1273

NEW ORLEANS REPUBLICAN.

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VOLUME IV—NO. 217. NEW ORLEANS, THURSDAY, DECEMBER 22, 1870. WHOLE NUMBER 1128.

AMUSEMENTS.

ST. CHARLES THEATRE.

Last nights of the talented artiste,
MISS MAGGIE MITCHELL.
BEN DEBAR WILL APPEAR.

Thursday Evening, December 22, 1870,
MARGOT, THE POULTRY DEALER.
Concluding with
PET OF THE PETTICOATS.
PAUL.....MAGGIE MITCHELL
JOS.....BEN DEBAR

TO-MORROW EVENING—Farewell benefit of Miss Maggie Mitchell.
Saturday noon—Grand CHRISTMAS MATINEE; 5000 toy presents given away.
Wanted—Twelve gentlemen for chorus.
Doors open at quarter to seven. Performance commences at a quarter to eight o'clock. de22 1t

NEW OPERA HOUSE.
E. CALABRESI.....MANAGER
Thursday, December 22, 1870.
Second night of Halevy's grand opera, in five acts,
LA REINE DE CHYPRE.
In the first and fourth acts GRAND DIVERTISEMENT.
Saturday, December 24.
Second Matinee, at twelve o'clock, precisely,
LE VOYAGE EN CHINE.
A comic opera, in three acts, by Basin.
The doors will be open for the matinee at eleven o'clock.
Box office open every day from nine A. M. to four o'clock P. M.
Doors open at half-past six, and the performance commences at seven o'clock, precisely.
Tickets can be secured at Gruenewald's music store, No. 129 Canal street. de21 2t

A GRAND CHRISTMAS FESTIVAL
Will be given by Ladies of the Fourth Baptist Church at the
MECHANICS' INSTITUTE,
Bryades street, between Common and Canal, streets, for the benefit of the Church, on
Saturday, December 24, 1870.
In consequence of the change from the Lutheran Hall, all tickets will be received at the Institute. de22 3t

ACADEMY OF MUSIC.
This week will be presented
STARTLING AND SPARKLING SPECIALTIES FOR THE HOLIDAYS, BY FIFTY STAR ARTISTS,
GIVING SELECTED GEMS,
From all known amusements, including Opera, Comedy, Drama, Farce, Burlesque, Extravaganza, Ethiopian Songs, Dances, Gymnastics, Acrobats, Sketches, etc., concluding each entertainment with the
SENSATION OF THE PERIOD,
THE FEMALE MINSTRELS.
FIFTEENTH ANNUAL CHRISTMAS GIFT MATINEE,
As originally established by this Management in 1856.
There will be two Christmas Gift Matinees this year. The first on SATURDAY, December 24, 1870. The second on MONDAY, December 26, 1870, giving away
10,000 ELEGANT GIFTS.
On Monday, December 26.
Will be presented the Great
HOLIDAY SPECIALTIES,
The Nautical Aboriginal Burlesque and Comic Trick Pantomime
ROBIN CRUSOE AND HARLEQUIN MAN FRIDAY. de20

SELECT READINGS
BY MRS. MARIE WILKINS.
At the solicitation of several prominent gentlemen, Mrs. Marie Wilkins, of the late Varieties Company, will give, at Masonic Hall,
Friday Evening, December 23,
A READING FROM MODERN AUTHORS, the programme including, with other selections, Longfellow's "Building of the Ship," Tennyson's "Dora," Hood's "Song of a Shirt," and Bret Harte's "Tennessee's Partner."
Mrs. G. C. Pearce and Messrs. J. A. Arnold and L. A. Seward, the well-known amateur musicians, have kindly volunteered to assist.
The readings will commence at eight o'clock precisely. Tickets can be procured at the hall, Friday evening, or from Mr. E. A. Tyler, 115 Canal street; Messrs. C. H. Zimmermann & Co., 94 Canal street; Mr. Louis Grunewald, 129 Canal street; Mr. Albert Byrich, 120 Canal street; Mr. C. C. Haley, 19 Commercial alley; Messrs. Hyde & Carey, 9 Commercial alley, and the members of the Shakespeare Club. de21 3t

LADIES' FAIR,
IN AID OF THE FUND OF THE
HEBREW EDUCATION SOCIETY,
Open every night during this week (Friday, twenty-third, excepted).
Lunch daily from 10:30 A. M. till 1 P. M. de21 5t

FRENCH BAZAR.
The closing of the exhibition will take place on SATURDAY EVENING, twenty-fourth instant.
The drawing of the Grand Lottery will commence on MONDAY, twenty-sixth instant, at six o'clock P. M., at the St. Louis Hotel. de20 6t

WANTED.

WANTED.—ANY ONE HAVING A FURNISHED house to rent, could find a responsible tenant by addressing House, ladies' box 3186, New Orleans Postoffice. de16 10t

WANTED—A SITUATION AS ENTRY CLERK, to assist in office, to copy or to do other writing, by a gentleman accustomed to such business, and who is willing to be generally useful. Address Ira Hastings, City Postoffice. de15

TEACHERS WANTED.—APPLICATIONS are hereby invited for the position of Principal Teacher at each of the Public Schools in Greenville, Mississippi. Applications to be made on or before the second day of January next; either in person or by letter, and to be accompanied in all cases by certificates of competency and character.
JULIUS JUNKERMANN,
Superintendent of Public Education for Washington County, Mississippi. de4 1m

AGENTS WANTED IN ALL PARTS
OF THE
United States, to sell L. V. Deforest & Co.'s
Aluminum Gold Jewelry.
Agents are making $200 to $300 per week selling the Aluminum Jewelry. The best imitation of gold ever introduced. It has the exact color, which it always retains, and stands the test of the strongest acids. No one can tell it from gold only by weight. The Aluminum Gold being about one-tenth lighter. L. V. Deforest & Co. are selling their goods for one-tenth the price gold jewelry is sold for, and on most liberal terms to agents—one-quarter cash, balance in thirty, sixty and ninety days. We send persons wishing to act as agents a full and complete assortment of goods, consisting of Seals, Bracelets, Lockets, Ladies and Gents' Chains, Pins, Rings, Sleeve Buttons, Studs, etc., for $100—$25 to be paid when the goods are received, the other $75 in thirty, sixty and ninety days. Parties wishing to order goods and act as agents will address
L. V. DEFOREST & CO.,
no8 3m 40 and 42 Broadway, New York.

LOST.

LOST OR MISLAID.—A PROMISSORY NOTE drawn by J. H. Hirsch in favor of Louis Stern & Brothers, dated February 7, 1870, and payable January 4, 1871, for $45.
Promissory note made by Moses Wimberg, in favor of Louis Stern & Brothers, dated June 30, 1870, and payable January 4, 1871, for $200.
Draft drawn by Salomon Lion, in favor of Louis Stern & Brothers, on M. Kaufman, Port Gibson, and accepted by him, dated June 25, 1870, and payable January 4, 1871, for $332 16.
Draft drawn in Boston, September 7, 1870, by Brown & Brother, at four months, on Brown & Brother, Vicksburg, Mississippi, for $126.
The public are cautioned against negotiating for above papers, as payment has been stopped. A liberal reward will be paid for the return of one or all of them to No. 16 Chartres street. de11 10t

FOR RENT.

TO RENT—TWO HANDSOMELY FURNISHED rooms, in a private family, convenient to business. No. 20 Baronne street. de10 10t

FOR RENT—TWO FINE BRICK HOUSES, newly painted and repaired, with all the modern improvements, situated on St. Andrew street, near corner of Magazine street, and No. 211 Prytania street, near corner of Josephine street. Rent low. Possession given immediately. Apply to E. Conery, corner Canal and Delta streets. de21jal

ROOMS TO RENT—ONE OR TWO FINE, large, airy, comfortably Furnished Rooms can be had in a private family, with or without board, where the French and English languages are spoken, and free from the annoyance of children, by applying at No. 321 St. Ann street, corner of Derbigny. The cars pass within a few doors of the house. Terms very moderate. oc30

FOR RENT.—PLEASANT AND COMFORTABLE furnished rooms, without board, to rent at prices varying from ten to fifty dollars per month. Apply at No. 114 St. Charles street, corner of North. no9

FOR SALE.

FOR SALE.—TWO NEW AND BEAUTIFULLY improved places on St. Charles street, in the Sixth District of New Orleans. Prices twenty-two and twenty-five thousand dollars.
SHELBY SEYMOUR,
de16 1w No. 28 Carondelet street.

BAY ST. LOUIS LOTS, ON NICHOLSON avenue, extending from the New Orleans, Mobile and Chattanooga Railroad to the bay, are now for sale on easy terms, and at prices varying from two hundred to one thousand dollars each.
J. J. ALSTON,
dell 1m No. 32 Carondelet street.

TWO-STORY FRAME COTTAGE AND lot of ground thirty by ninety feet, on Constantinople street, between Perrier and Prytania, for sale at the very low price of $3000. One-third cash, $1200 in one year without interest, and the balance in two years, with eight per cent interest.
J. J. ALSTON,
dell 1m. No. 32 Carondelet street.

FOR SALE—ABOUT 10,000 ACRES OF THE best sugar lands, situated in the parishes of Lafourche, St. James and Assumption, between the Mississippi river and Bayou Lafourche, near College Point and Thibodaux, three miles from Morgan's New Orleans and Texas Railroad, and about the same distance from the Chattanooga Railroad.
The owner being anxious to dispose of these lands would sell the whole or only a portion at an extremely low figure.
For further particulars apply to
H. M. ROBINSON,
Real Estate Agent, 22 and 24 Commercial Place.
jy21

FOR SALE OR RENT.—A PLEASANT AND valuable property in Lewisburg, two hours run from New Orleans; cottage house, out-houses, wharf and bath-house and spacious grounds. Will be sold or rented to a good tenant, very cheap. For price and terms apply to George H. Penn, Esq., Attorney-at-Law, No. 53 Exchange Place, room No. 18, second floor. No yellow fever or cholera was ever known to prevail at this place. jy16 tf

FOR SALE.—ONE OF THE FINEST SECTIONS of unimproved Sugar Land in the State, in the parish of Iberville. It is about nine miles from the Mississippi river, and that section of country has never been overflowed. The Chattanooga Railroad, now in rapid process of construction in the immediate vicinity, runs between two and three miles in front of this land, while the Opelousas Railroad passes its rear some six miles distant. It is undoubtedly the most valuable tract of unimproved Sugar Land in the State, and as to soil, timber and locality it is unsurpassed. For particulars, apply to
H. M. ROBINSON,
Real Estate Agent, 24 Commercial Place.
au13 tf

BOARDING.

BOARD AND FURNISHED ROOMS—or rooms alone—on reasonable terms at that elegant residence No. 212 Carondelet street, immediately above Julia street. de3 3m

BOARDING—ALL WHO WISH TO OBTAIN Board with a genteel family, speaking English and French, are referred to the advertisement of N. Galatas, Esq., at No. 183 Rampart street, Second District, a delightful location near the public square. Mr. Galatas refers to several of our best citizens. no30 1m

CO-PARTNERSHIP.

COPARTNERSHIP.—THE UNDERSIGNED have this day entered into copartnership, under the firm of WEED & KELLY, for the transaction of the general Job Printing and Stationery business, at No. 72 Camp street.
WILLIAM A. WEED,
(Successor to Steel & Co.)
WILLIAM J. KELLY.
New Orleans, December 15, 1870. de16 12t

REWARDS.

$3000 REWARD.
The above reward will be paid for the arrest and committal to jail, in this city, of Clayton & Williams, the parties who committed the recent forgeries on the banks here.
CITIZENS' BANK,
CANAL BANK,
BANK OF AMERICA.
New Orleans, December 14, 1870. de21 3t

LOTTERIES.

DRAWING OF THE LOUISIANA
STATE LOTTERY FOR DECEMBER 21, 1870.
CLASS 302.

1	2	3	4	5	6	7	8	9	10	11	12	13	14
59	47	72	3	1	39	11	5	58	54	7	30	66	10

The above drawings are published in all the principal papers, and are drawn in public daily at the rooms of the company.
Information furnished and prizes cashed by
HOWARD, SIMMONS & CO., Contractors.
St. Charles street, corner Union, New Orleans.
Witness our hands at New Orleans, Louisiana, this twenty-first day of December, 1870.
H. PERALTA,
ADAM GIFFEN,
Commissioners.
BEWARE OF ROGUS LOTTERIES. de23

LOUISIANA STATE LOTTERY
COMPANY.
Incorporated August 17, 1868.
CHARLES T. HOWARD.....PRESIDENT.
SINGLE NUMBER LOTTERY.
SPLENDID SCHEME—ONLY 20,000 NUMBERS.
Capital Prize.....$50,000.
CLASS R.
TO BE DRAWN AT NEW ORLEANS ON
Saturday, December 31, 1870.
HOWARD, SIMMONS & CO., Contractors.
SCHEME:
20,000 Numbers—Tickets Only $20.

1 prize of $50,000 is		$50,000
1 prize of 30,000 is		30,000
1 prize of 20,000 is		20,000
1 prize of 10,000 is		10,000
1 prize of 9,000 is		9,000
1 prize of 8,000 is		8,000
1 prize of 7,000 is		7,000
1 prize of 6,000 is		6,000
1 prize of 5,000 is		5,000
1 prize of 4,000 is		4,000
1 prize of 3,000 is		3,000
1 prize of 2,000 is		2,000
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1 prize of 1,000	are	25,000
50 prizes of 500	are	25,000
317 prizes of 200	are	63,400
36 Approximation prizes		12,600
440 prizes, amounting to		$230,400

Whole Tickets, $20; shares in proportion.
Prizes payable without deduction.
Orders to be addressed to
CHARLES T. HOWARD,
Lockbox 692, Postoffice, New Orleans.
Send postoffice money order, or register your letter. fe

Mrs. Jeannette Braun vs. S. Schwartz and Wife—Seventh District Court for the parish of Orleans, No. 1946.
BY VIRTUE OF AN ALIAS WRIT OF FIERI FACias to me directed by the Honorable the Seventh District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, on the premises hereinafter designated, on WEDNESDAY, December 28, 1870, at half past four o'clock P. M.—
THE CONTENTS OF A CLOTHING AND DRY Goods Store, situate at No. 404 Dryades street, near the corner of Melpomene street, in the First District of this city.
Also, the Furniture and movable effects therein contained.
The whole as per inventory, which may be seen in my office.
Seized in the above suit.
Terms—Cash on the spot.
C. S. SAUVINET,
de15 22 28 Sheriff of the Parish of Orleans.

Emanuel Blessey vs. Kearny & Bernos—Eighth District Court for the parish of Orleans, No. 162.
BY VIRTUE OF A WRIT OF FIERI FACIAS TO me directed by the Honorable the Eighth District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, on MONDAY, December 26, 1870, at ten o'clock A. M., at my Warehouse, No. 74 St. Ann street, between Royal and Bourbon streets, in the Second District of this city—
A LOT OF GLASS, as per inventory, which may be seen in my office.
Seized in the above suit.
Terms—cash on the spot.
C. S. SAUVINET,
de14 19 23 Sheriff of the Parish of Orleans.

THE COURTS.

Fourth District Court—The Great Sulphur Mine Case—Opinion of Judge Theard.

Louisiana Petroleum and Coal Oil Company vs. Calcasieu Sulphur and Mining Company of Louisiana.—In this case, the following opinion was delivered yesterday:

In the case of Escoubas et al. against the Petroleum Company, in which the plaintiffs were seeking to recover the possession of their lands situated in the parish of Calcasieu, on the ground that the Petroleum Company had forfeited the lease which they held from the plaintiffs, I decided that the lease was not forfeited, and I decreed further that the rich bed of sulphur, the discovery of which was the real cause of the controversy, was to be equally divided between the land owners and the Petroleum Company.

The parties appealed from my judgment to the Supreme Court, who, having arrived at a different conclusion, and believing the lease to be forfeited, reversed my decision, and ordered that the land owners be put in possession of their valuable lands.

While the appeal was pending, Escoubas & Lowell, the land owners, entered into an agreement with A. Bonneval & Co., by which they leased to the said A. Bonneval & Co. the lands in dispute for a period of ninety-nine years, on certain conditions, fully specified in said agreement.

The Petroleum Company, believing that agreement to contain a sale of the rights in litigation in the suit pending on appeal, immediately applied to the Supreme Court for an order on Escoubas & Lowell to produce the original or a certified copy of the agreement, so that they might have an opportunity to exercise their rights under article 2622 of the Civil Code, namely, to take the place of the purchasers of the litigious rights. But the Supreme Court, on an exception as to the jurisdiction, filed by the counsel of Escoubas & Lowell, very properly declined to entertain original jurisdiction as to a new state of facts for the first time presented in that court.

Thereupon the present suit was instituted before this court, for the purpose of testing the right of the Petroleum Company to stand in the place of the Calcasieu Sulphur and Mining Company of Louisiana, to whom A. Bonneval & Co. have transferred all their rights.

The demand is met by two exceptions, and by an answer pleading the general issue.

The first exception reads as follows:

"*Res judicata:* The rights of Escoubas & Lowell, whose lessees these appearers (the Sulphur Company) are, were finally adjudicated upon by the decree of the Supreme Court of Louisiana, rendered on the twenty-third of May, 1870, in the suit of Escoubas et al. vs. Louisiana Petroleum and Coal Oil Company."

Is that exception well taken? I think not.

The parties are not the same. The issues of the two suits are also different. In the case of Escoubas et al. vs. Petroleum Company, the Supreme Court decided on the rights of Escoubas & Lowell on the contract originally made with Mallet and subsequently tranferred to the Petroleum Company. In the present suit the Petroleum Company are endeavoring to enforce a transfer to them of the rights of Escoubas & Lowell, now adjudged in their favor, and which, it is alleged, they sold to A. Bonneval & Co., pending the litigation. This transaction occurred after judgment in this court and pending the appeal. The appeal from that judgment carried up the issues tried in the district court. The Supreme Court could not decide any other issue without assuming original jurisdiction, which they properly declined to do. It is then clearly obvious that the question presented in this suit is not *res judicata*.

The next exception reads as follows:

"No litigious right was ever acquired by these appearers (the Sulphur Company); but even if it were so, the plaintiffs do not allege that any tender of the price of the pretended purchase of a litigious right was ever made by them to the defendants; and the plaintiffs, after having resisted the claim of Escoubas and al. against them, can not be allowed to avail themselves of the rule laid down in article 2622 of the Civil Code, even if there had been a purchase of a litigious right, as is pretended by the plaintiffs."

This exception is also untenable. Although I readily concede that a tender is indispensable to recovery in an action of this kind, and that the tender should be made, if practicable, before the institution of the suit, still the tender becomes unnecessary where the defendant denies any sale, as in this case, and therefore dispenses with the vain formality of tendering a price. The Sulphur Company having always denied there was any sale, and consequently any price, the Petroleum Company could not make a tender. Besides, the peculiar circumstances of this case are such that I do not see how the Petroleum Company could make a tender until the amount paid by A. Bonneval & Co., to Escoubas et al., could be ascertained and in reality paid. I am satisfied that the tender has been made at the proper time; that is to say, as soon as possible, and the exception must necessarily fail.

It remains now to be seen, if, on the merits, the demand of the Petroleum Company can stand an examination.

The Petroleum Company contend that the contract entered into between Escoubas & Lowell, on the one part, and the Calcasieu Sulphur and Mining Company, on the other part, contains not only a sale of the rights of Escoubas & Lowell, which were in litigation in the original suit between them and the Petroleum Company, but that the act itself is a sale of a portion of the soil, or at least of the usufruct of the lands in dispute.

The task of giving a correct name to the agreement entered into between the land owners and the Sulphur Company is not free from difficulty. The contracting parties have named it a lease, and the plaintiffs in this suit call it a sale. The limits of this opinion, and the short time which I can devote to it, will not permit me to go through an examination of all the points urged by the plaintiffs tending to show that it is a sale; but I will endeavor to ascertain from the features of the act itself its true character.

And first, a wide distinction must be observed in this controversy, between the ninety-nine years lease of the third of March, 1870, and the ten years lease of the fifth of October, 1865. The lease of the third of March, 1870, which is the basis of the charter of the Calcasieu Sulphur and Mining Company, has not been in litigation. In no event, and under no circumstances, can the plaintiffs ask to take the place of the defendants, in that contract.

If any litigious right has been sold pending the previous litigation, to which plaintiffs have any claim, it must be the right to the possession of the lands leased, until the fifth of October, 1875—the termination of the ten years lease. This is all that plaintiffs can possibly claim in this suit.

Upon an examination of the act of third of March, 1870, I am satisfied that it is not an act of sale. Escoubas & Lowell still remain the owners of the lands. It does not appear that they have sold anything; but have entered into an agreement by which they give to the Sulphur Company the right to dig and bore for sulphur and other minerals, for a period of ninety-nine years. This permission, right or license to mine, is given for the consideration of twenty thousand dollars cash and one-half of the capital stock of the Sulphur Company. But it does not seem that Escoubas & Lowell have alienated their rights as owners. They, on the contrary, expressly reserve to themselves the exclusive property and use of all mineral waters on said lands, and also the timber, with right of pasture and right of way, which they may desire. They also declare that a non-fulfillment of the conditions of the agreement entered into, for a period of two years, shall be deemed a forfeiture of the agreement.

These conditions certainly show that they do not sell their lands, and the proposition that the act before me is a sale must be rejected.

But the plaintiffs contend that, even if the act itself is not a sale, the sixth section of the agreement certainly contains a sale of the litigious rights of Escoubas & Lowell.

I think not, as there can not be a sale without a price. There is no price stipulated to be paid for the privileges granted by section sixth of the act and assumed by the Sulphur Company.

It can not be contended that the price was $20,000 in money, and half of the capital stock of the company to be organized, for the deed recites that this was the price and consideration of the right to mine, and not a consideration for any litigious rights represented to have been sold.

Escoubas & Lowell contract as follows: For the sum of twenty thousand dollars in money and one-half of the capital stock of the company they lease to said company the lands for ninety-nine years, the lease to commence immediately; but they do not obligate themselves to put the company in possession of the lands until the fifth day of October, 1875, because of a law suit then pending (the very case of Escoubas et al. vs. the Petroleum Company); which prevents them from giving the Sulphur Company immediate possession of the lands. And they further say: You (the Sulphur Company) shall be entitled to the possession before the fifth day of October, 1875, if you can obtain it by legal proceedings, by compromise or other means, and we authorize you for this purpose to carry on this suit, which stands in your way, at your cost and risk, to final adjudication.

Nothing was paid for that transfer. The stipulation is evidently made for the mutual benefit of both parties, for the sooner the possession was obtained, the sooner dividends on stock held by both might be expected. There is, therefore, no sale of litigious right.

I might stop here, as it is clear that the Petroleum Company has no cause of action. But, for the sake of science, I want to define the act which is the subject matter of this controversy.

It is certainly not a sale. Is it simply a lease? or a lease and a partnership at the same time? I believe that it contains the features of the emphyteosis and of the partnership.

Marcade, in volume 2, page 345, defines as follows the emphytheosis: (I translate from the French.)

"The emphyteosis or emphyteotic lease is a contract by which I grant you, for an annual rent, which is called *emphyteotic canon*, the right to use and enjoy my immovable property as absolute owner, but only for a determined period. There is this difference with the simple usufructuary, that the emphyteot may change the substance of the thing, provided it be to improve it; but he has to pay even for the extraordinary repairs; his right is never extinguished by his death, but only at the expiration of the time agreed upon, generally ninety-nine years.

* * * The State, the communes and public establishments have always consented, and frequently consent temporary emphyteoses. The authors and the jurisprudence recognize to-day, with reason, the validity of these emphyteoses on the part of individuals."

From which it is obvious that the requisites of an emphyteosis are: The payment of a rent; the right to use as owner; the improvement of the property leased; the obligation to pay for all expenses incurred by the property; the duration of the lease fixed at ninety-nine years.

Are not all these essential requisites to be found in the agreement entered into between Escoubas & Lowell and the Sulphur Company? The payment of the rent is not exactly the $20,000 in money, which is a mere bonus, but the annual dividends which are naturally to flow from the digging of the sulphur; the right to use as owner, for all purposes concerning the digging, is clearly given: the improvement of the property is to be found in the obligation taken by the Sulphur Company to develop all the resources of the lands; the obligation to pay the taxes and other expenses is also assumed by the Sulphur Company; and, lastly, the duration of the lease is fixed at ninety-nine years.

Is it sufficiently clear?

The objection urged by the plaintiffs, that the act in question is not a lease, but a sale, because the $20,000 was paid at once, in a lump, instead of a monthly or annual rent, which is one of the essential features of a lease, can not stand, because, as I have already stated, I look upon the payment of this sum as a mere *bonus* granted to the lessors, the real rent being the amount of dividends expected from the enterprise of digging the mines of the lands. Our code (article 2641) expressly provides that the rent may consist in a portion of the fruits yielded by the property leased. Here, the fruits are the income derived from the mines, which the Sulphur Company share with the lessors.

The objection to the length of time which this lease has to run, is equally without any foundation. The plaintiffs contend that, according to the French commentators, a lease for a longer period than nine years is either a sale of the property itself, or, at least, of its usufruct. Even if this principle be true, it has no application to our jurisprudence, because our code does not limit the duration of leases, which, on the contrary, is entirely left to the contracting parties.—C. C., 2674. See also Connell vs. Orphan Asylum and Dr. Campbell, 18 A., 513, in which the Supreme Court of this State held that a fifty years' lease was simply a lease, and did not constitute the lessee an usufructuary.

But the principle relied upon by the plaintiffs is not true. The French authors take great care in defining the obligations and rights of lessees and usufructuaries, and show, conclusively, that they are altogether different. As to the presumption that a lease for more than nine years is, in reality, a sale, Marcade, beyond doubt, shows (volume 6, page 425) that it is only in cases where the intention of the parties does not appear from the clauses of the contract. For, when the parties have clearly granted a lease, and retain the ownership, as in the case before me, for any length of time, it is a lease and nothing else.

The last important objection of the plaintiffs is that the contract entered into between the land owners and the Sulphur Company, conveys a portion of the soil itself, which is in opposition to the spirit of a lease. Marcade answers also that objection (volume 6, page 427), and says that mines may be leased, and that they are subject only to certain rules adopted by the government.

There is no doubt then, at least in my mind, that the act before me is a lease. But the act is two-fold: it is a lease and a partnership.

It is a partnership, because it is a contract into which the land owners put their lands, for a bonus of $20,000, and one-half of the capital stock of the company, and the other partners their money, and by which they agree to form a corporation for the purpose of digging the lands and extracting the sulphur, and sharing the profits. It seems to be self-evident.—C. C., 2762, and Seq.

Under our jurisprudence I now pronounce the act before me a lease and a contract of particular ordinary partnership. But under the jurisprudence governing Pennsylvania, it is simply a license to mine.

For these reasons, let the exceptions of defendants be overruled, and let plaintiffs' demand be rejected, and judgment be for the defendants, with costs.

Eighth District Court.

The matter of the State ex parte Attorney General vs. the Superintendent of Public Education came up yesterday.

The Attorney General suggested that the order of the court, made yesterday, be carried out, inasmuch as there was no opposition on the part of the defendants.

The amount of the school fund in the hands of the State Treasurer, apportioned to the city of New Orleans, was about $198,000.

There being no opposition, Judge Dibble made the following order:

Entry showing rule and answer of all parties named in order—Let the prayer of the State of Louisiana be granted, and let John S. Walton be appointed receiver of the public school moneys now in the treasury of the State for account of the public schools of the city of New Orleans. Let the said receiver be required to give bond to the State of Louisiana in the sum of $25,000, subject to the approval of the Governor of the State, the Attorney General, and the State Superintendent of Education. Upon the approval of the said bond, the said receiver be authorized and directed to receive from the State Treasurer all such money so standing to the account of the public schools of said city, to be by said receiver disbursed for account of said schools, under the supervision of the Attorney General, the State Superintendent of Education, and J. B. Carter, Division Superintendent for the Sixth Division, until the further order of the court, it being understood that this proceeding shall not compromise the litigation for the control of the public schools of New Orleans between the City Board of School Directors and the ward boards of school directors, pending in this, or on appeal in the Supreme Court.

Fifth District Court.

The Mitchell and Ramelsburg Furnishing Company vs. Wood & Summers.—This is a suit growing out of the enterprising operations of a firm which appears to have disappeared, and who, among their other operations, purchased of George Mitchell a large bill of goods, with the understanding that there was to be immediate payment. The impromptu firm not seeing it in that light, or rather by this time having disappeared, a claim is now entered to the effect that the sale was never completed. To the above prayer Judge Leaumont has ordered a writ of sequestration to issue.

Suit for Illegal Arrest.

In the Seventh District Court an action was brought by Clarence G. Marks, charging that he was arrested in October last in the Ninth street market of this city, by a police officer, at the instance of Simon Leopold, and that he was accused of being a thief. The answer of Leopold admitted the arrest, but averred that the plaintiff was allowed to depart as soon as it was discovered that a mistake was committed.

Upon this issue a jury was impaneled and returned a verdict in favor of the plaintiff for one dollar and costs.

Reminiscences.

Manhood's estate is but well developed childhood, to put a familiar phrase in a new dress. Probably in no way is this more aptly proven than in our pleasurable recollections of early pleasures. The adult American who does not recall with kindling eye and quickened pulse his young experiences in the once famous circuses of Stickney, Stone & McCullom, Spalding & Rogers, Robinson, and others whose names were household words, must certainly have a most uncomfortable conscience to lull to sleep at night.

What a wonderful lapse of time there was between succeeding Saturday's afternoon when a circus was in town! How bright the anticipation of beholding the grand entree, the acrobats, the giant tosser of cannon balls, the daring bareback rider, and the rose tinted sylph who was most unexpectedly and not un-Venus-like brought to life in a sea of sawdust, and on a mammoth tulip. Yet the rising generation will have few such agreeable reminiscences. They may not realize the loss, being otherwise provided for; but our grown-up readers can not reflect, without a pang, that one whom they respect is responsible for the innovation.

It was to fill a gap in "holiday times" that Mr. Dave Bidwell conceived and brought forth day performances (which previously had never been heard of outside a circus tent) in the old New Orleans Amphitheatre, and as early as 1853. We all remember Dan Rice, the McAllister magicians, Donnetti's dogs and monkeys, the Keller Tableau Troupe, etc., which all performed there. But they did not pay, and nothing besides the indomitable courage and energy characteristic of Manager Bidwell could ever have made them a success. Strict discipline, however, both on the stage and in the auditorium, finally won for his efforts a recognition with all classes of our citizens, of a most substantial and endearing character.

After Messrs. Spalding & Rogers joined Mr. Bidwell in 1856, the change of hour to midday was made, and these exhibitions christened matinees: and we here note it as a fact, not generally known, that this style of performance now recognized as legitimate even in opera, owes its name and origin to our fellow-citizen, Manager Bidwell.

These matinees were not popularized without cost of thought and money. On Christmas Day, 1856, we record the first of "gift matinees." That day Mr. Bidwell distributed some five hundred toys to ladies and children, and finding he had struck a happy chord, followed by giving away fans, bouquets, confections, etc., but always delighting the young folks with toys on Christmas. Of late years *every visitor* to the Christmas matinee has received a gift, and for this year Mr. Bidwell has a large assortment (some 10,000 selected by himself in Paris) which have been for a week past heaped up and encumbering all the spare space in the Academy building.

As recent experience has shown that all the Academy patrons will be unable to obtain admission to the first, it has been decided to give a "toy matinee" on Saturday next and again on the following Monday, so that there will be few of our young folks (or old ones either, for that matter), who will not be able to preserve a memento of this, the Fifteenth Annual Christmas Toy Gift Matinee at their favorite place of amusement.

GREAT SALE OF DIAMONDS, WATCHES, FURNITURE, ETC., AT THE LOAN AND PLEDGE ASSOCIATION.—This day, at eleven o'clock, at the Loan and Pledge Association, corner of Perdido and St. Charles streets, the Messrs. Montgomery will begin the sale of the largest assortment of elegant diamonds, jewelry, watches, revolvers, pianos, furniture, etc., ever offered at public auction in this city. The sale will be continued from day to day until the whole is disposed of, regardless of the amount loaned. The sale is without limit or reserve.

The New Hampshire Democrats are told by the Concord *Patriot* that success is not impossible for them in the March election, but before they can grasp it there are difficulties to be removed, differences to be harmonized, prejudices to be overcome, and confidence to be inspired. This is a big job for the New Hampshire Democrats.

At Erie, Pennsylvania, a large gas well was struck on the grounds of the Erie Car Company on Saturday, the waste gas of which lights several squares. Erie is now illuminated nightly by waste gas. Over thirty wells have been sunk, and all have struck large veins of gas.

Governor Warmoth yesterday appointed Charles E. Halstead Assistant Tax Collector in Iberville parish.

BY TELEGRAPH.

LATEST NEWS FROM ALL POINTS

LOSS OF STEAMER NICK WALL

Sinking of Steamer Glendale

SCHENCK MINISTER TO ENGLAND

His Successor on Committee

DEBATE ON SAN DOMINGO BILL

INVESTIGATION OF OUR CUSTOMHOUSE

Report of a District Attorney

COTTON SHIP STRUCK BY LIGHTNING

Second Day's Georgia Election

DISSOLUTION OF THE SPANISH CORTES

WASHINGTON.

Schenck's Successor as Chairman of Ways and Means Committee—The Defaulting Paymaster Parker—Purchase of the Chronicle—Schenck Nominated for the Mission to England—Debate on San Domingo—Passage of the Sugar Bill—Vote Postponing Amnesty Bill—Joint Committee to Investigate New Orleans Customhouse—Sumner Against the San Domingo Bill.

WASHINGTON, December 21.—Mr. Hooper will succeed Mr. Schenck as chairman of the Committee on Ways and Means.

Navy Paymaster Forbes Parker has not obeyed the order to appear before a court-martial to answer for $40,000 default. It is thought he has left the country.

J. M. Morris, executive clerk of the Senate, has purchased the *Chronicle*. It will be continued as an administration paper.

Mr. Schenck was nominated to-day for the mission to England.

Mr. Adams was nominated Collector at St. Johns, Florida.

The War Department has no advices of trouble in Georgia.

Senate—A dispute over precedence exhausted the morning hour, when the San Domingo bill came up in order.

Mr. Sherman moved a postponement to take up the sugar bill. The yeas and nays were called.

Mr. Sumner styled the San Domingo resolutions pernicious.

Mr. Sherman's motion was lost, 25 to 29. Mr. Sumner then spoke on San Domingo.

Mr. Morton is speaking to-night. He gave way and the sugar bill passed without an amendment, and goes to the President for his approval.

House—The vote postponing the amnesty bill was 102 to 85.

The Speaker announced that to-morrow's session was for debate only. This delays the San Domingo bill till after the recess

The Committee on Ways and Means have been instructed to consider the expediency of abolishing the compulsory use of a metre by distillers.

The House then adjourned.

The Committee on Retrenchment have appointed a joint committee to investigate the customhouse at New Orleans, consisting of Messrs. Harris, of Louisiana, Schurz, of Missouri, and Walker, of Ohio.

Mr. Sumner made a speech against the San Domingo bill to-day, alluding to President Baez, Cazreau and Fabers as conspirators with General Babcock, who called himself, in the protocol, the aide-de-camp of President Grant. Where was the warrant for such office? It was unknown to the laws. The object of appointing a commissioner to proceed to San Domingo was to commit Congress to annexation. If President Grant merely desired information, he could send a commissioner and pay the expenses out of the secret service fund. In the protocol signed by Baez and Babcock, the latter pledged that the President would so influence Congress as to make annexation a necessity. So the first thing the President did was to send a naval force to San Domingo that President Baez might betray his country.

Mr. Sumner showed that a naval officer had entered the capital of Hayti, and threatened the authorities that if they endeavored to thwart the object of annexation, he would bring his guns to bear, and blow down the town about their ears. The government would not so threaten a stronger power, such as France or England. We could not acquire the island of San Domingo, for one-half belonged to Hayti; and if we annexed San Domingo we, would have to assume a part of the 60,000,000 of francs that Hayti and Dominica owe to France. In every view of the case, we would purchase a bloody lawsuit, and Mr. Sumner appealed to both Mr. Morton and the Vice-President to call on the President, and ask him to retrace his steps, and not follow the example of Presidents Pierce, Buchanan and Johnson.

The Senate still remains in session, discussing the San Domingo resolution. It is probable there will be an all night session.

The boys in blue made a demonstration of welcome to Congress, and made a visit to the President, who, in a short speech, stated that any attempt to remove the Capitol was, in his opinion, unconstitutional.

NEW YORK.

Southerns Steady—Governments Steady—Cotton-Laden Bark Struck by Lightning and Burned at Sea—Rumors of a Ten Million Gold Lock-Up—Gold Dull All Day.

NEW YORK, December 21, Evening.—Money more active at 7 currency to gold. The bulk of the transactions at the close were at 6@7, currency. Exchange, 8⅞@9. Gold, 110⅜@110⅝. Governments steady. Southerns steady; Tennessees, 64¾; new, 64¾; Virginias, 65; new, 63; Louisiana sixes, 70½; new, 64; levee sixes, 71; eights, 85; Alabama e