OFFICIAL JOURNAL OF THE UNITED STATES

OFFICIAL JOURNAL OF NEW ORLEANS

THE COURTS.

Eighth District Court—Decision of Judge Dibble.

State of Louisiana ex rel. Soloman & [illegible], vs. James Graham, State Auditor.—This is an application for the writ of mandamus to compel the State Auditor to issue a warrant upon the State Treasury for the sum of $50,341 46. The claim arises out of an act of the Legislature, No. 32, bearing date March 1, 1871, entitled "an act for the relief of James O. Nixon, late public printer." The bill appropriates the aforesaid amount, and directs the Auditor to warrant for the same. The relators allege that they are the assignees and transferees of Nixon; that they have demanded the warrant, but that the Auditor refuses to issue the same; wherefore these proceedings.

The Auditor in his return urges two reasons in justification of his refusal to issue the warrant: First, That the law aforesaid violates the third amendment to the constitution of the State, in this, that it increases the debt of the State, which is already in excess of the limit of twenty-five millions, imposed by the said amendment. Second, That the Legislature has no constitutional authority to make a gift; that the act under which relators claim simply donates the aforesaid amount of money for private purposes. It was also set up that the forms prescribed by the constitution were not observed in the passage of the bill, but this defense was not insisted upon.

Under our practice it is not necessary to file a formal replication to the return of the respondent, but it is considered as traversed.

The relators insisted in argument that the return of the Auditor is insufficient, because he was called upon to perform a mere ministerial duty, and he cannot justify his refusal by setting up the unconstitutionality of the act imposing that duty upon him. Perhaps it would have been better to have urged this objection in the form of a motion to quash the return, but in granting this prerogative writ the courts are not disposed to insist upon technicalities.

The objection is serious. When the laws impose specific duties upon public officers, in the performance of which they are not to exercise discretion, the courts are disposed to look with disfavor upon an excuse for non-performance based upon the opinion of such an officer, that in his view the law is invalid. Still, I do not think that an invariable rule has been established that such a return is insufficient in all cases; especially it seems that the Auditor of Public Accounts can urge, in a case like this, that the constitution has been violated. He is the book-keeper of the State; he is more, he is its business manager. In his office are kept the accounts of its debts and credits. The nature of his office, which is of so great importance that it was established by the constitution, imposes upon him the duty of protecting the State from fraud. It is true that he is obliged to audit all claims against the State not required to be audited by some other officer, but, of course, legal claims are implied.

But if any difficulty is presented in this objection, it is obviated by the fact that the State of Louisiana, in her sovereign capacity, through the Attorney General, has intervened and joins with the respondent in urging the unconstitutionality of the act aforesaid. To this intervention the relators have also excepted, in this instance, formally and in writing. The exception was overruled. Whether an intervention can be filed in such a case will here be presented directly to the Supreme Court. The relators urge that the State ought not to be permitted to intervene, because the writ issues in the name of the State; but this is a technical formality. Indeed, all processes issue in the name of the State, and yet she is not prevented from asserting her rights in the courts. But it is insisted that the State is estopped from urging the unconstitutionality of its own act; of a law binding upon all of the officers of the government.

This argument proceeds upon the assumption that the sovereignty of the State is vested in the Legislature. Such is not the fact. The State, as a juridical being, exists separate from the departments of the government. The State is not bound by either department when acting outside of the constitutional sphere assigned to it. It is the duty of each department to resist the unconstitutional acts of the others. If the executive should presume to pass judgment upon a citizen, and to execute it, he would be brought before the high court established by the constitution for his trial. If the Legislature enacts a law without constitutional authority it is the duty and the prerogative of the courts so to declare, when a case is presented to them. If a court presumes to act beyond its judicial sphere the judge may be impeached and condemned or ignominiously dismissed from his office without impeachment.

In a case like this the Attorney General appears specially as the agent of the executive branch of the government, to see that the laws are executed. But the constitution is a law, enacted by the people—the paramount law. The officers of the government must see that this organic law is first enforced.

I therefore conclude that the objection to the return made by the Auditor, and the exception to the intervention of the State, based upon the assertion that the validity of the act aforesaid can not thus be inquired into, are untenable.

I proceed, then, to consider the case, with view to the two important questions of constitutional law presented. First—Does the act No. 32, aforesaid, violate the third amendment to the constitution of the State? Second—Did the Legislature otherwise exceed its constitutional power in the enactment of the said law?

1. During the first three sessions of the Legislature, under the present constitution, the debt of the State was rapidly and greatly increased. Bonds were issued to rebuild the levees which had been neglected or swept away during the war; bonds were issued to aid works of internal improvement; bonds were issued to fund the floating debt, until reflecting men began to fear that the burden of taxation necessary to meet the interest would become unbearable. To check the apprehended evil an amendment to the constitution was submitted to the people with the hope of giving confidence in financial circles and enhancing the value of the State securities. The amendment was almost unanimously adopted at the general election in 1870. It is in the following language:

"That prior to the first day of January, 1890, the debt of the State shall not be so increased as to exceed twenty-five millions of dollars."

Since this case was submitted, counsel for relators handed me a supplemental brief, calling attention to what, it is said, is an informality in the passage of the act, submitting this amendment. It is too late to urge the point here, and if it was before the court the theory I have adopted would render it unnecessary to pass upon its effect.

In considering the point now under discussion it is first necessary to ascertain whether the appropriation made by the act No. 32, aforesaid, increases the "debt of the State," within the meaning of the amendment to the constitution above cited.

In the argument and determination of constitutional questions it may be hard, but it is necessary, to rise above the impulses of the hour. It will not do for courts to give an interpretation in order to meet the exigencies of the case. Here it is urged with force and eloquence that the debt has reached a limit which can not be exceeded without ruin to the people. The court is, therefore, asked to declare that the Legislature has no power to make further appropriations, except for certain purposes.

The same rules which are applied in the construction of statutes are resorted to in the interpretation of constitutional provisions.

Considering this amendment in the light of that rule which requires you to ascertain the intention of the lawmaker, I do not think that it can be considered as limiting the power of the Legislature in making appropriations for the purposes of the government. Such appropriations do not, in my opinion, increase the debt, in contemplation of the third amendment. The annual revenues of the State are supposed to be sufficient to meet the expenditures, and, in speaking of the State debt, we do but have reference to such funding obligations as are [illegible], not the floating debt, the obligations expected to be met by the current receipts. I have no doubt that such was the intention of every man who voted for the amendment, either in the Legislature or at the polls.

With this view, it becomes unnecessary to further examine the question of the constitutional limitation or present extent of the State debt.

2. I now proceed to the consideration of the second question presented in this case. That question is involved in the proposition of counsel for respondent and for the State, who insist that the act for the relief of J. O. Nixon makes a pure and simple donation to him; that at the time it was passed the State did not owe him a dollar, and that the Legislature has no constitutional power to "make donations to individuals for private purposes."

One who studies the judicial history of the United States will be struck with the fact that the courts have always been extremely unwilling to condemn or even criticise the acts of the executive and legislative departments. Judges have understood that the existence of our system of government depends upon the maintenance of the equality and independence of the co-ordinate branches. Perhaps, too, they have fully appreciated the fact that unless they were willing so to accord the entire independence of the other branches, that they would be powerless to perform the duties imposed upon them by the constitution. While the judiciary department, in purview of the constitution, is the equal of the others, still it is the weakest; it is, indeed, powerless. And yet, to the glory of our country, it can be said, that her judges have seldom flinched from their duty of sustaining and defending the rights of the citizen when assailed. I do not loose sight of these views.

Upon my mind there is not the shadow of a doubt that the act No. 32, aforesaid, is simply a donation of $50,341 46 to James O. Nixon. In arriving at this conclusion, I do not go beyond the face of the law. Aside from the clap-trap contained in the preamble, the bill declares that Nixon, who was once public printer, and who was paid for his work by checks upon the treasury, shall now receive the aforesaid amount of money to compensate him for losses sustained by him in selling his warrants at a discount. Here the Legislature renders a judgment against the people of the State for fifty thousand dollars, and orders its execution, upon a claim, which would be summarily dismissed by any court in the civilized world. The State has paid these warrants in full. The money has been collected for that purpose by taxation. Nixon was paid in full, as the preamble in this bill states, for he who accepts notes and sells them discharges the debt. 5 Johnson, 73; 1 Cowan, 303; 5 Barbour, 408.

An individual can have no superior claim upon a contract with the State than against an individual. 3 Selden, —; 15 Peters, 377.

We are now brought to the consideration of the important proposition involved in this case: Has the Legislature the constitutional power to appropriate money for private purposes, which has been raised by taxation? The examination of the question will necessarily involve the determination of the extent of the constitutional authority of the judiciary to pass upon such an issue.

The nature of American constitutional government has been so often and so ably discussed by the learned judges and distinguished publicists of our land, that there remains little to be said. From these reports and writings we ascertain that certain principles and rules have been definitely and indisputably established.

Among our early judicial writers the constitution was often spoken of as an expression of the social compact, which was supposed by the French philosophers of the eighteenth century to be the basis of government. The proposition was even then discussed whether the judiciary could declare an act void because it violated "the fundamental principles of right and justice inherent in the nature and spirit of the social compact." "It may be well doubted," says Chief Justice Marshall in Fletcher vs. Peck, "whether the nature of society and of government does not prescribe some limits to the legislative power." Perhaps in this day we have a more practical and more correct understanding of the nature of government than was entertained by the earlier writers, who were much under the influence of the abstract ideas which actuated the French revolutionists. We now consider constitutional government as an outgrowth of modern civilization; as the defined but still expanding line mark of nationality; as the original charter of the people's liberty, with the amendments not yet completed. But if at first, in the desire to protect national life and personal liberty, there was a struggle to find some limitation upon the authority of government in the nature of the social relations, so to-day it is declared that our notions of modern liberty preclude the idea that government can exist for any other purpose than the welfare of the public; that the power delegated to the government can be used for any private advantage.

When the colonies severed their connection with England, they became possessed of the full powers of the British Parliament. These powers were supreme and unlimited. Without pausing to consider the history of the formation of the American governments, it is enough to notice that the people established the dual system, made up of the then existing governments of the new States and the federal or national government. "The government of the United States is one of enumerated powers, the national constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the national government assumes to possess. In this respect it differs from the constitutions of the several States." Cooly, p. 9. On the other hand, all of the sovereign powers which are inherent in the people and which were not delegated to the government of the United States, are vested in the State governments. In Great Britain, Parliament is vested with the law-making or legislative power, without any restriction or limitation. It has been said that this claim to omnipotence rests upon the fact that Parliament is unfettered and unrestricted by a written constitution expressive of the will of its constituents; that it stands in the place of the people, and speaks the language of absolute sovereignty. Smith on constitutional construction, Sec. 293. This absolute power of Parliament has been questioned. Lord Coke declared that the common law doth control the acts of Parliament, and adjudges them void when against common right and reason. 8 Coke, 118. This view was commended by Lord Chief Justice Holt. 12 Modern R. 687. So Lord Chief Justice Hobart insisted that a statute made against natural equity, as to make a man a judge in his own case, was void. This, however, is not the settled rule at common law. The weight of opinion is that an act of Parliament can not be questioned in the courts; that it imports absolute verity and is the "exercise of the highest authority that the kingdom acknowledges upon earth." Still the bold expressions of the great jurists named, indicates that in England and long ago there were men who could apprehend the fact that the evolution of Anglo-Saxon liberty was producing a civilization whose corner-stone should be that governments only exist for the benefit of all the people.

In the system of representative government which has been developed in our own country, the legislative, executive and judicial powers are organic and co-ordinate. Neither is absolute, nor are they all. This is the political life of the age, whose history is written in constitutional enactments, which have been declared from time to time.

The legislative power is divided up between the Congress of the United States and the legislatures of the several States. Congress exercises legislative power only so far as authotity has been delegated in the national constitution. "The federal government can do nothing but what is authorized expressly or by clear implication." He who maintains the validity of a law of Congress must show the authority to enact it. It is not necessary here to notice these powers. It may not be improper, however, to say that, in consonance with the idea that constitutions grow, the student will observe the expansion of the legislative and judicial authority under the national government. Whatever power is necessary to protect the citizens of the republic, or to aid in developing the resources of the country, is cheerfully granted by the people.

The residuum of the law-making power is reserved to and vested in the legislatures of the several States. This authority is fundamental, and is not unlike that vested in Parliament. True, the powers of the Legislature do not extend to the exercise of the executive or judicial authority; true, the federal constitution prohibits expressly the exercise of certain powers and, by implication, others; true, that the constitution of every State in the Union contains numerous specific restrictions and limitations expressive of the great principles of the magna charta and of modern liberty, still, as Mr. Chief Justice Black said in the celebrated case of Sharpless vs. Philadelphia: "Beyond this there lies a vast field of power granted to the Legislature by the general words of the constitution, and not reserved, prohibited or given away to others. Of this field the General Assembly is entitled to full and uncontrolled possession. Their use of it can be limited only by their own discretion. The reservation of some powers does not imply a restriction on the exercise of others which are not reserved. On the contrary, it is a universal rule of construction, founded in the clearest reason, that general words in any instrument or statute are strengthened by exceptions, and weakened by enumeration. To me it is as plain that the General Assembly may exercise all powers which are properly legislative, and which are not taken away by our own, or by the federal constitution, as it is that the people have all the rights which are expressly reserved." 21 Pa., 168.

This rule has been often declared by our own Supreme Court. In the case of the State vs. Volkman, the court said: "The theory of our form of government is that the legislature in its sphere, is supreme in all respects, save when restricted by the constitution of the State or of the United States, and may do anything not prohibited by such authority." 20 An. 585. These words were quoted with approval by the court in the case of the State vs. Fagan, 22 An. 545.

But when is the legislature within "its sphere" and who is to determine? This is the problem.

It is a fact which the historian of constitutional government will note that the men who have been celebrated as jurists in England and America, have been unwilling to admit that the legislative power has no limitation in its own nature and in the nature of government. We have seen what Lords Coke, Hobart and Holt declared even of the power of parliament, that parliament to which the king and his ministers are subservient; even where the House of Lords dare not refuse to pass a law insisted upon by the Commons. We have seen how Chief Justice Marshale "doubted whether the nature of socoity and of government does not prescribe some limits to the legislative power." These "doubts" run through all of the early decisions. In the case of Calder vs. Bull, 3 Dallas, 386, Mr. Justice Chase, while admitting the full and unrestricted powers of the State Legislatures within their spheres, said:

"The people of the United States erected their constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty, and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature and ends of legislative power will limit the exercise of it. * * An act of the Legislature (for I can not call it a law) contrary to the first great principles of the social compact, can not be considered a rightful exercise of legislative authority. * * * The genius, the nature and the spirit of our State governments amount to a prohibition of such acts of legislation."

Such expressions might be quoted from numerous other cases. Mr. Smith, in his work on statutory and constitutional construction, after considering the subject, remarks that "the weight of authority seems to preponderate the scale in favor of the doctrine that there are restrictions upon the legislative power, growing out of the nature of the civil contract and the natural rights of men, independent of any written constitutional restrictions and certain limits beyond which that power cannot be lawfully called into exercise," § 148.

Other authors and judges have expressed their opinions in a general way, but have held that the courts have no authority to interpose to check the Legislature. Yet it will be found that when the decision or the article has been prepared, in full view of the whole subject, that a certain limit is "hinted at," as our Supreme Court remarked, at which it would become the duty of the judiciary to interfere. In the recent able work of Mr. Justice Cooley on constitutional limitations he says, in considering the subject of his book, that there are other limitations upon legislative authority than those prescribed in the constitution, springing "from the very nature of free government." Among these restrictions he remarks the inhibition to raise taxes or appropriate the public money except for public purposes. These, however, are matters of legislative wisdom, discretion and conscience. This discretion of the Legislature can not be controled by the courts, "except, perhaps, where its action is clearly evasive, and where, under pretence of lawful authority, it has assumed to exercise one that is unlawful."

In the Supreme Court of our own State, in the case of Oakey vs. Mayor, et al., 1 Louisiana, 11, Judge Porter, in sustaining the constitutionality of an ordinance of the city of New Orleans laying a tax, remarked: "Because a law might be passed plundering a citizen under the pretense of raising a revenue, and therefore void, it does not follow that all inequality in taxation draws with it the same consequence. And again he remarks: "It is not necessary for us to say in this case whether there are not in the constitution of every free country certain fundamental principles under which the citizen can find shelter and protection in extreme cases. We will think of that when a case arises which requires us to do so." So in the celebrated drainage tax cases reported in the 11 An., Judges Spofford and Ogden admitted that perhaps a court might arrest legislative action, although not directly or impliedly unconstitutional, in a case of flagrant wrong.

Thus we find that the way has been prepared by far-seeing jurists, for the decisions which public sentiment indicates will inevitably be rendered throughout the land. But there are cases intimately allied in principle with this, in which the subject has been more fully discussed. In the leading case of Sharpless vs. Mayor of Philadelphia above referred to, Chief Justice Black was the organ of the court in rendering the opinion sustaining the constitutionality of an act authorizing the city of Philadelphia to subscribe to the stock of a certain railroad corporation. The law was contested, among other reasons, because it was said to impose the burden of taxation for a purpose not warranted by the constitution. Judge Black considered the nature of the taxing power, and quoted Chief Justice Marshall, in the case of McCulleck vs. Maryland, 4 Wheaton, 428, who declared that there was no limit to the power of taxation. Judge Black, however, uses the following significant language:

"But I do not mean to assert that every act that the Legislature may call a tax law is constitutional. The whole of a public burden cannot be thrown on a single individual, under pretence of taxing him. * * These things are not excepted from the powers of the Legislature, because they did not pass to the Assembly by the general grant of legislative power. A prohibition was not necessary. An act of the Assembly, commanding or authorizing them to be done, would not be a law."

Again he remarks, in the same case: "I am of the opinion of the Supreme Court of Kentucky (9 B. Monroe, 345), that a tax law must be considered valid, unless it be for a purpose, in which the community taxed has palpably no interest; where it is apparent that a burden is imposed for the benefit of others, and where it would be so pronounced at the first blush.

Neither has the legislature any constitutional right to create a public debt or to lay a tax, or to authorize any municipal corporations to do it, in order to raise funds for a mere private purpose. No such authority passed to the assembly by the general grant of legislative power. This would not be legislation. Taxation is a mode of raising revenue for public purposes. When it is prostituted to objects in no way connected with the public interests or welfare, it ceases to be taxation and becomes plunder."

There are some cases, decided since the war, to which my attention has been called. They arose under acts of the Legislature authorizing a tax to be collected in certain towns, for the reimbursement of money paid to obtain recruits for the war. The tax was in each case sustained, but upon the distinctly expressed opinion that the imposition was for a public purpose. If it had been otherwise the laws would have been void. Tyson et al vs. School Directors, etc., 51 Pennsylvania, 9. In this case the court remarked that a law imposing a tax for a private purpose would much more resemble an imperial rescript than constitutional legislation. Booth vs. Town of Woodbury, 32, Connecticut, 118. Freeland vs. Hastings, 10, Allen (Massachusetts), 570. In this case the doctrine was clearly announced that the Legislature has no power to impose a tax which would inure to the exclusive benefit of particular individuals. "It is hardly necessary to say that a statute designed to accomplish such purposes would be against common right, and would transcend the authority conferred on the Legislature by the constitution."

So Mr. Justice Cooley, after reviewing the nature of the taxing power, after conceding its far reaching extent, and after finding that the only limitation beyond the express restrictions of the constitution is that the levy must be for a *public* purpose, remarks: "There are cases where it is entirely possible for the Legislature so clearly to exceed the bounds of due authority that we can not doubt the right of the courts to interfere to check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. An unlimited power to make any and everything lawful which the Legislature might see fit to call taxation would be, when plainly stated, an unlimited power to plunder the citizen." Constitutional Limitations, p. 487.

So, again, he says: "When, therefore, the Legislature directs the levy of a tax for a purpose not public, and which can not be properly made a public burden, * * we must conclude that they are exercising an authority not conferred in the general grant of legislative power, and which is, therefore, unconstitutional."

These principles were clearly announced by Judge Cooley, as the organ of the Supreme Court of Michigan, in the case of the People ex rel. the Detroit and Howell Railroad Company vs. the Township Board of Salem, recently decided; American Law Review, October, 1870, p 126; also by Chief Justice Dillon, of the Supreme Court of Iowa, in the case of Hanson vs. Vernon, 1869, 1 American Reports, 215; and subsequently by Judge Dillon in 1871, from the bench of the Circuit Court of the United States, district of Iowa; Chicago Law Journal, January 28, 1871. These decisions have been severely criticised because they also determined that acts authorizing municipal aid to railroads involved taxation for private purposes.

Another important case was decided by the Supreme Court of Wisconsin in 1869. The Legislature authorized the town of Jefferson to raise a tax for a private educational institution. It was contested. Chief Justice Dixon said:

"It strikes us, at the first blush" that this is not the levy and collection of money for public purposes. * * * It is not the kind of public benefit and interest which will authorize a resort to the power of taxation.

And so the law was held invalid because the public had no interest in the object for which the money was proposed to be raised. The court cited the case of Philadelphia vs. Wood, 39, Pa. 73, as sustaining the principle.

In the hurried collection of these authorities I have been obliged to select at random. Numerous other cases and authors could be cited if time and space would permit. I think, however, that the doctrine has been clearly established that there are limitations upon the power of the Legislatures of the States beyond the explicit restrictions imposed by their constitutions and the constitution of the United States; that these limitations arise out of the nature of the "legislative power" vested in the assemblies by the State constitutions. I believe that the weight of recent authority will sustain the position that the courts are bound to declare invalid any act which at "first blush," upon its face, appears to have been passed not for public purposes, not for the good of the people, but for the private advantage of one or more persons.

Is the law No. 32, under which these relators claim, such an act? I have already said that I have no doubt, judging alone from the face of the statute, that it makes a simple donation to Mr. Nixon, and that the people have no interest or advantage in the disposition. The question then arises, is there any difference in principle between an act making an appropriation out of the public treasury, and an act levying a tax? It is clear to me there is none. The unlimited power of taxation for public purposes is conceded. Here the legislative discretion is alone to determine. But therefore a tax can be levied and collected of one, two or three per cent "for the purpose of sustaining the government of the State;" and then, if this money can be used for the private advantage of the beneficiaries of the legislature, the evil would be none the less. Experience in this country proves to what fearful corruption this power would lead. If a sufficient majority of the members of the assembly can be got together in a "ring," they can agree to pass any bill, and the whole revenue of the State could thus be diverted to the purpose of enriching the members. I do not think that the courts in this country can be induced to decide that, in the exercise of the law-making power, the legislature has the constitutional right to rob and steal either for the advantage of the members or for others.

The views I have here expressed lead me to the following conclusions:

1. The auditor, as the general accountant of the State, may properly decline to issue his warrant upon the treasury for a claim which appears to him to be illegal or invalid.

2. The State, by the Attorney General, may properly intervene in a mandamus suit which has been instituted to compel the State Auditor to warrant upon the treasury in payment of a claim against the State. In such intervention the State may urge the unconstitutionality of an act of the General Assembly.

3. An appropriation made by the Legislature, in the exercise of the legislative power, which is to be paid out of the general funds to be derived from the current revenues, is not an increase of the debt of the State in contemplation of the third amendment to the constitution of the State. The act under which relator's claim is, then, not a violation of the article of the constitution limiting the debt of the State to twenty-five millions.

4. The act of the Legislature entitled "an act for the relief of J. O. Nixon, late State Printer," is, upon its face, a bill appropriating money out of the public treasury exclusively for a private purpose; the people of the State, for whom the Assembly exercise the legislative power, have no interest and can derive no advantage from said appropriation, but are nevertheless required to pay it from the taxes levied upon their property.

5. That while the General Assembly of the State is vested with full legislative power, under the restrictions of the constitution of the United States and the limitations imposed by the constitution of the State—that while in the exercise of this power their actions can not be controlled except by their own discretion and wisdom, there are still certain other limitations imposed upon the exercise of that power by the very nature of the power itself. The legislative power implies acts for the public welfare and advantage. That although the assembly is sole judge as to how it shall administer its powers for the public good, still if an act is passed which at "first blush" clearly appears to have been enacted for the private advantage of one or more persons; if it clearly appears that the public have no interest in such act and that it imposes a burden upon the citizens of the State, it will be the duty of the judiciary to declare the same void, because no authority to pass such an act was vested in the Legislature by the grant of legislative power contained in the constitution. That, however, such judgment can only be rendered in a case properly before the court. Therefore the act No. 32 aforesaid is unconstitutional and void.

Wherefore it is ordered that the mandamus be refused at the relator's costs.

Commissioner Weller's Court.

The captain of the British schooner Astrea was charged by one of his crew with assault and battery. The captain demurred to the jurisdiction of the court on the ground that, being a British subject on board of a British ship, the British flag covered him as if he were on British soil, where British government was administered over British subjects, in a British manner, according to British customs, and a considerable more British. As the offense charged had been committed while ascending the Mississippi river, the commissioner held that the schooner was in American waters, ergo, under American jurisdiction, that if an offense had been committed it was in violation of the peace and dignity of American government, that American sovereignty must be vindicated, and, in short, not to put too fine a point upon it, the captain's plea was ne exeat. So the captain asked for time to produce evidence, and the case was continued until this morning at ten o'clock.

Appeal in One of the Suits Against the State Board of Liquidators.

Counsel for Mr. Jules A. Blanc et als vs. the State Board of Liquidators, to compel them to exchange bonds for State warrants and certificates of indebtedness in their hands, under the act relative to the extinguishment of the floating debt, have filed in the Eighth District Court a motion for an appeal to the Supreme Court from the judgment of Judge Dibble, rendered a few days ago against them.

The Contest Over the Legislative Warrants.

The contest which is now going on in the Eighth District Court between the holders of different classes of legislative warrants recently issued, which was to have been renewed yesterday, has been continued over, in consequence of indisposition on the part of Judge Dibble, until Monday next. The struggle between the contending parties is to get possession of the $125,000 appropriation which has not yet been expended. This appropriation, which is included in the general appropriation bill recently signed by the Governor, reads, if we remember rightly, for "contingent expenses."

The warrants held by Merle et als, the parties bringing the first suit for some $80,000, were issued for contingent expenses, while the warrants held by Whitney et als were issued, it is alleged, for per diem and mileage.

Now the question seems to be, whether the act means that the $125,000 shall be used solely for warrants issued for contingent expenses, or whether it was intended that it should be used to include also warrants issued for per diem and mileage expenses. Eminent counsel are engaged by the several relators.

In the above suits the rule for an injunction upon the Treasurer, taken by counsel for Whitney, has been withdrawn, while the application for the writ of mandamus upon the Auditor remains.

Calcasieu Sulphur and Mining Company.

The *Picayune* of Tuesday says, in reference to this company, which will develop one of the most important resources of the State:

The great event in connection with the future operations of this company is the intended departure to-day for Europe, of Mr. Granet, the chief engineer.

This gentleman, who is a most accomplished mining engineer, and who brought with him the highest references from France, goes abroad with full powers from the company to have constructed the necessary shaft and machinery to put the mines in first class working order.

It is expected that the entire paraphernalia will cost, when completed and put up, one hundred thousand dollars, and the company propose to commence active operations, in the matter of extracting sulphur, by the first of January next.

The directors estimate that they will be able to produce daily, at the very least estimate, two hundred tons of sulphur, and this they calculate will, at the lowest figure, give to the stockholders a revenue of three million dollars annually.

The shaft, which is to be constructed upon the plan of the Chaudron patent, will only have to be sunk a distance of four hundred and twenty-eight feet, which is only about one-fourth the depth of some of the coal shafts in Great Britain, by means of which are daily extracted in many instances an average of sixteen hundred tons of coal.

The following are the names of the gentlemen composing the directors of this company, which it will be seen embraces some of our leading citizens:

W. B. Koontz, president; M. Musson, cotton factor; P. Fourchy, president of the Merchants' Insurance Company; S. H. Kennedy, president State National Bank; E. Ganucheau, president Louisiana State Insurance Company; Henry Peychaud, president Hope Insurance Company; A. Fortier, president Bank of America; T. Lowell, wealthy landed proprietor, and A. Bonneval, secretary and treasurer.

A Sad Confession.

The St. Louis *Democrat* has thoroughly awakened from its wild dream of a third party that gave Missouri to the Democracy. It thus enters its confession:

The incidentals of "liberalism" have not been so exhilerating that any honest and intelligent Republican can be cheated by demagogues with the name when the meaning has gone out of it. What are those incidentals? Democratic victories—a Democratic triumph with but a minority vote in this county. A Democratic representation of St. Louis county in the Legislature, sent there by a minority of the voters of the county. A Democratic House—and *such* a House! A Blair representing (!) Missouri in the United States Senate, as champion of the Indiana resolutions and of the Ku-Klux Klan. These, and things like these, have been the incidentals for liberalism, in itself just. The work of that liberalism is accomplished. *Isn't it about time?*

"The hallucination of so tried a Republican journal as the St. Louis *Democrat* was a sad spectacle to all earnest Republicans, and to none more so than to those of Maryland. We were betrayed and overthrown by the treason of one man in whom we trusted. The Missouri Republicans led the way to their own overthrow at the bidding of Carl Schurz, who is now laboring to dismember and defeat the Republican party of the nation. Those who follow him now may one day have to make as mortifying a confession as that put forth by the St. Louis *Democrat*." So says the Baltimore *American*.

The Washington special of the St. Louis *Democrat* says:

The Committee on Elections, in view of the fact that the last House voted $114,000 to contestants for seats, has adopted the following rule: The committee will not recommend payment of any compensation beyond the actual, reasonable and necessary expenses to any contestant who fails to maintain his right to a seat, and will recommend payment of such expenses only in cases where the contest is made in good faith and with reasonable cause. Each contestant failing to sustain his claim to the seat, and claiming compensation, shall present to the committee an itemized statement, under oath, of his expenditures in connection with such contest, which shall be examined by the committee, or by a sub-committee for that purpose, and so much only shall be allowed as comes within the provisions of this rule. This covers the ground of the bill offered in the House a few days ago by Mr. McCrary, of Iowa, who is chairman of the committee.

Says the Cincinnati *Gazette:*

During the delivery of Mr. Sumner's speech there was frequent and general applause in the Senate galleries. The applauders were taken to be Republicans, and Mr. Sumner probably so regarded the demonstration. On Thursday the same class applauded the Ku-Klux utterances of Davis and Blair. So general and violent, indeed, was the applause that the Vice President threatened to clear the galleries. These scenes carry us back to the time when Brooks made a brutal assault upon Sumner, and to 1860, when the advocates of slavery and Democracy were conspiring to destroy the government. Let the warning be heeded.

Jones R. Henry has just recovered a verdict of $12,000 against the Chicago City railway. He paid his fare in the horse car, but the conductor, not believing him, forcibly ejected him from the car. He fell upon a curbstone and injured his head so that his life was despaired of for some time, and his health permanently impaired.

LAWS OF THE STATE OF LOUISIANA.

PUBLISHED BY AUTHORITY.

No. 71.

AN ACT

To create the parish of Vernon, and providing for the organization thereof.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened, That a new parish in the State of Louisiana be and the same is hereby created out of the western portion of the parish of Rapides and the southern portion of Sabine and Natchitoches, to be called and known by the name of the parish of Vernon.

SEC. 2. Be it further enacted, etc., That the following shall be the boundaries of the parish of Vernon, viz:

Commencing at the mouth of Bayou Toro, upon the Sabine river, thence up said Toro to the township line between three and four (3 and 4), thence east on said township line to the road known as the Bevils (now Hardins) and Natchitoches road; thence along said road in a northward direction to the township line between four and five (4 and 5) north, thence east on said township line to the Devil creek, thence down said creek to the range line between four and five (4 and 5) west, thence south on said range line to the parish line of Calcasieu, thence west on said parish line to the Sabine river, thence up the Sabine river to the point of beginning.

SEC. 3. Be it further enacted, etc., That it shall be the duty of the Governor, immediately after the passage of this act, to nominate and, by and with the advice and consent of the Senate, to appoint for said parish of Vernon a judge, sheriff, clerk, recorder, assessor, six justices of the peace and six constables, and all other officers that may be necessary therefor, whose power, and duties, and pay, shall be the same as other judges, sheriffs, clerks, recorders, assessors, and like officers throughout the State.

SEC. 4. Be it further enacted, etc., That it shall be the duty of the parish judge of said parish of Vernon, immediately after he receives his commission, to convene the several justices of the peace to meet at a convenient time and place, a majority of whom shall constitute a quorum, for the purpose of laying off six police jury districts in said parish.

SEC. 5. Be it further enacted, etc., That the Parish Judge of the parish of Vernon, as soon as the police districts shall have been formed as required by the foregoing section of this act, and after giving regular notice of time and place, shall cause an election to be held by a justice of the peace, in each police district, for the election of one member from each district to the police jury.

SEC. 6. Be it further enacted, etc., That the parish seat of said parish shall be located on or near the Bayou Castor, in section twenty-three, township two north, range nine west; and that the parish judge shall convene the members of the police jury immediately after the election, at the place as designated in this section, for the purpose of causing to be erected suitable public buildings.

SEC. 7. Be it further enacted, etc., That the parish judge of said parish shall keep his office at the parish seat of said parish and that the said parish shall form part of the Ninth Judicial District of the State, and the time of holding the terms of the district court in the parish of Vernon shall be the ——, and the parish shall be attached to the —— Senatorial District.

SEC. 8. Be it further enacted, etc., That it shall be the duty of the clerks of the district courts of the parishes of Rapides, Sabine and Natchitoches, immediately after the passage of this act, to transmit to the clerk of the district court of the parish of Vernon all petitions, answers, documents and papers appertaining to suits wherein the defendant or defendants reside within the parish of Vernon.

SEC. 9. Be it further enacted, etc., That immediately after the passage of this act it shall be the duty of the recorders of the parishes of Rapides, Sabine and Natchitoches to make out a true and certified copy of all acts, deeds and title papers on file in their respective offices relative to or affecting landed property situated within the limits of the parish of Vernon, and transmit the same to the Recorder of the parish of Vernon at the expense of the parish of Vernon.

SEC. 10. Be it further enacted, etc., That the assessor and collector of the parish of Vernon shall collect all unpaid taxes assessed by the assessors of the parishes of Rapides, Sabine and Natchitoches, upon the property heretofore lying and being in said parishes respectively, and which is included within the limits and bounds of the parish of Vernon, and turn over the same to the parish treasurer of the parish of Vernon, whose duty it shall be to pay the same to said parishes, according to their present respective rights. The said assessor and collector shall collect the State tax and pay it to the State Treasurer.

SEC. 11. Be it further enacted, etc., That the Sheriff and other officers of the parish of Vernon shall qualify and give bond in the same manner as other parish officers throughout the State.

SEC. 12. Be it further enacted, etc., That the school fund for said parish of Vernon shall be provided in the same manner as for the other parishes of this State.

SEC. 13. Be it further enacted, etc., That the existing laws and rules of practice for the several courts held in the parish of Sabine relative to public notices, advertisements, and in relation to all judicial sales made in said parish of Sabine, shall be and exist in full force in the parish of Vernon.

SEC. 14. Be it further enacted, etc., That the Police Jury of the parish of Vernon shall have all the powers that are now possessed by, and be subject to all the duties that are now enjoined upon the police jury of the parish.

SEC. 15. Be it further enacted, etc., That any persons now being duly qualified jurors, and who may have been drawn as such to serve in said parishes of Rapides, Sabine and Natchitoches, shall serve as such until the expiration of their terms, according to existing laws, as if no change had been made in the boundaries of said parishes by the provisions of this act.

SEC. 16. Be it further enacted, etc., That this act shall take effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.
Approved March 30, 1871.
(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.
A true copy:
GEO. E. BOVEE,
Secretary of State.

No. 72.

AN ACT

Making appropriations for the general expenses of the State for the year ending the thirty-first day of December, one thousand eight hundred and seventy-one.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened, That the following sums be, and they are hereby appropriated from any money in the treasury not otherwise appropriated, for the following purposes, for the year ending the thirty-first day of December, one thousand eight hundred and seventy-one, to wit:

For the salary of the Governor, eight thousand dollars.

For the salary of the Lieutenant Governor, three thousand dollars.

For the salary of the State Treasurer, five thousand dollars.

For the salary of the Secretary of State, three thousand dollars.

For the salary of the Auditor of Public Accounts, five thousand dollars.

For the salary of the Attorney General, five thousand dollars.

For the salary of the State Superintendent of Public Education, five thousand dollars, payable out of the current school fund.

For the salaries of five Division Superintendents of Public Education, at two thousand five hundred dollars each, twelve thousand five hundred dollars, to be paid out of the current school fund.

For the salary of the Division Superintendent of Education for the city of New Orleans, four thousand dollars, to be paid out of the current school fund.

For the salary of the secretary of the State Superintendent of Public Education, three thousand dollars, payable out of the current school fund.

For the salary of the secretary of the Division [illegible]

[illegible] thousand five hundred dollars, to be paid out of the current school fund.

For the salary of the Judges of the Supreme Court, forty-[illegible] thousand [illegible]

For the salary of the Judges of the district courts, act No. 20 of 18[illegible], one hundred and twenty-five thousand [illegible]

For the salary of the Judges of the [illegible] courts, act No. 51 of 18[illegible], one hundred nineteen thousand dollars.

For the salary of the district [illegible] twenty-seven thousand dollars.

For the salary of the Adjutant and Inspector General, three thousand dollars.

For the salary of the Reporter of Decisions of the Supreme Court, act No. [illegible] of 1871, thirty-five hundred dollars.

For the salary of the Register of the [illegible] Land Office, act No. 38, extra session of 1870, four thousand dollars.

For the salary of the State Librarian, act No. 320 of 1855, twelve hundred dollars.

For the salary of the State Registrar of Voters, act No. 99 of 1870, three thousand dollars.

For the salary of the Governor's Private Secretary, act No. 50 of 1865, twenty-[illegible] hundred dollars.

For the salary of the Governor's messenger, four hundred and eighty dollars.

For the salary of the Assistant Secretary of State, act No. 214 of 1868, two thousand dollars.

For the salary of the clerk of the Secretary of State, fifteen hundred dollars.

For the salary of the page of the Secretary of State, act No. 214 of 1868, four hundred and eighty dollars.

For the salary of the chief clerk of the Treasurer's office, act No. 325 of 1855, [illegible] thousand five hundred dollars.

For the salary of the bookkeeper of the State Treasurer's office, twenty-two hundred and fifty dollars.

For the salary of two assistant clerks of the State Treasurer's office, at two thousand dollars a year each, four thousand dollars.

For the salary of the chief clerk of the Auditor's office, two thousand five hundred dollars.

For the salary of eleven assistant clerks of the Auditor's office, at eighteen hundred dollars a year each, nineteen thousand [illegible] hundred dollars.

For the salary of the Sergeant-at-Arms of the House of Representatives, act No. 17 of 1870, two thousand dollars.

For the salary of the Sergeant-at-Arms of the Senate, act No. 17 of 1870, two thousand dollars.

For the salary of one porter and one night watchman for each House of the General Assembly, at nine hundred and sixty dollars a year each, thirty-eight hundred and forty dollars.

For the salary of the messenger of the Auditor's office, act No. 30 of 1868, four hundred and eighty dollars.

For the salary of the chief clerk of the State Land office, act No. 38, extra session of 1870, two thousand five hundred dollars.

For the salary of the clerk of the State Registrar of Voters, act No. 99 of 1870, [illegible]teen hundred dollars.

For the salary of the Public Gardener at Baton Rouge, nine hundred dollars.

For the salary and traveling expenses of the inspectors appointed by the Auditor of Public Accounts, in accordance with the provisions of section ninety-one of the revenue law of 1870, three thousand dollars.

For the salaries of the Secretary of Senate, one thousand dollars; the Assistant Secretary of Senate, nine hundred dollars; the Minute Clerk of Senate, nine hundred dollars; the Chief Clerk of House of Representatives, one thousand dollars; the Assistant Chief Clerk of House of Representatives, nine hundred dollars; the Minute Clerk of House of Representatives, [illegible] hundred dollars. The warrants therefor shall have the same preference as warrants drawn under the legislative appropriation bill.

For furniture, coal and stationery for the Senate during the entire session, [illegible] thousand dollars; the warrants therefor shall have the same preference as warrants drawn under the legislative appropriation bill.

For the reimbursement of moneys paid into the State treasury through error, which do not belong to the State, fifty thousand dollars, or so much thereof as may be necessary.

For the reimbursement of licenses erroneously collected on sugar houses and cotton gins, five thousand dollars, or so much thereof as may be necessary.

For the payment of office rent of the Attorney General for the year 1871, twelve hundred dollars.

For the payment of office rent of the State Superintendent of Public Education, for the year 1871, under section eleven of act No. [illegible] extra session of 1870, eight hundred dollars, to be paid out of the current school fund.

For the payment of office rent of the State Registrar of Voters for the year 1871, under section four of act No. 99 of 1870, [illegible] hundred dollars.

For the contingent expenses of the State Registrar of Voters for the year 1871, [illegible] hundred and fifty dollars.

For the contingent expenses of the Governor of the State, five thousand dollars.

For the contingent expenses of the Lieutenant Governor of the State, one thousand dollars.

For the contingent expenses of the Secretary of the State, one thousand dollars.

For the contingent expenses of the State Library, one thousand dollars.

For the contingent expenses of the State Treasurer, one thousand dollars.

For the contingent expenses of the Auditor of Public Accounts, four thousand dollars.

For the contingent expenses of the Attorney General, five hundred dollars.

To pay clerk hire of the Attorney General for the year 1871, eighteen hundred dollars.

For the contingent expenses of the State Superintendent of Public Education, [illegible] thousand dollars, to be paid out of the current school fund.

For the contingent expenses of the Supreme Court, two thousand dollars.

For the contingent expenses of the Register of the State Land Office, fifteen hundred dollars.

For the compensation to assessors out of the general funds, the current school fund, the interest tax fund, the levee tax fund and the special levee tax fund, one hundred and seventy-one thousand four hundred [illegible] seventy-two dollars and eighty-six cents.

For commissions to tax collectors out of the general funds, the current school fund, the interest tax fund, the levee tax fund and the special levee tax fund, one hundred and seventy-four thousand four hundred and ninety-six dollars and nineteen cents.

For deductions to tax collectors out of the general funds, the current school fund, the interest tax fund, the levee tax fund, the special levee tax fund, four hundred [illegible] eighty-six thousand dollars.

For the contingent and traveling expenses of six division superintendents of education, six hundred dollars each, three thousand six hundred dollars.

For the traveling expenses of the State Superintendent of Public Education, for holding school meetings in the several parishes of the State, act No. 6, extra session of 1870, one thousand dollars.

For the arming, equipment and uniforming of the State militia, seventy-five thousand dollars; and for expenses of the State militia in case of necessity, seventy-five thousand dollars, to be paid out under the direction of the Governor of the State.

For the interest on the bonded debt of the State, as follows:

For the interest on the bonds issued to the New Orleans and Nashville Railroad Company, twenty-seven thousand four hundred and twenty dollars.

Interest on the bonds issued to the Mexican Gulf Railroad Company, two thousand seven hundred and sixty dollars.

Interest on the bonds issued for the relief of the State treasury, act No. 277 of 18[illegible], forty-five thousand dollars.

Interest on the bonds issued to the New Orleans, Jackson and Great Northern Railroad Company, fifty-three thousand [illegible] forty dollars.

Interest on the bonds issued to the New Orleans, Opelousas and Great Western Railroad Company, thirty-nine thousand [illegible] dollars.

Interest on the bonds issued to the Baton Rouge, Grosse Tete and Opelousas Railroad Company, nine thousand six hundred dollars.

Interest on the bonds issued to the Vicksburg, Shreveport and Texas Railroad Company, seventeen thousand eight hundred and eighty dollars.

Interest on the bonds issued for levee purposes, act No. 115, of 1867, two hundred [illegible] forty thousand dollars.