The New Orleans Crescent.

OFFICIAL JOURNAL OF THE CITY OF NEW ORLEANS.

A. O. SIXON, Editor and Proprietor.

OFFICE, No. 94 CAMP STREET.

THE DAILY CRESCENT

is published EVERY MORNING—Mondays excepted. Yearly Subscription, in advance, $16; Half yearly, $8; Quarterly, $4; Single copies, 10 cents.

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Seven	60 "	105 "	135 "	230 "	375 "
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One	$ 3 net.	$ 5 net.	$ 13 net.	$ 20 net.	$ 30 net.
Two	5 "	16 "	20 "	35 "	50 "
Three	13 "	23 "	28 "	44 "	70 "
Four	15 "	27 "	35 "	55 "	90 "
Five	18 "	32 "	42 "	65 "	110 "
Ten	30 "	60 "	75 "	150 "	200 "
Fifteen	40 "	75 "	100 "	180 "	250 "
Thirty	70 "	130 "	180 "	300 "	450 "

TUESDAY MORNING, DECEMBER 1, 1868.

A Card from Dr. Southworth.

NEW ORLEANS, LA., NOV. 30, 1868.

To the Editor of the New Orleans Crescent:

SIR—I inclosed the telegram forwarded from Washington on the 28th inst., by the Associated Press agent, and published here yesterday, containing what purports to be an extract from the New York Herald's version of Major General Rousseau's report to Gen. Grant, in the following note to Gen. Rousseau, and append his reply:

"NEW ORLEANS, Nov. 29, 1868.

"Gen. L. H. Rousseau, commanding, etc., etc.:

"*General*—Will you be so kind as to inform me by the bearer if the inclosed paragraph, purporting to be from your report, as published in the New York Herald, really emanated from you? And oblige, your obedient servant,

"M. A. SOUTHWORTH."

"NEW ORLEANS, LA., Nov. 29, 1868.

"M. A. Southworth, Esq.:

"*Sir*—Your note of to-day is just received, and in reply I have to say that the paragraph you inclose forms no part of my annual report to Gen. Grant. I have the honor, etc., etc.,

"LOVELL H. ROUSSEAU."

I have to add that I never visited Gen. Rousseau's headquarters except on business, and in the interests of peace and order, nor have I ever uttered the expression attributed to me in the interpolated paragraph of the report.

The paragraph referred to is so vulgar in language, and so evidently false and malicious, and its accusations so contrary to my known principles and habits, that it is only necessary to add that so far as it relates to me it is wholly and entirely untrue, and that those from whom it emanated are guilty of willful and malicious falsehoods. Very respectfully, M. A. SOUTHWORTH.

A SPECIFIC FOR COUGHS AND COLDS.—To those afflicted in this line the remedy prepared by our friend Mr. John H. Pope, corner of Jackson and Prytania streets, is said to be, *par excellence*, the best and most effective now before the public. Mr. Pope has been for years one of our leading druggists and chemists, and the most convincing proof of the efficacy of his preparations is that he keeps several clerks under his personal supervision, constantly employed to meet the demand. Those suffering with this complaint should immediately repair to Mr. Pope. See card.

CARPET AND OIL CLOTH WAREHOUSE.—The next thing on the carpet in the way of commercial news is the immense carpet house of Messrs. Eikin & Co., 168 Canal street, (opposite Christ Church) wholesale and retail dealers in carpets of every description, floor oil cloths, window-shades, lace and damask curtains, etc., etc. Their stock is one of the most complete in the Southern country, and their prices will be found as reasonable as any house in the city. For a cheap and beautiful selection go to Eikin & Co., 168 Canal street. See advertisement.

Davis & Jackson, No. 200 Poydras street, appear to be as great favorites as ever with the New Orleans public, for they have simply to announce new styles received by every arrival, when, almost simultaneously, their large establishment becomes the chief attraction for a score of eager purchasers. Read their advertisement in another column, then give them a call.

A RARE CHANCE.—A splendid opportunity for obtaining a desirable store and its well assorted contents together with an unexpired lease is now being offered at No. 31 Royal street, between Customhouse and Bienville.

This locality has always been considered as being admirably adapted to any branch of business, and the present occupant is only retiring in consequence of ill health which debars her from bestowing upon her interest the attention requisite. We would, therefore, advise all who are seeking for investments to remember the number and apply immediately.

ARRIVED.—The steamship Mariposa, Kemble, master, to C. A. Moulton, arrived yesterday. The following are her passengers: Miss Frost, Miss R. Mack, Mrs. Jno. Ingalls and child, Mrs. Allaine and two servants, Mr. Peniston and child, W. R. Hodges, R. C. Sieffert, D. Ward, L. J. Simmons, George W. Turner, M. Mark, J. Burton, J. Murphy, H. M. Curran, R. King, and five in the steerage.

A highly intelligent lady, a resident of Syracuse, N. Y., says that she was afflicted nearly a year, periodically, with derangement of the circulation, the blood rushing to the lungs with such force as to threaten congestion and death. This was attended with the most intense pain in all parts of the body. Failing to obtain relief from any of the physicians whom she employed from time to time, she was induced totry the Plantation Bitters, and to her surprise and joy they have relieved her, and she is now in good health and spirits.

A FINE THING FOR THE TEETH.—The fragrant Sozodont has taken a very prominent place among the most approved dentifrices of the day. It is a very popular article for the toilet, highly recommended by all who have used it as a beautifier and preserver of the teeth, refreshing the mouth, sweetening the breath and arresting the progress of decay.

"They do say" that over at the University if a student desires to know anything about ox-driving, they put him through a course of gee-ology and haw-ticulture. Wonderful, isn't it?—[Champaign Gazette.

Spalding's Glue mends broken china, glassware, and is essential to every family.

THE COURTS.

The United States District Court, Judge Durell Presiding.

J. T. Tucker vs. the New Orleans, Opelousas and Great Western Railroad Company.

We sincerely regret that the illness of our reporter prevented our obtaining a report of the proceedings in the United States District Court on Saturday last while this case was being argued by the counsel of the company, M. M. Cohen, Esq.

We understand that, in an argument of great ability and learning, which lasted for three hours, Mr. Cohen enforced the following points:

1. That a railroad company is not embraced in the bankrupt law of 1867, and that this act of Congress does not apply and was not intended to apply to a railroad company.

2. That the New Orleans, Opelousas and Great Western Railroad Company is not and was not insolvent, and therefore its acts are not a subject for judicial inquiry.

3. That the defendants never committed an act of bankruptcy and never made a voluntary payment fraudulently or with the intention to give a preference to any one creditor over another.

4. That petitioners have no equity and no right to institute this suit and are not entitled to the process of this court or its aid to force defendants into the bankrupt court.

Yesterday the case was opened by Judge John B. Robertson, he speaking for the State and representing her interest in the road, which is a large one. He stated first the reasons why the road had never been completed. It had been destroyed by the events of the war: its rails had been torn up, its cross-ties and bridges burned, its stock destroyed. Then the levees had been cut and vast damages had been done to the embankments and cuts of the road by the water; the road had been held in possession of the government, and from 1862 till the close of the war the revenues of the war had been cut off; during 1866 and 1867 the damage was being repaired, and all the profits of that time were thus swallowed up. The interest account had been accumulating since 1862, because since that time there had been no profits made by the company which could be appropriated to taking up the coupons, and that lack of money was due to no fault of the company, but to the peculiar turn of events, beyond the company's control, which for so long shut it off from all profits. Since the company has been in a position to make money it has gradually extinguished its ordinary debts, and now it owes nothing but $30,600 to the United States and its coupons. The coupons were not paid because they were held by bond-holders and were well secured. From what he had learned he was justified in saying that the prosecution had been undertaken by attorneys who had before prosecuted the road in other courts; the coupons sued for had been bought for the express purpose of forcing the road into bankruptcy, that it might be sold out. It was a conspiracy against the road. The ordinary debts of the company have been paid; the bondholders have declared their willingness to sustain the company; some coupons have been paid, but only under pressure of judgments obtained in various courts, from justices up. The company intend to extend the road. In the past the times have not been propitious. The land of the road, and that adjacent has been overflowed. There has been no commerce, no trade to warrant the extension. Governments have varied amongst us. We have had temporary, provisional, transitory and permanent ones. None have been able to assist the road. The Banks regime would not trust the road, the others could not assist it. But now we have something permanent, we have a stable government and are on a firm basis; so now we can hope for something substantial; not until Grant was elected was there any stability here; but now we can get capital; offers to buy and lease are pouring in upon the company. Capital is coming out of its hiding places; even men of the South are investing. The road must be completed. The road *will be* be completed, now that it is possible to do it.

What is the object of this suit? To force the road into bankruptcy. And is this done by the parties suing to obtain their money? No. For the money was tendered them—double the money was offered them—but they declined the proffer, and insisted that the company was bankrupt. Such conduct was irreconcilable with itself. Could the company be declared bankrupt when it had offered to pay its debts? Judge Robertson here brought up the law of Louisiana to prove that a legal tender may be made at any stage of bankruptcy proceedings. The plaintiffs then have no right to appear in court. Mr. Morgan, owning over $600,000 worth of bonds, other parties owning over $500 000 of bonds, are unwilling to proceed against the road, and yet here stands creditors whose debts are legally paid—legal tender of their amount having been made—and in the names of other creditors, who do not want the thing done, demand that the road be declared an involuntary bankrupt. Why, the court could not entertain such a thing for a moment.

The assets of the road are as follows:

The road from Algiers to Berwick's Bay, with culverts, grading, etc	$3 840,000 00
Debt due by the United States	360,000 00
Net earnings from the United States due up to July, '63	128 000 00
Earned from the United States since July, '63	60,000 00
Debts due by the city	60 000 00
Debts due by parishes	56,000 99
Debts due by the State	550 000 00
Total	$5,194,000 99

In the opinion of the speaker the debt of the United States is a good one. It can surely be collected. It would have been collected sometime ago, but the speaker, who was then in Washington, lacked the proper authority to receive it. The city debt is also good, and will ultimately be collected. The $56,000 due by the parishes are due principally by parishes on the other side of Berwick's Bay. This could not be collected just after the war because the Legislature then meeting forbade such a thing. The debt due by the State—$550,000—is also good. The act of 1862 was quoted to show the appropriations made, and the Constitution of 1868 to show that the law was still in force. The liabilities of the road are as follows:

First mortgage bonds	$1,987,000 00
Second mortgage bonds	40,000 00
Interest due	578,000 00
Due the United States	20 000 00
Other liabilities	20,000 00
Total	$2,655,000 00

Now with this exhibit, with $5,000,000 assets and $2,500,000 liabilities, shall Mr. Tucker, with a sum less than 8 cents on the $1000, be allowed to force this great corporation, in which the whole community are so much interested, and which is now ready to fulfill its contract to build through the road, into involuntary bankruptcy? Why the idea is monstrous. On such a principle Mr. Tucker himself, notwithstanding his property, might be forced into bankruptcy on a washerwoman's bill. Is the company amenable to the bankrupt laws? It is not a trader, but a corporation.

If this bankruptcy is ordered the road will never be built through. If it is let alone work on the extension will commence by July 1, next. The belief of the speaker, the solemn, honest belief, is that if the road ever gets into the hands of the Western men who back Mr. Tucker, it will be run to the injury of the city and State and not to their benefit. The company will shortly, if they are released from these proceedings, dispose of the road to men who will build it through, and who will also, in time, guarantee to pay 7 per cent. interest annually on the stock. The Western men who have inaugurated suit to sell out the road say they want the road completed to obtain transportation from Texas to New Orleans of cattle. This is a blind. There is now before Congress a bill appropriating large sums towards building a road from Cairo through Missouri, Arkansas, Louisiana and Texas to the Rio Grande, thence to the Pacific ocean at San Bias, making the route from Cairo to San Bias 1500 miles. Over this road would pass the cattle of Texas, and the Opelousas Railroad would thus lose the travel which, but for the road, it would have; and the men who back Mr. Tucker are the men who are putting this bill through Congress. These men want to buy the Opelousas Railroad so they can stop it at Brashear City, and thus cut off forever from New Orleans that trade which they want for the new road, and which would otherwise come here. It was a plot to shut the road up forever, and the cattle idea is only a blind and a sham.

Mr. Tucker holds $4000 of the coupons of the company and yet he only sues for $280. That is shrewd, as that is put below the appealable amount. The speaker was opposed to Mr. Morgan's schemes as much as any party concerned in the case. As to Mr. Tucker, he is a gentleman of energy and enterprise, a gentleman of whom New Orleans may well be proud; but let him open his eyes. He is a tool of others. Let him withdraw this suit, and by January 1st next, the road will be in live hands and its extension commenced. Let Mr. Tucker retire from this contest while he may. He gains no reputation in it and may lose much. The company was spoiled by the armies of both the North and the South. Let not Mr. Tucker now come in to conclude the work of desolation by the arts of peace. There was a time when the road was prosperous. But dark days had come upon it. It was crushed, down-trodden, poor, and now, just when it has regained some of its former vigor, here comes a crushing blow threatening to take away from it all the "rich result of time" which had been so hardly earned.

Gen. Grant has said, "Let us have peace," and we have now peace. But let us have peace in the forum as well as peace in the field; let these unworthy strifes for spoils cease; let just, equitable peace reign, let even handed justice be done.

The speaker then appealed to the judge (Durell) to do his duty in the case, and in spite of pressure of "rings" or of the public press or any other influences to render a fair decision. He (the judge) was a man of probity, of intelligence, of firmness. Let him call up every great attribute of his mind and soul, and give only even handed, exact and equal justice.

Col. Miles Taylor, attorney for Mr. Morgan, suing for judgment on bonds and coupons held by him, next addressed the court.

The case now stands thus: James T. Tucker petitions that the Opelousas Railroad Company be declared bankrupt, alleging, first, that the company suspended at a particular time the payment of its interest coupons presented to it by James T. Tucker and by —— Wallis. Second, that on Feb. 20, 1868, the company paid to L. D. Aldrich, of Caddo parish, $280 for coupons held by him, thereby preferring him to its other creditors, to their manifest and great detriment. The answer of the defendant says that the allegations of the petition are untrue, because their intentions were never fraudulent, and that no act of bankruptcy or of insolvency had ever been committed; further, that Mr. Tucker never held the coupons in good faith. Subsequently Paul Acona filed a petition adopting the allegations of Mr. Tucker's petition, and asking also that the company be declared bankrupt. After the suit was commenced a tender of the amounts due was made by the company to Messrs. Tucker and Acona, which tender was declined, after which Mr. Tucker appeared in court and made affidavit that in the offering of the money the company had committed fraud by preferring himself and Mr. Acona to other creditors. Then Mr. Cohen, counsel for the road, filed an exception to the further appearance of the plaintiffs, their claims not being provable under the bankrupt law, as they were secured by a mortgage. Then one if not both of the plaintiffs had signed a paper entirely renouncing all mortgage claims which they held against the company.

Mr. Cohen then took up the question as to whether a railroad corporation comes under the provisions of the bankrupt law. The original bankrupt laws of England only included tradesmen. But, now-a-days, persons not actually tradesmen are engaged in those transactions which may necessitate bankruptcy. The United States government, by the constitution has full power to enact uniform bankrupt laws. Twenty-five years ago a bankrupt act was passed which was entirely silent about corporations. The last act embraced "all monied, business and commercial corporations and joint stock companies." Now, in the construction of this law, the intent of the law-makers must be considered. Railroad companies are not trading corporations, business, monied or commercial ones. They give facilities to trade and travel but do not trade themselves. They cannot be said to come under the strict provisions of the act. They exist for the public benefit, and are public works. They are not included in the spirit of the bankrupt act; for that reason all proceedings should fail.

The next question is, are the petitioners, Messrs. Tucker and Acona, qualified to institute suit against the company. The coupons they hold are secured by mortgage. True, they had released their security, but this did not alter the case. Their debt being thus secured, it was not provable under the bankrupt law. They are not holders of the obligations in good faith. A decision of the Supreme Court of the United States. The law allows the Supreme Court of the United States to fix the forms to be filled out, and thus gives to those forms the weight of law. By one of these forms the creditor is made to swear that he did not obtain the claim for the purpose of influencing the proceedings under the operation of the bankrupt law. Now, that these coupons for which suit was instituted had been procured for the purpose of forcing the company into bankruptcy was evident, because the holders had refused to accept the value of them tendered in open court.

Judge Durell here intervened, declaring that the law was that if the creditor had received the money, they would have to pay it back to the assignee and receive nothing. Therefore the petitioners, Messrs. Tucker and Acona, were justified in refusing to accept the tender, as if they had accepted it they would have lost all claim upon the company, and been compelled to refund the money thus accepted.

Col. Taylor resumed. How the coupons sued for had been obtained could not be stated. But the use to which they had been put would make it appear that they had been bought for the purpose of using the law to commit a fraud.

The law was made to enable creditors to get payment. Now such was not the object of the men who now endeavor to take advantage of its provisions. They don't want payment, for they have refused payment. They want to wind up the affairs of the company to carry out some ulterior views of their own. Such being the case, the court should refuse to hear the petitioners, their animus being evil.

The argument will be concluded to-day, probably.

Supreme Court Decisions.

The Supreme Court met yesterday, and after the reading of the minutes the following decisions were delivered:

BY CHIEF JUSTICE J. T. LUDELING.

No. 1133—E. Thompson & Co. vs. Alfred Moulton.

On rehearing. In this case, having decided that the potestative condition upon which the penal clause was to become exigible, had not happened, the court should have rendered judgment as in case of non suit.

When the demand is premature, or if the obligation be conditional, and its execution be demanded before the condition has been fulfilled, the suit must be dismissed, leaving to the party his right to bring his action in due time. C. P. 158; 13 La. 404; 18 La. 537.

It is therefore ordered, adjudged and decreed that the judgment of this court, rendered on the 4th day of May, 1868, be amended, and that the judgment of the district court be avoided and reversed. It is further ordered, adjudged and decreed that there be judgment in favor of the defendant as in case of non-suit; that the plaintiff pay the costs of the lower court, and that the defendant and appellee pay the costs of the appeal.

BY CHIEF JUSTICE J. T. LUDELING.

No. 1785—State of Louisiana ex rel. J. J. O'Hara vs. Ed. Heath, mayor city of New Orleans, intervenor.

The application for a rehearing in this case is refused.

The court will not entertain the motion to dismiss, which was erroneously permitted to be filed whilst the court was deliberating on the application for a new hearing. C. P. 912, 11 A., 604, 12 ANN. 756.

BY ASSOCIATE JUSTICE W. G. WYLEY.

No. 1429—Mary G. Shaw, wife etc., appellee, vs. Artemus Hill, et al., appellants—Appeal from the Fourth District Court, parish of Orleans.

This is an injunction taken out by plaintiff to restrain her husband's judgment creditor, A. Hill, from selling two lots and improvements in Algiers, which, she alleges, is her paraphernal property, the same having been bought by her in the month of May, 1855. The deed was passed before H. P. Caire, notary public, and was not recorded till after the seizure, to-wit: 2d February, 1866.

Plaintiff was a married woman at the time the purchase was made in her name, and was duly authorized thereto by her husband, Chas. W. Wilson. The act of sale recites that she paid $200 cash "out of funds belonging to her personally," and executed her note to the vendor for $150, the balance of the price.

In January, 1866, this property was seized by the sheriff to satisfy the judgment obtained by Ant Hill vs. her husband, Wilson, rendered on 10th November, 1865.

On the trial there was judgment perpetuating the injunction and decreeing the defendant Hill to pay $500, damages and costs.

Defendant has appealed.

On a careful examination of the record we find that only two witnesses were introduced by plaintiff to prove that the funds with which she bought the property in question were her separate funds, and their evidence is not conclusive. They do not testify that the funds paid by plaintiff were actually her separate funds, administered by her. Watkins testifies that he has known plaintiff since 1853; that "her brother gave her money for the purpose of buying a house for herself. I saw him give her the money; it was in gold, but I don't recollect the exact amount. He said he gave it to her for the purpose of buying her a house. It was somewhere about $400 or $500. This money was given her in 1853." Cross-examined—He said, "I did not see the money that I have spoken of counted, and I do not know the exact amount, but I saw the money handed to Mrs. Wilson (see record pages 67, 68, 69, 70)."

Abel Rollins sworn for plaintiff, says: I know Mrs. Shaw. I am not exactly related, but I have been acknowledged and considered by our friends, relatives, etc., as her brother. I have acknowledged her as my sister. I know of the purchase of property by Mrs. Shaw. I gave her at one time $500, with the understanding that she was to purchase a lot in Algiers, as she said. This was before she purchased it. She has lived there all the time since, and I have frequently been in and out of it; she built a house on it, etc.

This witness further states, on cross-examination: "I am a blood relative of Mrs. Shaw's, her mother and mine are somehow mixed up and we are not exactly brother and sister, but are related. I can state nothing more definite in regard to my relationship," etc., (see record, pages 89, 90.) According to the testimony of these witnesses, Mrs. Shaw received about $500 from Rollins, in 1853, for the purpose of buying her a lot in Algiers, but she did not purchase the property involved in this litigation till 4th of May, 1855, at least sixteen months thereafter. There is no positive proof that she used the gold, the identical funds presented to her by Rollins, in the purchase of the property.

There is an allegation in plaintiff's petition that she purchased the property with her separate funds, but there is no allegation that she had the administration of her paraphernal funds with which she bought the property. She does not claim to have had the separate administration of the $500 from the time Rollins gave it to her in 1853, till the time of the purchase in May, 1855, and there is no proof on this material point.

She was a married woman, not separate in property, and the community of acquets and gains existed between her and her husband, of which he was the head and master. All property acquired during marriage, whether in the name of the one or other of the spouses, is considered community, and the debts contracted during marriage belong to the community, or are chargeable to it. (C. C. 2371, 2372.) This is the general rule. "This court has often recognized an exception to this general rule in relation to the purchase of property in the name of the wife, when it is paid for with her paraphernal funds, under her separate administration, or when it is received as a *dation en* payment made to her by a debtor for a separate and paraphernal claim of hers, the property does not belong to the community, but she becomes the separate and exclusive owner of it." (12 R. 579, 580, 581 and 582 and the authorities there cited.)

We fully recognize the right of the wife to invest her paraphernal funds while in the administration of her paraphernal property, as a legitimate investment of money under her separate control, but in order to acquire separate or paraphernal property by purchase during the marriage, the wife must show that she has purchased the same in her own name with paraphernal funds under her separate administration.

We do not think the plaintiff in this case has established this material fact. Indeed, under the allegations of her petition she could not introduce proof if obliged to that she was administering her paraphernal funds separately from her husband. The mere declaration in the act of sale does not relieve the wife from the burden of proving that the purchase was made with her separate funds under her own administration. 18 A. 126. We are of opinion that the note executed by the wife to the vendor for $150, the balance of the price, was a community debt. C. C. 2372. And from the law and the evidence we are bound to conclude that the property involved in this suit belongs to the community and is not the separate or paraphernal property of plaintiff, and that the injunction must be dissolved.

It is therefore ordered, adjudged and decreed that the judgment of the court below be avoided and annulled, and it is now ordered that there be judgment in favor of defendant, dissolving the injunction taken out by plaintiff in this case at the costs of plaintiff.

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1082—Abraham C. Myers, testamentary executor, etc., vs. John Mitchell. Appeal from the Third District Court of New Orleans.

On the 13th of June, 1866, judgment was rendered in this case in favor of the plaintiff by the court *a qua* for the sum of $300 with 8 per cent. interest from the 21st February, 1862, until paid, and costs. On the 13th June, 1866, the defendant appealed, and on the 7th November, 1866, the transcript of appeal was filed in this court. The plaintiff now moves to dismiss the appeal on the ground that the amount of the judgment is not sufficient to confer jurisdiction on this court.

By the Constitution of 1868, Art. 74, the jurisdiction of the Supreme Court in civil matters extends to "all cases when the matter in dispute shall exceed $500, and to all cases in which the constitutionality or legality of any tax, toll, or impost of any kind or nature whatever, or any fine, forfeiture or penalty imposed by municipal corporation shall be in contestation, whatever may be the amount thereof."

It is admitted that the case at bar being an ordinary judgment on promissory notes is not one of those included in this enumeration, but it is contended on behalf of the appellant that inasmuch as he had the right to appeal on the 13th June, 1866, and took his appeal, his rights as an appellant became "vested rights" which the Contitution of 1868 could not lawfully take away.

In our opinion this view is erroneous. Even if a vested right exists, as claimed, (which we are by no means ready to admit,) it may have been lawfully taken away by a new Constitution, provided the obligations of a contract were not impaired.

A prohibition which could control the people of the State in this regard, if in existence, would be found in the Constitution of the United States; but that instrument will be searched in vain for any such limitation on the popular will.

A State Constitution may be retrospective in its operation, and may divest vested rights; yet, if it do not impair the obligations of a contract, or partake of the character of an *ex post facto* law, it will not contravene the Constitution of the United States.

Satterlee vs. Matthewson, II Peters, 380; Chas. River Budge vs. Warren Bridge, II Peters, 420.

It will be readily perceived that the prohibitions contained in the Constitution, Art. 110, respecting vested rights, are addressed only to the government organized under the Constitution, and cannot be deemed to control the people in framing and adopting the Constitution itself.

It has been urged again that the right to prosecute the appeal in this and similar cases, has been preserved by articles 149 and 151 of the new Constitution, the former of which provides that "all rights, actions, prosecutions, claims, contracts, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, shall continue as if it had not been adopted," etc., etc., and the letter of which directs that "the General Assembly shall provide for the removal of causes now pending in the courts of this State to courts created by and under this Constitution." We cannot assent to this doctrine, but on the contrary we think it clear that the right of appeal in this case is one that is "inconsistent" with the terms of the new Constitution, and is not continued by article 149, and that article 151 cannot save it. It is true that by the latter article the Legislature is required to provide for the removal of causes pending in the late Supreme Court to the present Supreme Court, and has done so; but neither this injunction nor its fulfillment seem to effect the jurisdiction of this court. The causes have been transferred, the records are on file in this court, and it seems clear that the question whether the causes shall be tried or dismissed must be determined by article 74.

It is indeed urged in the discussion of this subject that if this court has no jurisdiction by reason of the insufficiency of the amount in dispute, it can make no order in the case, and therefore cannot make an order dismissing the appeal. This theory is ingenious but unsound. A court can always say that it has no jurisdiction of a case and dismiss it with costs. In this respect we can perceive no difference between a case transferred to us by an act of the Legislature in compliance with the constitutional command, and a case brought to us by an appellant since the organization of this court.

It is therefore ordered that the appeal herein be dismissed with costs.

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1549—John G. McCurray & Co. vs. McCutcheon & Howell—Appeal from the Third District court of New Orleans. For the reasons given in the case of Meyers vs. Mitchell, the motion must be granted.

It is therefore ordered that the appeal herein be dismissed with costs.

BY ASSOCIATE JUSTICE J. G. TALIAFERRO.

No. 1819—B. Dupermon vs. City of New Orleans—Appeal from Fifth District Court of New Orleans.

For the reasons announced in the case of Myers vs. Mitchell, it is ordered, adjudged and decreed that this appeal be dismissed at the costs of appellant.

BY ASSOCIATE JUSTICE TALIAFERRO.

No. 1081—Abraham C. Myers executor of D. F. Twiggs vs. Wm. J. Castell—Appeal from the Third District Court New Orleans.

For the reasons announced in the case of Myers vs. Mitchell, it is ordered adjudged and decreed that the appeal in this case be dismissed at the cost of the appellant.

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1905—Chevalley & Henn vs. City of Jefferson—Appeal from the Second District Court, parish of Jefferson.

In reasons given in the case of Myers vs. Mitchell the motion to dismiss, which has been made, must be granted and the appeal dismissed with costs.

BY ASSOCIATE JUSTICE E. W. W. HOWE.

No. 1385—J. B. Cotton vs. Jonas Pickles—Appeal from the Third District Court of New Orleans.

For reasons given in the case of Myers vs. Mitchell, the motion to dismiss the appeal in this case must prevail. It is therefore ordered that the appeal herein be dismissed with costs.

BY ASSOCIATE JUSTICE W. G. WYLEY.

No. 1139—Wm. S. Benedict vs. Wm. Francis—Appeal from the Third District Court of New Orleans.

Plaintiff foreclosed his mortgage against the property of defendent, and the sheriff refused to pay over all the proceeds of the sale, retaining in his hands enough thereof to pay certain taxes due for 1864 and 1865, and also the interest, costs and charges on certain taxes due by defendant for the years 1861, 1862 and 1863.

Plaintiff objected to this because, by the acts of 8th and 16th March, 1866, the taxes, interest, costs and charges had been remitted, the property having been held by United States authorities.

A rule was taken by plaintiff on the State of Louisiana, the city of New Orleans and the sheriff, to compel the sheriff to pay over said funds, which amount to less than $500, and the rule was made absolute.

Wm. S. Benedict, appellee, presents a motion to dismiss this appeal, on the ground that the amount involved is less than $500, and this court has no jurisdiction. It will be unnecessary to consider the other points presented in this case, if we conclude this motion to be well taken.

For the reasons assigned in the decision of Myers vs. Mitchell, it is therefore ordered that the appeal in this case be dismissed at the cost of the appellant, the city of New Orleans.

BY ASSOCIATE JUSTICE J. G. TALLIAFERRO.

No. 1349—John Bird vs. the heirs of Henry Doyal, deceased—Appeal from the Sixth District Court of New Orleans.

The plaintiff seeks to render the defendants liable as heirs of the late Henry Doyal under his alleged indorsement of a promissory note for $5700, drawn by R. A. Stewart on the 28th January, 1859, and made payable twelve months after date, with interest at eight per cent. per annum from date of the note. The defense is, that having no knowledge of the existence of such a note they can neither admit nor deny the signature of their ancestor, but they disclaim all liability whatever to the plaintiff and hold him to strict proof.

The defendants had judgment in their favor and the plaintiffs appealed.

We consider the indorsement of Doyal fully established. The main question in the case is as to the sufficiency of the notices of protest to bind the indorser or his heirs. The note was drawn payable to the order of Henry Doyal and by him indorsed before maturity, and as it seems for the accommodation of the drawer. It was made payable at the Citizens' Bank in New Orleans, because the property of John Bird, of Missouri, whose agent, Abram Bird, living in the parish of East Baton Rouge, in this State, placed it in the branch of Louisiana State Bank at Baton Rouge for collection. Pike, the cashier of the branch bank, transmitted it to the parent bank in this city, and when due it was duly protested for non-payment. The notary's certificate sets out that the notices of protest "were served on the parties respectively in the following manner, viz: On R. A. Stewart, drawer, H. Doyal, A. Bird and Wm. S. Pike, cashier, all inclosed to the address of the letter in Baton Rouge, La., and put in the Postoffice of this city on the date of said protest in time for the first mail thereafter. Duplicate notices for H. Doyal, indorser, left at the office of Mr. Phil. Rotchford, his attorney in fact, with Wm. S. Brown, as directed by C. A. F. Rondeau, cashier." It is in proof that Henry Doyal died on the 29th of January, 1859, one year and two days before the date of the protest. That suits were instituted against his executors, in one case on the 16th of February, '59, and in another on the 26th of September of the same year; that the large commercial house of Rotchford, Brown & Co., of New Orleans, were the factors of Hy. Doyal for many years, and up to the time of his death, receiving and disposing of his sugar crops of four large plantations, and furnishing them with all needful supplies; that the same house continued to do the business of these plantations after Doyal's death, doing the business of the executors; that P. Rotchford, the principal member of the firm, was appointed by Doyal his agent and attorney in fact, with general and special powers, by a notarial act executed in 1845, and that he continued to act under this procuration during Doyal's lifetime, some fourteen years or more. This act authorizes Phillip Rotchford to draw and indorse promissory notes in the name of Hy. Doyal, and to make notes payable to the order of P. Rotchford, either for the use of said P. Rotchford or for Hy. Doyal; to draw and indorse bills of exchange, domestic or foreign, and generally to do and perform all and every other act that may be requisite and necessary touching the premises as fully and effectually as the said Doyal himself might or could do."

Henry Doyal lived in Ascension parish, and his postoffice was at New River. These facts seem to have been well known in New Orleans within the range of his business transactions, which appear to have been quite large and extensive. The notary who protested the note appears to have been ignorant both of Doyal's postoffice and of his decease. Pike, the cashier of the branch bank at Baton Rouge, to whom the notary inclosed notices for the parties to the note testifies that he has no distinct recollection of receiving any notice. The court then goes on in the examination of the different points as to the probabilities of serving the notice and the necessity of making the proper service, and concludes as follows:

We consider it well settled that the holder of a bill or note is required to show the use of reasonable diligence to find out the residence of the indorser when it is unknown to him. 1st N. S. 328, Chatty on bills 267 and 275, 12 M. 81.

The evidence in the record satisfies us that the exercise of a moderate degree of diligence would have put the notary in possession of the fact of the decease of the indorser long before, and the names and residence of his executors.

It is therefore ordered, adjudged and decreed that the judgment of the district court be affirmed with costs in both courts.

BY ASSOCIATE JUSTICE J. G. TALIAFERRO.

No. 616—J. L. Warner & Co. vs. Alfred Shaw, sheriff, and J. M. Peterson—Appeal from Sixth District Court, New Orleans.

This was an injunction sued out by the plaintiff to restrain the sheriff from selling as property of Barbot & Warner, a lot of ground and improvements thereon which plaintiffs allege belong to them. Judgment was rendered in favor of defendant, with 20 per cent. damages in favor of Jas. M. Peterson on the amount of the judgment enjoined in the suit and cost of suit.

The plaintiffs have appealed. We find no brief of either party in the case. A careful examination of the record has not enabled us to see that the plaintiff has in any degree sustained his allegations, and conclude that the judgment of the lower court was correctly rendered. It is, therefore, ordered, adjudged, and decreed that the judgment of the District Court be affirmed, with costs in both courts.

BY ASSOCIATE JUSTICE TALIAFERRO.

No. 1078—Mrs. Armide E. Fitz (widow Vogel) vs. A. Reichard et als.—Appeal from the Sixth District Court of New Orleans.

The plaintiff, in her capacity of natural tutrix to her minor daughter Alice, brings this suit against the three defendants, Reichard, Kruttschnett and Schmidt, *in solido*, as commercial partners of the firm of Reichard & Co., which expired by its own limitation on the 15th July, 1861.

She claims $2241 90, with interest running from different dates in separate portions of that amount. The defendants severed in their defense and filed general denials.

The plaintiff had judgment in her favor and defendants have appealed.

Judgment affirmed with costs in both courts.

ACADEMY OF NATURAL SCIENCES.—*Re opening.* The museum of the Academy will be re opened to the public to-morrow (Tuesday) afternoon, the interesting work for which it was temporarily closed having been completed. For several weeks past Mr. Waterhouse Hawkins, a distinguished English naturalist, has been engaged there in setting up the fossil remains of an enormous reptile, and in restoring and supplying such parts as are missing or destroyed. These remains were discovered in a bed of cretacious marl, near Haddonfield, N. J., in 1858, and were subsequently given over to the custody of the Academy. But they have never been put in order for exhibition until now. The animal to which they belonged was one of the monstrous lizards or saurians that flourished in the early geological periods, but that become extinct many ages ago. This one is named by paleontologists and other naturalists, hadrosaurus or "strong-lizard," just as others are called ichthyosaurus or "fish-lizard," etc. In