The Daily Crescent.

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THE DAILY CRESCENT.

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TERMS OF THE CRESCENT.
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NEW ORLEANS:
WEDNESDAY MORNING, MAY 9, 1849.

Correspondence of the Crescent.

North River Steamboats—New York and Brooklyn Churches—Speculations in Grave Yards.

NEW YORK, April 29, 1849.

Ed. Crescent—Our North River steamboats are now running on the "cheap cash system," and of course do a crowding business. The price of passage to Albany is put down in the bills at 25 cents, and if that is grumbled at, or if the runner of another boat is seen with his eye on the waybiller, a ticket may be had for a shilling. But it goes hard with the steamboat people to give a man so much travel on little cash, and it is not safe to put off the purchase of one ticket, as many "sober-sided" folks do, until fairly on board, and the boat clear of the wharf: as soon as the boat leaves her dock, the price of tickets rises to at least double the mark set in the handbills. A gentleman just down from Albany tells me that the price of tickets, yesterday afternoon, at the office of the "Empire State" was one shilling. He would not run the risk of trickery by paying his passage before starting, but as soon as the boat shoved off he stepped to the "Cappen's Office to settle." Tendering his shilling he was informed that it was only half enough. Tickets had risen. So my friend pocketed his shilling, and turned upon his heel in disgust. After consulting with some of his friends, however, he concluded to pay his "quarter," and not as supper was coming upon the table, he went down to the office again, to pay the extortionate demand. To his astonishment the "quarter" was now refused, and he was informed that the price of tickets was *half-a-dollar*. He paid it, convinced that he had been victimized to the extent of three shillings, and inwardly promising forever hereafter to pay for his tickets in advance, when traveling on the Hudson. In what other part of the world would a man consider himself cheated, upon being charged half-a-dollar for a passage of 150 miles? The travel on the river is immense, but of course it will not *pay* at the present rate of fare. One dollar per ticket, however, would give the boats a good profit.

The New Yorkers and Brooklynites (especially the latter) are celebrated for the cost and care bestowed upon their churches, and they (I might say *we* perhaps) "pride themselves" on their religion. But let me tell you a secret: all these fine temples, with their splendid windows, golden altar rails, rich carpets and sleep-prompting cushions—all these "evidences of a religious spirit" in our community—are set up in Wall street, and are built on speculation! Some of them yield an immense return to the *stockholders*. The profit derived from church speculation is, however, trifling when compared with that arising from *grave yards*, to which the attention of capitalists has naturally flown from their success in the church line. An acre of land which is bought for fifty or a hundred dollars is divided into 100 or 150 burial lots, and these lots are sold at prices varying from $20 to $50 or $100 each. Three hundred acres bought up and divided in this manner, with a few crooked paths cut through its native brush-wood, and dubbed "avenues," and partially enclosed with a ricketty fence, are estimated to yield the enterprising projectors, in the course of the next ten years more than half a million of dollars, while there may not be an actual outlay of thirty thousand!

Original cemeteries are beautiful places, and in spite of the speculative odor that prevades them, it is delightful to wander through their labyrinths. One bad feature of their government is, however, the stringent exclusion of the public from their grounds on Sundays and holydays.

Our weather is delightful, a fact to which you are indebted for the above speculations to the utter exclusion of city matters. I have passed the whole day at a distance from its smoke, its clamor and its glare.

Respectfully, yours, INDICATOR.

Murder and Suicide—Passage from Panama and San Francisco—Montreal Riots—Canadian Government and the Telegraph—Delay of the Sarah Sands—Passengers for Europe.

NEW YORK, April 30, 1849.

Ed. Crescent—We had a murder in this city, and a suicide in Brooklyn, during yesterday. The murdered man (in this city) was a young Irishman, named James Monahan, a tailor or harness-maker recently from Canada. The man who killed him is named William Thompson. The affair occurred in the street at the "Five Points." Some five or six parties were arrested to await the issue of an inquest which was to have been held this morning.

The case of suicide, in Brooklyn, is a very distressing one. The gentleman who committed the deed was a highly respectable physician—Dr. Charles G. Chapman—who has for some time labored under depressed spirits, superinduced by dyspepsia. He deprived himself of life by severing the femoral artery with a lancet, and was quite dead when found.

Messrs. Howland and Aspinwall inform me that they have found it absolutely necessary to raise the price of passage from Panama to San Francisco, in their steamers, to $300 for main passage and $150 for the steerage. The California and Oregon are to have new deck cabins added at once, the same as those on the Panama, which will accommodate 35 to 40 passengers more than they now do. They are now issuing tickets for the California for her third trip, which will be in June, probably.

Montreal papers of the 26th and 27th inst., are at hand with details of the riot in that city, and the destruction of the Parliament buildings on Wednesday night last. These details present very little of importance not embraced in our telegraphic dispatch of the following day, and few of them are worth a transfer to my letter. The Gentlemen arrested were Messrs. Heward, Mack, Ferres, Montgomery and Endall, who were examined before Mr. Ermantinger, and committed to prison under a decision that their offence was not bailable. The Inspector General went on Thursday to the Telegraph office to forbid the transmission of intelligence by the wires, and demanded the nature of that already forwarded. The Montreal Gazette states that the directors informed the honorable gentleman that their wires were open to the public for the transmission of any news that parties thought proper to send, and that such news would be forwarded, unless the Government should see fit to take possession of the wires by an armed force, in which event they would have a proper recourse. He was also informed that no man's affairs could be communicated, except to parties having a right to know them—plainly intimating that Mr. Hincks' right to know them would not be recognized.

The houses of Mr. Hincks and Mr. Holmes were attacked, and nearly every thing within their walls destroyed—that of Mr. Lafontaine, the Attorney General, was fired two or three times—the out-houses, stables, etc., burned, and the whole interior, furniture, etc., destroyed.

By telegraphic dispatch we have intelligence from Montreal down to Saturday morning, announcing the arrival of the 71st Regiment from St. Johns, N. B. The military were kept under arms during the whole of Friday night, and the Provincial Cavalry was expected to re-inforce them during Saturday. Sir Benjamin Dunham, the commander of the forces, is reported to disapprove of the course of the Governor-General, and to have countermanded the orders by which arms had been placed in the hands of the French population. He directed all the latter to be disarmed, and ordered Gen. Gore to ascertain by whose authority arms had been given to them. The Frenchmen refuse to deliver up their arms. The dispatch says that the upper provinces are arming—that three bodies of sturdy riflemen from the Eastern townships, and the lumbermen from the Ottawa, are expected to the assistance of the British party. A collision had occurred in the streets of Montreal between some twenty English gentlemen and the French special constables, in which one man was wounded by a pistol ball.

Those who may be supposed to know, say that Mr. Ely Moore will certainly be removed, at once, and that either Egbert Benson or Hiram Fuller will have the Marshalship. Fuller's friends say that they have no fear of Mr. Benson's preference, as Gen. Taylor has taken his (Fuller's) case into his own hands, and that the papers are filed in his private desk. (All of which is very doubtful, to say the least.)

A considerable degree of uneasiness begins to show itself with regard to the delayed arrival of the Sarah Sands. She has now been out more than a month. Every berth in the Europa is already taken up, and although she is not to leave until next Wednesday. A number of persons from the South and East, who have arrived to-day, or are expected to-morrow, with a view of going out in her are disappointed, and must wait another week for the Boston steamer.

Matthew Wood, the murderer of his wife, was this morning sentenced by Judge Edwards to be hanged on Friday, the 22d of June next, and William Donaldson, convicted of manslaughter in killing Andrew Meehan, was sentenced to imprisonment for two years and four months. Wood declares himself innocent, but there is not the faintest shadow of a doubt as to his guilt.

Our weather is especially delightful.

Respectfully yours, INDICATOR.

Democratic State Convention.

[REPORTED FOR THE DAILY CRESCENT.]

On Monday, at 12 o'clock, M., the Delegates from the city of New Orleans and the surrounding country having arrived on the steamboat Eliska, the members of the Convention assembled at the Methodist Church in Baton Rouge.

On motion of Mr. Ratliffe, of West Feliciana, Judge Bryce was requested temporarily to act as President, and Wyndham Robertson and W. B. Robertson as Secretaries. Rev. Mr. Crenshaw was called upon to open the Convention with prayer, which he did in an appropriate manner. The following gentlemen were then appointed a Committee to select Officers: Cyrus Ratliffe, Chas. Dannoy, John M. Bell, Wm. Splane, D. J. Fluker, A. Isaacs, B. Simmes, John C. Larue, and Oscar Arroyo.

During the absence of the Committee, Judge Bryce addressed the Convention.

The Committee having returned, reported the following gentlemen as officers, all of whom were unanimously elected: President, W. B. Scott; Vice Presidents, Charles Duitillet, Maurice Cannon, Judge Downs, Col. T. C. Porter; Secretaries, J. Foulhouze, G. W. Reese, Durant da Ponte, Joseph Brent.

The Parishes being then called, the following Delegates were found to be present:

Ascension—A. M. Templet, John Hutson, Cyrus Taylor.
Assumption—Not represented.
Avoyelles—W. F. B. Griffin, L. D. Lewis.
Rieaville—Not represented.
Bossier—Col. Porter.
Caddo—Not represented.
Caldwell—Mark Beatner, John Connolly.
Carroll—R. J. Chambliss, Wm. Baily, J. A. Bass, J. W. King, J. C. Drew.
Claiborne—W. H. Crenshaw.
Concordia—Not represented.
DeSoto—Col. Forter.
East Baton Rouge—W. B. Scott, Thomas Shelmire, John Bogan, James Cooper, Clinton Hooper, Lewis Reyburn, John C. Foreman, Frederic Bauker, Francis Rions, Chas. G. McHatton, H. Patterson, A. S. Herron, George S. Lacy, Dr. T. Fay, R. G. Beale, Seth David.
East Feliciana—Col. D. J. Fluker, J. R. Caulfield, Wm. Patterson, John Catlett, H. H. Haines, Gen. Felix Huston, B. M. J. Brown, Bythell Haynes, G. W. Reese.
Franklin—M. H. Dosson.
Iberville—J. H. Balch, E. Moore, Joseph Walsh.
Jackson—(By the Delegates from Ouachita.)
Jefferson—Col. Solomon Hich, Gustave Leroy, Wm. Cotton, D. W. Murphy, Durant da Ponte.
Lafayette—Not represented.
Lafourche Interior—Not represented.
Livingston—Rufus H. Fickler.
Madison—Wm. Perkins, R. C. Downs.
Morehouse—(By the Ouachita Delegates.)
Natchitoches—(By the Rapides Delegates.)
Orleans—First District—J. M. Bell, Alexander Walker, John Holmes, H. L. Hunly....*Second District*—Bernard Wheelehan, John Dunn, Thomas Shields, Bernard McGarey, Wm. Cook, M. Gernon....*Third District*—B. B. Lee, John C. Larue, John Henderson, R. B. Lusk, G. Harrison, D. Aldrich, John Mullens, Titus McCormick, B. Bloomfield, Dr. Maurice Cannon, Dr. J. Bradbury, Dr. A. Mercier....*Fourth District*—Frederick Duntive, John Claiborne....*Fifth District*—Bernard Avegno, Joseph Dubuc, Emile Wiltz, F. M. Crozat, J. J. Gutierez, M. L. Martin, Martin Broderick, Adolphe Dupre....*Seventh District*—Seneca Bennet, Charles N. Rowley....*Eighth District*—John Culbertson, S. Marcy, Lawrence Grivey, A. H. Smith.
Ninth District—Chas. F. Dannoy, Lewis E. Collins.
Algiers—P. Marcy, Casimir Lacoste.
Ouachita—Dr. Wm. H. Bradley, Wm. S. Haynes.
Plaquemine—Chas. Dutillet, M. Ronquillo, J. Foulhouze, Oscar Arroyo.
Pointe Coupee—J. Van Winkle, B. B. Simmes, J. M. Carrigan.
Rapides—Jesse A. Bynum, J. G. Bryce, Lewis Texada, G. W. Barrett, David Martin, W. B. Robertson, A. J. Isaacs, C. H. Flowers.
Sabine—Not represented.
San Bernard—A. Mamare.
St. Charles—D. Labranche.
St. Helena—John Holloway.
St. John Baptist—Not represented.
St. Landry—Not represented.
St. Martin—E. Simon, Jr., I. E. Mone, Alphonse Bozand, E. C. Moore Jr., J. L. Brent.
St. Mary—A. R. Splane, Alexander Brette, Jas. Leake.
St. Tammany—S. T. Staples, M. Robert.
Tensas—Not represented.
Terrebonne—Not represented.
Union—Dr. J. T. Henderson.
Vermilion—Not represented.
Washington—S. G. Staples.
West Baton Rouge—Vincent Kirkland, S. P. Graves, F. Cooney, J. T. Landres, V. Hebert, A. A. Knox, R. L. Hebert, Dr. T. P. Vaughn, Jesse Hart.
West Feliciana—Jesse Fulton, Cyrus Ratcliffe, R. E. Wickliffe, Jesse Davis, Charles Storer, A. D. M. Harralson, J. S. Wooster, Patrick Dougherty, Reuben Nash, John Pugh, Douglass Hamilton.
Catahoula—Geo ge Spencer.

Mr. Larue then moved that in voting, the Convention should adopt the ratio recommended by the Democratic Legislative Caucus, namely: one vote for every 100 democratic votes given at the last Presidential election, and one vote for every fraction over 50, provided that every parish may have at least one vote. Mr. Bynum opposed the resolution on the ground that by it the city would have all the power, and the selection of candidates would be placed entirely in her hands. Mr. Dupré, of New Orleans, believed the gentleman was wrong in insinuating a desire on the part of the city members to influence or control the country. Mr. Larue followed, stating that it was not his desire to inflict a speech upon the Convention—in offering the resolution he was only actuated by a desire to carry out the views of the Democratic Caucus—a majority of which was composed of members from the country. He wanted to see no distinction made between city and country, but he did not want to see the voices of those democrats stifled who stood firm when men knew who were democrats. The resolutions were unanimously adopted. Mr. Van Winkle moved that a committee of four from each Congressional district be appointed to draft resolutions. This was objected to by Judge Walker, on the ground that the resolutions should contain the names of the candidates, and therefore could not be written until after the nominations should be made. The appointment of the committee was consequently deferred.

The Convention then went into an election of nominees for Governor, Lieutenant Governor, and Auditor. Mr. Vincent Kirkland, of West Baton Rouge, moved that General JOSEPH WALKER be nominated by acclamation. The motion was carried unanimously. J. B. PLAUCHE was then nominated in the same manner. J. N. Carrigan nominated Zenon Ledoux, Jr., for Auditor of Public Accounts, and A. J. Herron nominated Amasa Read. On taking the vote it was found that Zenon Ledoux had 85 votes and Amasa Reid 44. ZENON LEDOUX was then declared unanimously nominated. On motion of General Huston, the chair appointed the following gentlemen to draft resolutions: J. C. Larue, Dr. A. Mercier, John Henderson, Col. Porter, Jesse Bynum, Col. Splane, Col. Van Winkle, C. Ratliffe, A. Read, A. Dupré, C. Dannoy, P. Marcy.

Alexander Walker, Casimir Lacoste, Chas. Dutillet, and Oscar Arroyo were appointed a committee to inform the candidates of their nomination, when the Convention adjourned until 4 o'clock.

At 4 o'clock the Convention reassembled, when Mr. Larue, from the committee to draft resolutions, reported the following, remarking at the same time that one member of the committee disapproved of the third:

1. *Resolved*, That the democracy of Louisiana proclaims its continued and steadfast adherence to those great principles which have heretofore constituted its rule of action; that in its recent defeat it perceives no reason for abandoning its opposition to a national bank, to tariffs instituted for other purposes than to raise revenue for the support of an economical administration of the government, and to monopolies of all kinds, in whatever guise, or under whatever name they may be presented.

2. *Resolved*, That the Constitution of the United States acknowledges no invidious distinction between the members of the confederacy, but that all are equal partners in the compact, and the benefits arising from it; that each State is entitled to an equal share in the advantages derived from the acquisition of territory gained by the joint efforts of all, and that therefore the democracy of Louisiana is opposed to the Wilmot Proviso and kindred measures by which the rights and interests of one portion of the Union would be sacrificed to the unjust demands of the other.

3. *Resolved*, That all just government should rest upon the will of the people, and is best administered by agents selected immediately by them; that we are in favor of the election of all officers, State, Parish and City, by the People; that it be recommended to the democracy throughout the State to make the amendment of our Constitution, so as to render all offices elective by the people an issue at every election for State officers.

Resolved, That we are in favor of economy in the administration of the State government, of a general system of popular education and of all legislative means by which the rights of the people can be enlarged and their interests promoted.

Resolved, That JOSEPH WALKER, by a long and zealous devotion to the principles of Democracy, and by a life of honesty, purity, and patriotism, has merited the confidence of the party and will be warmly, vigorously, cordially and enthusiastically supported for the office of Governor of Louisiana.

Resolved, That J. B. PLAUCHE, the veteran commander of the Orleans battalion, in the memorable and glorious victory gained on the plains of Chalmette, under the command of the immortal Jackson, has given such proof of his patriotism, and throughout his whole life has afforded such evidence of inflexible attachment to Democratic principles, as to entitle him to the full confidence and suffrages of the party.

Resolved, That in presenting the name of ZENON LEDOUX, Jr., as a candidate for the office of Auditor of Public Accounts, we feel confident that his known ability and merits as exhibited in his past services, will secure for him the individual support of the Democratic party.

Resolved, That a Central Committee of fifteen members be appointed, whose duty it shall be to address the people of the State upon the questions involved in the coming election, and to superintend generally the conduct of the canvass.

Mr. Splane spoke a few words in reference to his disapproval of the elective judiciary, and explaining some of the reasons for his opposition. Judge Walker replied in defence of the resolution, and was followed by Mr. Larue and Judge Bryce on the same side. Mr. Splane desired that his name should be entered against the resolution; Mr. Dupré also dissenting. On putting the vote on the second resolution, Gen. Felix Huston offered the following amendment:

Resolved, That the Democracy of Louisiana approve of the course of the Southern members of Congress in the Southern Convention, which issued the address to the Southern people and of the sentiments of that address relative to the rights and duties of the citizens of the South, and that the members of Congress from this State who signed that address, have merited the applause of their fellow-citizens.

In support of this amendment I. E. Morse made a long speech, and the vote being taken the amendment was adopted.

A vote of thanks was then passed to the President for the able and impartial manner in which he had presided, and another to the officers and to the Rev. Mr. Crenshaw. Judge Bryce explained to the Convention that Mr. Wyndham Robertson, assisted by other gentlemen, was about to establish a Democratic paper in the city of New Orleans. The Convention then adjourned.

The following is the letter of the Committee to General Walker, informing him of his nomination:

NEW ORLEANS, May 8, 1849.

Hon. Joseph Walker:

SIR—The pleasing duty has been assigned to us of informing you of your nomination by the Democratic Convention, held at Baton Rouge, on Monday, the 7th of May, as the Candidate of the Democracy of Louisiana for Governor, at the election to be held in November next. The confidence thus manifested by the representatives of the Democratic Party, in your patriotism, capacity and sound principles, must be the more gratifying to your feelings as it was the unanimous and spontaneous expression of the preference of one of the most numerous conventions ever held in this State, and was accompanied by circumstances indicative of a deep and warm enthusiasm and harmony, which give us the strongest assurance of your success in the contest in which we are embarked.

As the standard-bearer of the great principles of progress in our young and growing State, the Democracy will follow you with their warmest hopes and their best exertions for your glorious triumph!

Confiding in your devotion to the principles embodied in the resolutions adopted by the Convention, and in your ability to carry them into efficient operation, your fellow citizens hope to see your election to, and administration of, the executive trusts conducive to the honor and welfare of the State, and to the integrity and advancement of the Democratic Party.

With the assurances of their high regard,
We have the honor to be your ob't serv'ts,
ALEXANDER WALKER,
CASIMIR LACOSTE,
CHS. DUTILLET,
OSCAR ARROYO.

Supreme Court of Louisiana.

Condensed Decisions—NEW ORLEANS, May 7, 1849.

In a case of *quo warranto*, to inquire into the right by which certain Directors of a Bank hold their offices, where the alleged illegal acts complained of relate to their elections, over which the relators presided, they will not be heard as relators, when they have disqualified themselves by their own misconduct in concurring and participating in such illegal acts.

DUFILHO, WILTZ, ET AL. *vs.* PETERS, SHAW, ET AL....*Appeal from the Second District Court of New Orleans*....SLIDELL, J....*Per curiam*: The petitioners seek, by the present proceeding, (which is in the nature of a *quo warranto*,) to oust the defendants, Peters and others, from the Directorship of the Louisiana State Bank. They also ask a mandamus commanding Vignie and others to issue advertisements for a new election, they being the persons who constituted the Board of Directors prior to the alleged illegal election, under color of which, Peters and others had assumed to act.

All the Directors of the old Board, except two, have answered "that the said board of Directors of the Louisiana State Bank, did not deem themselves authorised from the return of the judges of election, for the election of Directors of said Bank, held on the 5th instant (February, 1849,) to order a new election of Directors to be made, and could not, therefore, issue advertisements for another election, to be held," wherefore they say "they submit to such judgment and mandate as the nature of the case may require, and as may be finally rendered in the premises." The two members of the old Board, who did not join in this answer, are members of the old Board, who did not join in this answer, are members of the new Board, and, as they claim to hold under the new election, must be considered as virtually concurring in the position taken by their associates in the old Board. The whole of the former Board, therefore, must be regarded as acquiescing in the validity of the election of the new Board, and their continuance in power. It is obvious, then, that the contest in this cause is between Dufilho, Wiltz and Dupré, on the one hand, and the newly elected Board on the other, who, upon the face of the pleadings, are at least Directors *de facto*, under color of election.

The first question which demands our consideration is, can the plaintiffs be heard as relators?

As the general rule, it may be conceded that, under our legislation, any stockholder has a right to inquire, by the remedy of *quo warranto*, into the election of those who assume to administer the corporation of which he is a member. But, while the defendants do not dispute the general rule, they contend that a party may have so acted, as to render himself incompetent or disqualified to become a relator. They argue "that, where the wrong complained of was the result of the party's own misconduct or negligence, the Court will refuse an application by him, or at his instance. That the law will not admit any one to play fast and loose; to establish or overturn the effect of his own actions, as may prove most beneficial to him—if it suits him to take advantage of his own conduct, and say nothing—if it does not accord with his views to declare his own conduct illegal, and avoid his own acts."

The authorities cited by the defendants fully sustain this position, and have not been met by any conflicting decisions.

In Thomas King *vs.* Clarke, 1 East. 47, it was observed, "the court have, indeed, on several occasions said, and said wisely, that they will not listen to a corporator who has acquiesced, or perhaps concurred in the very act which he afterwards comes to complain of, when it suits his purpose." In Rex *vs.* Slythe, 6 Barn. and Cus. 240, Abbott, C. J., said "it has generally been considered a rule of corporation law, that a person is not to be permitted to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately derived from that election." "But in order," said he, "to prevent any misunderstanding upon this point, I will add, that if a person should concur in an election, in *ignorance* of some fact making it invalid, and should afterwards come before the court and show the objection, and *that it has come to his knowledge since the election*, and that it is a matter which ought to be inquired into, I would by no means have it inferred from the decision in the present case, that such an application ought not to be heard." In the Queen *vs.* Greene, 2 Adop. and Ellis, 463, Denman, C. J., observed, "the principle which precludes a party, having acted as the relator did in this instance, from applying afterwards to set the proceeding aside, is the same which prevails in other cases, namely, that a man shall not take his chance of inconsistent advantages." And Coleridge, Justice, on the same occasion, assumed it to be the settled rule "that a man shall not apply to the court as relator, if he has concurred in the irregularity of which he complains." See also Angell and Ames on Corp. p. 707.

Without undertaking to say to what extent these opinions would be followed in this country, in questions concerning municipal corporations, we have no hesitation in recognizing their propriety as applied to private corporations. Such being the well settled doctrine, it remains to be considered how far it is applicable to the case at bar.

The petitioners allege that they were appointed commissioners of election for Directors of the Bank, and that acting in that capacity they received votes to which objection had been made. The certificate, which they themselves signed on the 5th of February, shows that the defendants, who now claim to be the duly elected Directors of the Bank, obtained a plurality of the votes offered at the election, and received by the plaintiffs themselves in their capacity of judges. It is now charged by the petitioners, that a large portion of the votes were not given according to law, and were given by persons not *bona fide* owners of the shares. But although objections, as is alleged in the petition, were made at the time to the reception of those votes, the plaintiffs themselves, whose duty it was to ascertain the disputed legality, received them. Under such circumstances, we are of opinion that they cannot be heard as relators.

It is proper to observe, that although the plaintiffs as commissioners, acting with the two other commissioners, Hermann and Rochereau, received all the votes, notwithstanding objections made by the stockholders at the time, and signed on the day of election a certificate showing the number of votes given to the respective candidates, the three plaintiffs signed two days afterwards (but without the concurrence of the other two commissioners) a declaration that they decline to certify, or declare either ticket elected. But we cannot perceive how this subsequent declaration destroys the effect of their previous reception of the votes upon the question of their competency now to impeach as relators, the legality of those votes. The declaration on the 7th stands in conflict with their acts on the 5th. It is also proper to add in this connection, that the only protest of stockholders against the reception of votes exhibited in the record, is a protest made by the successful candidates.

We are not to be understood as saying that a party can in no case be heard to impeach an election over which he presided, and the legality of votes which he himself, as commissioner, received. A case might occur where the illegality rested upon facts, as to which the party subsequently complaining was ignorant at the time, and was without the means of knowledge. Consent, induced by error, is not binding in the eye of the law. But the petition contains no such allegation, and no foundation therefore has been laid in the pleadings, or even in the evidence for a departure from a wholesome and equitably general rule.

A variety of points were discussed at bar, which, in consequence of the views already expressed, we do not deem it necessary to enlarge. It is, however, not improper to observe, that although the charter of the Bank declares that the directors shall be elected by a plurality of votes of qualified stockholders, and although the petitioners have admitted, in the petition, that the persons whose *election* is asked, had a nominal majority, they have not proved that a single illegal vote was given in favor of those persons, or even that a single illegal vote was received at all.

Three of the defendants, Peters, Shaw and Converse, filed an answer, in which they aver they have resigned the offices of Directors of the Louisiana State Bank, under the election set forth in the petition, and disclaim all title to be Directors of the said Bank in virtue of said election. It was alleged in the petition, that Peters, Converse and Shaw were, at the time of being voted for, Directors of the City Bank, and so continued until after the 5th inst. It is questionable whether the disclaimer, as framed, is to be deemed an admission on their part, of the existence of the alleged disability. But if it be so considered, it cannot be regarded as binding on the other defendants who have not concurred in it, nor on the corporation. No evidence has been adduced that such disability existed, and the plaintiffs' counsel, in his brief, admits that the disclaimer by the three in no manner alters the issue for the other six, who formally denied all the allegations of the petition except such as were expressly admitted. It is proper to add that the appeal is taken by the six directors.

While it is the duty of our courts to grant the extraordinary remedy of *quo warranto* to all those who are entitled to it under the liberal provisions of our code, it is equally their duty to administer the remedy with reference to the principles recognized in that jurisprudence from which the writ was derived, so far as those principles are consistent with the spirit of our institutions, and with sound reason and equity. Dissensions and lawsuits between the members of a corporation, like quarrels in a family, or a partnership, are dangerous to its well being, and those who bring matters pertaining to its administration before the tribunals, ought not only to prove that irregularities have been committed, but should also be free from the objection of having participated or acquiesced in them. A court of justice in such cases cannot be expected to take assertions for proof, or even hear a party whose complaints are inconsistent with his own conduct.

When any competent stockholder presents before us a case in which the irregularities are proved, which are complained of by the plaintiffs, and are in their turn asserted in recrimination by the defendants, it will be our duty to declare their legal effect. Until then it is unnecessary, and would be improper to do so.

Upon the question of the jurisdiction of this Court, which was suggested by the plaintiffs, we deem it unnecessary to do more than refer to the reasons given by the District Judge, on the motion taken below to set aside the order of appeal. The allegation of the petition was, that the new directors did "induct themselves on the 12th instant into the Bank as Directors, and so pretending themselves, did proceed to elect Samuel J. Peters as their President, and have taken unlawful possession of said institution, to the loss and injury of the stockholders to a large amount, and of your petitioners in particular as stockholders, in a sum exceeding five thousand dollars."

It is therefore ordered, adjudged, and decreed, that the judgment of the Court below be reversed, and that the petition of the plaintiffs be dismissed, the plaintiffs paying costs in both courts.

JAMES HAMILTON *vs.* F. C. BRADY....*Appeal from the Third District Court of New Orleans*....SLIDELL, J....Judgment affirmed with costs.

The General Council of New Orleans has the power to tax retailers of Soda-water, under the statute of Jan. 12, 1842, explanatory of the powers of that Council.

MUNICIPALITY NO. ONE *vs.* FELIX MANUEL....*Appeal from the Fourth Justice of the Peace for the Parish of Orleans*....EUSTIS, C. J....Appeal by defendant from a judgment by which the amount of a tax and the price of a license was adjudged to be due by defendant under an ordinance of the General Council of New Orleans, imposing said tax on the retailers of soda-water in New Orleans, with the exception of apothecaries. *Per curiam*: We think this ordinance is not illegal but is warranted by a fair construction of the Act of Jan. 12, 1842, entitled "An Act explanatory of the powers of the General Council of the city of New Orleans." Judgment affirmed with costs.

WM. HOWELL & SONS *vs.* CARLOS CRUZAT & CO., J. & R. GEDDES, GARNISHEES....*Appeal from the Third District Court of New Orleans*....EUSTIS, C. J....Judgment affirmed with costs.

An administrator, who illegally raises a mortgage held by a property bank on real estate belonging to the succession, which has been sold and purchased by another party, will be decreed to reimburse to the Recorder of Mortgages any judgment that may have been rendered against him at the suit of the purchaser who had previously been condemned to satisfy the mortgage of the bank, notwithstanding its erasure.

PIERRE LANDREAUX *vs.* PHILIPPE MARSOUDET. *Appeal from the Fifth District Court of New Orleans*....EUSTIS, C. J....Defendant was administrator of a certain successION, the property of which was adjudicated at judicial sale, and P. Chigé became the purchaser. On the property purchased by Chigé there existed a mortgage in favor of the Bank of Louisiana. The purchase money was to remain on deposit until this mortgage could be raised. Defendant withdrew the money in deposit without the privity of Chigé, and raised the mortgage, on his own instance, and without the knowledge or consent of the Bank, which then sued Chigé and recovered against him the amount of its mortgage with costs. Bertoli *vs.* Citizens' Bank, 1 An. 119; Alling *vs.* Citizens' Bank, 4 An., and other authorities. Chigé then sued Landreaux, the Recorder of Mortgages, for illegally erasing the mortgage in question, and had judgement against him. Landreaux now sues Marsoudet, the administrator, to recover from him the amount of the judgment thus rendered against him. There was judgment in Landreaux's favor, and Marsoudet appealed. The judgment below was affirmed with costs. Marsoudet had called in warranty two of the creditors of the succession, to whom it was alleged the funds had been distributed. It was held that even admitting defendant's right of action against these creditors, it was prescribed by Art. 1176 C. C.

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