New Orleans Republican.
OFFICIAL JOURNAL OF THE UNITED STATES
OFFICIAL JOURNAL OF NEW ORLEANS

THE COURTS.

United States Courts.

We are unable to give the proceedings of the United States Courts yesterday. Judge Durell having issued an order forbidding access by reporters to the minute books.

Supreme Court.

The following decisions were rendered yesterday:

BY ASSOCIATE JUSTICE MORGAN.

E. J. Hart & Co. vs. John Nixon & Co. Appeal from the Fourth District Court. A question of the confirmation of a default. Judgment reversed.

J. P. Forgay vs. A. Desmares, Block & Finbug, intervenors.—Appeal from the Fourth District Court, involving the title to a lot of cotton. Judgment affirmed.

Delgardo et al. vs. A. C. Wilbur et. al. Appeal from the Seventh District Court, parish of Orleans. Judgment reversed.

BY ASSOCIATE JUSTICE HOWELL.

John I. Adams vs. Asa Webster.—Appeal from the District Court, parish of Lafourche. Judgment reversed, both suits.

A. Marchand vs. D. W. Coeler.—Appeal from the district court, parish of Tangipahoa. Judgment affirmed.

Blanchin & Giraud vs. Amos Simms, sheriff, et al.—Appeal from the district court, parish of Terrebonne. Judgment affirmed.

BY ASSOCIATE JUSTICE TALIAFERRO.

M. A. Wells and husband vs. C. W. C. Walker.—Appeal from the Ninth Judicial District Court. A question of validity of a security on a bond. Appeal dismissed.

Hart vs. Hass & Elders.—Appealed from the parish of Caddo. This case involved the question of the right of parties to legitimate their children, who were born out of wedlock.

The father, a white man, lived in concubinage with the mother, a colored woman. It was contended that their legitimation was void, because at the time that their children were conceived and born the laws of the State declared that the issue of such intercourse could not be legitimated.

The court concludes, after a consideration of all the laws bearing on the subject, that the children were properly legitimated, and affirms the judgment of the parish court.

BY ASSOCIATE JUSTICE WYLY.

Louis Langman vs. Elizabeth Frezel.—Appeal from the Fifteenth Judicial District Court, parish of Lafourche. Involving the ownership of a crop raised by one party on the ground of another. Judgment amended so far as to give the former ownership of the crop raised.

Miss Leonie Lefretre vs. Alexander Barthet.—Appeal from the Seventh District Court. Judgment affirmed.

Brooks & Teuvent vs. Blanchin & Giraud.—Appeal from the Fifteenth District Court, parish of Terrebonne. Appeal dismissed.

State of Louisiana ex rel. D. B. Gorham vs. T. T. Montgomery.—Appeal from the Thirteenth District Court, parish of Carroll. Suit under the intrusion act, plaintiff seeking to declare defendant an intruder in the office of district attorney pro tem. Judgment affirmed.

Superior District Court.

The State of Louisiana, through the Attorney General, A. P. Field, herein represented by H. C. Dibble and E. C. Billings, of counsel, brings suit in this court, praying that the following named parties, to wit: D. B. Penn, John Youennes, Thomas Isabelle, Eugene May, R. C. Bond and W. G. McConnell, be enjoined and prohibited from acting or attempting to perform the duties of police commissioners, or from appointing any officers or members of the Metropolitan Police, and that Robert Brewster, Administrator of Police, be enjoined from acting with them as such.

Petitioner represents that by the recent action of John McEnery, who pretends to be Governor of the State, in appointing said parties as members of the Board of Metropolitan Police, they fear that a conflict of power will result therefrom, which would greatly injure and damage the best interests of the State, and they believe that injunctions are necessary in the premises to prevent such injury.

Judge Hawkins granted an order on Saturday for an injunction, enjoining said parties from doing any of the acts herein complained of, and the writs were issued forthwith. *This fact was mentioned editorially in the REPUBLICAN of Sunday.

State of Louisiana ex rel. F. A. Monroe vs. E. Meunier.—This case, involving the right to the office of judge of the Third District Court, took up most of the time of this court yesterday.

Fourth District Court.

In the case of L. R. Ross vs. Franklin Houdlette et al., Judge Lynch rendered the following decision:

The plaintiff, L. R. Ross, in the latter part of the month of March, 1870, was employed by the defendants, Mrs. Marshall, H. Hagar, Franklin Houdlette and George W. Edge, to act as master of the ship Gettysburg, to them belonging, and then on her way to New Orleans, the plaintiff and defendants at the time being residents of the State of Maine. Ross left for New Orleans on the twenty-eighth of the next month, and arrived hither on the eighth day of May. After his arrival he was engaged, as he alleges, in looking after some 800 bales of the Gettysburg's cargo of cotton, which lay in the presses, and getting the same stowed on board the ship. The vessel having received her freight, Ross took command, and on the fourteenth of May sailed for Liverpool. After the arrival of the ship at Liverpool and the discharge of her cargo, she was taken to Cardiff, in Wales, and having been there freighted with railroad iron, departed for New Orleans, whither she arrived on the ninth of September. She lay at this port about six weeks, Houdlette, the managing partner, not being willing to accept the low freights that offered here at the time. Captain Ross, about the twenty-first of October, obtained 1700 bales of cotton, and a few days after he completed the engagement of his whole cargo. He had 2500 bales of the cotton alongside and on board, and the ship was nearly ready to depart for Liverpool when a telegram from Houdlette announced to Ross that his services as master of the Gettysburg would be no longer wanted.

Plaintiff has brought this suit for the sum of $1080 97, for services as master of said ship during the period above set forth, and alleges that by verbal agreement between him and the defendants, he was to be allowed $20 a month and five per cent primage, less five per cent off the primage. The bill annexed to the petition, and made part thereof, contains some items of traveling expenses incurred by plaintiff in his journey from his home in Maine to this city to take command of the Gettysburg. The defendants admit their employment of plaintiff at the time alleged, but they say that when plaintiff took charge of said ship she was fully loaded with a cargo of 3363 bales of cotton and 1200 staves, and that plaintiff had no part in securing said cargo, or in loading said ship with the same; that the compensation of plaintiff, under an agreement, was to be $39 per month with five per cent commission on the net freight, after the payment of all charges for procuring cargo, and collecting the freight, and that said agreement and employment as master was for no fixed period. Defendants further say that the only compensation earned by plaintiff under said agreement is the commission on the net freight from Cardiff to this port, amounting to $259 24, and his wages at the rate of $30 per month from May 14 to November 15, 1870, making altogether $390 57; that plaintiff drew at different times from the funds of said ship several sums to the amount $867 47; that Captain Ross was discharged for conduct unbecoming that of a master of a vessel, for several causes and specifications set forth. They claim judgment in their favor in reconvention for the sum of $566 [illegible], with interest and costs. The reconventional demand of defendants is entirely unfounded. One item of $500 in this demand is shown conclusively to have been applied by Captain Ross to the payment of the ship's disbursements; another item of $25 is credited to the defendants by the plaintiff in his demand against them, and the remaining items are unsupported by any evidence on the part of defendants, and are denied by Ross under oath. I now take up the demands of the plaintiff, and in dealing with his claims I find much difficulty. The agreement between the parties was only verbal. Nothing was said as to whether primage should be allowed on the cargo from New Orleans to Liverpool. The defendants testify that the plaintiff had no part in engaging that cargo or in loading the ship, and only joined the vessel when she was about to sail. Ross states he arrived in New Orleans six days before the departure of his ship, and during that time he was in different ways attending to the business of his employers. In plaintiff's account there is an item of $279 70, being for primage on the voyage from Cardiff hither. This is the only part of his bill not objected to by the owners of the ship. They admit his right to a per centage on the freight earned in that voyage, but they make its amount only $259 24.

The commissions claimed by Captain Ross on his outward voyage from New Orleans to Liverpool amount to $655 10, and the commissions on the second voyage, from New Orleans to Liverpool, begun after the discharge of Ross, would be £150, or $809 98. We look in vain in the record for any evidence as to the custom in regard to a case like the present one. In other words, whether or not it is customary for a master of a ship to charge primage or commissions on a cargo already on board a ship to the command of which he has been appointed, and also whether the removal of a captain after he has engaged the cargo and superintended the loading of his vessel, and when nearly ready to sail, works a forfeiture of his primage or commissions, even when his employers have a right to remove him from command, as I believe they had in this case, his employment having been for no specified period. In the absence of any such evidence, and of any stipulations in regard to the matter by the parties themselves, the court has for its action no other guide than that of equity.

The defendants say that Captain Ross was only entitled to $390 57, including wages and commission, for a period of six months and seventeen days during which he was in their employ. The court thinks differently. The mate of Captain Ross was, during that time, receiving $60 per month. This rate of wages for the same period would amount to $394, a few dollars more than the wages of the chief officer of the ship.

I think it but just that the primage or commissions claimed by the plaintiff on the cargo he took to Liverpool be allowed him, his services in engaging and superintending the loading of the second outward cargo being at least sufficient to counterbalance those of that nature rendered in regard to the former cargo before he took command of the ship. I can not allow the item he claims on the trip made by the ship to Liverpool, after his services as master had been dispensed with by the owners. This item is $809 98. The demand of the plaintiff should be allowed with the exception of the last named item.

The Gettysburg is a square-rigged ship of large carrying capacity. The office of master of a vessel of that class is one of importance and great responsibility. His duties are multifarious and onerous, requiring great intelligence, courage, prudence and vigilance.

He is responsible for the lives of his crew and the property committed to his keeping. It requires years of study and severe training to fit him for the dangerous duties of his profession. He isolates himself from home, wife and children, and exposes himself almost continually to deadly peril. Men of this class will always be well paid for their important services.

Captain Ross, by the testimony, appears to have been an efficient and faithful officer. Twice he braved the storms of the western ocean, and the greater dangers of St. George's channel, risking his life to promote the pecuniary interests of the defendants. He remained with his ship in this harbor in the autumn of 1870, exposing himself to the danger of being stricken down by yellow fever, and working to advance the interests of his employers. The defendants are bound to pay him.

Wherefore, let there be judgment in favor of plaintiff and against the defendants in solido for the sum of $871, with legal interest and costs, to be paid by lien and privilege out of the property attached.

Fifth District Court.

In the case of Benjamin J. West vs. Mrs. C. Wesley and the city of New Orleans, Judge Collens rendered the following opinion:

A motion was made by the Assistant City Attorney, A. Lewis, to transfer this case, as to the city of New Orleans, to the Superior District Court of the parish of Orleans, under act No. 2 of the General Assembly of Louisiana, approved December 11, A. D. 1872. Said act declares that, immediately upon the passage thereof, "it shall be the duty of the judges of the Third, Fourth, Fifth and Sixth District Courts for the parish of Orleans to transfer to the Superior District Court for the parish of Orleans all suits or proceedings the jurisdiction over which is, by this law, vested in said Superior District Court." Section two of said act, as to jurisdiction in this case, reads as follows:

"The said Superior District Court shall also have exclusive original jurisdiction in and for the parish of Orleans, over all cases or proceedings in which the State of Louisiana, the municipal corporation of the city of New Orleans, or any corporation established by act of the General Assembly and domiciled in the parish of Orleans, shall be a party," etc. In obedience to these provisions the court had ordered the case to be transferred to the Superior Court to be transferred as to the city, when the plaintiff's attorney, R. H. Marr, came before it and asked to have the order rescinded, with a view to contemplated objections of a constitutional character to the right of the Superior Court to have the order granted as to the city.

The order was revoked, and the following rule was filed in two or three days afterward, notice of which was accepted by Mr. Lewis, representing the city. A day was fixed for the trial of the rule, and it was taken up. Upon hearing the same read the court, ex officio, ordered numbers one, two, three and four of the reasons assigned stricken out, first, because this court is without authority to pass upon the questions thus collaterally raised, because it is in duty bound to recognize all the departments and branches of the State government as they have been recognized by the government of the United States, and lastly, because the only question before it is as to the constitutionality of said act No. 2, approved December 11, 1872, creative of the Superior Court for the parish of Orleans, and which defines its jurisdiction.

The first reason was based upon the decision of the Supreme Court of the United States in Luther vs. Borden et als., reported in the seventh Howard's Reports at p. 1 et seq., in which the court held that "the federal courts have no jurisdiction of the question, whether a government organized in a State is the duly constituted government of the State; that is a question which belongs to the political, not to the judicial powers." The court held in this case that, by law, the President was clothed with authority to decide which was the government, where two ostensible governments were contending for supremacy, and that it had no power to entertain jurisdiction of the case, it being a political question.

It has uniformly held that in all questions which are by the constitution and laws submitted to the executive, the judicial power can take no cognizance of them. See Brightley's Federal Digest, p. 504, No. 19, and the authorities there cited. The case in 7 Howard is full and explicit on the subject.

Again, it must be apparent that if the court had seen proper to go into the investigation of the questions raised, and to decide that they were well taken, what power would it appeal to to inforce obedience to its decree? It certainly could not require that the *de facto* government, whose constitutional existence and authority it had declared to be nonentities, should inforce it, while it is palpable here there is no other to appeal to.

The second reason for striking out, to wit, that it is the duty of the court to recognize all the departments and branches of the State government as they have been recognized by the government of the United States was based upon the utter impossibility of doing otherwise, either under the law or by virtue of any available power to sustain its action. The oath of office of every judge obliges him to support the laws of the United States. The courts are bound to take notice of an existing government, whether it be only de facto or otherwise, provided it has dominion over them.

The national executive had recognized the State government, and the army of the United States, or a sufficient fraction thereof, is kept in readiness to enforce that recognition. Under the constitution and laws of the United States, the executive is charged with the execution of the laws of the Union, the suppression of rebellions, insurrections, etc. Thus we see that Congress has not only given him the power to declare which body or assembly constitutes the State government in cases of dispute or conflict, but the highest judicial tribunal in the land has repeatedly held that the judiciary can not take cognizance of such questions. To resist, then, would amount to a rebellion against the well-established authority of the general government. *Lex non cogit ad impossibilia.*

Having stricken out four out of five of the reasons assigned by counsel for the reasons above given, the only question remaining for consideration is as to the constitutionality of act No. 2 of the General Assembly, approved December 11, 1872, creative of the Superior Court in this city, and defining its jurisdiction.

Article seventy-three of the State constitution declares that "the judicial power shall be vested in a Supreme Court, in district courts, in parish courts, and in justices of the peace." Article eighty-three says that "until otherwise provided, there shall be seven district courts for the parish of Orleans, with the following original jurisdiction: The First, exclusive criminal jurisdiction; the Second, exclusive probate jurisdiction; the Third, exclusive jurisdiction of appeals from justices of the peace; the Fourth, Fifth, Sixth and Seventh District Courts, exclusive jurisdiction in all civil cases, except probate, when the sum in contest is above $100, exclusive of interest. These seven courts shall also have such further jurisdiction, not inconsistent herewith, as shall be conferred by law."

Article eighty-four provides that "Judges of the district courts shall hold their office for the term of four years."

Article eighty-one says: "The judges of all courts shall be liable to impeachment for crimes and misdemeanors." For any reasonable cause the Governor shall remove any of them, on the address of two-thirds of the members elected to each house of the General Assembly—article 106. In every such case the cause or causes for which removal may be required, shall be stated at length in the address, and inserted in the journal of each house. Article 120 provides that "the General Assembly may determine the mode of filling vacancies in all offices for which provision is made in this constitution."

Article sixty-one provides that "the Governor shall have power to fill vacancies that may happen during the recess of the Senate," etc. Article sixty says: "He shall nominate, and by and with the consent of the Senate, appoint all officers whose offices are established by the constitution, and whose appointments are not herein otherwise provided for; provided, however, that the General Assembly shall have a right to prescribe the mode of appointment to all other offices established by law." From these quotations the court deducts the following truisms:

1. There can be no judges but Supreme Court, district court and parish court judges, and justices of the peace; art. constitution 73.

2. "District court judges are elected, and shall hold their offices for four years;" art. 84: "Unless death intervene, or they refuse or neglect to act, or resign; or unless they be impeached, or addressed out of office by two thirds of the members elected to each house of the General Assembly." Art. 81.

4. All judges are constitutional officers (article 73), though the General Assembly may establish as many district courts as the public interest may require. Article 83.

5. The constitution mentions the causes for which they may be removed from office (article 81), and they cannot be removed for any others, unless by usurpation of power.

The Supreme Court has held that the executive can not vacate an office. See the case of the State on the relation of the Attorney General and on the information of the returning officers of election vs. Jack Wharton et als., reported in the New Orleans REPUBLICAN of the twenty-fourth ultimo, where Judge Howell, acting as the organ of the court, said: "Herron was the acting Secretary of State about the second of December, A. D. 1872, and it was not in the power of the Governor to remove him."

In the case of Downes vs. Towne, 20 An., 492, the court said: "We are of opinion that the Governor could not legally and constitutionally appoint the defendant, E. B. Towne, to the office of parish judge until the incumbent, Richard Charles Downes, was removed by impeachment or address of the Legislature, or until his disqualification was determined by the court." It is fair to presume that the power of the Governor in the premises is co-extensive with that of the Legislature. It would follow, then, that the latter could not vacate an office of judge, without impeachment or address of the Legislature in the manner pointed out by the constitution. (Articles 81 and 106.)

Such seems to have been the opinion of the court in the case last referred to, for it says, without a dissenting opinion: "It was not in the power of the Legislature to legislate him (Downes) out of office, or to diminish or increase his term of office, as fixed in the constitution." Chief Justice Ludeling, in pronouncing the opinion of the court eighteen months later, to wit, in December, 1871, in the case of the State on the relation of N. A. Robinson vs. Charles F. Dreaguet, repeats the above quoted dictum, and adds, 23 An., p. 785: "The precise question was decided against the pretensions of the defendant in that case (case of State ex rel. Towne vs. Downes) and time and reflection have only strengthened our conviction then expressed."

Under our theory of government, the judiciary is a co-ordinate branch of the government, possessed of equal sovereignty with the Legislature—supreme in the enjoyment and exercise of its constitutional powers and functions, and clothed and armed with absolute independence."

When, therefore, the constitution prescribes the causes for which and the modes by which judges may be removed from office, the specifications therein contained are an implied prohibition against legislative interference to the exercise of their functions or the enjoyment of their rights by adding to the conditions upon which the tenure of office must depend. Cooley's Cons. Lims, p. 64. "Judges shall hold their office for the term of four years," unless impeached for crimes and misdemeanors (art. 81), or addressed out of office for reasonable cause by two-thirds of the members elected to each house (arts. 84 and 106).

These are the only specifications to be found in the constitution, by which the terms of judges' offices can be diminished by legislative interference. It is true it "may establish as many district courts in New Orleans as the public interest may require," but the exercise of even this power must, by the terms of the eighty-third article of the constitution, dictated by the requirements of the public interest. Now what are the facts as to this public interest? During the last administration it was thought necessary to increase the number of courts in this city, and hence the establishment of the Eighth District Court. Has population decreased since its legislative birth? Has commerce dwindled and litigation diminished?

The statistics of the city and the dockets of the courts negative all these questions, and we are therefore without a constitutional reason for diminishing the number of the courts. But, it is probable that the Legislature is the sole judge of this necessity, and to this theory we should and must submit. Yet, while it has abolished two courts, it seems that the public interest required the reduction of only one: for, instead of reducing the number to six, as the abolishing of two would imply the necessity for, it established a new court, thereby showing conclusively that the public interest did not require a less number than seven courts, although it had abolished two out of eight.

It is fair to conclude, then, that the abolition of the Eighth Court would have satisfied all the requirements of the public interest. Again, the constitution requires that district court judges shall be elected. This is the will of the people, and not merely of the convention which framed the constitution. The constitution derives its force from the people (Cooley's Con. Lim. p. 66) and if it provides that district judges shall be elected by the people, to hold their office for a term of four years, it is not within the scope of constitutional power for the Legislature to authorize the appointment of judges to hold their seats for a term of four years.

There is no question that in framing and ratifying the constitution, the people reserved the right to elect their district and parish court judges. The Legislature, then, had no authority to "import difficulties into the constitution by consideration of public necessity or anything else, when none appear upon its face." Cooley's Con., Lim. p. 65.

In Oakley vs. Aspinwall, 3 New York Rep. p. 568, Chief Justice Bronson said: "It is highly probable that inconveniences will result from following the constitution as it is written, but that consideration can have no force with me. It is not for us, but for those who made the instrument to supply its defects. If the Legislature or the courts may take the office upon themselves, or if, under the color of construction, or upon other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set any boundary to the powers of the government. Written constitutions will be more than useless.

"My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it, and inconvenience can be borne long enough to await that process. But if the Legislature or the courts undertake to cure defects by forced and unnatural constructions, they inflict a wound upon the constitution which nothing can heal. One step taken by the Legislature or the judiciary in enlarging the powers of the government opens the door for another which will be sure to follow, and so the process goes on until all respect for the fundamental law is lost, and the powers of the government are just what those in authority please to call them."

Under the constitution of 1852, article eighty-one, of this State, judges of district courts were made elective, as they are under that of 1868. In 1853 (see article No. 231) the Legislature undertook to supply a defect in the system, by authorizing parties to select some member of the bar to try all cases wherein the judges were recused. The right of members of the bar thus to sit as judges, under the act, was drawn in question in the cases of the State ex rel. —— vs. Judge ——, 9 An., p. 62; and Hayes vs. Hayes, 10 An., p. 642, and the Supreme Court held that the power to select judges being by article eighty-one of the constitution reserved to the people, the act in question was unconstitutional.

We may remark that the whole tenor of recent legislation and of the decisions in the State of Louisiana has become alarmingly latitudinal as to constitutional limitations, and that they too often betray ingenious attempts to evade the plain letter of the constitution, or to make it say what, in reality, it does not. It has been forcibly argued by counsel for this motion, that the court should look into the motive of the Legislature in passing the act under consideration as it would examine the motive of a contract. We find no authority for this.

On the contrary, if we are to consider the departments of government as absolutely independent of each other, then it is evident the courts can not impute to the Legislature any but public motives for their conduct. "We are not made judges of the motives of the Legislature, and can not inquire into the bona fides of that body in discharging its duty." People vs. Draper, 15 N. Y., p. 845. In that case Judge Shankland said:

"The powers of the three departments are not merely equal—they are exclusive in respect to the duties assigned to each. They are absolutely independent of each other. If we may institute an inquiry into the conduct of another department, we may inquire also by what motives the executive is induced to approve a bill or withhold his approval, and in case of withholding it corruptly, by our mandate compel its approval. To institute the proposed inquiry would be a direct attack upon the independence of the Legislature, and an usurpation of power subversive of the constitution."

Any legislative action which in effect and in fact takes away from the people rights and privileges which they had reserved to themselves, such as that of electing their own judges, is a proper subject of judicial investigation, and in such a case it is presumable the Legislature acted without a due consideration of its authority.

While this is the settled doctrine of the courts of this country, it is equally settled that where the constitution has imposed no limits, the legislative power must be considered as practically absolute, whether it operates according to natural justice or not in a particular case. "The courts are not the guardians of the rights of the people, unless those rights are secured by some constitutional provision which comes within the judicial cognizance." See Cooley's Con. Lims., p. 168, 171-2, 182, et seq. Chief Justice Marshall, in Fletcher vs. Peck, 6 Cranch, pp. 128, declared that "the question whether a law be void for repugnancy to the constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes. The opposition between the constitution and the law should be such that the judge feels a clear and strong incompatibility with each other." Such is the conviction of the court in this case, and yet the Supreme Court having held in every case in which the question has been raised, directly or collaterally, as to the constitutionality of the Eighth or Superior Court, that the acts of the Legislature creating them were authorized by the constitution, this court would do a vain thing to do otherwise than to recognize its decision as the best evidence of what the law is.

In Yates vs. Lansing, reported in 9 John's Reports, page 415, Senator Platt said, and this court recognizes the truthfulness and force of his expression, that the "decisions of courts are not the law; they are only the evidence of the law." The Supreme Court having the supervision of all matters decided by the district courts, wherein the amount involved is appealable, it would be idle to decree otherwise than is consistent with its opinions. Were the question an open one, this court would have no hesitation in decreeing the act under consideration to be unconstitutional.

1. Because the Legislature has abolished two of the courts and the judgeships of the parish of Orleans, without impeachment of the judges—without addressing them out of office by two-thirds, or any other fraction of the Legislature, and without any decree of the court, pronouncing their disqualification to hold said office, it not being in the power of the Legislature to legislate them out of office, nor to diminish nor increase their terms of office as fixed in the constitution. 21 An., p. 192; 23 An., p. 785.

2. Because they had been elected as judges of the Seventh and Eighth District Courts, in and for the parish of Orleans, by the people, under the constitution of Louisiana, with full authority to hold their office for a term of four years. Art. 84 of the constitution; 21 An., p. 192; 23 An., p. 785.

3. Because all the judges of the district courts are elective by the people; whereas the judge of the Superior District Court was appointed by the Governor, by and with the consent of the Senate. Art. Constitution 83, 9 A., 62; 10 A., 642.

4. Because the jurisdictions of the respective courts having been fixed by the constitution, (Art. 83,) it was not in the power of the Legislature to deprive them of their respective jurisdictions, but only to confer such further jurisdiction not inconsistent with those fixed by the constitution, as the Legislature might deem proper to confer. Art. Con. 83.

5. Because the Legislature can not create vacancies, except by impeachment or by address. Art. Con., 81 and 106, 21 An., 192; 23 An., 785.

6. Because it can not take from or add to the judiciary department of the government by establishing a Superior District Court, with such peculiar rights, privileges and powers as are given to the judge thereof in sections three and four of the said act No. 2, approved December 11, 1872.

7. Because if the Legislature can by abolishing district courts, and decreeing a vacancy to exist in any one instance, as it has done in this, it may abolish all the district and parish courts in the State; declare the offices vacant as in the case of original vacancy, and adopting a name not known to the constitution, proceed to install all the district and parish judges of the State, by appointment of the Governor, and thus completely take away from the people the reserved constitutional right of electing their said judges (constitution article 83), and because they may make the provision of the constitution, article 84, nugatory, which declares that judges of the district courts shall hold their office for a term of four years.

8. Because if the Legislature can remove one judge without impeachment or address, it may oust all the judges without such proceedings, thereby making the judiciary, which was intended to be and is absolutely independent in its sphere, dependent upon the will and power of every Legislature.

9. Because the power to abolish offices and to displace incumbents constitutionally existing on the one hand, and elected on the other, and to appoint judges, as has been done in this case, is a virtual and absolute denial of the right of the people to vote, and is an abridgement of that right to all intents and purposes.

The Supreme Court having recognized the Superior Court by giving full force to its decree in the case before cited, and but recently decided, it follows that the opinion of this court, in accordance with the foregoing views of the unconstitutionality of the act creating that court, would avail nothing until the Supreme Court sees proper to review its decision.

We are, therefore compelled to order this case, so far as the city of New Orleans is concerned, to be transferred to the Superior Court.

New Orleans, Baton Rouge and Vicksburg Railroad.

The following letter has been received by L. J. Higby, Esq., from Mr. Levi Parsons, president of the New Orleans, Baton Rouge and Vicksburg railroad. It was dated at New York, the twenty-eighth ultimo:

Your favor is at hand. In regard to the "Backbone" railroad, we hear that so many promises have been made of its early completion by former parties connected therewith, that some of the New Orleans merchants have cause to expect relief from this company for better facilities in reaching the large Red river and Texas trade. But as the Missouri, Kansas and Texas railroad is now completed and in operation from Dennison, Texas, through the Indian Territory to Kansas, connecting with all the Northwest railroads, it is a business necessity to connect these with the commercial port of New Orleans, and the work will be pushed during the present year as rapidly as men and money can do it with reasonable economy. But your business men will understand that the continued non-payment of interest on the State debt, or adverse legislation, will increase the expense and time of completing such a work of public improvement. It is, therefore, not only the interest of this company, but of the whole commonwealth, that this corporation, so liberally aided by an act of Congress, should not be embarrassed by an unfriendly act of the State Legislature.

Colonel G. W. Cochran has received, in confirmation of the foregoing, a dispatch from Mr. Willis Gaylord, dated at New York, the eighth instant, stating that President Parsons has ordered a corps of engineers on the line of the New Orleans, Baton Rouge and Vicksburg railroad.

Opera Bouffe at the Varieties.

Next Monday evening at the Varieties Theatre, Mlle. Aimee, the queen of opera bouffe, will open with "La Grande Duchesse," herself as the *Duchesse*. Mons. Juteau will make his first appearance here in his most successful character of *Fritz*, Mons. Duchesne as *General Boum*, and Mme. Roland in her charming role of *Wanda*. Subscription to season tickets will be received to-day and to-morrow. The sale of seats for six nights in advance and the matinee will commence at the Varieties box office Thursday. The Philadelphia *Press* says of the leading artiste:

Aimee comes to us with certainly the most perfect organization ever devoted to opera bouffe. She is the same exquisite artiste, as full of magnetism, of mirth and music as ever. The new tenor, Juteau, is not only a fine tenor, but a great comedian.

A Suggestion from the Country.

Our country cousins are preparing to descend on New Orleans Mardi Gras like an avalanche, consequently the Magnolia *Gazette* makes the following suggestion for the benefit of its readers:

The accommodation train leaves New Orleans every evening at four o'clock, and runs up as far as McComb City, and leaves McComb City every morning at half-past three o'clock. Now we suggest that notice be given by the proper authorities that on the morning of the twenty-fifth of February the accommodation train will back up to Summit, which is only two miles from McComb City, and start from that place, allowing persons to visit the city at half rates, as persons are and have been allowed to do from places at a distance; and it being so difficult, as we before stated, for persons who arrive on that day to get accommodations, we further suggest that notice be given that the accommodation train will leave New Orleans at twelve o'clock on the night of the twenty-fifth instant. This will allow ample time for those who do not wish to remain in the city to witness the doings of the day and night, and afford them an opportunity to return. Such an arrangement would, we think, be also satisfactory to those who would leave the city on the accommodation train at the regular time of departure, as they would gladly remain and leave at twelve o'clock at night.

We trust the superintendent will consider this suggestion favorably, and give timely notice of an arrangement of this kind.

We make the suggestion in the name of the people and the mighty King of the Carnival.

A Session in March.

A Washington special to the New York *Herald* says:

There is an immense pressure for a restoration to the statute book of the law which required every Congress to be commenced on the fourth of March. The hotel-keepers want it, the lobby want it, the new members want it, the old officers of the House want it, and some of the old members who hold over are slyly pulling the strings to bring it about. The Senators want to enjoy the spring here, but prefer the more dignified executive session with no lower house to annoy them; but the President thinks that the sooner Congressmen go to their homes the better it will be for the treasury and the country. We shall see who will win.

The Iberville *News* says:

The sudden rise within the past few days in the great father of waters that majestically passes by our town on its irrestible course toward the sea, begins to offer an opportunity for profitable occupation to those of our citizens who generally betake to catching drift-wood at this season. From the huge blocks of solid ice which we noticed upon its surface a few days ago, heading for the Tropic of Cancer, it would not surprise us if at a more southern latitude catching drift ice would prove a remunerative occupation.

Pork Packing—Progress of the Business.

CHICAGO, February 8.—Howard, White & Crowell's *Card Bulletin* to-day publishes a report of the hog packing in fifteen different States to date, varying from January 1 to February 8. The table includes fifteen points in Ohio, fifty-two in Indiana, fifty-nine in Illinois, twenty-two in Iowa, fifteen in Missouri, and fourteen in Wisconsin, and embraces the principal packing points in those States. The number packed at these 286 points this season is 1,675,7[illegible]; estimated total packing at the same points for the entire season, 5,223,044; against total last year, 4,7[illegible], rate of increase over last season's packing is 7 [illegible] per cent; the average increase in weight five pounds. The average yield of lard appears to have varied little from that of last year, though the aggregate yield will be greater. The following shows the number packed at the principal packing points to date, with the total number last season: Chicago 1,135,000, last year 1,229,208; Cincinnati 590,000, last year 650,841; St. Louis 525,000, last year 419,000; Louisville 310,000, last year 309,512; Milwaukee 240,435, last year 315,000; number packed last year at points not heard from this year, 124,189. The same ratio of increase shown at other points will add to this number 8969, making 133,159, which will swell the total estimated packing for the season to 5,356,202, against 4,878,163 last year.

OFFICIAL.

Laws of the United States Passed at the Third Session of the Forty-Second Congress.

[GENERAL NATURE—No. 4.]

An act to provide for holding adjourned terms of the Supreme Court of Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the supreme court of the Territory of Arizona may hold adjourned terms thereof at any time and place in said Territory agreed upon by a majority of the judges of said court at any regular term thereof. The order for an adjourned term shall be signed by a majority of the judges thereof at a regular term of said court and entered upon the minutes of the court, and any business which such court might do at any regular term thereof may be done at such adjourned term; and the clerk of said court shall be entitled to such mileage for attendance at such adjourned term as is by law allowed the marshal of the district of Arizona for his attendance upon the courts in said Territory.

Approved December 24, 1872.

[GENERAL NATURE—No. 5.]

An act making appropriations to supply deficiencies in the appropriations for the service of the government for the fiscal year ending June thirty, eighteen hundred and seventy-three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums, or so much thereof as may be necessary, be, and the same are hereby appropriated for the service of the year ending June thirtieth, eighteen hundred and seventy-three, for the purposes hereinafter expressed, namely:

POSTOFFICE DEPARTMENT.

For the manufacture, engraving and printing of postal cards for the service of the quarter ending June thirtieth, eighteen hundred and seventy-three, fifty thousand dollars.

For registry-locks, to be used on through mail routes for pouches containing registered letters, three thousand dollars.

COAST SURVEY.

For replacing old and worn-out vessels for service in the coast survey, one hundred and fifty thousand dollars.

For continuing the survey of the Atlantic and Gulf coasts and Lake Champlain, including compensation of civilians engaged in the work, and excluding pay and emoluments of officers of the army and navy and petty officers and men of the navy employed in the work, twenty thousand dollars.

CENSUS.

For a deficiency in the appropriations for the expenses of the ninth census, twelve thousand dollars.

REBEL RAM "ALBEMARLE."

To enable the Secretary of the Navy to pay the capture of the rebel ram "Albemarle," in accordance with the decree of the district court of the United States for the District of Columbia, two hundred and two thousand nine hundred and twelve dollars and ninety cents.

PATENT OFFICE.

For photo-lithographing, or otherwise producing copies of drawings of current and back issues of patents from the patent office, and for reproducing back numbers of the *Patent Office Gazette*, twenty thousand dollars.

DISTRICT OF COLUMBIA.

To enable the Secretary of the Interior to pay the expenditures made by the board of public works of the District of Columbia for paving roadway, and curbing and paving sidewalks; grading, sewerage and other improvements upon and adjoining the property of the United States in the District of Columbia, one million two hundred and forty-one thousand nine hundred and twenty dollars and ninety-two cents, or so much thereof as may be necessary; provided, that all payments under this appropriation shall be made only upon vouchers approved by the officer in charge of the public buildings and grounds of the district, after full examination and measurement of the said improvements, and the approval of the prices claimed therefor; and provided further, that the said board of public works be, and they are hereby, prohibited from incurring or contracting further liabilities on behalf of the United States in the improvements of the streets, avenues, and reservations beyond the amount of appropriations previously made by Congress, and from entering into any contract touching such improvements on behalf of the United States, except in pursuance of appropriations made by Congress.

Approved January 8, 1873.

[GENERAL NATURE—No. 6.]

An act to amend the one hundred and thirty-third section of an act approved June eighth, eighteen hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-office Department."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one hundred and thirty-three of the act entitled "An act to revise, consolidate, and amend the statutes relating to the Post-office Department," approved June eighth, eighteen hundred and seventy-two, be so amended as to authorize the transmission by mail of packages of seeds, cuttings, bulbs, roots, and scions, of any weight, for each of such packages, not exceeding four pounds, at a rate of postage of one cent for each two ounces or fractions of an ounce of such package or packages; provided, that all mail matter of the third class must be prepaid in full in postage stamps at the office of mailing.

Approved January 9, 1873.

[GENERAL NATURE—No. 7.]

An act making appropriations for the payment of invalid and other pensions of the United States for the year ending June thirtieth, eighteen hundred and seventy-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the payment of pensions for the fiscal year ending the thirtieth of June, eighteen hundred and seventy-four.

For army pensions to invalids, widows and dependent relatives, revolutionary pensions, and pensions to soldiers of the war of eighteen hundred and twelve, and for furnishing artificial limbs or apparatus for resection, with transportation, or commutation therefor; also, for compensation to pension agents, and the expenses of the several agencies, and for fees for preparing vouchers and administering oaths, as provided for by the acts of April twenty-fourth, eighteen hundred and sixteen; July fourth, eighteen hundred and thirty-six; May thirteenth, eighteen hundred and forty-six; February twentieth, eighteen hundred and forty-seven; February second, eighteen hundred and forty-eight; July twenty-first, eighteen hundred and forty-eight; July twenty-ninth, eighteen hundred and forty-eight; February third, eighteen hundred and fifty-three; June third, eighteen hundred and fifty-eight; July fourteenth and seventeenth, eighteen hundred and sixty-two; June thirtieth, eighteen hundred and sixty-four; June sixth and July twenty-fifth, eighteen hundred and sixty-six; July twenty-seventh, eighteen hundred and sixty-eight; June seventeenth and July eighth and eleventh, eighteen hundred and seventy; February fourteenth, eighteen hundred and seventy-one; and February twentieth, eighteen hundred and seventy-two; and all other pensions provided by law, thirty million dollars.

For navy pensions to invalids, widows and dependent relatives, and pensions to sailors of the war of eighteen hundred and twelve, and for furnishing artificial limbs or apparatus for resection, with transportation or commutation therefor, compensation to pension agents, expenses of agencies and fees for preparing vouchers and administering oaths, as provided by the acts of April twenty-third, eighteen hundred; February twentieth, eighteen hundred and forty-seven; August eleventh, eighteen hundred and forty-eight; July fourteenth and seventeenth, eighteen hundred and sixty-two; June thirtieth, eighteen hundred and sixty-four; June sixth and July twenty-fifth, eighteen hundred and sixty-six; March second, eighteen hundred and sixty-seven; July twenty-seventh, eighteen hundred and sixty-eight; June seventeenth and July eighth and eleventh, eighteen hundred and seventy; and February twentieth, eighteen hundred and seventy-two; and all other pensions provided by law, four hundred and eighty thousand dollars; provided, that the appropriation aforesaid for navy pensions, and the other expenditures under that head, shall be paid from the income of the navy pension fund, so far as the same may be sufficient for that purpose.

Approved January 10, 1873.

[GENERAL NATURE—No. 8.]

An act supplemental to and amendatory of an act entitled "An act to prescribe the mode of obtaining evidence in cases of contested elections," approved February nineteen, eighteen hundred and fifty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all contested election cases the time allowed for taking testimony shall be ninety days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first forty days; the returned member during the succeeding forty days; and the contestant may take testimony in rebuttal only during the remaining ten days of said period. Such testimony in rebuttal may be taken on five days' notice. Testimony may be taken at two or more places at the same time.

SEC. 2. Depositions of witnesses residing outside of the district and beyond the reach of a subpena, may be taken before any officer authorized by law to take testimony in contested election cases in the district in which the witness to be examined may reside.

SEC. 3. That the party desiring to take a deposition or depositions under the provisions of this act, or of the act to which this is an amendment, shall give the opposite party notice, in writing, of the time and place, when and where, the same will be taken, as well as of the name of the witness or witnesses to be examined, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney of his authorized by him to take testimony or cross-examine witnesses in the matter of such contest, if, by the use of reasonable diligence, such personal service can be made; but if, by the use of such diligence, personal service can not be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service. And the taking of the testimony may, if so stated in the notice, be adjourned from day to day. The notice, with the proof or acknowledgment of the service thereof, shall be attached to the depositions when completed. The party notified as aforesaid, his agent or attorney, may, if he see fit, select an officer (having authority to take depositions in such cases) to officiate, with the officer named in the notice, in the taking of the depositions; and if both such officers attend, the depositions shall be taken before them both, sitting together, and be certified by them both. But if only one of such officers attend, the depositions may be taken before and certified by him alone. It shall be competent before the parties, their agents, or attorneys authorized to act in the premises, by consent in writing, to take depositions without notice; and it shall also be competent for them, by such written consent, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in common law, or civil actions, or in chancery, by either the laws of the United States or of the State in which the same may be taken, and to waive proof of the official character of such officer or officers. Any written consent given as aforesaid shall be returned with the depositions; and every such officer so chosen by the parties, their agents or attorneys, and officiating, shall have all the powers in the premises that are conferred by the act to which this is an amendment upon the officers named therein. At the taking of any deposition under this act, or the act to which this is an amendment, either party may appear and act in person, or by agent or attorney.

SEC. 4. All officers taking testimony to be used in a contested election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify the same, and carefully seal and immediately forward the same, by mail, addressed to the Clerk of the House of Representatives of the United States, Washington, D. C., and shall also indorse upon the envelope containing such deposition or testimony the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and shall subscribe such indorsement. Upon the written request of either party, the Clerk of the House of Representatives shall open any deposition at any time after he shall have received the same, and he may furnish either party with a copy thereof.

Approved January 10, 1873.

[GENERAL NATURE—No. 9.]

An act to amend section twelve of an act entitled "An act to authorize the appointment of shipping commissioners," etc., approved June seven, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twelve of the act entitled "An act to authorize the appointment of shipping commissioners," etc., approved June seven, eighteen hundred and seventy-two, be amended by adding to said section the following proviso: "provided further, that this section shall not apply to [illegible] of vessels when engaged in trade between the United States and the British North American possessions, or the West India islands, or of the Republic of Mexico."

Approved January 15, 1873.

[GENERAL NATURE—No. 1[illegible].]

An act to prevent certain officers of the United States and Territories from practising as attorneys or solicitors in courts of the United States in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no clerk, assistant or deputy clerk, of any territorial, district or circuit court, or of the Court of Claims or the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

SEC. 2. That whosoever shall violate any provision of this act shall be stricken from the roll of attorneys by the court upon complaint, upon which the [illegible] shall have due notice, and be heard in his defense; and in the case of a [illegible] deputy marshal so acting, he shall be [illegible] by the court for [illegible] office.

Approved January 16, 1873.

[GENERAL NATURE—No. 12.]

An act to amend an act entitled "An act relating to members of Congress, heads of Departments and other officers of the government," approved June eleventh, eighteen hundred and sixty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act entitled "An act relating to members of Congress, heads of Departments and other officers of the gov-