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THE DAILY CRESCENT

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TUESDAY MORNING, JANUARY 12, 1869.

CITY TOPICS.

After several tedious, almost interminable days of rain and mist, gloom and mud, the sun rose Monday morning,

"So cloudless, clear and purely beautiful,
That God alone was to be seen in Heaven!

A stiff northwester careered through the streets, drawing copious tears from the eyes of those who faced it, romping with ladies' skirts, affording shadowy glimpses of snowy stockings and nimble ankles, and at times with a playful gust discovering the fashion of a garter. Everybody seemed to walk with more elastic steps under the influence of the bracing atmosphere.

The readers of the CRESCENT will be delighted to learn that the martial Colonel Edmonston, ex-commander-in-chief of Governor Wells's militia, has succeeded in obtaining a federal office in Mobile. No military chieftain living deserves more from a grateful country. Long may it be before the gallant colonel shall be called upon to draw his trenchant and unsullied blade!

The wordy war between the school board and Warmoth has resulted in enlisting the scalawag Legislature on the side of the carpet-bag governor. Yesterday two bills were introduced into the lower house, both providing for the immediate abolishment of the present school board, and the appointment of another by Warmoth. One was introduced by a man named Carr. It makes the board to be composed of seventeen members, to be appointed by Warmoth, by and with the advice and consent of the Senate. The other was offered by Rey, a colored man, who was elected to his seat by the House itself and not by the people. It gives only five members to the board, and provides for their absolute appointment by Warmoth. Both bills were referred to the education committee. It is not to be doubted that one or the other of these bills will become a law. One similar to them was introduced last session, but dropped simply because the members thought they had then gone to the very furthest verge of outrage that they would be allowed to go. When the bill does pass, Warmoth will undoubtedly appoint negroes on the board, when the question of mixed schools will be brought very plainly before the people. Time alone will show how they will receive it.

The business of coroner is neither easy nor profitable now-a-days. Sunday was a very rainy, bleak and uncomfortable season. But, notwithstanding the inclemency of the weather, Dr. Espinola, the clever, amiable and efficient deputy of Dr. Avila, betook himself to the Pontchartrain lake to hold an inquest over the body of "a man found drowned" somewhere between the pier head and Lord knows where. Getting out of the cars, he hied him to the spot described. There was nobody to assist him, and the fishermen along the shore were too ignorant or too surly to answer his questions. He investigated on his own hook. He finally espied the body of the man, half floating, half submerged—his head rocked with the rocking billow—thirty yards from the shore, where his heavy boots had anchored him. Dr. Espinola rolled up his pants to mid leg, and waded into the cold water. To reach the corpse, he had to enter deeper than the height of his thigh, and even there he had to push away drift-logs and weeds before he could disengage what he was after and bring it to terra firma. Then he had to summon a coroner's jury, hunt for the members of it along through every by-way, in his wet clothes, the cold wind blowing pitilessly. When he had got them together, all speaking different lingoes, and none understanding his own intelligibly—when Espinola had done all these things, and explained their duties to men from the troubled shores of the Bay of Biscay, from the Mediterranean, from auld Ireland, France, Africa and Lake Pontchartrain itself—when he had done all these things, we say, he had done a good day's work. But just when he had reached home, changed his clothes, and seated himself at his warm and cheerful table, in came another summons to officiate upon the body of a corpse at Chalmette, (battle ground) of a man that had died through maltreatment at the hands of a nigger doctor, whose office (?) is on Goodchildren street, in the Third District, between St. Ferdinand and Poet streets. The dinner was left untasted and the warm, cheerful fire unenjoyed whilst our poor friend had to obey the summons. The case is not ended as yet, for Doctor Avila is determined to bring to justice all these Voudou doctors and midwives who practice their ridiculous charms upon the ill in flesh and the poor in spirit. Would that the Legislature, the governor and his lieutenant, as well as the Continental Congress had to be investigated and purged by so efficient a brace of officers as the coroner and the deputy coroner of the lower part of the parish of Orleans.

A few evenings since, three festive youths, while emerging from a theater, were pounced upon by a metropolitan, who declared that he seized them as suspicious characters. They were, of course, aghast at this announcement, and became more so when the metropol commenced to escort them towards St. Charles street corner of Lafayette. Visions of free lodgings, a visit to the recorder, and possible parish prison in the dim perspective, began to form themselves in their souls, with frightful rapidity and distinctness. But, fortunately, some friends were in the neighborhood, and they rescued the trembling trio from the insatiate clutches of the liveried minion of the law, by assuring him that the young men were "all right." Once released, they turned to their aforetime captor and demanded of him what reason he had for placing three innocent, good-looking young men in durance vile. Imagine their surprise when they were informed that the Alpine hats which all three of them wore were the cause of their misfortune, the policeman asserting that as every thief in town wore an Alpine, he had deemed that, in connection with other items—but that chiefly—damning evidence of their guilt. Is it necessary to state that the Alpines were discarded at the first hat store? or that, with innumerable treats, the victimized three tried to stop the mouths of their rescuers, but failed, as this narrative showeth? The moral of this "o'er true tale," is, don't wear an Alpine unless you have your character in your pocket, for you will need to exhibit it to some of the blue coated gentry before you have worn your mountainous head covering a week.

Irishmen will be interested in the fact that one of their own race, Mr. James Brennan, an accredited representative of the Fenian Brotherhood, is now here in the interests of the order. He is to speak on Monday evening next at the National Hall, on Poydras street, near Liberty. We can imagine the enthusiastic audience that will gather around him to hear him tell how speeds the cause of Irish liberty, and what her sons in strange lands are doing for old Erin, their home. His address will be an interesting one to everybody.

A gentleman, on Saturday last, while mingling in the immense crowd which gathered to witness General Rousseau's funeral, thinking that there might be pickpockets in the throng, took his watch from its usual place and put it in his pantaloons pocket. He arrived home with it safe there, and was congratulating himself upon his prudence, when, on glancing down, he discovered that a valuable diamond cross which he had worn as a breast-pin, was gone. The rogues had taken it out of his shirt bosom.

A committee was appointed at the last session of the House to revise the statutes of the State of a general character. They reported yesterday that they had intrusted the work to John Ray. He promises to complete it by January 1, 1870. Until then the statutes will remain, we suppose, unrevised.

Paniers were not few on the Boulevard yesterday. By paniers we do not mean the absurd Grecian bend, but simply that peculiar manner of arranging the dress behind, which is one of the most graceful and prettiest of modern styles. Some of the costumes were extremely handsome and tasteful.

Mr. Wiltz, of Orleans, yesterday in the House gave notice of a bill removing the slaughterhouses below the city. It has not yet been introduced and read, so it is not yet open to comment.

Somebody said last night in the CRESCENT sanctum that the Alpine hat was a Swiss tile. A jury—one that was not only *de jure* but *de facto*—promptly sat on him. Verdict: Temporary elongation of the caudal appendage, producing protemasininity.

"Tchune," cried a juvenile news merchant on Canal street as he hawked his last Picayune last evening.

Oscar Dunn and his associates of the police board have been and done it. They have proceeded to velocipedal extremities, and whilst they cause quiet young men to be arrested by their myrmidons on Camp street for proceeding quietly and skillfully along on their two-wheel horses, the circus people are whirling around Lafayette Square, right under their squashy and boneless noses, and crowds of spectators impede the passers by. Oh, Oscar, Oscar! Sophonesba, oh! Cried the young velocipedestrian, Saturday, when the metropolitan stopped him on Camp street, near Palmer's, "ah, woe is me!"

Was there ever anything that venomous humanity could do to encourage negro outrages so much as the prospect of damages in a court of justice against the corporation? Here are negroes who violate every principle of law and order—and if an indignant populace rise up in their might and wreak vengeance upon them and their chattels—as soon as the effervescence settles, up comes a suit for damages against the city. Come all ye niggers from the country—leave the plantations—here are your harvest fields—right here in the heart of New Orleans; commit your depredations, outrage public decency, drive honest people to frenzy, and then sue the city! You can get plenty of ex-Confederate officers to plead your claim, and bleed their fellow countrymen to the last drop. Come, niggers. For further particulars see local column, item, Fifth District Court.

Hon. Gifford, the Demosthenes of the lower courts, sues Baker, the celebrated English scholar, or, rather, the Admirable Crichton of this degenerate age, for the paltry amount of one hundred and seventy dollars, due for salary as registrar from some date in October to some other date in November. When Gifford rises, with spectacles on nose, before a justice of the peace, climbs up to the forensic trapeze, and swings himself to and fro on the wings of bathos and hyperbolical nonsense, the laws of reason and good taste are suspended, and the mighty Field draws in his Atlantean shoulders and hides his diminished head.

W. W. Handlin, who was a judge in 1864, and was then removed by the then Gov. Hahn, wants to recover $20,000 from the State for his salary as judge from the time of his removal until the Constitution of 1868 went into force, four years, at $5000 per year. He has petitioned the Legislature for it. He may get it and he may not.

The death of that staunch and energetic citizen, John Holmes, has created a void in many family and business circles in New Orleans. Mr. Holmes, or Governor Holmes, as he was usually addressed and spoken of, was one of the Brothers Cheeryble; jovial, generous and warm-hearted, ever ready to sacrifice his own comforts for the comforts and happiness of his friends. Louisiana never had a truer or more devoted Democrat or a better citizen.

There is an institution in this city of New Orleans which is essentially worthy of a paragraph or a city topic. It is the Hancock Club, whose domicil is in the Imperial Building, corner of Gravier and Carondelet streets. The club already numbers over six hundred members, and every week from fifty to one hundred of the best citizens of New Orleans are applying for the privilege of membership.

Yesterday, in company with a friend, the writer visited the Hancock Club, and wandered through all its ramifications in the second, third and fourth stories. On the second floor he partook twice of the excellent liquors at the bar, and once of the equally excellent lunch. He also met a good many friends gathered in knots and around tables, talking politics or partaking of the good things. The parlor is admirably well furnished, and a cosier or more comfortable one could hardly be imagined. The floor above is devoted to billiards and other games, whilst the fourth story is not yet prepared for the members, but soon will be.

The writer had heard so much of the billiard tables of the Hancock Club that, though but a dull player himself, he examined them very curiously and minutely. He found them the most beautiful and perfect tables he has ever seen. A ball rebounds every time it touches the cushions, as if, like Antæus, the contact renewed its impetus. The cue rack, the tables, the cues and all the adjuncts are absolutely perfect. They are the handiwork of J. M. Brunswick & Brothers, of St. Louis street, in this city, opposite the St. Louis Hotel.

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

EDITORIAL PARAGRAPHS, ETC.

A foot of snow fell at Vicksburg on Sunday!

The debt of Massachusetts is $27,735,870.

Dexter is said to like the gingle of sleigh-bells.

Senator Chandler was re-elected on the 6th.

One of our camel visitors is dead.

Toronto, Canada, claims 55,000 inhabitants.

Florence, Massachusetts, has a female cobbler.

St. Joe, Missouri, is to have a bridge.

Bostonians have a hot soda-water furore.

Maggie Mitchell is in Louisville.

Garibaldi is ill.

Striped flannel for morning dresses is considered very *distingue* in Paris.

The two vacant brigadier generalships will probably go over to the next administration.

There is a preject to have an inauguration ball in the capitol rotunda.

Banks wants Uncle Sam to exercise a protectorate over the turbulent West Indians.

The debt of Maine, not the main debt, is over $5,000,000.

The A. B. C. F. M. appropriated $547,000 for the coming year.

Some gentlemen of Buffalo presented Bishop Coxe with a check for $1500 Christmas morning.

The late James Arnold, of New Bedford, bequeathed $40,000 to six clergymen.

There is a revival in the New Hampshire State prison.

Fourteen millions' worth of ecclesiastical property has been sold in Italy within a year.

There were nearly 500 applications for divorce in Chicago last year.

Stewart has been renominated for senator from Nevada.

A Republican senatorial caucus in the Maine Legislature gave Hamlin 75 votes and Morrill 74.

The New Hampshire Republicans have nominated one Stearns for governor.

Hyster Clymer declines mounting to the governorship of Pennsylvania.

A Chicagoan has invented a one wheeled velocipede.

Generals Babcock and Porter departed northward on Saturday.

The Denver board of trade indorses Sheridan's "Indian policy."

Kellogg is not coming immediately, but Lambele has arrived.

Adjourned meeting to-night of the friends of the late Gen. Rousseau.

When does a man's case lie in a nutshell? When he's a colonel.—[Punch.

The "bump of destructiveness"—a railway collision.—[Judy.

A church at Louisville has put up a sign commanding "no smoking."

A $5000 veil figured at a New York wedding the other day.

Goldsborough, Maine, containing eighteen hundred inhabitants, has no house of public worship.

If men will but amuse the world, it will freely forgive them for cheating it.—[Ex.

When men are long indifferent toward us, we grow indifferent to their indifference.—[Ex.

Prince Napoleon made a visit to the chateau of George Sand, to stand godfather for her grandson.

Black cherry blossoms were seen in St. Louis on the 7th.

Some fellows never pay a debt except when they owe a grudge.—[Ex.

Dulce calls the late Bourbon dynasty "a plant so poisonous that it putrified the air we breathed."

A war is to be made on *fac simile* stamps used in the franking business.

The commissioners of Shelby county, Tenn., have voted $300,000 to the Mississippi River Railroad.

On a recent stormy day, in New York, Mr. Bergh was seen in various places stopping cars and omnibuses which had but single teams.

A codicil has turned up to Rossini's will, which gives all his property, after his wife's death, to his native town.

Wales has had several interviews with Napoleon, and rumors of Victoria's intended abdication are revived.

The Desert News—the organ of Brigham Young—encourages the "Sorosis" with its best wishes.

Seward was elected governor at the age of thirty-seven, and Hoffman at the age of thirty-nine.

A moderately fashionable funeral in Chicago (not by any means a slap up one, however) costs $547.

Geo. Ellis has the Artisan, Chimney Corner, Literary Album, New World, (Leslie's new paper,) and Leslie's Illustrated.

Bad for the local paragraphers—workmen were yesterday supplying the gap in the Lafayette Square fence.

Rochefort estimates the income of the emperor, empress and prince imperial at 50,000,000 francs a year.

A New York paper says of a famous singer, that "she sings a few airs and puts on a great many."

"Not guilty," said an Omaha jury, "but if the prisoner is smart he will leave the territory before night." He left.

A Philadelphia critic, speaking of Mrs. Scott-Siddons' beauty, says that "in personal pulchritude she knocks Beau Ideal himself."

The Louisiana election, says the Washington correspondent of the Cincinnati Enquirer, is to be set aside, the congressmen sent back and the electoral vote, like Georgia's, not counted.

The Second Baptist Church, of Newport, organized in 1656, is the third oldest Baptist church in America. Six of its ministers have died in office aged 80 years and over.

A Nashville mechanic is said to have invented a shooting machine, which he calls the "Polyfer," which will destroy a regiment of soldiers, distant a mile and a half, in four minutes.

If we take a cold-blooded creature to our bosom, better that it should sting us at once and we should die, rather than its chill should slowly steal into our hearts.—[Ex.

C. C. Haley, from his new and commodious quarters in Commercial Place, sends us the Literary Album, New World, (Leslie's new paper,) Emerald, Irish People, Police News, Pilot, Artisan, Saturday Night and New York Ledger.

In a cave under the island at Rock Island, the statue of an Indian maiden, a copper pedestal, a seven foot high obelisk of solid brass and other Indian curiosities, were found on the 6th, says a dispatch from veracious Chicago.

There was a "scene" at the Houston Theater, a few nights ago, not down on the bill. Belle Boyd, who had taken the part of Miss Maud St. Leon in a quarrel with the manager, rushed before the curtain, declared she had been insulted, and refused to continue her engagement.

The gentle Brownlow has laid aside the editorial harness. "In reviewing my long and eventful career as an editor," says Brownlow, "I have this to say, that had I my life to live over, I would pursue the same course I have pursued, only more so."

G. A. T. says Butler visited the president, on New Year's day, to demonstrate a dutifulness that Grant had refused. The more he thought of this, the more "gallus" it seemed—a sensation, a piece of giraffe effrontery, perhaps an example of hostile generosity.

The elements of a vigilance committee, says G. A. T., are combining in New York as truly as the elements over slavery combined to make war. Nothing in the near future is so apparent as a great gallows before the City Hall, and the yeomanry of New England and New York guarding the ceremony.

The California papers are congratulating their readers that next season will bring fresh Chesapeake Bay oysters to the Pacific coast, via the great railroad. One lot has already reached San Francisco, being carried across the "break" in stages at a heavy expense. It is thought that Eastern oysters will compete successfully with the "big fat fellows" of the Gulf of California, even at a higher price.

Supreme Court Decisions.

This court met yesterday, present the Hon. Chief Justice Ludeling and Associates Taliaferro, Howell and Howe. Absent, Associate Justice Wyley.

After reading the minutes the clerk, Colonel Deane, announced as the decision of the court that no new cases would be called or fixed until the country cases would be disposed of, which would be called on the fourth Monday of this month, and fixed for trial, the cases already called and fixed being sufficient to occupy the time of the court up to that date. The following are the decisions delivered yesterday:

BY ASSOCIATE JUSTICE HOWE.

No. 1338—Erastus F. Chandler et al., appellees, vs. Anthony Barrett, executor, appellant. For defendant and appellant, Alex. T. Steele and M. A. Dooley, and for the plaintiffs and appellees, Belden, Fusilier, A. P. Boyd and M. C. Dunn. Appeal from the Second District Court of New Orleans.

The plaintiffs in this case allege that they together with a minor brother and minor sister, are the sole heirs of Mrs. Christina Chandler, their father's sister, who died in New Orleans on the 2d of August, 1866; that on the 24th day of July 1866, the deceased executed an instrument called and known as her last will and testament, before A. Hero, Jr., notary, by which she bequeathed all her property to the defendant, Barrett, constituting him universal legatee and sole executor; that the will has been admitted to probate upon application of the defendant, but that it is null and void for the reasons that at the time of making the will, and for many years prior thereto, the testatrix was totally disqualified and incapable of making a will, and also for other reasons which, having been abandoned by plaintiffs, it is unnecessary to discuss. They pray that the will may be annulled and avoided, and that the plaintiff with their minor brother and sister, may be adjudged to be entitled to inherit and possess the estate, and for general relief.

The defendant pleads the general denial, specially denies the relationship of plaintiffs' father, avers that the testatrix, "Christina Chandler, at the age of seventy years, lived alone, uncared for and neglected by the plaintiffs, who lived very near her," and asserts that the deceased "when she made her will, and until her death, exhibited more than ordinary proof of sanity and capacity to do business."

There was judgment for plaintiffs, and the defendant has appealed.

The only question in the case, in the view we have taken of it, is whether Christina Chandler, on the 24th day of July, 1866, had testamentary capacity, or whether, on the contrary, she was intestable by reason of unsound mind. The question, we must say, is not very clearly presented by the pleadings, but it seems from the whole record to have been the main point at issue. And here we may remark that while it is true, as stated by this court in Aubert vs. Aubert, 6 An., 106, and urged by plaintiffs at bar, that testaments are more easily avoided than contracts on the ground of unsoundness of mind, yet this distinction applies to such matters as those of notoriety and interdiction, and not to the amount of intellect required in a testator. So far as the latter is concerned, a will may well be made by any mind which has the soundness and strength necessary to endure the conflict involved in the making of a bargain. It would be unreasonable to require that a testator should have more mental vigor and a more lucid memory than a person who makes a contract. See Merlin Repertoire, vol. 13, p. 550. Stevens vs. Van Cleve, 4 Wash., C. C. R., p. 267. Converse vs. Converse, 21 Vermont, 168.

It appears from the evidence that Christina Chandler resided in Missouri in 1825; that her husband died in that year; that soon after his death she became the mother of a son, Thomas W. Chandler; that in 1835 she removed to Vicksburg, where she remained till about 1850; that she then came to New Orleans, and lived here with her son up to the time of his death in April, 1865, and that she survived him about sixteen months, managing his succession, of which she was sole heir, and living alone in the same house on Canal street, where she had lived for sometime before. In considering the question of her alleged unsoundness of mind at the time her will was made, there are some elementary principles which may guide us to a just conclusion: "That Romace law" says Coin Delisle (Donations et Testamens, p. 82,) "furnish rules on this point which still deserve to be followed. If the testament present but a series of wise and judicious dispositions, it is for the heirs who attack it to prove unsoundness of mind at the date of the testament. If it contain dispositions such as would cause insanity to be presumed, although susceptible of being justified by peculiar circumstances, it is for the legatee to prove by witnesses the sanity of the testament. But if by facts occurring near the time of the date of the testament and preceding and following it, the heirs have proved an *habitual state of insanity*, we are constrained to think that then and notwithstanding the wisdom of the act, the legatee should be held to prove the existence of soundness of mind during the intermediate time. If [however] the acts of insanity were rare and occurred at periods distant from each other and from the date of the testament, the testament would sustain itself, and would be presumed to have been made in a lucid interval, at least *if the act was not destitute of good sense and betrayed no sanity.*"

"The presumption," says Foulier, "is always in favor of the act. Insanity is never presumed. The advanced age of the donor, the forgetfulness of his family, the largeness of the legacy, the low rank of the legatee, will not of themselves suffice to decide that the testator is not of sound mind." Droit, Civil, vol. 3, p. 44. See also Marcade, vol. 3, p. 403; Duranton, vol. 8, p. 167.

"The presumption of sanity does not cease," says Troplong, "because the testator has experienced some transitory intellectual derangement at a time anterior to the testament." Donations et Testamens, vol. 2, p. 56. And the same writer animadverts with characteristic energy upon the tendency he has observed to transform a "morbid susceptibility, an ephemeral excessive excitement, a superficial trouble, into one of those profound alterations which destroy the reason."

The English law seems to be the same upon these points. In the case of Chambers vs. the Queen's Proctor (2 Curtiss, 415, cited by Ray, p. 272, and Jarman on Wills, Vol. 1, p. 72.) The deceased was an attorney, who made his will on the 15th November, 1839, and committed suicide the next day. He labored under singular delusions, having no foundation in truth, on the three days next preceding the day on which the will was executed; among others, that the benches of the Temple were about to disbar him on account of an imaginary trivial fault he had practiced on them, and that in consequence thereof he was a lost man, and must be got out of the country.

It appeared that delusions equally gross possessed his mind in 1838. But the court (see Herbert Jenner) said that the first point to be considered was whether habitual insanity had been proved, "because it is admitted that where habitual insanity does not exist, the proof of actual insanity *at the* time [the will was made] must come from those who impeach the act. The court, therefore, must look for proof of habitual insanity or insane delusion from those who oppose this will," there being no evidence of actual insanity at the moment the will was made. The court was of opinion that no habitual insanity had been proved, and the will was therefore sustained. See, also, Fullock vs. Allison, 3 Hazzard, 527.

In the common law States of our own country the same general rules have been laid down. Clarke vs. Fisher, 1 Paige, 171; Jackson vs. Van Deussen, 5 Johnson, 144; Halley vs. Webster, 21 Maine, 461. Turning to the evidence in the record, we find the principal acts of folly relied upon by plaintiffs to be that about the year 1850 or 1851 the testatrix, Christina Chandler, ran up on the roof of a house, as if trying to escape from an imaginary robber; that about 1856 she had a delusion that her brother had killed seven men, and cut them up and thrown them in a well; that "some time before the war" she took all her bed clothing and her clothes and burned them; that about 1863 she informed one of the witnesses that her son and a young lady had bought a large kettle and she believed it was their purpose to boil her up in it; that during the last illness of her son, about sixteen months before her own death, she was very miserly in her housekeeping, to his discomfort; that about two months before her death she offered to will her property to a neighbor, Mr. Hannigan, if the latter would attend to her wants in the way of nursing, and afterwards offered to will it to Mr. Hefferan, another neighbor, if he would go in and take care of her during her last illness; that on another occasion, the date of which is not fixed, she had a fear of being poisoned by her son, and refused for a time to drink water from his cistern.

That her habits were those of a miser, and she was afraid of being cheated and robbed. That some time prior to September, 1861, calling at the house of the plaintiff's father, Maryland K. Chandler, she would say when she came to the gate: "Maryland, will you kill me?" and he would jokingly reply, "Yes," and she would then call the witness, her sister-in-law.

The plaintiffs also rely on the opinions of experts, but the experts do not seem to agree as to what was the character of Mrs. Chandler's mental aberration. They do not appear to have considered her imbecile nor afflicted with dementia. In their opinion the unsoundness took the form of mania of some kind. The judge of the court, who recused himself and was called as a witness, thought her of unsound mind; that she seemed to distrust everybody, except the judge of the Second District Court; to have a morbid fear of being robbed and cheated, and to have "a mania for pernurious conduct." He thought, however, that she knew how to keep her money, that she was not violent and he did not deem it his duty to interdict her. He did not see her after the summer of 1865. The first medical witness thought her insane and seemed to lay much stress upon the delusion in 1863 in regard to her son, and her manner at that time and her conduct when her son was ill in April, 1865. He did not see her for about six months prior to her death, except as he saw her passing in the street. The second medical witness declared that she "was afflicted with what is called moral insanity, which is characterized by cruelty to ones kindred." He did not see her after April, 1865."

We may here observe that while is true that experts may give opinions, and that the opinions of medical men are freely received upon questions of professional skill, it is equally true that they ought also to state the facts upon which those opinions are based, and that the opinions themselves are not conclusive, but must be weighed as other evidence.—5 La., 276; 4 Ann., 377; 1 Jarman on Wills, 78.

Judge Howe concludes that no habitual state of insanity has been established; that penuriousness or miserly conduct is hardly evidence of such a condition; that the desire of deceased to leave her property to her neighbors, provided they nursed her in her last hours, was to attract their kind attentions; that neglect being incident to infirmities and extreme old age, the law gave her such means of controlling such attentions as were due to her age and infirmities; (Vide language of Chancellor Kent in case of Van Alst vs. Hunter, 5 Johnson, Ch., p. 148) that Mrs. Chandler's fear of being robbed and cheated was not unnatural in an aged woman, living alone, and unvisited by a single relative over a year before she died, though they (plaintiffs and their mother) lived in three miles of her house from 1861 to 1868; that judging from the squalid style in which she lived; the burning of her clothes and bedclothing "some time before the war," at least six years before her will, was as likely to have been a sanitary precaution as an act of lunacy, and that even if it was an act of pyromania it was never repeated in any form; that the delusions which peopled her mind at various times during sixteen years were few, not permanent, and long separated in time from the date of the testament, and that however morbid, they indicated merely cerebral irritation at the time, and that the evidence affords no trace of them after the year 1863, though the will was made in 1866.

We are of opinion, therefore, that the plaintiffs have not overcome the presumption of sanity, which must exist in favor of a will so rational as that of the testatrix in this case. And we are confirmed in this opinion by the testimony for the defense. We there find Mrs. Chandler, four weeks before her death, consulting a lawyer in regard to a suit which had been brought against her, and stating the facts to him with clearness and accuracy. Two days after she calls again upon her counsel, informs him correctly of her family relations, of the fact that she has no descendants, and states her desire to make a will, so as to dispose of her property as she pleased. She mentions the fact that she knows Mr. Hero, and is advised to employ him as notary. On the day the will was made, Mr. Hero, with three witnesses, went to her house. She told him she desired him to make her last will and testament. She dictated to him the ideas as written down in the will. She told him that no one had taken care of her, (meaning, doubtless, no one whose natural duty it was to care for her) that Mr. Barrett had and would continue to do so. She then informed the notary that she had some money in the house, gold coin, which she did not wish to keep there, as she had some time before been robbed of her paper money. She then went with assistance into the next room and brought a basket containing six or seven rolls of paper, in each of which she said there were $100, except one which contained $60. The money was counted by the notary, and as he says, proved to be in amount what she had stated. The money was then handed to Mr. Barrett, for safe keeping apparently, as she did not wish to keep it "there."

She then told the notary that Mr. Barrett had constructed a tomb for her in one of the cemeteries, (a fact elsewhere appearing in the evidence,) and that as part of the consideration of his services, she desired to transfer to him certain vaults she owned, and the written transfer was therefore made. The plaintiffs urge that this was an act of insane folly inasmuch as she had given him already over $600 in gold, and had bequeathed him all her property, but we cannot so regard it. She had given him the gold for safe keeping, and as for the rest of her property it was uncertain when she would die, then defendent might not have come into possession for years. She might have used it up as well as the gold before her death, or she might have revoked her will. We think the act quite businesslike. The notary and the witnesses were in her presence about two hours. She seemed a very avaricious woman, who deprived herself of all the necessaries and many of what are generally considered the necessities of life, but to all of these four witnesses she seemed to be perfectly rational and to have an excellent memory. Her capacity for business, her determined frugality, her knowledge of her property and of her legal rights, her prudent administration of her son's estate, for fifteen months prior to the date of the testament, appear elsewhere in the evidence both for plaintiffs and defendant. That she was very penurious and very eccentric is plain enough, but that she was habitually insane is something we cannot affirm. She had in former years, without doubt, on occasions separated by long intervals of time, suffered from irritation of the brain; but, from the evidence, we must deem it to have been of the transitory kind, which occurring long anterior to the time of the testament, does not cause the presumption of sanity as to that act to cease.

If the plaintiffs had shown that before these isolated acts of folly occurred, her habits of mind were different and that these acts indicated a permanent and morbid change; if they had shown that the delusions which visited her at various times continued to manifest themselves in some form down to the time she made her will, as if the result of a chronic state; in short if they had brought themselves within the rule that where insanity is proved to have been habitual the burden of proof is shifted on the legatee, the result might have been different. But, as the case comes to us it seems to fall under the rule we have cited, that if the acts of insanity are rare and occur at periods distant from each other and from the date of the testament, the testament if not destitute of good sense, and betraying no folly on its face, will sustain itself and be presumed to have been the off spring of a healthy volition and a lucid memory.

For the reasons given it is ordered and adjudged that the judgment appealed from be reversed and avoided; and that there be judgment in favor of defendant with costs in both courts.

BY ASSOCIATE JUSTICE HOWELL.

No. 1407—James A. Lusk vs. Graham & Cole. Appeal from the Fourth District Court of New Orleans. C. Roselius and R. H. Marr for appellant, and Clarke & Bayne and P. Soulé for appellees.

This is a case involving questions of partnership and sale of an interesting but not particularly novel or important character to the public. Judgment of lower court reversed.

BY ASSOCIATE JUSTICE HOWELL.

No. 1451—Collins & Leake vs. John O. Friend, Robinson Yeatman, garnishee. Appeal from the Fourth District Court of New Orleans. Cooley & Phillips for plaintiffs and appellees, and M. C. Dunn for garnishee and appellant.

This is a suit of some interest, involving questions of garnishments, etc. Judgment of the lower court reversed.

BY ASSOCIATE JUSTICE J. G. TALIAFERRO.

No. 1402—Bedelia G. Kellar vs. Mrs. M. L. H. Blanchard. Appeal from the Third District Court of New Orleans—J. P. Horner for plaintiff and appellee; E. Rawle and A. & M. Voorhies for defendant and appellant.

The plaintiff, averring herself to be the assignee of certain claims from Theresa Smelser against the defendant, brings this suit to recover them. She claims $804 73, with interest arising from the contract of lease originally entered into between the defendant and Levi Smelser, the husband of the plaintiff's assignor. She also claims $4369 68, with interests on portions of the amount from different periods, the estimated value of certain buildings erected by Levi Smelser for the defendant on three several lots of ground owned by her and situate on Tchoupitoulas street, in the city of New Orleans. The answer of defendant is a general denial. The plaintiff had judgment in the court below and the defendant presents this appeal.

The facts, more briefly than stated by Judge T., seem to be these: In January, 1853, Smelser leased the lots for a period to expire November 1, 1860, at $1800 per annum, payable monthly; Smelser to build on them one or more houses at his expense, according to such plans and specifications as might be agreed upon; defendant, at the end of the lease, to pay the builder the value of the buildings to be erected, part cash, balance in installments; the buildings to be appraised by experts, or, as the parties termed them, arbitrators, one to be selected by each party and these two to choose an umpire. In May, 1855, Smelser died, but previously had completed his engagement to build—died without descendants, willing part of his estate to his mother and another to his wife, whom he appointed as his executrix—wife qualified and had mortuary proceeding instituted. The estate seems to have been considerably burdened with debts, to have been badly administered, and to have occasioned much litigation.

The court think proper to notice particularly the facts connected with two events growing out of the administration, the sale of the lease and the sale of the interest in the buildings erected by Smelser. The sale of the property of deceased not realizing sufficient to pay debts of the succession, executrix, on 20th September, 1855, applied for sale of lease, and obtained order therefor next day. The 11th of December, same year, Todd & Co., creditors of the estate, on a rule against executrix, obtained orders, December 14, for sale of property of the succession to pay their debt. Beard, auctioneer, as directed in the order, and, after usual advertisement, sold the lease on the 29th December, 1855; defendant purchased it at the price of one dollar. Executrix, November, 1857, brought suit to annul this sale; judgment of nullity was rendered December 20th, 1858, and this, with slight modification, was confirmed on appeal to this (Supreme) Court in April, 1860. (See 15th Annual, page 254).

Defendant went into possession of leased premises under sale of December 29th, 1855, and remained in till lease expired November 1860. As the buildings had increased value of lease, court awarded plaintiff $804 73, being excess in value in favor of the estate over the amount it was bound for to defendant under original contract. On application of Dunham, a creditor of the succession, an order of sale was rendered 27th January, 1857, and under it the only remaining asset, as it seems, the interest in the buildings on defendant's lots was sold September 11th following, and Mrs. Smelser, the executrix, in her individual capacity became the purchaser. It was adjudicated to her at $1600, and retaining in her hands $967 30 she executed a twelve months bond for the balance, Mrs. Kellar, plaintiff, being the surety on her bond. This bond was assigned by the sheriff to Mrs. Kellar, Sept. 26th, 1857, she, as averred in argument, having paid it. To all her rights acquired by the sale, September 11th, 1857, Mrs. Smelser substituted Mrs. Kellar by written act, November 22d, 1858, transferring to her all the interest of the succession in the buildings on defendant's lots and subrogating her "to a certain suit pending against Mrs. Blanchard and husband, No. 13,391 of the Second District Court, and to all the advantages, money, etc., that may be had or be obtained by judgment or proceedings thereupon."

This clause in the act of transfer refers to the suit then pending to annul the sale, by virtue of which defendant had acquired title to the unexpired portion of time the lease had to run. The ground taken by the defense is, that by none of these proceedings did the executrix, in her individual capacity, acquire any title to the rights she pretends to have transferred, and consequently that the plaintiff, as her transferee, stands in the same attitude. It is argued that the proceedings were illegal and null; that the sales under which plaintiff holds were made under writ of *fieri facias*, a proceeding unknown to the law in the sale of succession property; that admitting the estate had rights against the defendant, these rights have not been divested, and therefore, that the estate not being a party to this suit, would not be included by a judgment rendered in favor of the plaintiff against the deffendant, and that the transaction between the executrix and the plaintiff was the transfer of a litigious right, entitling the latter to recover only the amount she paid, if entitled to recover at all.

Upon this statement of the important facts of the case, on both sides, Judge Taliaferro, after an examination of the record, and an elaborate consideration of the questions involved in the interesting controversy, concludes his opinion with the following decree of the court:

"We conclude that with some modification the judgment of the lower court should be maintained. It is therefore ordered, adjudged and decreed, that the judgment of the district court, so far as it decrees the defendant to pay the plaintiff the sum of $804 73, with interest specified, be annulled, avoided and reversed, and that in all other respects it be confirmed, reserving to the estate in question any rights it may have against the defendant growing out of the contract of lease. It is further ordered that defendant and appellant pay the costs in the lower court; the plaintiff and appellee to pay costs of the appeal."

SUNDAY'S DISPATCHES.

FUNERAL OF MR. BOTTS.

RICHMOND, Jan. 10.—Hon. John M. Botts was buried this afternoon from St. James Church. All the State officials and the Grant and Colfax Association were in the procession. A very large crowd of freedmen followed the remains to the cemetery.

EARTHQUAKE IN MEXICO.

SAN FRANCISCO, Jan. 10.—A letter from Colima, Mexico, dated December 21st, reports a severe earthquake. The cathedral and brick buildings were cracked from top to bottom. Several persons were killed by the falling of the National Hotel. The volcano of Colima was active. The cathedral buildings at Mancello, a century old, are destroyed. Twenty persons killed by the falling walls of the American Hotel.

THE EUROPEAN CONFERENCE—THE CRETANS.

PARIS, Jan. 10.—The conference met yesterday and held its first session, which lasted seven hours.

The Greek and Turkish representatives manifested a conciliatory disposition, and a peaceful solution is confidently looked for next session, which occurs Tuesday.

NEW YORK, Jan. 10.—The Post publishes a letter from Dr. Samuel C. Howe, stating that the insurrection in the interior of Crete is in full blast, and urges the Cretan relief committees not to be misled by lying Turkish reports.

BUSTEED'S CASE—WITNESSES BEFORE THE ELECTION FRAUD COMMITTEE.

WASHINGTON, Jan. 10.—The statement that Judge Busteed, of Alabama, had half a million dollars to his credit in the Mobile Bank, is denied. In explanation it is stated that three hundred thousand dollars—proceeds of shipwrecked property—are deposited in the Bank of Mobile to the credit of the district court, which can only be drawn after proper adjudication by the court on the certificate of the clerk, countersigned by the judge.

Judge Busteed is confident that the committee will dismiss charges against him as unfounded and frivolous.

A telegram asserts that the witnesses before the Congressional election fraud committee are notorious English thieves, counterfeiters and burglars. It is rumored that they received fifty dollars each for information.

RESIGNATION OF LIEUT. GOV. GLEASON OF FLORIDA.

TALLAHASSEE, Jan. 10.—The Legislature adjourned Saturday morning until Monday. In the Senate, Lieut. Gov. Gleason, in vacating the presidential chair, called Mechan, colored member, to fill it. Gleason then retired, and sent in his resignation as president of the Senate, which was accepted. The lieutenant governor being a State officer, and by provision of the constitution president of the Senate, the proceeding is deemed irregular and of no value, as his resignation should have gone through the executive department to the Senate, and the question arises as to whether he can resign the functions of that office alone.

The House transacted no business.

FROM HAYTI.

NEW YORK, Jan. 10.—A Port-au-Prince letter reports Salnave in possession of seven towns along the coast, the inhabitants having driven out the rebels. It is thought those successes will hasten the surrender of the whole peninsula to Salnave. The rebels still hold St. Marcs, and it is stated, have received arms and ammunition from Boston.

The government monopoly on coffee was removed Dec. 30th.

FROM HAVANA.

NEW YORK, Jan. 10.—The Herald's Havana special says General Cespedes, the provisional president of the republican government, and Senor Aguilera have proclaimed emancipation. They complain that the people of the Western department have not heeded calls of the revolution and that the Junta at Havana furnishes no money.

It is reported that Col. Benegose had failed to occupy Holguin, and was compelled to return with his wounded to Gibara. Gen. Queseda is said to have landed from Nassau with 80 men and 3000 rifles.

Puerto Principe is still surrounded by small bands of insurgents. In the city prostration and gloom prevail, all the shops being closed and many arrests made.

On the 18th ult. a fight occurred at Casualidad Yeguay between seven hundred insurgents and five hundred Spanish troops. The Spaniards were defeated with considerable loss.

HAVANA, Jan. 9.—A proclamation abolishing the trial of civilians by court martial has been issued.

The abolition of slavery by the rebels is confirmed.

It is expected that Dulce's proclamation will end the revolution.

Jan. 10.—The revolutionary hymn of Spain was sung last night at the Tacon Theatre in the presence of Dulce.

Two battalions have left for Nuervitas.

News from San Domingo states that Baez failed to secure a loan from Europe. This failure to get money will probably result in the downfall of Baez's administration.

A Washington dispatch of the 8th says information has been received that the Texas convention has passed an ordinance giving the right of way to the International Pacific Railroad, from the eastern to the western border of that State, and a reservation of twenty miles on each side of the road—the road to be completed within six years. This road is one of the connecting links of the International line from Cairo to San Blas, on the Pacific Ocean.