Wholesale Sales-room, No. 13 Gravier street, up stairs, where can be found the precise article for the California market. fy5

BLACKSMITHING, Etc.
THE undersigned have associated themselves together for the purpose of carrying on the following business—viz: BLACKSMITHING, WHITESMITHING, Finishing Brass Foundering, Pattern Making, and Jobbing in general. All work entrusted to them will be attended to with punctuality and dispatch.
FOSTER & PRENTICE.
110 Camp st, few doors above Poydras, formerly occupied by Mr. Hopkins.
Refer to Capt. A. O. Pitfield, and William Smith, foreman of Government Shop. mh15 1m*

TO CALIFORNIANS!
SMITH & BROTHER, No. 52 COMMON STREET, GRAND DEPOT for the sale of all INDIA RUBBER GOODS
Manufactured under GOODYEAR'S PATENT.
S. & B. have for sale, and are constantly receiving, almost every article for the comfort and use of the CALIFORNIAN EMIGRANT. Among their assortment may be found AIR BEDS, Air Pillows, India Rubber Cloth Riding Caps, Sou'wester, Cloaks, Coats, Ponchos, Clothing Bags, Travelling Bags, Bottles, Water Tanks, Blankets and Tarpaulins, etc.
TENTS, PACK SADDLES, CALIFORNIA SADDLE Bags, Saddles and Bridles of every description; Bitts, Stirrups, Spurs, Hair Rope, Moss Blankets, etc. etc. fy28

THIRD MUNICIPALITY FERRY TO ALGIERS.
THE undersigned would respectfully inform the public that he has now in successful operation a fine new STEAM FERRY, running from the foot of [illegible] the City of New Orleans to Algiers, from day light until 8 o'clock, P. M. The Boat leaves this city from a fine wharf built expressly for the purpose, and located opposite to the Pontchartrain Railroad landing, in Algiers, a short distance above the Belleville Iron Works. The landings on each side are well arranged, and a safe and easy access is offered to vehicles of all descriptions. The rates are the same as those charged by the other Ferries. Also, shipmasters and others wishing to go to the Point, will find it more commodious than through the Government wharf, (where the Omnibuses stop,) and Thier's Warehouse on the opposite side.
fy5 WILLIAM RANDOLPH.

CONVENIENT COTTON TABLES.
WE have just received a copy of a little work, showing the cost of Cotton per pound, shipped either at Mobile or New Orleans, when re-sold by the cwt. at Liverpool, and showing the price of the article at Liverpool and also the factors' [illegible] in Liverpool [illegible] this work [illegible] this city, and is one of much information to all [illegible] in [illegible]. [illegible] pocket-book form, etc.
DAVID FELT & CO., 24 Chartres st.
mh15 B. M. NORMAN, 16 Camp st.

RESTAURANTS, &c.

Holbrook Osyter Saloon and Restaurant
HAS made arrangements to be at all times supplied with the finest OYSTERS from Mobile and Barataria, which will be served up in every style, to suit the palate. The proprietor has made his arrangements to be supplied with every variety of GAME and FISH, in the preparation of which no pains will be spared to gratify the taste of the most fastidious epicure. On his Bill of Fare will always be found STEAKS, CHOPS, CUTLETS, every kind of POULTRY, and, in short, every thing in season that can be procured. ja30

FRANKLIN HOUSE.
Lake end of New Shell Road.
THE undersigned has just refitted and opened the above well-known and favorite establishment, and intends to make it, in every respect, worthy of the patronage of his friends and those who wish to enjoy a pleasant drive to one of the most elegant and salubrious retreats in the country. The gardens and grounds will be kept in the best order; he will have boats out at all times to keep his table supplied with the finny tribe, fresh from their ocean home. He will also be at all times supplied with every description of wild game, and all the delicacies that the New Orleans market affords, together with choice liquors and wines, with good lemonade for his temperance friends.—"Come one, come all." [d20 6m] DAN HICKOK.

AMERICAN OYSTER SALOON and RESTAURAT—No. 44 ST. CHARLES STREET.—The undersigned would most respectfully inform his friends and the public in general, that he has reopened this well-known establishment in a new and elegant style, and hopes, by his unwearied attention to business and his great experience, to retain and increase the kind and liberal patronage heretofore extended by the lovers of good cheer. Having made ample arrangements for procuring Mobile, Barataria and Cat Island OYSTERS, together with GAME and FISH of every description, he is now prepared to serve up, at the shortest notice, all the rarities and delicacies of the season in a style calculated to please and gratify the taste of the most fastidious epicure.
His WINES, LIQUORS and CORDIALS have all been selected by himself, and are of the finest brands the city can produce.
☞ He is also prepared to accommodate a few gentlemen with Lodging and Private Sitting-rooms, as he has had the upper portion of his house elegantly furnished for that purpose. [n6 6m] JAMES CASSEDY.

SMITH'S HOTEL....Bayou Sara, La.
Immediately fronting the Steamboat Landing.
TRAVELERS going up Ouachita or Red River, or coming out of said Rivers, will find it to their advantage to stop with him, as all the Boats stop at Bayou Sara. Horses, Carriages and Buggies always to hire.
fy2 1y T. B. SMITH, Proprietor.

CRESCENT RESTAURAT & OYSTER SALOON
No. 46 ST. CHARLES Street, corner GRAVIER.
THIS establishment has been entirely remodeled, greatly improved, and very handsomely re-furnished throughout, and is now open for the season. From the previous well-established reputation of the CRESCENT OYSTER SALOON and RESTAURAT, WALTER deems it superfluous to enter into a long panegyric of his house, but simply to thank his friends and patrons for the marked and liberal patronage he has received, and to assure them that the kind manner in which his efforts to please have been appreciated, will only stimulate him to increased exertions, to secure the large patronage already given, and make the "Crescent Restaurat" the most fashionable and popular resort in the city.
He has made arrangements to be at all times supplied with the finest OYSTERS, from Mobile, Barataria, Cat Island and Grand Pass, which will be served up in any style to suit the palate. His arrangements are complete to be seasonably supplied with every variety of GAME and FISH; in the preparation of which no pains will be spared to gratify the taste of the most fastidious epicure.
On his bill of fare will always be found STEAKS, CHOPS, CUTLETS, every kind of POULTRY and VEGETABLES; in short, with every thing in season that can be procured.
His stock of LIQUORS having been selected by himself, are of a superior quality, and embraces the best and choicest brands imported, of French and Swiss Wines, Cordials, Scotch Ale, Irish and Scotch Whisky, London Brown Stout, and the best Philadelphia Ale and Porter—a trial of these Liquors is all that he desires to insure a favorable opinion. s30 6m

COMMERCIAL HOTEL,
Corner GIROD and NEW LEVEE Sts. New Orleans.
THIS fine Hotel is advantageously situated, being in front of the principal Steam and Flatboat Landings, and affords peculiar accommodations for Western Merchants, Traders and Travellers generally. The house is spacious and comfortable, and possesses every convenience; the chambers are well furnished and airy; the table is supplied with the best the market can furnish; the Bar will be supplied with the best Wines and Liquors; all of which are selected with great care. No expense will be spared to make the Commercial worthy of public patronage.
o14 6m JAMES ROACH, Manager.
Successor to JOSEPH E. SELL.

FELICIANA HOUSE,
Corner of TCHOUPITOULAS and JULIA Streets.
THIS House has been thoroughly repaired and fitted up in good state, and is now open for the reception of BOARDERS. The subscriber respectfully solicits a share of public patronage.
mh10 6md&W JOHN HOOVER, Manager.

CHAMPAGNE.
SUPERIOR Champagne for sale by
mh26 6t A. B. RINGGOLD, 26 Bank Place.

TO CLAIMANTS ON THE U. S. GOVERNMENT
ONE of the undersigned will on the 18th inst. proceed to Washington City, for the purpose of attending to CLAIMS now in their hands, and will give particular attention to any business with the different Departments entrusted to them.
fy15 LANGDON & GRICE, 34 St. Charles st.

SPRING STYLES.
JUST received, by ships Creole, Atlantic, W. B. Jones and Wilhasset, some fine Drab BEAVERS, Fashionable No. 1 MOLESKINS, CASSIMERES, B. B. RUSSIAS, and a complete assortment Spring Goods. Also, some very fine Black soft BUENA VISTAS. For sale low at JOHN DURBRIDGE'S,
mh8 28 Customhouse street, Up Stairs.

SMITH & BROTHER,
52 COMMON STREET,
HAVE received large additions to their stock of INDIA RUBBER GOODS. These Goods are of the best manufacture, and warranted to stand all extremes of weather. S. & B. would call the particular attention of Californians to their Bottles, Canteens, and Water Buckets, manufactured with special reference to the many dry places and arid deserts between the Rio Grande and the "Gold Diggins;" Air Beds, which weigh only 12 pounds; Water-proof Bags; Pontoon Bags; Saddle Bags, etc. INDIA RUBBER CLOTHING of all kinds; Wading Boots, Leggings, etc. India Rubber Blankets, Pillows, etc. etc. Also—TENTS, TENT-CLOTHS, Saddles, Bridles, Bitts, Stirrups, Spurs, etc., etc., at 52 Common st. mh15

CHEAP DRY GOODS
At the NEW YORK STORE, 168 Poydras street.
PRINTED Muslins, fast colors and beautiful patterns, at 12½c. per yard, same as selling at the cheap stores at 15 to 20c.; Scotch Ginghams, 12½c.; 2 cases Swiss Muslins, 5-4 wide, at 20c. per yard, usually sold at 50c.; French Damask Curtain Stuff, at 30c.; Turkey Red do. at 10c.; 100 doz. Gents' large size Linen Cambric Hdkfs., new style, at $4 50 per dozen, worth double the money; 1600 yards White Linen Musquito Netting, at 8c., same quality can not be bought for less than 10c. in the city; 6 cases Irish Linens, by the large or small quantity, at less than wholesale prices; Pure Linen at 20c. per yard, and upwards; Undressed Family Linen at 35c., as good as can be bought for 50c. Buyers can test the truth of the above assertions, by comparing samples. Also, a full variety of the newest and richest styles of Fancy and Staple DRY GOODS, equally low. The subscriber would remark that it is not the practice of this establishment to offer a few leading articles very cheap, with a view of obtaining exorbitant profits on other goods. With facilities unsurpassed for receiving goods from the North at the lowest rates—an active and increasing business, unaffected by cholera or hard times—a saving per diem of from fifteen to twenty dollars in rent and expenses—he can afford to sell cheap. Heavy expenses must be met by enormous profits. New Yorkers are especially invited to call; they will be reminded of the cheap establishments in Grand and Catherine streets.
mh12 R. BROWN, 168 Poydras st.

WISTAR'S BALSAM
The Great American Remedy
For Lung Complaints and all Affections of the Respiratory Organs,
The Best Remedy ever known to Man, for Coughs, Asthma, Colds, Croup, Bronchitis, Bleeding of the Lungs, Influenza, Difficulty of Breathing, Liver Affections, Pain or Weakness of the Breast or Side, First Stages of Consumption, etc.

OUR AGENT at Marksville, La., writes us:
"MARKSVILLE, May 8th, 1848.
"*Messrs. Scovil & Mead*—Gents—Enclosed I send you a letter from Dr. Dulany, a Graduate of Medicine, and one of our most skilful Physicians, testifying to the remarkable effects of Wistar's Balsam in his own practice. He stands high among the Profession here, and has a very extensive practice. (Signed) G. A. STEVENS."

"*Dear Sir*—I promised to inform you of the result of my trial of Wistar's Balsam of Wild Cherry upon Mrs. M——. It relieved her cough, and her general health was so much improved that she fancied herself entirely cured, and, *contrary to my advice*, she discontinued the use of it and all other remedies, and recommenced her singing in the Catholic Church. The consequence of this was she had a return of spitting of blood. *She is now, however, using the Balsam again, and is recovering under the use of it.* The Balsam was also used twice in Mrs. M——'s family for Croup, with the happiest results. Once, in a *very violent case*, which I am informed *was relieved in three hours after taking three doses.* The other, a little girl, less violently affected, was relieved by taking one dose. Before writing you further, I wish to try this medicine in other cases and on other patients.
"Yours, etc., (Signed) B. DULANY, M. D."

Remember
There is a base Counterfeit of this article, sold as genuine by unprincipled dealers in medicine in this city. It purports to come from Philadelphia, is coarsely put up, and bears the name of "WISTAR'S BALSAM." It is of recent origin, and is endeavored to be sold on the reputation of the genuine and original preparation. Beware of it, or you will be imposed upon with a worthless imitation. The *genuine* bears the signature of SANFORD & PARK on the engraved wrapper around each bottle, and is sold in this city ONLY by SCOVIL & MEAD, 111 Chartres st.,
Between Conti and St. Louis sts.
Sole General Agents for the Southern States.
N. B.—We have no Agents in this city. fy20