The New Orleans Crescent

OFFICIAL JOURNAL OF THE CITY OF NEW ORLEANS.

J. O. NIXON, 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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TUESDAY MORNING, DECEMBER 15, 1868.

AMUSEMENTS.

THE OPERA.—The inclemency of the weather last evening necessarily prevented the Opera House from being well attended, but there were many of the fearless present, determined upon listening to the stirring strains of the great composer Verdi. The curtain rose on the first tableau of "Trovatore," to furnish another occasion for the appreciation of Mr. Van Huffien's grand manner of reciting the story of the *Trovatore*, and the change of scenery was made amid much applause. The garden scene which ensued evinced that Picot, Peront and M'me Cambier were in better voice than ever, and disposed to make the *reprise* of Trovatore a success. M'me Cambier's voice, however, should be criticised, as it was false during the whole scene, and badly so. Later in the evening this lady's singing improved, especially in the duo with the *Count of Luna*, after the *Miserere*. So far so good; everybody was charmed with the play as a whole; but immediately after the "Anvil Chorus," which was poorly sung, as well as the balance of the choruses, M'lle Bourgeois arose from the side of *Manrique* to express the introduction to the Gipsy song, but was unable to utter a single sound. After a few ineffectual attempts to recuperate, she concluded not to sing, and sat down for the second or third time, weeping, apparently very much affected, amid the calls for a change of performance and "Let M'me Boudro sing the part." The curtain dropped, and it was announced that M'lle Bourgeois, being entirely incapacitated, the role of *Azucena* would be dispensed with, although the balance of the opera would be sung—"Hamlet," without the *Prince of Denmark!*—but that Mme. Boudro would undertake to sing the part of *Azucena* in the last scene; and be it said to her credit, notwithstanding the delusion of a singer with the *partition* in her hand, the public expressed their gratefulness by giving her merited applause. We must not forget to mention that Picot sang the "Miserere" finely, and was encored.

To-night "The Midsummer Night's Dream." "Barbe Bleue," which was announced for Thursday next, will, in all probability, not be performed, and the reason is this: M'lle Bourgeois, who was to have taken the leading female part in Offenbach's opera, has resigned her engagement with the Opera House administration. Yesterday morning, in consequence of her protracted illness—an enlargement of the lungs, we believe—she had already offered to resign, but Mr. Calabresi induced her to abandon the idea until, at least, after the performance last evening. The result is known.

ST. CHARLES—*The White Fawn.*—After preparations and labors the extent of which none but the initiated can imagine, Mr. Pope, of the St. Charles, brings out to-night that famous spectacular drama "The White Fawn"—a piece of which and of the success of which elsewhere few of us have not heard. It is produced with the aid of Whitman's Parisian ballet troupe, which includes Mlles. Diana and Marie Landa as danseuses asoluta, Mlles. Zuarde, Barena and Deverci as second premières, and a full corps de ballet, under direction of Mons. Harvig. Among the scenes to be presented are the Silver Lake Ballet, the Wood Nymph's Dance, the Fisher Waltz, a grand Amazon March and the bewildering Can-Can. The gorgeous transformation scene, said to be the finest spectacle ever placed upon the American stage, will by itself be an attraction of no ordinary kind. By all means, we say, if you admire the spectacular, see the "White Fawn."

VARIETIES.—The execrable weather of last evening dimmed the brightness of Miss Orton's benefit, which otherwise would have undoubtedly been a brilliant occasion. As it was, spite of rain and wind and cold, the audience was a tolerable one, while the performance, introducing Miss Orton in two great characters, was possessed of a merit which made every spectator involuntarily regret there were not more there to witness it. As *Donna Violante*, the woman who keeps a secret, and as *Nelly*, in Nursey Chickweed, with Vining Bowers as an inimitable *Jonathan*, Miss Orton sustained her reputation as both a powerful and a versatile actress. The support accorded her in the comedy by Miss Freeman as *Donna Isabella*, Mr. Sheridan as *Don Felix*, and the members of the company in general, was all that could be desired. Nor must mention of the first appearance of Mr. O. B. Barr in the character of *Frederick*, be omitted, nor also of a pretty pas seul between the pieces by Mlle. Theresa. "East Lynne, or the Elopement," will be played this evening.

ACADEMY OF MUSIC.—"Undine" will be repeated to-night, and not only "Undine," but what we fancy will be even more welcome in its repetition, the trapeze act by Millie Tournour, who returning from a successful week in Mobile, reappears to-night to entertain by her grace and daring her many admirers in this city. We need not bespeak for Miss Millie a flattering welcome—it will be spontaneous.

AMES'S MUSEUM AND MENAGERIE.—This popular place of resort will always be found open between 8 A. M. and 10 P. M., and offers to the inspection of the curious a rare and carefully collected assortment of wonders, animal, vegetable and mineral. Strangers in the city may here be reminded that the Museum is directly opposite the St. Charles Hotel.

EXTENSION OF THE JURISDICTION OF THE COURT OF CLAIMS TO LOUISIANA AND ARKANSAS.—We have received from Senator Kellogg a copy of the following bill, which he introduced in the Senate on the 8th. It was read twice, and ordered to be printed:

Joint resolution to extend the provisions of the act of July 4, 1864, limiting the jurisdiction of the Court of Claims to the loyal citizens of the States of Louisiana and Arkansas.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, The provisions of the act of the 4th of July, 1864, entitled "An act to limit the jurisdiction of the Court of Claims" is hereby extended to the loyal citizens of the States of Louisiana and Arkansas, and that the act of February 19, 1867, entitled "An act to declare the sense of an act entitled 'an act to restrict the jurisdiction of the Court of Claims,'" shall not be so construed as to prohibit the payment of the claims of loyal citizens of the United States arising in said States of Louisiana and Arkansas, anything in said act to the contrary notwithstanding.

PUBLIC DEBT.—The following is the statement of the public debt to December 1:

Debt bearing coin interest, $210,783,610; debt bearing currency interest, $72,140,000; national debt not presented for payment, $824,588,364; debt bearing no interest, $413,102,181 17; grand total, $2,601,374,164 81; six per cent. lawful money issued to the Pacific Railroad Companies, $14,337,000; total debt $264,711,164 81. Amount in treasury—coin, $88,425,374 54; currency, $18,253,946 13; total, $106,679,320 67. Amount of debt, less cash in treasury, $2,539,031,844 14. Warrants issued by the treasury during November to meet the requirements of the government amounted in round numbers to the following: Civil, miscellaneous and foreign, $282,200; interest on the debt, $24,205,000; war, $6,570,000; navy, $1,203,000. The warrants issued for the redemption of the public debt are not included in the above.

EDITORIAL PARAGRAPHS, ETC.

Bonner thinks Grant will drive his own team.

Little Nap. has taken to the velocipede.

Mrs. Ben Franklin could not read.

Butler occupies Thad. Stevens's old seat.

A training school for domestics is proposed.

Gen. Banks's family are to visit Europe.

The Courier-Journal pitches into Josh Billings.

It is said Cushing is authorized to buy Cuba.

Ben. Butler occupies Thad. Stevens's old seat.

The Paducah Herald is to be issued daily.

A free university is to be established at Iuka.

Louis Gaylord Clark has been injured by a fall.

Yates is to launch a universal suffrage bill.

Maine Blaine wants the speakership.

Francis Joseph wants peace.

O. A. Brownson is recovering.

Chicago expects a million hogs this season.

Gen. Marcy believes in killing Indian savages.

Ex-Attorney General Lynch has arrived in town.

Cut-throat weather all day yesterday and all night last night.

It is said Colfax will resign the speakership and take his bride to Europe.

Col. Donn Piatt is the Washington correspondent of the Cincinnati Commercial.

Patti is to sing in Russia this and the two following seasons.

Boutwell is mentioned as Grant's secretary of the treasury.

The Southern Express Company afford us New York papers of the 10th.

Elsewhere are copies of two bills introduced in Congress by Senator Kellogg.

Mrs. Alice Oates is no relation of Felis of that ilk.

Last Friday was the coldest day in St. Louis for thirty years.

Thanks to the purser of the steamship Lavaca for Florida papers.

We have the Honduras Gazette, of Nov. 14, by the steamship Trade Wind.

Joe Howard, Jr., is warmly eulogistic of Brick Pomery.

Butler dined at the Manhattan Club recently, the guest of Richard Schell.

Telegraph Morse is to be banqueted in New York.

Houston will have cock fighting during race week.

Memphis is preparing for German opera under H. Grau.

A monument to Robinson Crusoe is to be erected on the island made famous by him.

Eugenie is going to give the Napoleonic dynasty another chance for perpetuity.

Geo. Ellis has the American Artizan of the 9th.

"Had we have" etc., is the elegant language of a contemporary.

Weston likes water and molasses better than spirituous beverages.

There were 339 deaths in New York last week and 167 marriages.

There are 540 secret political policemen in Paris.

Spinner pitches into copper and nickel currency, calling it stinking, poisonous and irredeemable.

The Russian Grand Duke Nicholas, brother of the czar, will winter in Paris.

Isabella's useless husband is charged with appropriating $70,000 belonging to a church.

The Davenport brothers have lost their money, married French wives, and got the consumption.

Hawthorne's "Old Manse" at Concord, Mass., is for sale.

Roberts, the new Spanish minister at Washington, is very handsome and of English descent.

Earl Russell is seventy-six. He has been in parliamentary life fifty-five years.

Elsewhere will be found extracts from the report of the secretary of the treasury.

The horse railroad is to be extended to the main entrance of the Fair Grounds on Gentilly road.

Gen. Beau Neill has been ordered to convey official documents to Washington.

Elsewhere is a sketch of Mr. Davis's speech at Leamington.

In another place is a statement of the public debt.

The Board of Trade of Marseilles, France, wants the coat of arms of New Orleans.

Dickens's eldest son is trying to "run" All the Year Round.

Elihu Burritt had his pocket picked of £150 and papers at a public dinner in Birmingham.

The name of Jefferson Davis is the first in the book of visitors at the Massachusetts Historical Society, and that of U. S. Grant is the last.

Ole Bull was aboard the steamship United States, which collided with the America, but escaped unscathed, carrying his fiddle with him.

Fiske, the champion of stock gambling in New York, used to drive a peddler's cart in Vermont and New Hampshire.

G. A. T. has had a peep at Washington's will, and finds that the great man knocked one g out of the word aggregate.

It is said E. B. Washburne, of Illinois, is to be secretary of the treasury. Per contra, it is said Grant has not decided upon his cabinet.

Mr. Laird was greeted during a recent visit to the Liverpool Exchange with hootings and cries of "What about the Alabama?"

Longstreet was upon the floor of the United States Senate on the 7th, and was presented to several senators by Mr. Kellogg.

A 111 year old negro visited Port Gibson the other day. He remembered Washington, as a matter of course.

"That senators of the United States grow rich in their places," says the Round Table, "is notorious."

The secret of safety on the velocipede is equilibrium, and that, at first, is only to be gained by boldness and speed, as in skating.

Ole Bull played to the deaf Duke of Devonshire by connecting his violin to his auditor's teeth with a string.

A negro convicted of rape in Yazoo county, Mississippi, has been sentenced to the penitentiary for life.

Whilldin, of Flake's Bulletin, has removed his personal sanctum to Austin, where he is watching the convention.

Republican congressmen say Grant has given an opinion on both sides of the Indian bureau question.

Ex Deputy Collector Stockdale has gone to Chicago on business connected with the grain-forwarding business.

The New York World has added an eight-cylinder press to its printing resources, and claims to be able to print 50,000 papers in an hour.

The president and several foreign potentates have condoled with the surviving Rothschilds on account of the death of James.

Lee, Mass., is becoming deserted by emigration to the West.—[Ex.

Peter wants to know if he is to understand by the above that people are deserting Lee *en masse*.

The report that Custer has been killing friendly Indians is said to be a device of the Indian bureau, which reads the doom of its policy in an active warfare against the red skins.

The colored Tribune thinks Mr. Dunn fully the equal of Mr. Warmoth, and that the latter infringed upon the rights of the former in delegating Private Secretary Remic to perform the functions of governor during the recent illness of that functionary.

The wife of Commodore Thompson, who is reported among the lost in the recent steamboat disaster on the Ohio river, was quite well known in this city as a lady of rare social accomplishments. Her home was in Philadelphia, in the refined society of which city her loss will be deeply felt.

Bishop Wilmer has appointed Rev. A. G. Bakewell, rector of Mount Olivet Church, Algiers, an itinerant missionary for the Red River and Ouachita region. Mr. Bakewell, than whom a more devoted and zealous regious advocate is not to be found in the South, has departed for his new field of labor. The sympathies and prayers of a multitude of friends will follow him.

SUPREME COURT DECISIONS.

The following important decisions of the Supreme Court were delivered yesterday, a full bench present:

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1448—Gustave Dubroca vs. Wm. S. Pike; David N. Barrow vs. Wm. S. Pike—Pitot & Bright for plaintiffs and appellants; Morgan & New for defendants and appellees — Appeal from the Fourth District Court of New Orleans.

The plaintiff sues to recover the sum of $19,752 91 with interest from September 14th, 1863, upon the ground that he was a partner with the defendant and others in certain purchases and sales of sugar from September 29, 1862, to September 14, 1863. That a large profit was made and declared upon the books of the firm; that the share of the plaintiff, being the sum mentioned above, was credited to the defendant for plaintiff, and that the defendant withdrew from the firm these funds of plaintiff and has since retained them.

A mass of testimony appears in the record, and numerous questions have been raised by counsel, but the view which we have taken of the case makes it necessary to consider but a single point. It clearly appears that the whole transaction was conducted in what were called Confederate notes. The sugar was purchased with these notes, it was sold for them, and it even appears from the testimony of Crutcher, one of the parties to the alleged partnership, that the amount thus realized in Confederate notes was at the time of the trial of this case still in possession of Crutcher & Co., by whom the sales were made.

Even if we admit, therefore, the truth of the allegations of the plaintiff as to the partnership and the profits, we cannot lend our aid to settle disputes in regard to such transactions and to divide their apparent gains. 17, A., 26, 19 A., 161, 164, 257, 269, 288, 359.

We think this question not only firmly settled in our jurisprudence, but rightly settled. But if there were doubt as to the correctness of this series of decisions we think this court cannot now enforce the matters of contract disclosed in this case. By article 127 of our present Constitution, all agreements, the consideration of which was Confederate money, notes or bonds, are declared to be null and void; and it is directed that they shall not be enforced by the courts of this State. We think the case at bar is within this prohibition, for the business of the alleged partnership was to acquire and divide Confederate notes, and the foundation of the action is the averments that the defendant has received and retains, the share of profits accruing to plaintiff.

The judgment of the court *a quo* was in favor of defendant.

It is ordered and adjudged that the same be affirmed with costs in both courts.

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1847—Joseph H. Wilson vs. Shroeder & Schrieber and Jacob Zoelly. Hornor & Benedict for appellant; Julien Michel for appellees. Appeal from Fifth District Court of New Orleans.

This is an action against the defendants, Shroeder & Schrieber, as makers, and Zoelly as indorser of a promissory note.

Judgment having been given against them, *in solido*, the defendant Zoelly alone has appealed. The appellee moves to dismiss the appeal on the grounds:

First. That the defendants Shroeder & Schrieber have not been made parties; and

Second. That the appeal taken on the 22d day of May, 1868, was made returnable on the fifth Monday of June following, when it should have been returnable on the first Monday of November, 1868.

As to the first ground, it is true that in many cases of judgment *in solido* this court has decided that the judgment debtor who appeals must make his co-defendant an appellee. The principle is that such co-defendant who does not appeal is interested to maintain the judgment, in order to maintain his recourse for contribution against the appellant. But in this case there is no pretense that the note was made for the accommodation of the indorser, but on the contrary, so far as we can perceive, the indorsement was made for the accommodation of the makers. The makers, therefore, can have no recourse for contribution against the appellant, and have no interest in the maintenance of the judgment.

We cannot see that the second ground constitutes any reason for dismissing the appeal. The statute of 1864, invoked by counsel, was repealed by the statute of 1866, and has not been revived by the statute of 1867. (C. C., 23.)

The motion to dismiss is therefore denied.

BY ASSOCIATE JUSTICE W. G. WYLEY.

No. 1446—Marquise de la Villa Palma, vs. Abat & Generes et al., appellees. — Appeal from the Third District Court of New Orleans. A. and M. Voorhies for appellant. C. Dufour for Abat & Generes, and L. Castera for E. F. Mioton, appellees.

Plaintiff, the purchaser of three lots, subject to a special mortgage with pact *de non alienando*, sues to annul a subsequent sale under the foreclosure of said mortgage.

The sale was made under executory process, and the three lots and improvements were sold in block, although appraised separately, and although described in the act of mortgage as separate lots. Plaintiff vendor, A. Costa, had mortgaged these lots prior to selling them to her, and defendants had become the owners and holders of the mortgaged notes under which the sale was made, contradictorily with a curator *ad hoc*, representing the mortgage debtor, A. Costa, who was an absentee. The appraisers were duly appointed by this curator *ad hoc* and the mortgage creditors on the day of sale. They appraised two of the lots together at $1800 and the third lot by itself at $1000, making the total amount of appraisement $2800. The curator *ad hoc* gave the sheriff no instructions whether to sell the property in block or separately, and the same was sold by the sheriff in block, under instructions of the seizing creditors' counsel, for the price and sum of $3675 cash.

On the trial in the lower court there was judgment in favor of defendant, and against plaintiff. Plaintiff has appealed.

The various grounds of nullity set out in the petition are all abandoned by the plaintiff's counsel in the argument before this court, except the position that the sale is null, because the lots were sold in block by the sheriff, and not separately.

We concur with plaintiff that the insertion in the act of mortgage of the pact *de non alienando* does not invest the mortgage creditor with the right to disregard the forms of law in making the forced alienation of his mortgage debtor's property. We think the non alienation clause springs from the agreement of the parties and not from a prohibitory law, based upon motives of public policy forbidding the transfer of property so mortgaged. The advantage of this clause is to save the mortgage creditor the necessity of resorting to the delays of the hypothecary action. He can proceed to enforce the mortgage directly against his mortgage debtor without reference to the transferee of that debtor.

But still the transferee is subrogated to his vendor's rights by virtue of the purchase and his sufficient interest in the object of the contract of mortgage to sue to annul the sale if the forms of law have not been complied with by the mortgage creditor of his vendor in making the forced sale. But from a careful examination of the law and the evidence in this case we cannot concur with plaintiff that the sale is null because the lots and improvements were sold in block and not separately. The property sold in block for a much larger price than its appraisement which was made separately. There is no evidence that the bystanders would have bid a greater price if the offering had been made separately.

But what right has this plaintiff to complain of the sale of property which she only held subject to the rights of her vendor's mortgage creditors? With the non-alienation clause she could not expect to be made a party to the sale. She occupied no better position than her vendor, and the sale was made contradictorily with him, through the curator *ad hoc* appointed by the court, and we regard the sale as valid. Even if the defendant in execution had the right to require the property to be sold separately, which we do not admit, still the objection now comes too late, after the sale has been made contradictorily with the curator *ad hoc*. We cannot now permit that objection to be set up to the title acquired by the purchaser. (1 A., 725, 726.)

The officer who made the sale in this case testifies that the curator was present and appointed an appraiser, but did not require him to sell the property separately; and this is corroborated by the evidence of the curator *ad hoc* himself.

The objection that the property was sold by the sheriff in block now comes too late. (See the case of Taylor vs. Graham, 18 A., 656.)

In reasons assigned, we are of opinion that the plaintiff has failed to make out her case, and her action of nullity must be dismissed. It is, therefore, ordered that the judgment of the district court be affirmed with costs.

BY ASSOCIATE JUSTICE R. K. HOWELL.

No. 1396—A. Schlenker, liquidator, appellee, vs. B. W. Taliaferro, appellant—Cotton & Henriques for appellee; Hawkins & Fish for appellant. Appeal from the Third District Court of New Orleans.

This is a suit on a promissory note and open account, in which the maxim *contra non volentem agere nulla curat prescriptio* is invoked against the plea of prescription of three and five years.

It was suggested at bar that the sum invoked is not within the jurisdiction of this court, but we find that the interest accrued on the note at the date of instituting the suit, September 5, 1866, makes the total of the note and account exceed $500. The proof is that the parties resided, at the date of the note, January 1, 1861, in the parish of Catahoula, in this state, and that in January, 1864, the defendant came to this city, where he has ever since resided, and was the postmaster. There is no reason assigned why suit could not have been brought against him in the courts of his domicil, before prescription on the note was acquired, January 2, 1866, and according to the doctrine of the case of Babel vs. Poursian, 20 A. 31, the maxim invoked cannot avail the plaintiff.

It is therefore ordered that the judgment appealed from be reversed and that there be a judgment in favor of defendant, with costs in both courts. Mr. Justice Taliaferro recused.

BY ASSOCIATE JUSTICE J. G. TALIAFERRO.

No. 1418—Gustave Brusle, appellant, vs. Pierre Sauvé; third opposition of police jury, left bank, parish of Jefferson—Alfred Grima & T. J. Cooley for plaintiff and appellant; B. C. Elliott for police jury, appellee. Appeal from Second District Court, parish of Jefferson.

The police jury of the parish of Jefferson, left bank, come in by way of third opposition claiming by preference $1375 75, with interest and costs, out of the proceeds of a tract of land sold under a writ of *fieri facias* issued at the suit of the plaintiff, having a special mortgage on the property sold. The opponents aver that their claim is for parish taxes on the property sold, for a series of years consecutively, commencing with the year 1860 and running to the year 1866 inclusive, and for interest and costs arising from their non payment.

The plaintiff and appellant resist this claim on several grounds:

1. That no legal assessment of parish taxes has been made against the tract of land sold under his mortgage, and that no such taxes are due.

2. That for the years 1860, 1861, 1862, 1863 and 1864 the alleged assessment was upon a large number of slaves, horses, stock of various kinds, a carriage, etc., as well as upon the land; and if bound at all for any of these taxes, he is not bound for that portion assessed against the slaves.

3. Prescription—That if the land sold were ever liable for the taxes claimed, the privilege granted by law upon the real property to secure their payment is extinct by the limitation of the lien of two years from the 1st of April of the year for which the assessment was made.

4. That if the assessment be legal it was made upon an entire tract of land containing 1600 arpents, while the part of that tract subject to plaintiff's mortgage and sold contains only 461 arpents, and consequently, that if subject to him at all for the taxes claimed it is subject only to a proportional part of the amount assessed. The opponents had judgment for $643 90, with first privilege upon the proceeds of the land sold. The plaintiff appeals.

In this court the opponents and appellees pray to have the judgment of the lower court amended by allowing them the whole amount of their claim.

We have given a careful examination to the evidence introduced in this case, and are not satisfied that it establishes with sufficient certainty that the forms strictly required by law in the making assessments of property have in this case been observed. As far as disclosed by the record we are unable, from want of description of the property assessed, to identify it as that on which the opponents claim the privilege. Taking this view of the case we deem it unnecessary to examine the other points stated in the defense.

It is therefore ordered, adjudged and decreed that the judgment of the district court be annulled, avoided and reversed. It is further ordered that this suit be dismissed without prejudice, the appellees paying costs.

BY ASSOCIATE JUSTICE W. G. WYLEY.

No. 1421—Wm. Murphy, appellee, vs. Morritz Kaufman, appellant—Horner & Benedict for appellee; Gustavus Schmidt for appellant. Appeal from Sixth District Court of New Orleans.

In 1864, defendant made a contract with plaintiff to convey his goods in the wagons of the latter from Franklin to Newtown, in this State, and to return the teams immediately after the completion of the contract to the owner at Franklin. The consideration of this contract was one hundred dollars, which were paid in advance. After the goods were delivered at Newtown and the wagons unloaded, and whilst the drivers were about starting back with the wagons, pursuant to the understanding of the parties at the time of the hire, the defendant prevailed on the drivers to convey the goods from Newtown to Alexandria, which they did. In this trip and at Alexandria, the wagons and teams were taken or lost, or from some cause were never returned by defendant to plaintiff.

To recover the value of this property this action was instituted. On the trial the district judge gave judgment against the defendant for $2310 and interest and costs; and he has appealed. We think the judge *aquo* did not err in overruling defendant's exception that plaintiff's petition does not set forth when the contract was made, and whether in writing or not. Plaintiff's petition fully discloses his cause of action; there was no valid ground for the exception. We are satisfied from the evidence that defendant made the contract as alleged, with plaintiff, and afterwards violated it for his own advantage or convenience, and by reason thereof plaintiff lost the property mentioned in his petition. The value of the property is fully proven.

We do not find in the record sufficient evidence to satisfy us that the drivers were the agents of plaintiff, authorized to contract with defendant. On the contrary, it seems they were only hired by plaintiff to drive his teams to Newtown and back to Franklin. And it also seems that defendant himself had charge of the wagons; the drivers consented to go on to Alexandria because they did not wish to leave the wagons which they evidently thought defendant would take anyhow.

We also concur with the district judge, that general order No. 9, issued by Gen. Canby, on 28th January, 1866, does not apply to defendant, even if he were capable of exercising military functions or enforcing a military order.

We do not think from the evidence that he took the property in question in pursuance of the orders of the president or the commander of the forces in that expedition.

It is therefore ordered that the judgment of the court below be affirmed with costs.

BY ASSOCIATE JUSTICE W. W. HOWE.

No. 1431—Villeneuve Le Blanc Jr. & Co., appellants, vs. L. E. Perroux, Phillippe Marsondet subrogated, appellee; Jos. H. Grover, security injunction on bond, appellant—H. and J. Grover for appellant; L. Castera and C. Hunt for appellee. Appeal from the Sixth District Court of New Orleans.

This is an action of nullity.

The judgment sought to be annulled was rendered in a suit upon four promissory notes made by Villeneuve LeBlanc Jr. & Co., of the parish of West Baton Rouge, who in an act granting a mortgage upon their plantation, situated in the parish of West Baton Rouge, to secure these notes, consented as follows:

Here the act of mortgage is recited, electing the office of Bellocq, Noblom & Co., or that of their successors in this city, for their domicil, and renouncing the benefit of any laws now in force or hereafter to be enacted, providing that the defendants can only be sued or proceeded against before the judge of the district or parish wherein they reside or have their domicil.

In this action upon the promissory notes, commenced in the Sixth District Court of New Orleans, the return upon the citation was the following:

[illegible] day served a copy of this citation and accompanying petition on A. P. Noblom, agent of V. Le Blanc, defendant herein, personally.

Upon this return judgment by default was entered, and in due time the default was confirmed and judgment rendered against Octave Le Blanc and V. LeBlanc, composing the firm of V. LeBlanc, Jr. & Co., *in solido*, for the sum of $16,000, with sundry arrears of interest and with privilege on the property mortgaged.

Steps having been taken to execute this judgment, the plaintiffs in the case at bar commenced their action of nullity upon the ground of defective citation and invoked the customary remedy of injunction. The defendants (appellees) appeared and answered, and moved to dissolve the injunction upon the ground, substantially, that the judgment debtors had been properly cited and that the citation and return formed a legal basis for a judgment. The judge *aquo* denied this motion, being of opinion that the service of the citation as disclosed by the return we have quoted above, was not a compliance with the law and amounted to no citation at all.

The defendants in injunction thereupon procured an order permitting the return of the sheriff in the case of Perroux vs. LeBlanc to be amended as follows:

In conformity to the ruling of the court permitting an amendment to be made to the service of the above citation, I now make the following additional return and amendment, to-wit: That on the day named in the said return, I served a copy of this citation and accompanying petition, as in said return set forth, by serving the same on A. P. Noblom, personally, who, at the time I served him, was in his counting room or office, being that of Bellocq, Noblom & Co., No. 61 Carondelet street, on second floor of said building, First District of New Orleans, New Orleans, Nov. 16, 1866.

The case came on to be tried and the court *aquo* gave judgment for plaintiffs, but thereafter granted a new trial, and upon the second trial gave judgment for defendants, dissolving the injunction with damages. From this judgment the plaintiffs have appealed.

It is well settled that a judgment rendered against a party who has neither been cited nor appeared, is an absolute nullity. That a court can presume nothing with respect to a party being cited; that nothing will cure defects of citation or want of service except appearing and answering to the merits; that the proof of the service of a citation is not a matter *en pais*, and there can be no evidence of it but the sheriff's return unless service be waived by the appearance of the party. That the service must appear by matter of record and no parol evidence of it can be received. (C. P., article 206, Harris vs. Alexander, 1 R. 30.)

Tested by these elementary rules, the citation in the case of Perroux vs. Le Blanc, as evidenced by the original return, was clearly defective. There is no allegation of agency in the petition, and admitting that Le Blanc, Jr. & Co., in electing as their domicil the office of Bellocq, Noblom & Co., in New Orleans, elected it as a place to receive citations, it does not appear by the original return that the service was made at this elected domicil, nor does it appear the service was made upon a person apparently above the age of fourteen, living in the house. (C. P., 189, 201; 16 L., 590; 12 L., 547.) The defendant seeks to avoid these conclusions by contending that the election of the office of Bellocq, Noblom & Co. as a domicil was a mandate to this firm, and each of its members, to accept services of citations. In support of this proposition his counsel have cited French commentaries and decisions on Art. 111 of the Code Napoleon, and have urged that although that article is not to be found in our Civil Code, yet its equivalent is to be found in C. C., Art. 11.

The court, after citing various authorities, decides as follows:

We think, then, that the judgment in question in the case at bar must rest upon the facts evidenced by the original return, and for the reasons given above must be annulled. If, as matter of fact, the service of citation was proper the defendants herein can still proceed to perfect a judgment in the case, since the present judgment being annulled there can be no objection to such amendment of the return as will make it conform to the truth.

It is therefore ordered and adjudged that the judgment appealed from be avoided and reversed, and that there be judgment in favor of the plaintiffs against he defendants, avoiding and annulling the judgment of the Sixth District Court of New Orleans in favor of L. E. Perroux vs. Villeneuve LeBlanc, Jr., & Co. in the case numbered 13,927 of the docket of said court; that the order of injunction issued herein on the 6th February, 1866, be made perpetual and that the defendants pay the costs of both courts.

ASSOCIATE JUSTICE W. G. WYLEY.

No. 1400—Bank of New Orleans, appellant, vs. B. Toledano & Taylor; A. J. Dufilho third opponent, appellees—Elmore & King for appellant; J. L. Tissot for appellees. Appeal from Third District Court of city of New Orleans.

On the 17th December, 1858, the defendant, Taylor, intervened in the marriage contract between his daughter and third opponent, and in consideration of the marriage made a donation as dowery unto his daughter of two lots of ground with the improvements thereon, situated in this city.

The donation was made and accepted in proper form and the act was duly registered in the mortgage office, parish of Orleans, in a book of donations kept in that office. In 1866 plaintiff received judgment against the defendants, based upon an indebtedness which accrued subsequent to the donation and levied upon the property donated. To resist the sale of this property A. J. Dufilho, the husband of the daughter of the donor, instituted this proceeding of third opposition and injunction.

On the trial in the court below there was judgment in favor of third opponent perpetually enjoining plaintiffs from selling the property in question, and decreeing judgment against plaintiffs for $300 special damages as attorneys fees and costs. Plaintiffs have appealed.

The question presented to us for determination is whether the third opposition title to the property seized was inscribed in the manner required by law so as to give effect to the donation as against third persons.

Plaintiffs contend that this donation was a transfer or conveyance of the property, and should have been registered in the conveyance office in pursuance of act 1827, page 136, but the third opponent insists that the donation was duly inscribed in the book of donations in the mortgage office pursuant to article 1541, Civil Code, and that an inscription in the conveyance office was unnecessary.

The act of 1855 created the office of conveyancies and requires every act of conveyance to be inscribed in that office. If this act of donation amounts to a conveyance, it should have been recorded in the conveyance office and need not have been registered in the book of donations in the mortgage office. This court has often held that possession under an act of sale is not sufficient notice to creditors and subsequent purchasers to defeat the registry laws, (14 A. 414 and the authoriteis then cited.)

Does the title of the donee depend upon the law prescribing the forms of alienations and the mode of registry thereof? Or does it depend upon compliance with the law prescribing the forms of donations *inter vivos*, and the mode of registry thereof?

Would this act of donation of the lots, properly drawn up by the notary, have been valid if recorded in the conveyance office and not in the book of donations in the mortgage office?

We think not. Article 1541, Civil Code, says: "When the donation comprehends property that may legally be mortgaged the act of donation, as well as the act of acceptance, whether the acceptance be made by the same or separate act, must be registered within the time prescribed for the registry of mortgages, in a separate book kept for that purpose by the register of mortgages, which book shall be open to the inspection of all parties requiring it." Article 3351, Civil Code, requires the recorder of mortgages for the parish of Orleans to keep three registers, one for conventional mortgages and privileges, another for judicial mortgages, and a third "to record all donations which have to undergo that formality."

What was the object of registering the act in the book of donations in the mortgage office? It was evidently to give notice to give it effect as against third parties. It was a notice in the manner pointed out by law. We think the constitution of dowery in this case was neither an alienation nor a mortgage; that the act did not irrevocably invest the donee with ownership; that the validity of the act and its effect against third persons is based upon the articles of the Civil Code perscribing the forms of donating *inter vivos*, and the mode of registry thereof. We think the act of 1855, perscribing the mode of registry of conveyances of immovable property does not apply to donations *inter vivos*; that neither the act of 1827 nor the act of 1855 repeals article 1541, Civil Code, which prescibes the form of registering donations *inter vivos*.

Plaintiffs' brief cites us to the language of act of 1855, page 335, which declares "that no notarial act concerning immovable property shall have any effect against third persons until the same shall have been recorded in the office of parish recorder or the register of conveyances of the parish where such immovable property is situated. If this language is to be construed to mean all acts effecting immovable property, then mortgages as well as donations *inter vivos* must be registered in the office of the conveyance, and we are to infer that this act repeals the article of the C. C., prescribing the form of registering acts of mortgages and acts of donation *inter vivos*. [illegible] tion of that act. Plaintiffs contend that if Art. 1541, C. C., is not repealed by the statues of registration that that article has no application to marriage contracts. We think Articles 1727 and 2317 of C. C. completely refute this position of plaintiffs. Art. 1727, C. C., declares that "every donation *inter vivos* though made by marriage contract to the husband and wife, or to either of them, is subject to the general rules prescribed for donations made under that title." The dowery of Mrs. Dufilho was settled by her father at a time when he was able to do so; it was a donation which had to be registered according to Article 1541, C. C.

We think the judge *a quo* did not err in maintaining the injunction; but the judgment however must be amended as regards the allowance of counsel's fees.

We know of no law authorizing plaintiff in injunction to recover from defendants in injunction the amount incurred for counsel fees (see the case of Dyke vs. Dyer, reported in 14 A., 701, and the authorities therein cited).

It is therefore ordered, adjudged and decreed that the judgment of the district court be amended by striking out the clause allowing $300 counsel fees, and that the judgment so amended be affirmed with costs, the appellee to pay the costs of appeal.

CONFEDERATE MONEY REPROBATED.

No. 1410—President, directors, etc., of Bank of West Tennessee, vs. Citizens' Bank of Louisiana. Hays, Adams & Moise, in the lower court, and Hays & New, in the Supreme Court, for plaintiff, the appellee, and A. Pitot and Thos. J. Semmes, for defendent, the appellant. Appeal from the Fifth District Court of New Orleans.

The opinion of the court was read by Associate Justice Wyley, as follows:

Plaintiff has instituted this action against the defendant to recover a large cash balance for deposits and collections by the defendant, the Citizens' Bank of Louisiana, for and on account of plaintiff, the Bank of West Tennessee, during the year 1862.

Defendant sets up in answer that the transactions between the parties were in Confederate States treasury notes; and that on the 10th September, 1863, the amount claimed by plaintiff was paid over to the United States quartermaster, in obedience to General Order No. 202.

On the trial in the district court there was judgment in favor of plaintiff for $40,887 22, with five per cent. interest thereon from 10th September, 1863, and costs.

Defendant has appealed.

In the investigation of this case, the first important question presented is: Were the transactions between the plaintiff and defendant based upon Confederate treasury notes?

Plaintiff has filed in this suit the account current of defendant, extending from 17th March, 1862, to September 11th, 1863. Plaintiff's witnesses state that this account current is correct, and that it was sent to plaintiff by the defendant under cover of a letter, dated May 2d, 1866, which is also filed. There are several entries in this account of Confederate treasury notes. We have observed a very large debit of $200,000 entered in that account on the 26th May, 1862.

Plaintiff's action seems to be based upon that account to recover the balance due thereon. It is true that the record discloses no positive proof that defendant was instructed to collect (for) the defendant in Confederate treasury notes, but a careful examination of the record satisfies us that plaintiff knew that his transactions with defendant were on a basis of Confederate notes. This large entry of $200,000 in the account is explained by the correspondence of Mr. Rousseau, the cashier of the Citizens' Bank, with Mr. May, the cashier of the Bank of West Tennessee.

On the 20th May, 1862, Mr. Rousseau wrote: "As you have in our hands a large amount of currency deposits, without being able to bring it back, we think it more prudent on both sides to send you by bearer, L. E. Simonds, Esq., *a large portion of said funds*; the balance may be sent to you in the same manner, if you desire it, on which please instruct us by return of Mr. Simonds."

On 24th May, 1862, Mr. May, the cashier of Bank of West Tennessee, replied: "I have received your favor of 20th per Mr. L. E. Simonds, together with $200,000 treasury notes placed to credit your account. I have a good many checks out which may pass through the lines or may be held should I not be able to take them up here; I have not charged you with any of my collections for some time; do not send the balance, our paper, past due you, will hold, as I fear to take the risk of transmission."

By this correspondence it appears that there could have been no misunderstanding between the parties as to what was ment by the expression of "currency deposits," because on the 24th May, 1862, plaintiff was in possession of the letter of defendant stating, you have in your hands a large amount of currency deposits; we think it more prudent, on both sides, to send you by Mr. Simonds a large portion of *said funds*. Plaintiff received, without objection, from Mr. Simonds the $200,000 Confederate States treasury notes, knowing they were a "large portion of said funds."

What does the expression in plaintiff's letter, "Do not send the balance," mean? "I have received your favor of the 20th per Mr. L. E. Simonds, together with $200,000 treasury notes," "Do not send the balance." The balance evidently meant the amount of the treasury notes remaining in the hands of defendant.

Why did plaintiff wish defendant to hold the balance? Because there were checks out drawn against this currency deposit which might pass through the lines.

Plaintiff had frequently sent packages of Confederate States notes as well as defendants, for collection to defendants. On the 1st February, 1862, Mr. May, the cashier of the Bank of West Tennessee, wrote to Mr. Rousseau, the cashier of the Citizens' Bank: "Our president, T. O. Nelson, Esq., leaves for your city to-morrow and will be there several days. By him I send a deposit of treasury notes—$100,000."

Against these deposits plaintiffs drew various drafts payable in currency, when defendants became uneasy and desiring to relieve themselves from so much responsibility, they sent $200,000 treasury notes to plaintiffs and offered to send them the balance, but plaintiffs instructed them to hold on to the balance to meet some checks that they had drawn against these funds, which might pass the lines. On the 10th March, 1862, plaintiffs sent to defendants for collection a check on the Union Bank for $58,416 19, payable in Confederate notes.

It appears that all the deposits and collections were kept in the same account, and from the correspondence of plaintiffs we infer that monthly accounts had been rendered by defendants to them. When plaintiffs sent the coupons of Confederate bonds to defendant for collection, he wrote: "As this interest is payable in coin, you will so oblige me as to collect and send me coin by express."

From a careful examination of the evidence we are satisfied that the collections made by the defendant for the plaintiff were in Confederate notes, and that plaintiff was aware thereof; that this action is based upon transactions in Confederate treasury notes.

Under the Constitution of 1868, the courts of this State cannot entertain an action based upon transactions in Confederate treasury notes. We think the evidence discloses that this case is founded upon dealings in an unlawful currency, and this court has often refused to lend its aid to transactions reprobated by law.

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 defendants, dismissing this action at plaintiffs' cost in both courts.

BY ASSOCIATE JUSTICE W. G. WYLEY.

No. 1411—Chattanooga Savings Institution vs. Citizens' Bank of Louisiana. Hays, Adams & Moise, for appellee; A. Pitot, for defendant-appellant. Appeal from Fifth District Court, New Orleans.

The facts of this case are analagous to those in the case of Bank of West Tennessee vs. the Citizens' Bank of Louisiana just decided, and for the reasons therein assigned it is ordered, adjudged and decreed that the adjudgment of the court below be avoided and annulled, and it is now ordered that there be judgment in favor of defendant, dismissing this action at plaintiff's cost in both courts.

ATLAS MUTUAL LIFE INSURANCE COMPANY OF ST. LOUIS.—The Hon. Charles A. Mantz, of St. Louis, president of this company, is in our city. He paid us a visit last evening and informed us it is his intention to establish an agency of the company in New Orleans before he leaves. The "Atlas Mutual Life" is a well-known institution, and is eminent for its liberal advantages offered to policy holders, and is in all respects worthy the attention of the community, offering to the public, without extra charge, a WORLD-WIDE POLICY, non forfeiting from its date of issue, and in all things one of the most advantageous life insurance companies, as we are informed, that has ever done business in the West or South.

The directors and officers of the Atlas Mutual Life are old and wealthy citizens of St. Louis, and its capital and assets are large and ample. It has met with great success so far, and we wish it success here.

ARRIVAL OF THE GEO. WASHINGTON.—The steamship Geo. Washington, Capt. Gager, arrived here last evening. Reports having been detained in port of New York by a snow storm. Arrived off Southwest Pass Bar 9:30 Sunday evening, but owing to the severe gale did not cross until next morning. She had a succession of gales the entire passage:

Mrs. C. C. Dean, Mrs. J. H. Chapman and child, Mrs. Amson and child, H. Foster and wife, W. E. Rattigan, U. S. N., Miss M. L. Gasquet, Miss T. E. Gasquet, Miss H. V. Gasquet, Mr. M. Reviere, Mr. Jos. Roth, Mr. M. Mumford, Mr. Jas. Patterson, Miss E. Walsh, Miss G. Banks, Mr. John Williams, and nine in the steerage.

ARRIVAL OF THE TRADE WIND.—The steamship Trade Wind, Capt. Morrill, from Belize Honduras, arrived Sunday evening, and reports having experienced very heavy weather on both outward and inward bound passage, and was detained thereby three days. She brings the following named passengers:

Chas. McDermott, Anne Belle McDermott, Margaret McDermott, Chas. J. J. McDermott, Willie McDermott, Scott McDermott, Edward McDermott, Z. H. Carpenter, J. C. Carpenter, Jr., J. A. Doisin, Richard McCall, E. Arntinez, Mrs. Mary Putnam, Henry Putnam, Emmett Putnam, Edward Putnam, Robert Putnam, Lee Putnam, Mrs. M. E. Merrill, L. F. Merrill, J. H. Merrill, S. H. Merrill, Dr. L. Champagne, Miss M. E. Chick, W. S. Barcleft.

ARRIVAL OF THE GEN. GRANT.—The steamship Gen. Grant, Capt. Quick, from New York, 6th inst., arrived at her wharf last evening, with the following passengers: Geo. F. Hopper, Wm. F. Derve, Mrs. Hagerty and daughter, E. S. Mears, Henry Meyer, John Waldron, Michael Quinlan, Henry Schmidt, Mrs. McQuade.

MAGNOLIA WATER.—Superior to the best imported German Cologne, and sold at half the price.