

CITY HALL,
New Orleans, April 12, 1871.
The Council met in regular session at 7 P. M., Hon. B. F. Flauders, Mayor, presiding.

These were present Administrators John Cochran (Improvements), Alfred Shaw (Accounts), L. T. Delmasse (Public Buildings), F. C. Hennick (Commerce), James Lewis (Police), John B. Walton (Finance), and H. Boudreau (Assessments).

The Mayor laid before the Council the following message:

MAJORITY OF NEW ORLEANS,
April 12, 1871.

The City Council of New Orleans:
CITY COMMISSIONERS: The Mississippi and Mexican Gulf Ship Canal Company procured an enactment by the late Legislature directing the construction of a vast system of drainage canals and protection levees in New Orleans and Carrollton, and giving the work exclusively to that company, at the fixed price of one dollar per cubic yard for excavation and embankment, to be paid by the city of New Orleans.

The act also provides for the payment of the work at a price four times as high as the same kind of work cost the drainage commissioners; three times as high as the estimate of the City Surveyor, and nearly twice the price at which parties of the highest credit and responsibility have voluntarily proposed to do the work.

Permit me to urge the Council carefully to reconsider the ordinance and reverse their action thereon. By persisting in this measure you will voluntarily give away more than a million of dollars to a company which, although it has a nominal capital of four million dollars, has not a dime of stock paid in, and whose financial and mechanical ability to do the work has been derived exclusively from a previous grant from the State. For myself, having but a few days ago publicly and with alacrity given notice, by order of the Council, to that company that we did not consider the city obliged to give them one dollar a yard for the work if we could get it done for less, I feel extreme reluctance to say to them now, publicly and officially: "We concede the work to you at a dollar a yard in preference to other parties more responsible than yourselves, who offer to do it for sixty cents a yard." The logical inference to be drawn from such a course would be, either that our first proceeding was an attempt to blackmail the company, in which the public would naturally conclude we had been successful, or that our second action had been taken, not freely and voluntarily, but under some kind of necessity.

Now, as to the drainage fund. That part of the act which abolishes the boards of drainage commissioners and proposes to turn over the drainage funds to the city and the company to pay for the work, is a delusion and a snare, as a glance at the origin and history of this drainage fund will conclusively show. By the ninth section of the "act to provide for the drainage of New Orleans," now under discussion, the Board of Administrators of the city of New Orleans is subrogated to all the rights, powers and privileges of the commissioners of the several drainage districts, and is directed to collect from the owners of property within said districts the balance due on the assessments made under the act of the eighteenth of March, 1859, and all the money thus collected, as well as that which may be received from the different boards of drainage commissioners, it is enacted, shall be placed to the credit of the Mississippi and Mexican Gulf Ship Canal Company, and held as a fund to be applied to the drainage of New Orleans and Carrollton.

The question consequently presents itself, what is the character of the fund and claim which is thus to be put to the credit of this company? By reference to the act of 1858 we find that the whole city of New Orleans and the lower portion of the parish of Jefferson on the left bank of the Mississippi river, were divided into three distinct drainage districts, for the purpose of draining the city and reclaiming the waste lands within their respective limits. The system of drainage established by this law was to be carried on by three boards of drainage commissioners, to be appointed by the Mayor of the city of New Orleans, by the Council of the City of Jefferson, and by the Council of the town of Carrollton. To provide for the payment of the work to be done, the commissioners are directed to prepare a plan of the land within their respective districts and to ascertain the probable cost of said work. This plan and estimate are to be filed in the district courts, and after due notice to the parties interested the courts are directed to enter a decree or judgment subjecting the land to a first mortgage, lien and privilege in favor of the commissioners for such amount as may be assessed upon such property for its proportion of the costs of draining each section.

All this has been done. A solemn judgment has been entered against the property and its owners for the amount required to pay for the drainage and improvement according to the plan and estimates on which the judgment is based under the act of 1858. It becomes, therefore, almost too clear to admit of controversy that the funds thus assessed and levied cannot be diverted from the destination given to them by the law as well as by the judgment of the court. The money is assessed for the sole purpose of defraying the expense to be incurred for the benefit of the property of those by whom it has been paid. Nothing is left uncertain. The nature and extent of the work to be performed, and the probable cost of that work, is judicially determined; and it is for this purpose and for no other that the assessment is made. A considerable part of the work has been done with the money levied by these assessments. It is evident, therefore, that the owners of the land assessed have a vested right to insist that the money which they have paid shall be applied in conformity with the law of 1858, and the judgment of the court rendered in pursuance of that law. To divert the fund from this object and to apply it to the payment for the excavation of canals and the building of levees under a contract between the State and the Mississippi and Mexican Gulf Ship Canal Company, will be a flagrant violation of the clearest constitutional right. Nor is it believed that any part of the unpaid assessments can be collected from the owners of the land, and if this proposition is well founded the whole of this enormous expenditure will thus fall on the city of New Orleans.

The power of the Legislature to establish a different system of drainage to that laid down in these acts of 1858 and 1859 is not questioned; but it is believed that the fund raised under the acts of 1858 and 1859 is not retained under the act of 1871, but is constitutionally placed to the credit of the Mississippi and Mexican Gulf Ship Canal Company. As a result of this, the City Council of New Orleans is the

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It is true, that political corporations are the creatures of the legislative power of the State; yet, when established, they have no power to enter into contracts for themselves, but by act of the Legislature or otherwise; and although the ordinance under consideration seems to profess to act against the assumption of this power, it is clear that if this ordinance goes into operation no question can ever be raised as to the constitutionality or validity of the act, so far as the city of New Orleans is concerned. The protest of the Council in the form of a declaration at any time hereafter to contract at law or otherwise the constitutionality of the act, is of no value whatever. The company is not required to agree to it as a condition precedent, and the city, having acknowledged the contract by setting the company to work according to the terms of the law, will, of necessity, have been put in for the whole contract without any reservation whatever; and I have never known or heard of any contractor with the city who would voluntarily abate one jot or tittle of his contract advantages, or who would not claim of the city excessive damages, should it desire to modify or abandon works which were found to be unnecessary or inexpedient.

I repeat that in the face of the facts adduced and the evidence presented, a persistence in this ordinance will be a voluntary and unnecessary payment to the Mississippi and Mexican Gulf Ship Canal Company of at least one million of dollars which can be saved to the taxpayers.

Nor does the impolicy or injustice of this ordinance end here. By the terms of the act of the Legislature, these drainage works are to be carried on "in New Orleans and Carrollton." In the ordinance the phrase is, "New Orleans and environs." The change of phraseology is calculated to mislead, and cause one to overlook the important fact that the city of New Orleans alone is made responsible and liable not only to pay for the canals and levees constructed in New Orleans, but also for those constructed in Carrollton, and without the right or power of reclamation being anywhere given to New Orleans in the act.

The plea of urgent and immediate necessity, urged in the act, is not supported by facts. Assuming, however, that the immediate necessity for entering on this work exists, this company is not the only one able to commence operations at once. Any other contractors, with adequate financial resources, could get to work inside of thirty days.

The cost of the canals and protection levees at the price as fixed in the act is estimated in a report by the City Surveyor, made in compliance with a call from the Council, at two millions of dollars, and the price at which, according to his experience, it can be done, allowing a fair margin to the contractor for profits, is from twenty-five cents to thirty cents per cubic yard, or in amount about one-third that required to be paid to the Mississippi and Mexican Gulf Ship Canal Company for the work. An official statement of the cost of the canals, about ten miles in aggregate length, excavated by the drainage commissioners, gives an average of a little less than twenty-eight cents per cubic yard. One of them, the Claiborne canal, three and a half miles in length, forty-four feet wide and eight feet deep, dug with a dredgeboat through the most difficult swamp in the rear of the city, filled with stumps and cypress knees, cost only twenty-five cents per cubic yard, including every expense except first cost of the dredgeboat. Include the dredgeboats, and the cost of these canals was less than thirty cents per cubic yard. I have verified this statement by a careful examination of the books of the drainage commissioners.

This certificate and the report of the City Surveyor are herewith appended, as well as the proposal of the New Orleans Dredging Company. I further ask leave of the Council to publish, in connection with this message, the elaborate and exhaustive opinion of the City Attorney, rendered in response to a request of the Council that he would examine into the constitutionality of this bill.

To recapitulate, my objections to the ordinance are these: The act of the Legislature on which it is based is unconstitutional, and held to be so by the Council; it is so pronounced by the City Attorney, who by the charter is made our legal adviser; and it is declared such in the ordinance before us.

An acceptance of any part of this contract binds us for the whole, including the drainage works in Carrollton—at least unless the reservation of the rights of the Council under the contract, to modify it or to contract with other parties, be previously conceded by the company.

It would render us liable to the extent of fifty thousand dollars a month, which we have either to pay in money or in paper obligations. The former we are unable to do, as our estimated current expenses are far beyond our estimated receipts provided for in the budget, and the latter would embarrass the Council and greatly depreciate city obligations.

Because by recognizing this contract the city gives away at least one million dollars of the taxpayers' money to a company whose only capital consists of bonds of the State, issued to them gratuitously, of which bonds the city of New Orleans pays nearly one-half their face value.

Because the ordinance is neither an acceptance of the act of the Legislature so as to relieve the city of all contingent pains and penalties, nor a rejection of the act so as to bring the question of its constitutionality fairly and squarely before the courts, but, under the guise of a protest against the constitutionality of the enactment, the ordinance virtually accepts the contract proposed by the bill, and thus renders the city liable for all the cost of compliance, without giving it a chance of escape from the penalties of non-compliance.

And, finally, because I think it the duty of the Council to resist every effort to deprive the city of its property or franchises without its consent, or to impose burdens which are unnecessary and unequal for.

I therefore veto the ordinance.

BENJ. F. FLAUDERS, Mayor.
[EXHIBIT A.]
SERVITOR BELLA'S REPORT.

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