New Orleans Republican.

OFFICIAL JOURNAL OF THE UNITED STATES.

OFFICIAL JOURNAL OF THE CITY OF NEW ORLEANS

CITY COUNCIL--OFFICIAL.

REGULAR MEETING.

CITY HALL, NEW ORLEANS, May 24, 1870.

Mayor Flanders called the Council to order at seven o'clock this evening.

Roll called.

Present: Administrators J. R. West (Improvements), Alfred Shaw (Accounts), L. T. Delassize (Public Buildings), S. C. Emley (Commerce), E. W. Pierce (Police), J. S. Walton (Finance), and H. Bonzano (Assessments).

Mr. Bonzano moved to correct the minutes of the last meeting by making the salary of the fifteen assessors appointed by the third section of the ordinance organizing the Department of Assessments $2400, instead of $2000.

The Secretary explained that in the ordinance as handed to him by the Administrators there were two sets of figures written in pencil; one $2000, and one $2400. He read $2000, and the section was so passed by the Council.

Mr. Walton said his recollection was distinct, that the section, as read and passed, fixed the salaries at $2000.

Mr. West remarked that the motion to correct the minutes came too late; since the ordinance had been certified and promulgated. It was now the law. It was too late to correct the minutes; the only way now open was to amend the ordinance.

The minutes were approved.

The Floating Debt.

The following message and accompanying documents were received from the Mayor:

MAYOR'S OFFICE, New Orleans, May 24, 1870.

ADMINISTRATORS—I have the honor to lay before you a letter addressed by myself to the City Attorney, and his response thereto, in reference to the Floating Debt.

By the light of the City Attorney's opinion I shall immediately consider the lists prepared by the Administrator of Public Accounts. Very respectfully,

BENJ. F. FLANDERS, Mayor.

MAYORALTY OF NEW ORLEANS, City Hall, May 19, 1870.

George S. Lacey, Esq., City Attorney:

SIR—Will you please answer in writing the following questions referring to section forty of the city charter, which that section has suggested:

1. Has the Mayor any discretion or election to approve or not to approve a statement made and attested by the Administrator of Public Accounts?

2. If the Mayor has such discretion or election, would he be justified in withholding his approval of such statement if it should not be a "full" and "correct" one, or if it did not contain *all* the matured obligations of the city at the date of the passage of the act?

3. What would be a "full and correct statement of all the matured obligations of the city?"

4. Would the Mayor be justified in approving a partial statement, one that did not contain all the specified, valid, matured obligations of the city, to wit: "Final judgments, warrants, registered certificates, and unredeemed city notes, used as currency?"

5. Were warrants, or registered certificates, or city notes issued by the City Controller, or by committees of the City Council, without the authority of the Council, and in defiance of the express prohibitions of law "valid, matured obligations of the city," and if not, does this act of the Legislature validate them?

6. And if such warrants, registered certificates, and city notes were not valid city obligations, and, if this act of the Legislature has not validated them, can the Administrator of Public Accounts, by placing them in the "statement" and the Mayor and Administrator of Finance, by "approving," make them valid and secure their payment; and if they can, would it be right, or expedient?

An act of the Legislature "to limit the indebtedness of the city of New Orleans," approved March 15, 1855, provides—

"SECTION 1. That it shall not hereafter be lawful for the Council of the city of New Orleans to authorize any increase of the amount of the present indebtedness of said city.

"SEC. 2. That after the total indebtedness of said city shall have been reduced, under the operations of existing laws, to the amount of twelve millions of dollars, it shall not be lawful for the City Council to authorize any increase of said indebtedness beyond the sum herein specified, whether the said debt be in the form of bonds, loans, contracts or engagements under any ordinance, resolution or other acts.

"SEC. 3. That from and after the passage of this act no warrant or order on the Treasurer of said city for the payment of money shall be issued by the Controller or any other officer of the city, unless there be, at the date of such warrant or order, sufficient funds in the treasury, duly appropriated by the Council, to pay the same."

The act relative "to works of improvements in New Orleans," approved March 15, 1855, provides—

"SECTION 1. That all public works, materials or supplies susceptible of being put under contract, the cost thereof exceeding five hundred dollars, shall be sold by the Controller at public auction, and given to the lowest bidder who shall give adequate security; provided, that the Controller shall have the right, at the time of adjudication, to refuse such bid or bids as are injudicious or against the interest of the city."

"SEC. 3. That the Common Council shall not have the power to release any contractor from a strict compliance with the conditions of his contract, but may grant an extension of time to parties for the completion of their contracts when, in their opinion, it may be just and proper, and for the interest of the city."

The city charter act, approved March 20, 1856, section thirty, requires that "No money shall be paid out of the treasury unless by an ordinance or resolution of the Common Council." And in section thirty-one, "The Treasurer shall pay on the warrant of the Controller and by checks drawn to order, countersigned by said Controller, all claims against the city which the Common Council may authorize, and in *no case* shall the *Treasurer pay any* claim *whatever against* the city *except in* the manner *set forth*." Section one hundred and twenty-four further provides, "That the Common Council shall, once in every twelve months, before fixing and deciding upon the amount of taxes to be assessed for the ensuing year, cause to be made out a detailed statement, exhibiting the various items of liability and expenditure, including the requisite amount for contingent expenses during said year: and shall cause the same to be published for at least ten days in the official journal of the city, and such rate of taxation, not exceeding one dollar and fifty cents on one hundred dollars of valuation, shall thereafter be fixed and assessed as, together with other revenues of the city, may be necessary to meet said estimated liabilities and expenditures. The adoption of said detailed statement shall be considered as the appropriation of the amount therein stated for the purposes therein stated; *and* no money shall be drawn from the city treasury except the same shall have been previously appropriated for the purpose for which it was drawn.

The Supreme Court, as cited in Leovy's Digest, page 128, has decided that "the city can not be held liable under a contract made by the municipal officers in violation of law," and "that the City Surveyor is without authority to make a contract for city work which will be binding on the city without pursuing the formalities of law." 16 Ann., page 132.

These provisions of law prescribe the manner and authority in and by which alone a city obligation can be created. Now, all, or nearly all, the "warrants" and "registered certificates," and many of the "city notes," amounting in the aggregate to about $2,000 000, forming much the greater part of the floating debt of the city, were issued not only without authority, but many of them in direct defiance of the above cited provisions of law. They have brought the city to the verge of bankruptcy. Does the law now require their recognition and payment, and give to the gross violation of law the sanction of legislative approval. Soliciting an early reply to the questions propounded, to guide me in the performance of my official duty in the premises, I have the honor to be, very respectfully, your obedient servant,

BENJ. F. FLANDERS, Mayor.

OFFICE CITY ATTORNEY, New Orleans, May 23, 1870.

Hon. B. F. Flanders, Mayor:

DEAR SIR—In reply to your esteemed favor of the nineteenth instant, I have the honor to say that I have carefully examined section forty of the city charter, to which you have directed my attention, and am of the opinion that, under that section—

1. You have the right to exercise a sound and judicious discretion in the approval or rejection of the statement of the floating debt of the city of New Orleans, made by the Administrator of Public Accounts. I regard your right and duty, under that section, as more than *clerical*.

2. I do not think the Mayor, in the exercise of the discretion accorded to him by section forty of the charter, has the right to withhold his approval until the statement is so final and complete, as to embrace *all* the matured obligations of the city, at the date of the passage of the act referred to by you. If the statement presented, embraces only a portion of the claims entitled to be classified as a part of the floating debt, and such claims are then properly classified in the report or statement of the Administrator of Public Accounts, the statement ought to be approved. Those creditors who have exercised vigilence in presenting their claims for settlement, should not be made to wait the tardy action of other creditors, or the delay of the department in investigating other demands.

3. "A full and correct statement of *all* the matured obligations of the city," is evidently an exhibit of the entire, not of a portion, of the city obligations. Notwithstanding this, a sound construction of section forty of the charter does not require that such full and final statement should be made before the approval of the Mayor can be had. Such interpretation would be technical; and would sacrifice the spirit of the law, and the fitness of things to that which I would respectfully suggest is a mere technicality.

4. The Mayor would be justified in approving partial statements, *full and correct* in themselves, made from time to time.

5. Warrants, registered certificates, or city notes, issued without the authority of the Council, and in defiance of express prohibition of law, cannot be regarded "as valid matured obligations of the city," and I know of no act of the Legislature which has the effect of imparting validity to such pretended liabilities.

6. If the obligations hereinabove last referred to are included in the statement prepared by the Administrator of Public Accounts, and that statement is attested by that officer under oath, and is approved by the Mayor and Administrator of Finance, it is the duty of the Administrator of the Floating Debt to issue certificates for the amount of the debts included in such statement, and to pay the amount of these certificates of indebtedness to the holder of the same, or to his order, out of the bonds or the proceeds thereof, according to the provisions of section forty of the city charter. The Administrator of the Floating Debt is without the right to go behind the statement. Questions of expediency do not properly appertain to this office; but as you have asked for my opinion, I do not hesitate to say that it would not only be inexpedient, but wrong to embrace within the statement prepared by the Administrator of Public Accounts, any warrants, registered certificates, or city notes issued in defiance of express prohibition of law. I do not, however, wish to be understood as assuming the position that equitable obligations on the part of the city, authenticated by evidences of indebtedness, not issued in compliance with the strict formalities of law should be repudiated; on the contrary, each claim ought *promptly* to be laid before the Council for careful investigation, and proper action in the premises. I wish simply to say that obligations of the character referred to should not, by the Administrator of Public Accounts, the Mayor and Administrator of Finance, and without scrutiny on the part of the Council, be classified as a portion of the floating debt of the city.

I have carefully noticed the reference made by you to the several acts of the Legislature, passed in 1855 and 1856, and am familiar with the rulings of the Supreme Court of this State, also referred to by you. Those laws and decisions have doubtless been brought to my attention for the purpose of showing me that many city obligations have been contracted in violation of the express provisions of law, and for the further purpose, doubtless, of laying the foundation of the question which you have propounded to me, and which may be substantially stated as follows:

Do the provisions of the present charter render it *obligatory* upon the city authorities to recognize and provide for the payment of such obligations? I can not construe the charter as being *peremptory*, the contrary, my opinion is, that it is so far from being peremptory that it does not even justify the Administrator of Public Accounts, when preparing his statement of the floating debt, in including in that exhibit obligations not contracted by the sanction and according to the forms of law.

What the *Council* may do, when that class of obligations is presented for its consideration, will of course depend upon circumstance under which the pretended obligation arose, the benefit which the city has derived therefrom, and the power of the Council to recognize an equitable indebtedness, contracted in the absence of a compliance with the provisions of law.

I have the honor to be,
Very respectfully,
GEORGE S. LACEY, City Attorney.

On motion of Mr. Shaw, the message and correspondence were spread upon the minutes.

Department Reports.

Administrator West reported five ordinances and resolutions, and requested that they be laid on the table subject to call.

Agreed to.

Administrator Shaw presented the following report:

DEPARTMENT OF PUBLIC ACCOUNTS, New Orleans, May 24, 1870.

To the Council of the City of New Orleans:

I have appointed, subject to your approval, the following persons, with the monthly salaries set opposite their names:

Deputy Administrator of Public Accounts—John Calhoun, $416 66⅔.

Clerks—E. Gauthier, $150; E. A. Populus, Jacob Leser, John J. Oberlander, Eugene Lusey, G. Liautaud, B. H. Watkins, J. Delavigne, and Victor M. De Maine, each $100; W. B. Stith and J. O'Brien, each $75.

Book-keepers—George Wood, $200; E. Tureaud, $166 66⅔; T. G. Unhorn, $100.

Messenger—J. A. R. François, $50.

Under the ordinance authorizing provisional appointments by the several Administrators, I appointed an adequate number of investigators and clerks for the revision of floating debt claims, examining and reporting upon the affairs of the late cities of Algiers and Jefferson, and making out some forty thousand tax bills under the Metropolitan Police and City Park laws; all which work is progressing or well nigh completed. Among those employed on this force are some so competent and well versed in city affairs that I think their services can be illy spared. Already the city has been saved tens of thousands of dollars by their skill in the detecting of errors in accounts against the corporation. As objects of investigation will continually arise, I propose, in the interest of the city, before the close of their present labors, to recommend some of them for permanent employment.

ALFRED SHAW, Administrator of Public Accounts.

The report was received and adopted, on motion of Mr. Pierce.

Mr. Shaw stated that he had a further report on the condition of affairs in Jefferson parish, which, as it was long, and entered into detail, he would ask that it be printed and referred to the Administrator of Finance.

Received accordingly.

The report was as follows:

The President of the Police Jury of Jefferson parish, Hon. William Mithoff, has laid before me a statement, in memorandum form, of our relations with that parish, which is substantially as follows:

The shell-road on St. Charles street was contracted for by the Police Jury, and completed on the seventeenth of March last, and the portion of its costs the Police Jury is held for is $11,602. By a recent act of the Legislature thirteen-twenty-fifths of the assessed value of the parish is annexed to the city of New Orleans by section –. In said act the city assumes all the debts of the annexed city of Jefferson and parish of Orleans, right bank. In regard to the portion taken from the parish of Jefferson nothing is particularly said. It leaves to Jefferson parish the collection of the tax for 1869; but the liabilities of the parish are $19,051 74, beside the debt incurred for the shell road. Thirteen twenty-fifths of the $19,051 74 are $9906 91; add to this the whole debt incurred for shell road $11,602, and it makes a total of $21 508 91. Of this amount the portion annexed will reimburse $11,659 50, which would leave a balance of $9849 41 due the parish by that part lately annexed to the city. When the tax was laid the action of the Legislature could not be anticipated. By this act more than one-half of the whole parish of Jefferson is annexed to the city of New Orleans, and the expenses of the joint committee will fall now entirely upon the half left, which will largely increase the expenses and seriously embarrass the police jury of Jefferson parish left bank.

They, therefore, consider it only common justice that the city should reimburse at least the entire expense of the shell road, of which improvement the city will reap the sole benefit by the increased value of the property in its neighborhood.

The parish would be entitled to the amount of taxation of the annexed portion till March 16, which will be collected next year.

Accompanying the foregoing memorandum is a statement of debts due by the parish of Jefferson left bank, also furnished by Mr. Mithoff, with notes by him, which I lay before you, and suggest the reference of the whole subject to the Department of Finance.

ALFRED SHAW, Administrator of Public Accounts.

Debts due by the parish of Jefferson, left bank, up to March 16, 1870.

Bonds due May, 1871, given in exchange for warrants		$1,358 67
Two years interest, eight per cent		217 38
Bonds due now three years, issued for a new levee on Grave's place, above Kenner		1,140 00
Interest for three years, ten per cent		342 00
Due for warrants and registered debts prior to 1870		3,430 00
Due for warrants issued since January 1, for current expenses and criminal suits, costs		4 679 59
Due assessment of Metropolitan police		7,884 10
Total		$19,051 74
The annexed portion of the parish is 13-25 of the above amount, is		$9,906 91
Debt contracted and unpaid for the shell road on St. Charles street is:		
Bonds given for Peals' property, to widen street for shell road	$580 00	
One year's interest at eight per cent	46 40	
Claim of H. H. Williams, for superintendance	300 00	
Two thirds of amount due to contractor for shell road completed March 17, 1870, for which bonds are given	7,148 00	
One-third of amount due March 17, 1871, to be retained, contractor is bound to keep the road in good repair till then	3,571 00	11,648 40
Total		$21,553 31

The tax the parish collects from the annexed portion, if all paid for 1869—special tax for shell road is included, $11,659 50, would leave a balance due, $9,895 81.

Now add the amount of tax for 1870, to be collected in 1871, say one-fourth of $11,659 50—$2914 87½. Total, $12,810 68.

(Now take in consideration that Jefferson City paid forty-six per cent, and the annexed portion of the parish thirteen per cent, or in all fifty-nine per cent of the general parish expenses, and you will perceive, at once, that we are still the greatest losers.)

Administrator Delassize presented the following report:

DEPARTMENT OF THE WATER WORKS and Public Buildings, New Orleans, May 24, 1870.

To the Council of the city of New Orleans

I beg leave respectfully to report favorably on the bills of C. Rouyer, for repairing the clocks of First, Second, Fifth and Sixth District Courts, to the amount of ($37) thirty seven dollars.

Respectfully,
L. T. DELASSIZE, Administrator.

On motion of Mr. West the report was received, and payment of the amount was ordered.

Mr. Delassize offered the following:

DEPARTMENT OF THE WATERWORKS AND Public Buildings, New Orleans, May 24, 1870.

To the Council of the City of New Orleans:

I beg leave to state that I have set apart room No. 21 for the use of Assistant Attorney Waples, in compliance with the action of the Council.

Respectfully,
L. T. DELASSIZE, Administrator.

The report was received, and the action of the Administrator confirmed.

Mr. Delassize presented the following:

DEPARTMENT OF THE WATERWORKS and Public Buildings, New Orleans, May 24, 1870.

To the Council of the City of New Orleans:

On the petition of Honorable Eugene McCarthy, Fifth Justice of the Peace, asking permission to occupy the courtroom in the Town Hall, of the late town of Algiers, I have to report adversely, it being customary for justices of the peace, in and for the city of New Orleans, to rent and pay for their own courtrooms, etc. I therefore ask to be discharged from the further consideration of the petition.

Respectfully,
L. T. DELASSIZE, Administrator.

Received and adopted, as was also the following:

DEPARTMENT OF THE WATER WORKS and Public Buildings, New Orleans, May 24, 1870.

To the Council of the city of New Orleans:

On the seventeenth instant, in the presence of his honor the Mayor and the honorable Administrator of Finance, I opened the proposals for repairing, whitewashing, etc., the Insane Asylum, and also for supplying the patients of the Insane Asylum with clothing, etc.

For repairing, whitewashing, etc., the following were the bids:

W. P. Reynolds	$1,600 00
J. Amrein	1,800 00
Emele Sugurs	1,500 00
George McNeil	4,700 00
C. G. Eggelman	2,100 00
D. J. Wasson	4,450 00
J. Burel	1,275 00

The award was made to J. Burel, his bid being the lowest.

For clothing, etc., the following bids were received:

D. Mercier	1,397 25
J. Winchill	2,367 00

The award was made to D. Mercier, his bid being the lowest.

In connection with the awards made, I beg leave to urge the passage of the accompanying resolution.

Respectfully,
L. T. DELASSIZE, Administrator.

On this report, Mr. Delassize offered the following resolution:

Resolved, That the adjudication by the Administrator of Waterworks and Public Buildings of a contract, under resolution No. 81, Administration series, for supplying the patients of the Insane Asylum with clothing unto D. Mercier for the price and sum of thirteen hundred and ninety-seven dollars and twenty-five cents ($1397 25), with J. L. Mercier as security, in the sum of five hundred dollars ($500), be and the same is hereby approved, the security accepted, and the Mayor authorized to sign and execute, on behalf of the city, the necessary contract before the City Notary to carry the same into effect.

Carried.

On the same report, Mr. Delassize presented this further resolution, which was carried:

Resolved, That the adjudication by the Administrator of Waterworks and Public Buildings of a contract, under resolution No. 81, Administration series, for repairing, white-washing, painting with coal tar, etc., the Insane Asylum unto J. Burel, for the price and sum of twelve hundred and seventy-five dollars ($1275), with Emele Darsse, as security, in the sum of five hundred dollars ($500), be and the same is hereby approved, the security accepted, and the Mayor authorized to sign and execute, on behalf of the city, the necessary contract before the City Notary to carry the same into effect.

Mr. Delassize presented the subjoined report (which was received) and resolution:

DEPARTMENT OF THE WATERWORKS AND Public Buildings, New Orleans, May 24, 1870.

To the Council of the city of New Orleans:

In response to the communication of M. Carroll, farmer of Vegetable and Fruit Markets, in relation to the condition of said markets, I beg leave to present the accompanying resolution.

Respectfully,
L. T. DELASSIZE, Administrator.

Resolved, That the Administrator of Waterworks and Public Buildings be authorized to make the necessary repairs to the Vegetable and Fruit Markets, the cost not to exceed $500.

On the motion to adopt the resolution being put, one Administrator voted yea, four nay.

The Mayor declared the resolution lost.

Mr. Pierce presented a resolution as follows:

DEPARTMENT OF POLICE, Administrator's Office, New Orleans, May 21, 1870.

To the City Council of New Orleans:

I have the honor to report that the contract for furnishing fresh beef, in accordance with resolution No. 62—Administration series, has been awarded to Louis Ruch, at four and one-half cents (4½) per pound, with D. A. Dennison and John Stumpf as security; and I respectfully recommend your approval.

E. W. PIERCE, Administrator.

Received and adopted.

The following resolution, submitted by Mr. Pierce, was adopted:

Resolved, That the adjudication by the Administrator of Police of a contract as per resolution No. 62, Administration series, for the furnishing of fresh beef to the City Workhouse and Boys' and Girls' Houses of Refuge, at the price and sum of four and one-half cents (4½) per pound all around, to Mr. Louis Ruch, as principal, with D. A. Dennison and John Stumpf as security, be and the same is hereby approved, the security accepted, and the Mayor authorized to enter into contract in behalf of the city, per notarial act before the city notary, for the performance of said contract.

Mr. West: I rise to a point of order. In deciding that the resolution authorizing repairs to certain market houses was lost—

The Mayor: Will the Administrator put the resolution in writing?

The Council in the meantime proceeded to other business.

Mr. Bonzano submitted the following report:

To the Honorable Council of the city of New Orleans:

Report on the petition of Evaristo Sugaste, residing at No. 9, Philip street, Second District.

DEPARTMENT OF ASSESSMENTS, May 24, 1870.

Petitioner asks exemption from taxes due to the city of New Orleans for the year 1863, because the property assessed was taken possession of by the United States military authorities, and was by them used as a recruiting bureau to enlist soldiers to serve in the United States army. Judgment has been rendered against the petitioner, and an attachment has been issued against his property.

I have carefully considered the application, and the following are my views on the subject:

This department has no power to remit or cancel assessments heretofore made, and it is for the Council to say whether they have the power to set aside a judgment rendered by a judicial tribunal of the State.

On the advent of the United States military authorities, the conqueror, no doubt, had a right to suspend taxation, and to abrogate, if he chose, all laws referring to taxation; but, as he did not exercise that power, the local laws remained in force.

All property must be taxed in accordance with the law. The constitution expressly says that all taxes shall be "uniform," which I take in this case to mean that the property shall be taxed according to law, no matter whether the Confederate or the United States military authorities made it their rendezvous. (I believe they both did.)

The remedy, if any there be, must be, it strikes me, against those who occupied the premises. The property itself must be taxed, that is positive, and it is for the owner to take the chances of getting an occupant who will pay the rent.

By the constitution of the United States, no private property can be taken for public use without compensation being first made therefor; hence the owner in this case has a right to demand compensation from the United States.

But the chief stumbling block against a favorable consideration is a paragraph in the constitution of the State of Louisiana, of 1868, which, after declaring a number of acts and actions to be valid, *annuls and excepts* the particular act by which this property *would have been exempted* from State, parish and *city* taxes for the year 1863. There is consequently a direct prohibition to grant the relief sought to be obtained by the petitioner.

As a supporter of the constitution of Louisiana, as a good citizen of the State, and as an Administrator of the city of New Orleans, I am constrained to report that, in my opinion, the petitioner's request can not be granted.

Very respectfully,
H. BONZANO, Administrator of Assessments.

Mr. Pierce moved that the report be received and approved.

Mr. Shaw moved an amendment that the report be laid over to be printed. There was a good deal of law and a good deal of argument on it and he wanted to read it.

Mr. West seconded Mr. Shaw's amendment, which was carried, and the report was laid over accordingly.

Mr. West said he had now reduced his motion to writing to set aside the decision of the chair, that the resolution introduced by the Administrator of Public Buildings authorizing certain repairs to market houses had been lost. The ruling of the chair appeared to be that unless a majority voted for a resolution it was lost, and by thus ruling great injustice might be done.

The Mayor explained that he had not decided on any such ground. He put the question, and there was one vote in the affirmative and one in the negative, and consequently he decided the motion not carried. He so decided, expecting some Administrator would call for a reconsideration. He wished the resolution passed, but he also wished that administrators would vote when a resolution was put.

The resolution was called up again and passed.

Mr. Bonzano presented the following report and resolution:

DEPARTMENT OF ASSESSMENTS, May 16, 1870.

To the Honorable Council, City of New Orleans:

In reference to the petition of William S. Donnell and Samuel Nelson, asking to be relieved of costs in the suit of the city of New Orleans vs. W. S. Donnell & Co., suit No. 21,581 of the docket of the Second District Court of the Parish of Orleans, I beg to report that the suit was instituted in order to enforce payment of city tax for 1863 on their capital or stock in trade in that year.

It appears by the sworn statement of the members of the firm, William S. Donnell and Samuel Nelson that they had no capital nor stock in trade in the city or State in 1863. The late City Council, through the Finance Committee remitted the judgment obtained against them, but neglected to relieve them also of the payment of the costs.

I deem the appeal just and proper and recommend that the relief asked for be granted. Very respectfully,

H. BONZANO, Administrator Assessments.

Resolved, That Messrs. William S. Donnell & Co., be and are hereby relieved of the payment of the costs of the Clerk and Sheriff in the suit of the city of New Orleans vs. W. S. Donnell & Co., known as suit No. 21,581, docket of the Second District Court parish of Orleans.

Laid over to be printed, on motion of Mr. Shaw.

Reports of City Officers.

The subjoined report and resolution from City Attorney Lacey, were ordered to be printed and laid over:

OFFICE CITY ATTORNEY, New Orleans, May 23, 1870.

To the Honorable the Mayor and Members of the City Council:

GENTLEMEN—I have reason to believe that an order may be obtained, by the consent of parties in interest, referring to arbitration the suit of Daniel Mulligan vs. City of New Orleans, No. 77, Sixth District Court, and John F. Rust vs. The City of New Orleans, No. 23,816, Fourth District Court. Those suits involve the investigation of intricate accounts and claims, and for that reason I am of the opinion that justice to all parties may better be had by an *arbitration*, in preference to a protracted and expensive litigation in the courts.

Your honorable body will select one arbitrator, whom, I respectfully suggest, should be one of the Administrators; the plaintiff another. The other arbitrator or umpire, to be selected in case of disagreement, by the two thus to be chosen.

I have the honor to transmit herewith a resolution in relation to the subject matter of this communication.

Yours, truly,
GEORGE S. LACEY, City Attorney.

Resolved, That the City Attorney be, and he is hereby, authorized to submit to arbitration, the suit of Daniel Mulligan vs the city of New Orleans—No. 77, Sixth District Court, and John F. Rust vs. the city—No. 23,816, Fourth District Court, parish of Orleans; one arbitrator to be named by the Council, one by the plaintiff, and the third arbitrator, or umpire, in case of disagreement, to be chosen by the other two.

Resolved, That the Administrator of —— ——, be, and he is, hereby selected, as arbitrator, on the part of the city.

The same disposition was made of the claim of the *Commercial Bulletin* and the report of the Attorney General, which were as follows:

COMMERCIAL BULLETIN, New Orleans, La., April 8, 1870.

To Benjamin F. Flanders and Board of Administrators, City of New Orleans, Louisiana:

We observe from the proceedings of the Council meeting held last evening, that the New Orleans Republican Printing Company have been chosen City Printer for the term of one year, from the seventh instant. We consider this election of said printing company in violation of the contract we have entered into with the city of New Orleans for the period of one year, dating from the seventh day of July, eighteen hundred and sixty-nine, for the publication of its laws and other advertisements. We shall require the city to comply with its contract, and also hold it responsible for damages resulting from its failure to do so.

Respectfully,
SEYMOUR, JEWELL & CO.

OFFICE CITY ATTORNEY, New Orleans, May 16, 1870.

To the Honorable the Mayor and Members of the Council:

GENTLEMEN—The City Council, having elected the New Orleans Republican Printing Company as city printer, can not well recognize the demand of Messrs. Seymour, Jewell & Company contained in their letter under date the eighth ultimo. No action in reference to that demand is deemed necessary.

I have the honor of returning the communication of Messrs. Seymour, Jewell & Company. Respectfully, etc.,

GEORGE S. LACEY, City Attorney.

The subjoined report was received and spread upon the minutes:

OFFICE CITY ATTORNEY, Room No. 13, City Hall, New Orleans, May 18, 1870.

His Honor the Mayor and Members of the City Council:

GENTLEMEN—Judgment has lately been rendered by his Honor Judge Cooley, of the Sixth District Court, in S. S. Prentiss vs. the city of New Orleans, and A. N. Gardner vs. same; and, in both cases, *adversely* to the city.

The judgment in each case amounts to $100, with interest and costs.

Judge Cooley did not look upon the parties suing as public employes, liable to be discharged at will, nor did he regard the late charter as justifying a termination of their office at the time they were dismissed. He treated them as clerks, hired by the month, and discharged without good cause before the expiration of the month, and for that reason rendered judgment in their favor.

The amount in controversy being less than $500, no appeal will lie to the Supreme Court of the State.

Respectfully, etc.,
GEORGE S. LACEY, City Attorney.

On the question of a claim of David Stickney against the city, the Attorney reported as follows:

The application of M. M. Cohen, in behalf of David Stickney, for compromise of suit now pending in the Seventh District Court simply involves a question of *expediency*, the determination of which properly belongs to the City Council.

Therefore, I respectfully return the papers received from you, for such action as your judgment may suggest.

Respectfully,
GEORGE S. LACEY, City Attorney.

The report was received and laid over.

Assistant Attorney Waples rendered the following reports on the subject of the Jefferson City contracts referred to the Mayor and himself for action:

CITY HALL, New Orleans, May 23, 1870.

Hon. B. F. Flanders, Mayor:

SIR—I have before me the report of the Department of Public Accounts, on the subject of the "Jefferson City contracts," re-referred to your honor and myself. I have nothing to change in the opinion read before the last meeting of the Council, on the contract of Mr. G. McNeil for painting the City Hall. Nor can I see any difference between that and the pretended contracts with John Marks to keep certain streets in repair for five years, at the price of $19,500 *per annum;* with Joseph Kaiser to dig ditches, clean out old ditches, etc.; with H. H. Romain to shell certain streets; with H. T. Trephagen to lay sidewalks; with Frank Pettevain to fill up and inclose market square, etc., and with Messrs. Kaiser and Satchell to build a new levee; for all of these contracts, like the one first mentioned, were entered into by Aldermen Caulkins, Massie and Brown, without any authority to bind the city. Mayor Lowe also signed all the contracts, with the exception of the one last mentioned.

The only semblance of authority which these four officers had was the ordinance to which I referred in my letter on McNeil's contract. That ordinance in terms authorized any three of eight persons named therein to make contracts on subjects embracing almost the whole scope of the legislative power of the Council. It even went further; for it authorized three persons to make contracts of the character of those above indicated without advertisement in the official journal and adjudication to the lowest bidder according to law. **It sought to make the action of the three final, for the ordinance did not contemplate any subsequent ratification by the Council. The ordinance was clearly illegal, being an attempt on the part of the Council to delegate their powers to a small minority of their number, as I suggested in my note to the Administrator of the Department of Waterworks and Public Buildings in reply to his letter relative to McNeil's contract.**

But I learn now, for the first time, that an attempt was made to ratify these agreements. By the report before me, I find that a motion was made with that object; but it appears to have never been adopted. The verbal statement of the Secretary of the late Jefferson City Council that about five days after the motion had been orally made he embodied it into the minutes, at the request of Alderman Caulkins, can not outweigh his more solemn declarations in his journal, if he means to say that the facts are different from his record. If the journal shows that the resolution of ratification was adopted, still the objection remains that the contracts were awarded without advertisement and legal adjudication. All that had been previously done was without legal authority; and I do not think that in a single resolution, covering so many interests and relating to important agreements with so many different persons, the Council could thus bind the corporation.

The resolution authorizing a warrant in favor of G. G. Fisk, appears in the report, but I do not know whether or not this is also referred to us.

I wrote to the Administrator of Public Accounts some days ago, on the subject of J. Benjamin Chandler's contract, exempting his ten squares of ground from taxation for ten years, saying that, in my opinion, the City Council had no right to exempt any one man's property from taxation more than another's. The constitution particularly mentions what property may be exempted from taxation. No other can be; for the affirmation is pregnant with the negative. Taxation shall be equal and uniform. If Mr. Chandler's park, (which, by the terms of the ordinance, is to be *free to all, upon the payment of such admission fee as said Chandler may require*), is to be exempt from the burden of the city government, why should not the theatres, race courses, and every other place of public amusement? Would taxation be "equal and uniform" if the Metarie race course should be taxed, and this "Park," which is to include a race course, be exempt?

As to the provision of the ordinance that the city shall have the privilege of buying at the end of the ten years, it is only necessary to observe that she must then pay whatever the property shall then be appraised to be worth. This is not such an advantage to the city as to constitute a legal consideration for giving up the right to receive licenses and taxes on the property for ten years.

Since writing the opinion above mentioned, I have been informed that the streets named in the ordinance, and which Chandler was authorized to inclose with his ten or twelve squares, have never been opened to public use. If so, it may be true that the ordinance and contract are not subject to the objection that they seek to convert public property to private use; but there the further objection arises, that the city has no right to give away, without consideration, the privileges of opening those streets at any time within the ten years, should the public interests require it—an objection quite as fatal to the ordinance as the former one.

Certainly, the Council of Jefferson City had no more right to give away the privileges of the people composing the corporation than they had to vote away money for any purpose other than such as the law authorized. I consider that all the contracts mentioned in the report, as therein described, are illegal.

Respectfully, yours, etc.,
RUFUS WAPLES, Assistant City Attorney.

The report above alluded to, addressed to Administrator Shaw, was read as follows:

NEW ORLEANS, May 14, 1870.

Honorable Alfred Shaw, Administrator:

SIR—The ordinance of the late city of Jefferson, "To permit J. Benjamin Chandler to open a park of grounds in the city of Jefferson, and for other purposes," and the contract made pursuant thereto with Chandler, are clearly illegal and void, because—

1. The Council had no right to exempt eight squares of ground from taxation for ten years. The eight squares are private property, and the park is not devoted to public use by the terms of either the ordinance or the contract, but is for the exclusive benefit of Chandler and his associates, no one being permitted to enter without "paying such charge for admission to said park as shall be fixed by said Chandler." The Council might as plausibly have exempted half the property of the city from taxation, and put the whole burden of the city government on the other half. Taxation must be equal and uniform.

2. The ordinance authorizes and requires Chandler to enclose the eight squares in one park, including the intervening streets. These streets are public property, and this attempt to convert them to private use is illegal and void.

It is useless to enumerate other grounds, as these are deemed sufficient.

Respectfully, your obedient servant,
RUFUS WAPLES, Assistant City Attorney.

The ordinance upon which the above reports were founded, was as follows:

An ordinance to permit J. Benjamin Chandler to open a park of grounds in the city of Jefferson, and for other purposes.

SECTION 1. Be it ordained by the Common Council of the City of Jefferson, That J. Benjamin Chandler be and is hereby authorized to open a park on grounds bounded by St. Denis, Claiborne, General Taylor and Milan streets, for and during the period of ten years, upon the conditions as follows, to wit: Said Chandler to enclose Marengo and the cross streets from St. Denis street to Claiborne street, and from General Taylor to Milan street.

SEC. 2. Be it further ordained, That said Chandler, at the expiration of ten years, shall pave or cause to be paved, at his expense, Marengo street through the whole extent of said park, in the same manner and with like material as the said Marengo street may be paved with at the expiration of the term of ten years, and further, to make and keep open the ditches on the north side of St. Denis street and from Milan to General Taylor, and on the east side of Milan street from St. Denis to Claiborne.

SEC. 3. Be it further ordained, That the squares or lots embraced in the limits of the above named streets, according to a plan drawn by R. W. Todd, City Surveyor, and deposited in the office of the City Surveyor, be and the same are hereby exempted from taxation by the city of Jefferson during the term of ten years, and that no fee for a license to keep said park shall be exacted during the said ten years.

SEC. 4. Be it further ordained, That said Chandler, in consideration of the above, shall make or cause to be made a park or play ground for the purpose of amusements, such as base ball, cricket, croquet, race course, thespian, aquatic, picnics, concerts, promenades, etc., free to all upon paying such charge for admission to said park as shall be fixed by said Chandler, and further, that said Chandler shall commence making the said park within sixty days from and after the passage of this ordinance.

SEC. 5. Be it further ordained, That the City of Jefferson, through the proper officers, may, at the expiration of the term of ten years, have the privilege of purchasing said park, or as much thereof as may be desirable, at such valuation as may be determined by arbitrators, one to be appointed by the City of Jefferson, one by J. B. Chandler or his assigns, and the third to be a real estate owner, and chosen by the two arbitrators thus appointed.

SEC. 6. Be it further ordained, That the Mayor be and he is hereby authorized to sign and enter into a notarial act to carry out the provisions of this ordinance with J. Benj. Chandler, said contract to be submitted to the Council for its approval and ratification.

Adopted February 24, 1870.
F. C. HESTER, President.
Approved February 28, 1870.
J. F. LOWE, Mayor.
Attest:
J. H. A. ROBERTS, Secretary.

OFFICIAL—PROCEEDINGS OF THE CITY COUNCIL.

CITY OF JEFFERSON, Tuesday Night, March 1, 1870.

The contract with J. Benjamin Chandler being read, the same was adopted as drawn by the notary.

J. H. A. ROBERTS, Secretary.

On motion of Mr. Shaw, the reports of the Assistant Attorney were received, and the reference of the matters therein contained to the Mayor and Assistant City Attorney for action, was continued.

The Mayor stated that notices of the illegality of the various contracts had been prepared to be served upon the contractors.

Committee Reports.

The annexed report was received and ordered to be printed:

The committee, consisting of the Mayor and Administrators West and Emley, to whom was referred the resolution adopted at the last session of the Council, in reference to railroads, report that the representatives of the railroad companies were specially notified to meet the committee in the Mayor's parlor on Saturday last. Pontchartrain Railroad Company alone was represented at the meeting. Another meeting was called by advertisement for this day, and the railroad companies requested to be present by delegates. No representatives of the companies were present at the meeting.

The committee ask for further time.

**B. F. FLANDERS, Mayor.
S. C. EMLEY, Administrator of Commerce.
J. R. WEST, Administrator of Improvements.**

Mr. Delassize presented the following report and enclosure, which were ordered to be printed and laid over:

DEPARTMENT OF THE WATERWORKS and Public Buildings, New Orleans, May 24, 1870.

To the Council of the City of New Orleans:

In relation to my action in reporting in favor of renting the Orleans ball room for the use of the First District Court, I desire to make a statement in view of the recent action of the Grand Jury, and the protest of the officers of the First District Court as to removal of said court.

The question of the proper disposition of the Eighth District Court being under consideration, it was found impossible to locate it in the Court Building, unless some one of the courts were removed therefrom. At first it was suggested to remove the Supreme Court, but there was one universal protest. The next most feasible idea presented was to remove the First District Court to the Orleans Ball Room and to give the Eighth, or one of the other District Courts, the rooms vacated by the First. Before proceeding to make any arrangement carrying out this idea, the Judge of the First District Court was consulted, and he, in a letter to the undersigned, assented to the removal of his court to the Ball Room, provided there was adequate space for the purposes of his court. I immediately satisfied myself that no difficulty was to be apprehended on the score of "adequacy," and requested the City Surveyor to examine the Ball Room, and distribute the space therein in such a manner as best to serve the purposes of the First District Court. I then drew up the report, the presentation of which, with the action taken by the Council, has brought forth the protest of the Grand Jury and of the officers of the First District Court.

On the appearance of the protest above referred to, I caused the City Surveyor to measure the Orleans ball room and the rooms occupied by the First District Court, to ascertain their superficial areas, and the difference found is but slightly in favor of the First District Court:

The area of the First District Court is	33.136
The area of the Orleans ball room is	30.840
Difference	2.290

Notwithstanding the difference found, I am still of opinion that every purpose of the First District Court can be fully served by the removal.

In view of the fact that the First District Court occupied for a long period of time the rooms now used by the Sixth District Court, and no objection was ever made thereto by the Grand Jury or officers of said court, it seems strange that a storm of protestations should be raised when it is proposed to locate the same court in quarters much more commodious than the Sixth District Court, and subject to less objections on other grounds.

With these remarks I submit herewith the letter of Judge Abell, and leave the disposition of the matter in your hands.

Respectfully, L. T. DELASSIZE, Administrator.

DEAR SIR—You may say to Mr. Delassize that personally I have no objection to the removal of the First District Court to the Orleans Ball Room, on Orleans street, provided the public can have room equally capacious and convenient for its accommodation.

The Criminal Court is one of great importance to the people, and I have no right or desire to abridge their privileges or comfort,

Yours respectfully, E. ABELL,
New Orleans, May 3, 1870.

Administrator Walton made, orally, a report reversing a previous report against the land claim of Louis Senechal, and now reporting in its favor. He called up the adoption of the following resolution, which was carried:

Resolved, That the Administrator of Public Accounts warrant on the Administrator of Finance, in favor of Louis Senechal, for the sum of two hundred and seventy seven dollars and sixty-three cents ($277 63) for five per cent commission on interest collected from ground rents paid to the Administrator of Finance, April 22, 1870.

Mr. Walton presented the following report:

DEPARTMENT OF FINANCE, May 24, 1870.

Upon the proposition of the New Orleans Gas Company to settle their taxes by registered bills against the city for gas furnished, I respectfully report, that in regard to the taxes of 1868, the late city government, by ordinance 1138, new series, November 25, 1868, authorized the Controller to make the settlement in that manner, but it was never carried out. In May, 1869, the Finance Committee passed a resolution authorizing the Controller to pay the Gas Company's bills for March and April, 1869, to enable the company to pay their taxes then due, which resolution, as well as the former one passed by the Council, the Controller appears to have treated with contempt.

In this state of affairs it was agreed that the tax bill of 1868 should not be advertised in the list of delinquent taxpayers, and that it should be retained by the Treasurer until a settlement could be made with the Gas Company, which agreement is shown by a letter of the chairman of the late Finance Committee, herewith transmitted, dated May 20, 1870. The bill was not advertised, but notwithstanding these pledges, it was given by the late City Treasurer (Mr. Mount) to the Assistant City Attorney, who, without advertisement or notice of any kind, proceeded to get a judgment against the Gas Company, and now claims commission on the bill.

In view of the above facts, I recommend the adoption of a resolution authorizing the settlement of the Gas Company's taxes for 1868, in the manner proposed by the company.

The resolution accompanying the report was as follows:

Resolved, That the Administrator of Public Accounts be authorized to issue a warrant upon the Administrator of Finance in favor of the New Orleans Gas Light Company for so much of their bills against the city for the months of February and March, 1870, as will pay their tax bill for the year 1868.

The report was received, and the resolution, on a yea and nay vote, was unanimously adopted.

Mr. Emley presented the subjoin[illegible]

In the matter of the Le Breton [illegible] have the honor to report additi[illegible] L. Marque proposes to pay as [illegible] said market from the thirteenth [illegible] ent month to the thirty-first [illegible] inclusive, at the rate of $45[illegible] together with the amount [illegible] the present lessee, leaves th[illegible] of the amount the market [illegible]

I respectfully recommen[illegible] the lessee of said mark[illegible] obligation, and the acce[illegible] bid for the revenues of [illegible]

Respectfull[illegible]

Admin[illegible]

In reply to a [illegible] market was wort[illegible] the market co[illegible] one old woman [illegible]

Mr. Walton [illegible] made a bad [illegible]