

LOTTERIES.

LOUISIANA STATE LOTTERY COMPANY, Incorporated August 17, 1890. CHARLES T. HOWARD, PRESIDENT.

SINGLE NUMBER LOTTERY. CAPITAL PRIZE, \$20,000. CLAS. B. TO BE DRAWN AT NEW ORLEANS, ON SATURDAY, APRIL 24, 1892.

APPROXIMATION PRIZES: 3 approximation prizes of \$25 each for the nine remaining tickets of the same ten of the number drawing the \$20,000 prize are \$1,200.

REAL ESTATE LOTTERY. ONE MILLION OF DOLLARS. WORTH OF REAL ESTATE. LOCATED IN THIS CITY.

To be Drawn by Lottery. The drawing of this Lottery will take place (as soon as the tickets are sold) under the charter of the

LOUISIANA STATE LOTTERY COMPANY. Created by the Legislature of the State in 1891, and which entered in its scheme some of the MOST VALUABLE PROPERTY IN THIS CITY, to-wit:

THE ST. LOUIS HOTEL, now open to the public and doing business. THE FURNITURE OF THE HOTEL. THE OLD CITIZENS' BANK. THE DWELLING STORES AND WAREHOUSES, Nos. 114, 116 and 118 Royal street, adjoining the Hotel.

THE ST. LOUIS HOTEL FARM, BUILDINGS AND IMPROVEMENTS. SQUARES AND PARTS OF SQUARES OF HIGHLY QUALIFIED GROUND.

15 Prizes.....Tickets \$10. For a full and particular description see Circular, which will be sent postpaid to any one desiring it; and all orders for tickets will receive prompt attention by addressing

O. K. HALL, St. Charles Hotel, New Orleans, La. HAVANA LOTTERY. We will pay the HIGHEST PREMIUM for any PRIZE in the HAVANA LOTTERY. BORNIO BROTHERS, No. 77 Gravier street.

UNDERTAKERS-FURNITURE. MEYER, KOTTWITZ & CO. ROBERT MEYER, A. K. KOTTWITZ, HENRI KOTTWITZ. Furniture Dealers, 43 ROYAL STREET, (Between Customhouse and Blenville streets), New Orleans, La.

PHILIP LYNG, UNDERTAKERS, 87 ST. CHARLES STREET. Metallic, Mahogany, Black Walnut and Plain Coffins always on hand. Bodies Embalmed and carefully shipped. Funerals attended to in person, and by proxy, at short notice to obtain a show of public attention.

EDUCATIONAL. MRS. C. H. CALDWELL, TEACHER OF ALL BRANCHES. Through English Education, Modern Languages and Music. VOICE AND INSTRUMENTAL LESSONS IN DRAWING. LANDSCAPE AND PORTRAITURE. Strangers' Hotel, No. 129 Chartres Street, New Orleans.

LOUISIANA STATE SEMINAR, NEAR ALEXANDRIA, LOUISIANA. Founded and Supported by the State of Louisiana. The school opens on September 15th, 1892, and closes January 1st, 1893. Faculty consists of a full corps of instructors in all departments of literature and science usually taught in the best Colleges and Universities.

THE ONLY REAL SOUTHERN TONIC. Containing Nothing but Southern Ingredients. Manufactured by BARNETT & LLOYD, No. 12 New Levee street, and 111 Pailson street.

The New Orleans Crescent.

TUESDAY MORNING, MARCH 30, 1892.

EDITORIAL PARAGRAPHS, ETC.

Virginia has 640,000 acres of oyster beds. Two New York editors are opium eaters. Hector Berlioz, the French composer, is dead. Washburne is reposing in Galena.

Gen. Gillem arrived in Galveston on the 26th. The newly nominated president of Harvard College is only thirty-six. Sickles has been ordered before the retiring board.

The Plaquemines planters have put in a good many Irish potatoes. The Empire Parish says Plaquemines will this year raise a larger crop of rice than ever before.

Lee Hudson is about to do Massapa in Vicksburg. White kid gloves, double-stitched with black, are worn at receptions and the opera.

Cornelius O'Dowd is Charles Lever in disguise. During the last twenty years Lamarine spent 200,000 francs in charity.

The old bell-top hat, it is said, will soon be in vogue again. Mrs. U. S. Grant has been visiting Bishop Simpson in Philadelphia.

A lady resident of Ames, Iowa, repented of her sins in her one hundred and first year, during a recent revival. A woman in Americus, Georgia, has married two brothers and is now betrothed to the third.

The Council Bluffs Eagle says that within a year that city will be the terminus of eight railroads. "Col. Greens of the Boston Post" has slung ink for that paper thirty-four years.

The pope has invited the sovereigns to send ecclesiastics to represent them in the general council of the church at Rome. Ten female physicians were graduated in New York on Tuesday.

The New Orleans Tribune condemns the action of Governor Warmoth in the matter of the State auditor. Thanks to the officers of the steamers Mary, Louise and Josephine, and to Mr. W. M. Evans, for favors.

Geo. Ellis has Harper's Weekly, Moore's Agricultural, Round Table, American Agriculturist and Phony Fellow. We are indebted to our friend Mr. W. N. Conner, who returned to the city yesterday, for late Louisville and Memphis papers.

The upper East Tennessee people propose to get up a great meeting, and have a great speech by ex-President Johnson. What is the difference between a duck with one wing and a duck with two? It is merely a difference of opinion.—[EX.]

Tennyson has again declined an invitation to "come and be a member of those rollicking Rams," the English House of Lords. We witnessed an interesting combat a few days ago between a mink and a cow, which terminated in the mink's death.

One Jovian writes that Nilson is twenty-four, and has dreamy smiles which shed floods of light over her countenance, which is a highly satisfactory description. It is contended that our iron-clads are healthy vessels. That may be, but there have been some very sudden deaths on board of them.—[Cincinnati Commercial.]

A \$20,000 mansion, modeled after a noted European castle, is being built by Mr. Cunningham at Irvington, New York. The cellar is hewn out of the solid rock and the partitions in the building are all of stone.

The Council Bluffs telegrapher came within ten feet of the truth, when he flashed the arrival there of twenty-two wives of Brigham Young. 'Twas only the fair Amelia, the prophet's favorite, and his latest save three.—[Cincinnati Commercial.]

It is claimed by the friends of Gen. Brown, first assistant paymaster general of the army, that the revocation, by Gen. Grant, of ex-President Johnson's retirement of Paymaster General Price is also illegal. In a late conversation ex-President Johnson remarked: "There are two very bad classes of men in the country," and continued, "and they are what might be called rebel-Unionists and Yankee rebels."

The death of ex-Mayor James Harper, of New York, is announced by telegraph. On the 26th he was thrown from his carriage, and his death is probably due to injuries then received. He belonged to the firm of Harper Brothers. Colonel John G. Pressley, Colonel Jas. F. Pressley and Captain Dwight Barr, with their respective families, numbering altogether a company of eighteen, have left South Carolina to reside in California.

In health and strength, as we would certainly in pocket. If we may believe what we hear about Grant's policy in regard to Indians, the Indian bureau will soon look like a tabernacle of William Penn's treaty. At the head of the bureau is to be Col. Parker, an Indian, and many of the agents are to be Quakers, who are already going to Washington to receive instructions before setting out on their journey to feed and pacify the braves of the Western Plains.

Alluding to the lock and chain which Grant has had put on the front door of the White House, the New York World observes: "A policeman, whose beat incidentally contains portions of Mercer and Greene streets in this city, writes to us that the device reminds him of expedients resorted to by houses of a peculiar class in that vicinity." Think of George Washington or Andrew Jackson holding a parley with a noisy, pushing crowd of office seekers at the White House through a chained door slightly open!

The Herald's evening edition, called the Telegram, has invented and published the falsehood that the proprietor of the World has sold it to Governor Seymour and others. On the contrary, we were merely putting the finishing touches to an obituary of James Gordon Bennett, which we will publish in our issue of tomorrow.

A Washington special to the Republican says: Napoleon Underwood, a member of the late Louisiana constitutional convention, has been nominated for assessor of internal revenue for the First District of Louisiana. Chapman, of the Carrollton Radical Standard, is nominated collector for the same district. Hoc. John Ray, State senator from Ouachita, is strongly pressing for the office of postmaster at New Orleans. He is backed by Morey and Senators Harris and Kellogg. All the other Republicans here from Louisiana protest against his appointment.

Mr. George Francis Train's association with the women of the Revolution has developed in him a degree of modesty beautiful to behold. Although he was present at the dinner at Delmonico's, which was opened not long ago, he has not yet spread before him; and when, late in the evening, it was proposed to toast him for the purpose of drawing out a response from the bishop of the Society of the Holy Child, he was not present.

In Memphis, a few days ago, after the rite of confirmation had been administered by Bishop Quintard to a number of white candidates, a negro also presented himself at the altar, where the bishop remarked, "This person failed to receive the rite of confirmation with the others only because of a misunderstanding, for the church recognized the rights of no one to receive benefits at God's altar before another." He then proceeded with the service, and the subject walked down one of the broad aisles, followed by several hundred pairs of eyes.

"3337 07. BAYON ROMAN, March 27, 1892. Six months after date we promise to pay to the order of W. D. Phillips, Esq., of Baton Rouge, thirty-three hundred and fifty-seven dollars and seven cents in full for ninety bales of cotton purchased this day."

The note was indorsed by the bank, and the case is now before us, given in proceedings not authorized by law. The answer admits that the defendant "was a member of the firm of S. M. Hart & Co., which was organized in 1878, and that the defendant was acting as agent of the State of Louisiana in making provision for carrying on the State penitentiary at Baton Rouge, was appointed by Governor Moore agent of the State to conduct the penitentiary, and to perform such acts and duties as might be necessary to keep the penitentiary in operation, and to save the State the expense of their maintenance."

The favorable anticipations that have been indulged in for the past week relative to the Ladies' Fair for the benefit of St. Vincent's Orphan Asylum, were fully realized last evening. At an early hour the crowd began to assemble and the spacious rooms were soon filled with lovely women and their attendant gallants. Ascending the stairway leading to the realms of delight thus set apart for charity, one passed at the threshold hesitating which of the two fairy-like rooms he should first visit. Conspicuous in the center of the room on the right, is the Club's Fountain, kindly sent by the Boston Club, and to the perpetual replenishment of which stand pledged the women, Fair and otherwise, who have gathered around the nectar dispensed from this crystal fount, and the libations poured in the cause of benevolence lack again of sweetness or piquancy, they would derive it from being served by the fair hands of the fair ones who minister to the thirst of the thirsty that thronged that green and flowery bower last evening. To the right and beyond the "Fountain" stands the Hancock Club table, presided over by Mrs. Prague, Miss Eva Watkins and Miss Marie Honey.

The defendant has introduced evidence to show that the firm of S. M. Hart & Co. was established solely for the purpose of acting as agents for the State in managing the business and mechanical department of the penitentiary and has no other legitimate business or social acquaintance of defendant; that the cotton in question was purchased for account and to the order of the State, and was manufactured into cotton goods for account of the State.

As stated by counsel on both sides, the main question in the case is, to whom was the credit given in this transaction? Upon the record, it is clear that the judgment appealed from is reversed, and the case remanded to the district court with directions to accept sufficient surety for the removal of the cause to the next Circuit Court of the United States for the District of Louisiana, and there to proceed no further in the case.

In the case of Delaroderie vs. Hart, (29 Ann., p. 126.) it was held that where the defendant, as plaintiff for the Penitentiary, contracted with the State for the purchase of cotton, and in moving the machinery, and the bill for the price of the lumber was made out against these agents, they could not be held personally liable, the plaintiff having no privity with the defendant in their representative capacity.

We do not perceive that this case differs from that, except in the fact that the note was given, and it cannot be doubted that the original contract was made by the defendant, and that the plaintiff, on the other hand, if the note by which the plaintiff claims that S. M. Hart & Co. bound themselves personally, was given as claimed in the answer, the plaintiff is not bound to return to the district court, and the subsequent decisions could not on this ground alone recover.

The question still recurs, to whom was the credit given? Upon the record as it comes to us, we do not feel justified in affirming the judgment of the district court in favor of defendant. It seems to be one of those cases which justice requires to be remanded in order that the main question, as a question of fact, may be settled by further testimony. C. F. 906.

It is therefore ordered, adjudged and decreed that the judgment of the district court be reversed, and that the cause be remanded for a new trial, the appellee to pay the costs of the appeal.

BY ASSOCIATE JUSTICE HOWE. No. 1453—John W. Barry vs. Wm. S. Pike. Appeal from the Sixth District Court of New Orleans. Cooley & Phillips for appellee; John H. New for appellant.

Supreme Court Decisions.

The following decisions were delivered by this court yesterday, a full bench present:

BY ASSOCIATE JUSTICE HOWE. No. 2074—Chas. Wick vs. H. V. Robin, ex-sheriff and appeal from the Fifth Judicial District Court of East Baton Rouge. S. P. Graves, Foy & Callahan, for appellant; A. S. Heron, Favrot & Lamon, for appellee.

In 1861, the sheriff of the parish of East Baton Rouge, as tax collector, collected certain taxes for the purpose of making therefrom the amount of a State license. Laws of 1855, page 514, section 55. The sale was made on twelve months' credit, and the purchaser gave as security for twelve months' bond, P. K. Roberts, for the purpose of making therefrom the amount of a State license.

On May 12, 1868, certain real estate, the property of P. A. Kugler, one of the sureties, was seized and offered for sale for cash, but not being sold, was sold by the sheriff on credit for the then existing law. (Acts of 1868, page 90.) was sold on twelve months' credit. It was thus offered on the 4th of August, 1866, and P. A. Kugler, the surety and owner, bid it in, and gave a twelve months' bond, with plaintiff as the surety.

In August, 1867, after the maturity of the last bond, a writ of *fi. fa.* was issued on it, and the sheriff seized property of the plaintiff, who thereupon sued out an injunction *pro se* before the district court, and the same was dissolved by the injunction, and plaintiff has appealed.

We find no authority in the law for the second sale on credit and the taking of the second bond. If we concede, on behalf of the plaintiff, that the second sale should have been executed by a sale for cash, C. P. 720 and act of 7th April, 1826, amending the same. The second section of the act of March 2, 1866, in force in August, 1866, if it applies, does not require the sheriff to give notice to have required that upon such sale the property should be appraised and realized in cash its appraised value.

Without expressing, then, any opinion upon the validity of the second sale as an obligation to be enforced *pro se*, we think it clear that it cannot be collected in the summary manner in which the defendants endeavored to proceed. Such summary process, requiring no order of court, and no notice to the defendant, and no execution proceedings upon a mortgage, ought to be considered as *stricti juris*, and permitted only where it is clear that the bond which the obligee acknowledges to have the force of a final judgment is given in pursuance of law, in proceedings authorized by law.

We have been referred by defendants to several cases in which it has been held by this court that the surety on a twelve months' bond cannot, without the assent of the obligee, sue on the bond to enforce its irregularities on the sale. 2 La., 300; 9 R., 185; 12 R., 206; 8 Ann., 542. This rule is well settled, and might be invoked against an attempt to enforce the first bond. But we apprehend that the defendant has no such authority now before us, given in proceedings not authorized by law.

For the reasons given, it is ordered and adjudged that the judgment appealed from be reversed, and that the cause be remanded for a new trial, the appellee to pay the costs of the appeal.

BY ASSOCIATE JUSTICE HOWE. No. 1454—John W. Barry vs. Wm. S. Pike. Appeal from the Sixth District Court of New Orleans. Cooley & Phillips for appellee; John H. New for appellant.

The suit was instituted upon the following note: "3337 07. BAYON ROMAN, March 27, 1892. Six months after date we promise to pay to the order of W. D. Phillips, Esq., of Baton Rouge, thirty-three hundred and fifty-seven dollars and seven cents in full for ninety bales of cotton purchased this day."

The note was indorsed by the bank, and the case is now before us, given in proceedings not authorized by law. The answer admits that the defendant "was a member of the firm of S. M. Hart & Co., which was organized in 1878, and that the defendant was acting as agent of the State of Louisiana in making provision for carrying on the State penitentiary at Baton Rouge, was appointed by Governor Moore agent of the State to conduct the penitentiary, and to perform such acts and duties as might be necessary to keep the penitentiary in operation, and to save the State the expense of their maintenance."

The favorable anticipations that have been indulged in for the past week relative to the Ladies' Fair for the benefit of St. Vincent's Orphan Asylum, were fully realized last evening. At an early hour the crowd began to assemble and the spacious rooms were soon filled with lovely women and their attendant gallants. Ascending the stairway leading to the realms of delight thus set apart for charity, one passed at the threshold hesitating which of the two fairy-like rooms he should first visit. Conspicuous in the center of the room on the right, is the Club's Fountain, kindly sent by the Boston Club, and to the perpetual replenishment of which stand pledged the women, Fair and otherwise, who have gathered around the nectar dispensed from this crystal fount, and the libations poured in the cause of benevolence lack again of sweetness or piquancy, they would derive it from being served by the fair hands of the fair ones who minister to the thirst of the thirsty that thronged that green and flowery bower last evening. To the right and beyond the "Fountain" stands the Hancock Club table, presided over by Mrs. Prague, Miss Eva Watkins and Miss Marie Honey.

The defendant has introduced evidence to show that the firm of S. M. Hart & Co. was established solely for the purpose of acting as agents for the State in managing the business and mechanical department of the penitentiary and has no other legitimate business or social acquaintance of defendant; that the cotton in question was purchased for account and to the order of the State, and was manufactured into cotton goods for account of the State.

As stated by counsel on both sides, the main question in the case is, to whom was the credit given in this transaction? Upon the record, it is clear that the judgment appealed from is reversed, and the case remanded to the district court with directions to accept sufficient surety for the removal of the cause to the next Circuit Court of the United States for the District of Louisiana, and there to proceed no further in the case.

In the case of Delaroderie vs. Hart, (29 Ann., p. 126.) it was held that where the defendant, as plaintiff for the Penitentiary, contracted with the State for the purchase of cotton, and in moving the machinery, and the bill for the price of the lumber was made out against these agents, they could not be held personally liable, the plaintiff having no privity with the defendant in their representative capacity.

Appeal from the Fourth District Court of New Orleans.

The plaintiff seeks to recover the value, at Jackson, of a shipment of sugar and molasses, delivered to the defendants at Hammond Station, on the 25th of April, 1883, to be transported by the latter to Jackson. The shipment of the goods is admitted and the non-delivery at the place is also admitted, and it appears that the right money was paid by plaintiff to defendants at Tangipahoa, a few miles beyond the point of shipment.

The defense is that at or near Tangipahoa station the progress of the merchandise was arrested by the defendants, and that the same, for security from devastation by federal troops, was stopped at said station, and by the impossibility of proceeding further on the road in consequence of military orders, as well as by destruction of the road by the defendants, was then and there at Tangipahoa, the same was destroyed by a military force acting under orders of Col. Dumontell, of the Confederate army, and lost by a fire, by circumstances beyond the power of the plaintiff to prevent, and without any fault on their part.

There was judgment for plaintiff for the sum of \$1734 in gold, or its equivalent in United States treasury notes, with interest thereon from April 25th, 1883, and defendants appealed.

After reviewing the testimony in the case, the court decreed that the judgment of the lower court would be in all respects affirmed, if regular in form and for the proper amount of interest, as it is admitted by plaintiff's counsel that the rights of the plaintiff are not affected by the irregularity of the sum fixed by the court as the value of the property; and as interest is due, not from the time of shipment but from judicial default, (5 Rob. 12) it is ordered and adjudged that the sum of \$1734 in gold, or its equivalent in United States treasury notes, with interest thereon from April 25th, 1883, and defendants appealed.

BY ASSOCIATE JUSTICE W. W. HOWE. No. 1468—J. G. Rosenthal vs. the Adams Express Company. Appeal from the Third District Court. The plaintiff brought suit against the defendant as express forwarder, and caused them to be cited through Alfred Lockwood. The defendant, appearing by their attorneys, brought objection for the removal of the cause for trial into the next Circuit Court of the United States, to be held in the eastern district of Louisiana, offering security in such amount as the court might require, to show that the plaintiff would be satisfied with the removal.

The question which we meet at the threshold of the case is, whether the district court erred in refusing the application for removal. It is argued by plaintiff's counsel that no removal is to be had on the rule, the question cannot now be considered. The current of decision, however, was in a contrary direction. An application for removal is not a plea to the jurisdiction, and when a removal is ordered the plaintiff would be without remedy against such an order unless by appeal. It is otherwise when the court retains jurisdiction; the order is then an interlocutory decree, causing no irreparable injury, and unappealable, but which may be examined on an appeal by defendant from the final judgment, and may then, if erroneous, be corrected. Higgins vs. McChicklen, 6 N. S., 712, 2 A. M., 176; 5 La., 478; 9 R., 166, 419; 2 A., 100; 13 A., 569.

Proceeding then to examine the action of the district court in this matter, we are constrained to the conclusion that it was erroneous. The defendants averring themselves to be a corporation organized by and under the laws of the State of New York, and that all its incorporators are citizens of other States than Louisiana, had a right when used in one of our courts by a citizen of this State to remove the cause into the next Circuit Court of the United States, under the 12th section of the judicial act of 1789, 1 U. S. Stat. 79.

This right is established under the constitutional provisions respecting the judicial power of the United States, and the proceedings of a State court are not a plea to the jurisdiction, and when a removal is ordered the plaintiff would be without remedy against such an order unless by appeal. It is otherwise when the court retains jurisdiction; the order is then an interlocutory decree, causing no irreparable injury, and unappealable, but which may be examined on an appeal by defendant from the final judgment, and may then, if erroneous, be corrected. Higgins vs. McChicklen, 6 N. S., 712, 2 A. M., 176; 5 La., 478; 9 R., 166, 419; 2 A., 100; 13 A., 569.

The fact *de non alienando* contained in plaintiff's mortgage did not render inscription unnecessary. E. K. 166, 419; 2 A., 100; 13 A., 569. The fact *de non alienando* contained in plaintiff's mortgage did not render inscription unnecessary. E. K. 166, 419; 2 A., 100; 13 A., 569.

BY ASSOCIATE JUSTICE J. G. TALLAPRAHO. No. 1145—Eugene Laere vs. Eugene Robereaux & Co. Appeal from the Sixth District Court of New Orleans. A. and M. Voorhes for plaintiff and appellee; J. M. Taylor for defendant and appellant; Miles Taylor for Samuel Moore and Mrs. C. Bullitt and husband, appellees.

The plaintiff seeks to annul the sale made *in execution*, under a writ of fieri facias, of the property of the defendant of New Orleans by the national forces in the spring of 1862, the plaintiff being a registered enemy of the United States, and a resident of the city, who, during the war, was captured in April, 1862, at which time he returned to New Orleans. About six months after his departure from New Orleans, in 1863, the defendants being mortgage creditors of the plaintiff by act of mortgage dated May, 1862, and the subsequent mortgage to Mrs. Shaw null and void.

BY ASSOCIATE JUSTICE J. G. TALLAPRAHO. No. 1469—Jas. A. Douglas vs. S. C. Manning. Appeal from the Sixth District Court of New Orleans. Horner & Benedict, for appellee; McKay & Lusenberger for appellant.

The plaintiff sues on a promissory note for \$700. The defendant in his answer pleads that he has set up a reconventional demand founded upon claims against the plaintiff for a quantity of ballast, and a large lot of implements used by stevedores in their business, which he claims to be the property of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad. He claims that he left in charge of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad.

The verdict of the jury was in favor of the plaintiff for the amount of the note, reflecting all claims on the reconventional demand. The court thereupon rendered judgment in conformity with the prayer of the petitioner and the defendant has appealed.

BY ASSOCIATE JUSTICE HOWE. No. 1469—Jas. A. Douglas vs. S. C. Manning. Appeal from the Sixth District Court of New Orleans. Horner & Benedict, for appellee; McKay & Lusenberger for appellant.

The plaintiff sues on a promissory note for \$700. The defendant in his answer pleads that he has set up a reconventional demand founded upon claims against the plaintiff for a quantity of ballast, and a large lot of implements used by stevedores in their business, which he claims to be the property of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad. He claims that he left in charge of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad.

BY ASSOCIATE JUSTICE WILEY.

No. 3060—Britton & Koons vs. Jas. Jany, Sheriff, et al. Appeal from the Thirteenth Judicial District Court, parish of Concordia. Mayo & Spencer for plaintiff and appellants; H. B. Shaw for defendant and appellee.

This is a contest between mortgage creditors for the proceeds of the sale of a plantation in the parish of Concordia. On 10th May, 1856, A. T. Welch executed the mortgage upon which plaintiffs base their claim. On 5th Feb., 1859, he made another mortgage bearing on the same property in favor of the defendant, Mrs. E. Shaw.

On 17th September, 1867, Mrs. Shaw applied to the recorder to erase the mortgage of plaintiff, because the same had not been reinscribed within ten years. Plaintiff objected to the erasure, making and filing an objection. This objection was dissolved by the district court, and on appeal by plaintiff to this court, the recorder was required to erase plaintiff's mortgage, which he did. In the case of Britton & Koons vs. Jany, Sheriff, et al., reported last year, decided by this court, (30 R. 202.) Mrs. Shaw proceeded to foreclose her mortgage, when plaintiff made a third objection and enjoined the sheriff from applying the proceeds of the sale of the plantation to Mrs. Shaw, under which he was selling the property.

This injunction was dissolved and plaintiffs have appealed. Plaintiff contend that their mortgage has not lost its priority in rank over the defendants'. First, because the reinscription of their mortgage was rendered unnecessary by the inscription of the Shaw mortgage, wherein their note and mortgage are clearly not parties to the mortgage. Second, because full notice of their mortgage, the same being mentioned in the certificate of mortgage embraced in her own mortgage, and she cannot be considered a third party. Third, because their mortgage contains the *actio de non alienando*, which is a condition precedent to the mortgage, and the subsequent mortgage to Mrs. Shaw was made in violation of that fact, and as to them is null and void.

It will not require serious argument to refute the first position of the plaintiff. The inscription of Mrs. Shaw's mortgage embracing the mortgage certificate, wherein the previous mortgage of plaintiffs is mentioned, is not a legal reinscription of plaintiff's mortgage. The mere recital in her mortgage of the date of the mortgage of plaintiffs against the same property is not a legal reinscription.

Art. 333 of the C. C. informs us in what manner mortgages must be reinscribed. It declares that the effect of the inscription ceases if they are not reinscribed within ten years. "In the same manner in which they were first made." Plaintiffs' second position is also untenable. The recital of their mortgage in the certificate embraced in Mrs. Shaw's mortgage, does not give her any further notice than she already had from the registry of their mortgage. The previous inscription of plaintiffs' mortgage gave them a superior rank over the defendant's mortgage, and the subsequent mortgage during the lawful period of its inscription. Having failed to reinscribe their mortgage within ten years plaintiffs lost the right of priority, the effect of the inscription. C. C. 333.

This right is not a condition precedent to the existence of their mortgage, but it resulted alone from the inscription from complying with the registry laws. Plaintiffs cannot invoke the registry laws to establish their priority on the proceeds in the hands of the sheriff resulting from the sale of the property under Mrs. Shaw's mortgage, because they have lost the right of priority which these laws gave them by failing to reinscribe their mortgage within ten years as required by said laws. 6 R. 166, 419; 2 A., 100; 13 A., 569.

The fact *de non alienando* contained in plaintiff's mortgage did not render inscription unnecessary. E. K. 166, 419; 2 A., 100; 13 A., 569. The fact *de non alienando* contained in plaintiff's mortgage did not render inscription unnecessary. E. K. 166, 419; 2 A., 100; 13 A., 569.

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The verdict of the jury was in favor of the plaintiff for the amount of the note, reflecting all claims on the reconventional demand. The court thereupon rendered judgment in conformity with the prayer of the petitioner and the defendant has appealed.

BY ASSOCIATE JUSTICE HOWE. No. 1469—Jas. A. Douglas vs. S. C. Manning. Appeal from the Sixth District Court of New Orleans. Horner & Benedict, for appellee; McKay & Lusenberger for appellant.

The plaintiff sues on a promissory note for \$700. The defendant in his answer pleads that he has set up a reconventional demand founded upon claims against the plaintiff for a quantity of ballast, and a large lot of implements used by stevedores in their business, which he claims to be the property of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad. He claims that he left in charge of the plaintiff in the early part of 1861, when it seems the defendant left the city and took up his residence at Arcola, and other places near the Jackson railroad.

The verdict of the jury was in favor of the plaintiff for the amount of the note, reflecting all claims on the reconventional demand. The court thereupon rendered judgment in conformity with the prayer of the petitioner and the defendant has appealed.