New Orleans Republican.

OFFICIAL JOURNAL OF THE UNITED STATES

OFFICIAL JOURNAL OF NEW ORLEANS

THE DAILY REPUBLICAN

is published every day (Mondays excepted) at No. 94 Camp street. Terms: $12 a year; $6 for six months; $3 for three months—payable invariably in advance. Single copies five cents.

Office—No. 94 Camp street.

RATES OF ADVERTISING:

Squares.	One month.	Two months	Three months	Six months.	One year.
One	$12	$22	$30	$50	$75
Two	22	38	50	80	125
Three	30	53	70	110	175
Four	38	67	90	140	225
Five	46	80	105	170	275
Six	54	90	120	200	325
Seven	60	105	135	230	375
Eight	65	115	150	260	420
Nine	70	125	165	290	460
Ten	75	135	180	320	500
Eleven	80	145	195	350	540
Twelve	85	155	210	380	580
Thirteen	90	165	220	410	620
Fourteen	95	175	230	440	660
Fifteen	100	185	240	470	700
Thirty	175	300	450	750	1200

Monthly advertisements, inserted every other day, to be charged two-thirds of the above rates.

Second page monthly advertisements, each square, $20 per month.

Transient advertisements, having the run of the paper, first insertion $1 50 per square; each subsequent insertion seventy-five cents per square.

Second page transient advertisements, each insertion $1 50 per square.

Advertisements inserted at intervals to be charged as new each insertion.

Regular advertisers, who advertise largely, will be allowed such discount from above named transient rates as may be agreed upon; provided, that in no case shall such discount exceed twenty-five per cent.

All business notices of advertisements to be charged twenty cents per line each insertion.

THE WEEKLY REPUBLICAN

is published every Saturday morning, and contains the news by telegraph, miscellaneous reading, editorials, local matters of general public interest, commercial and monetary reports, and every thing that appears in the Daily, except such items as are of little or no public moment. The WEEKLY REPUBLICAN is an excellent family paper, valuable as well for instruction and amusement as information on the current topics of the day.

Terms of Subscription.

One year, $5; six months, $2 50.

Advertisements.

Transient advertisements same terms as in the Daily. Monthly advertisements inserted for one-fourth of the daily rates.

A liberal commission allowed to those who send us clubs of five or more.

East Pascagoula—Its Trade, Resources and Harbor.

A glance at Hardee's official map of the State of Mississippi will show East Pascagoula located on the line of the Mobile and Texas railroad, 100 miles from New Orleans and forty and a half from Mobile.

Pascagoula bay is formed by Horn and Petit Bois islands. The pass between these two islands, known as Horn Island Pass, admits vessels drawing eighteen feet. Through this pass vessels can approach within four miles of the town of Pascagoula and occupy safe anchorage. Vessels of greater draft can approach from the southwest by way of Ship Island Pass, finding there secure anchorage in twenty-three to thirty feet of water, and only distant from the mouth of Pascagoula river sixteen miles.

As there are no towage expenses, port charges or other dues to be paid at Pascagoula, it will at once be seen that a carrying trade to and from that point would be lucrative even at rates of freight comparatively lower than those paid at other places. Should Pascagoula be made a port of entry, the large quantities of sugar, molasses, railroad iron, salt, etc., that are daily imported into this country for transportation in bond to St. Louis, Louisville, Memphis, Cincinnati and other points, could then find a more expeditious and cheaper route, than by coming up the Mississippi, discharging at New Orleans, warehousing and reshipping. The trade of Pascagoula is principally in lumber, though it has resources in the way of tar, pitch, turpentine and rosin; and up through the back country quite a trade could be opened up in the line of wool, hides and tallow.

Pascagoula at present exports about a 1,500,000 feet of lumber per week, though the capacity of the mills will admit of almost double that. Our lumber market here in New Orleans is largely dependent on Pascagoula, as the following receipts reported in yesterday's paper will show: Schooner Walter Denny, 42,000 feet; schooner Sea Horse, 40,000 feet; schooner Mabel, 40,000 feet; schooner Four Brothers, 50,000 feet; schooner Mary Theresa, 25,000 feet; schooner Mary Louise, 30,000 feet; schooner Alcyon, 30,000 feet; schooner C. Braisted, 25,000 feet; schooner Emma Amelia, 30,000 feet. Total, 312,000 feet of lumber in one day.

A very large trade is also carried on between Texas and Pascagoula. Coasting schooners not drawing over nine feet loaded find it to their interest to ply between Texas and this point, as they can take on, right at the mills, almost their entire load at scarcely any expense. A single lighter load, brought to them at a maximum cost of $2 per thousand, finishes their lading, and they thus leave with quick dispatch.

Concerning the fitness of Pascagoula as a port of entry, we hardly think anything need now be said. In view of her immense trade as above set forth, her ample facilities for anchorage and harborage, her immediate contact with a railroad that will enable her to transfer goods in every direction, we think it due to the citizens of that region, and imperatively necessary for the exigencies of commerce, that Pascagoula be at once made a port of entry.

The Wonders of the Grave.

The tomb of Edward the First, who died in 1307, was opened January 2, 1770, after 463 years had elapsed. His body was almost perfect. Canute (the Dane), who crossed over to England in 1017, was found in 1776 by the workmen who repaired Winchester Cathedral, where his body had reposed nearly 750 years, perfectly fresh. In 1669 three Roman soldiers, fully equipped with warlike implements, were dug out of a bed [illegible] a mouse were perfectly fresh and plump. [illegible] England, [illegible] in Warwickshire, there was taken [illegible] the corpse of Thomas Gray, Marquis of Dorset, who was buried there the tenth of October, 1530, in the twenty second year of Henry VIII.; and although it had lain there seventy-eight years, the eyes, hair, flesh, nails and joints remained as though it had been but newly buried.

Robert Braybrook, who was consecrated Bishop of London in 1381, and who died in 1404 and was buried in St. Paul's was taken out of his tomb after the great fire in 1666, during the repairs of the cathedral, and although he had lain there no less than 262 years, his body was found firm as to skin, hair, joints, and nails.

Pietro Rodriguez, a Portuguese jeweler, while pursuing his occupation in the city of Mexico, was, in 1595, accused before the tribunal of the inquisition, and after suffering a variety of tortures, was condemned to be buried alive in a vault in the Convent de St. Domingo in that city. He was then thirty years old. The Convent de St. Domingo was lately demolished in search of treasure supposed to be concealed there, and the body of Rodriguez taken out of the vault exactly as when placed there 270 years before. His daughter, two and a half years of age, was lying under her father's feet, and as perfectly preserved as himself. These last mentioned bodies are in this city. The evidences of torture on the body of the jeweler are fearfully apparent. In one respect, however, the appearance does not coincide with the record which we have given them. The miserable man must have died in the hands of his tormentors. The positions of his hands show that he was suspended by the body and neck until he died. Marks of the cords and of the burning iron are deeply recorded on various parts of his body. His hair and beard are firm, his skin natural in hue and texture, without the least trace of decomposition in any part.

VIEWS OF A TEXAS EDITOR.

Decrease of Travel on the Morgan Line—The Cause—The Louisiana Political Troubles—The Much-Abused Judge Durell—The Attractions of the Charming Crescent City—The City Hotel, Etc.

[Editorial Correspondence of the Waco Register.]

Mr. W. R. Chase, editor of the Waco *Register*, whose presence in this city has been heretofore announced in the REPUBLICAN, favors his paper of the fifth instant with the following letter from New Orleans, in which we find enough of interest to our readers to lay the whole before them:

NEW ORLEANS, March 30, 1873.

Travel by the Morgan line of steamers has greatly diminished of late, a fact to be attributed to the completion of uninterrupted rail communication between Texas and St. Louis and all the North and East. There were only about a dozen passengers on board the Whitney as I came over. I never saw so few before on any of these steamers. It is manifest that New Orleans will suffer by this diversion of travel—for business and travel go together—until the Texas and New Orleans road is completed. When this road will be completed is among the uncertainties. I have called at the office of the company but can learn nothing more definite than that the road will be completed within a year or two, that the work is being done as fast as circumstances will permit, and that the road is in the hands of a strong company, able and determined to put it through.

New Orleans lacks the buoyancy and "push" of a rising city, with a great destiny ahead sure to be reached. Rents flag, business is dull, employment difficult to be obtained, money scarce. So say the papers, so looks the city. Instead of a strong, voluntary, inward flow of population, capital and business, it would seem as though these were silently sliding away as it upon an ebb tide.

And much of the neglect and dilapidation into which New Orleans is falling must undoubtedly be attributed to the continual political ferment in which the city has managed to keep itself since the war. I say "in which it has managed to keep itself," for I beleive its troubles have been of its own creating.

Politics, the never-to-be-reconciled or satisfied element of the Democracy, based on ante-bellum and conferate ideas, have been at the bottom of all the troubles of New Orleans and Louisiana since the war. No government not their own will ever satisfy this element, however good, wise or benign it may be. And the cry of "oppression" is worthy of little consideration when proceeding from a party whose creed it is to consider itself oppressed unless itself administering the government.

The Democratic-Fusion-Warmoth-McEnery party have had a full hearing for their cause, first before the United States court of this State, then before the Supreme Court of this State, then before the President, then they applied to the United States Supreme Court, and then to Congress, and though failing to receive a favorable verdict or a single essential point in the controversy from either of these great tribunals, they cooly ask the stranger visiting New Orleans and the country at large to believe, without hesitation, that they have the law, the evidence, the right all on their side.

But actions speak louder than words, and one thing the McEnery party have made self-evident, whatever they may say, and that is that they are not law-abiding; and to obey the law and the constituted authorities is the very first and most important condition of good citizenship in any civilized country. The McEnery party took up arms to resist the authorities of this State, as you have heard, on the fifth instant, and a street engagement between the opposing forces, principally with musketry, took place, in which several were killed and wounded.

The question in controversy has been, who shall hold the offices and administer the government of the State? The McEnery (Fusion Democratic) party say they were elected, and the Kellogg (Republican) party say they were elected. Now, I submit that it does not become me or any other person, or this paper or that paper to assert positively as of our own knowledge, who was elected. Unless we are to have anarchy or war, all such questions, in every instance, must be left to the decision of the tribunals upon which the law has conferred the jurisdiction. Such tribunals have tried this question and in every instance have decided against the claims of the McEneryites, and I submit to the citizens of New Orleans that if they would have their city prosper and have the confidence of the commercial and business men of the country at large, they should strive to have it understood that in New Orleans this decision and all other decisions and mandates of the court are to be obeyed and respected until set aside by due process of law. For the decision of a court, whatever the wishes or opinions of individuals or communities, is law, and resistance to the decision of a court is resistance to law.

From the best I can gather the McEnery strength is fast subsiding. The *Picayune* still keeps up a bold front and with as resolute air as the conscious weakness and uncertainties of its position will permit, advises resistance to the taxes. The *Times* began to hedge as soon as the bill ordering a new election was voted down in Congress; it says the "game is up," was "badly played," or words to that effect.

Yes, my opinion is that, on the part of the McEnery partisans, this Louisiana controversy has been a game and nothing else, played to win and not to find the right; and what astonishes me most is that so many leading papers of the North have been confused and misled by the shallow clamor of the strikers and ropers in the game.

It occurs to me that tax resistance is not going to amount to much.

I am told that while the McEnery strikers are keeping up a noise the mass of the people are quietly paying their taxes. The city government is Democratic, or was elected as such, and no fuss was made about it; but the *Picayune* advises resistance to city as well as State taxes.

"We want to be free from the rule of carpet-baggers and adventurers," cry the McEnery party. This is what they said when Warmoth and his associates, such as Sheridan and McMillen, were in power. Yet we now find Warmoth the leader of this same party, and McMillen elected to the United States Senate by the McEnery legislature! Two years ago they abused Warmoth and McMillen as badly as they now do Kellogg and Pinchback; yet the first opportunity they have they install Warmoth and McMillen into their highest places. Is that sincerity or respect for honesty, sincerity or consistency in such a party entitled? A glorious opportunity has this party to place the seal of their condemnation upon carpet-baggers. When Warmoth and McMillen stepped forward and asked for preferment, had this party been honest it would have said, "back, we have had enough of your sort." Instead of that they were embraced and promoted to the highest places.

The *Picayune*, while advising tax resistance, complains that the city government contemplates reducing the police force on account of the difficulty of raising the money to pay a large force. This reminds me of the course of the Texas Democracy on the school question. While refusing to pay their taxes they complained that the teachers were not being paid.

By the way, I wonder if any school tax resister will ever get to be Governor of Texas? I doubt it.

I have had the pleasure of meeting Judge Durell, judge of the United States Circuit Court for this State, whose name the Democratic press of the country has been trying to render infamous for the past six months. Judge Durell is a man of fine presence and countenance, and looks every inch a judge on the bench and off. He is a ripe scholar and a man of pure life and character, against whom no breath of reproach was ever breathed until he was obliged to decide some of the questions involved in the late political contest, when the decisions being adverse to the interests of the McEnery faction, the Democratic press of the country commenced an assault upon his character, calling him corrupt, a sot, a brute, etc. Now I say this, that whenever a party deliberately goes to work to unjustly harm in the slightest the personal character of the humblest citizen, it is unworthy the confidence of the country.

Judge Durell remarked that his name had been "bandied about in all manner of rascally ways all over the country for some time, but was confident that things would come to be rightly understood after a while." Judge Durell has been a citizen of New Orleans for thirty-five years, and was admitted to practice here.

The State and country is fortunate whenever a judge (a position as has been well said next to God on earth), is found who, knowing, dare discharge his duty firmly, despite the blandishments or threats of interested partisans or factions.

The *Picayune* has standing the following advertisement:

Governor John McEnery has his office at No. 25 Carondelet street, up stairs, in the marble building.

My opinion is that this "Governor" McEnery has occupied for some time a position in public attention far above his calibre, and am strongly of the impression that he will never be able to regain a position any higher or more exalted than that "back office up stairs" into which he has subsided.

Notwithstanding business commercially is dull, New Orleans retains many of its characteristic attractions in undiminished glory. The promenade on Canal street, the brilliant saloons, the theatres and places of amusement are the same. I know of no better place to recreate in than the charming Crescent City, and charming it is, truly, with its graces and intermingling of quaint eccentricities.

The old reliable City Hotel, where I am stopping, seems as prosperous and as great a favorite as ever. Here Texans most do congregate. The hotel in all its appointments is first class, is conducted on a liberal scale, and the comfort and convenience of all guests are assiduously sought to be promoted. An agreeable characteristic of this hotel is that we always find the same proprietor, clerks and employes, and do not have to make new acquaintances every other time we come. Colonel Morse, for instance, well known as one of the most liberal, enterprising, as well as judicious hotel managers in the country, is still proprietor, while Messes. Watson, Sharp and the others are still at their places as assistants. It may be worth while to remark that the charges at this house are lower than at any other first class hotel in town.

I have had the pleasure of meeting two of our enterprising Waco merchants, the Lewine Brothers, here. They have purchased largely, and will take on to Waco for the spring and summer trade an unprecedentedly large stock, especially of everything in the gentlemen's furnishing line. The goods are shipped and will reach Waco soon, and will be worthy the attention of our citizens.

I regret very much to hear of the recent fire in Waco. Another warning. How soon passes away before the devouring element the accumulations of years of toil and unremitting attention to business some of our citizens now feel. Let our city government do something to establish a fire department. Individual subscriptions, liberality and efforts can not be relied on to establish and maintain such an organization. We must have the city corporation and taxation at the bottom of it. W. R. C.

Audacity of a Reporter.

When the Duke of Wellington was Prime Minister, one of the morning newspapers gave the programme of a very important government proceeding about to be adopted. It startled all parties and created an immense sensation among the Tories, for that political party had received no information that the Cabinet intended any such move; nay, the majority of the Cabinet Ministers themselves were equally in the dark; and yet the announcement was true. The Duke was full of wrath at the premature display of his plans, and equally full of surprise, seeing that those plans had not been committed to paper. The clue to the mystery was after a time obtained. The Duke of Wellington was rather deaf during the second half of his life, and (as is usually the case under such circumstances) adopted a somewhat loud tone in conversation. One evening, after a stirring debate in the House of Lords, the Duke walked home arm in arm with another peer, a trusted member of his party, but not a member of the government. In the course of conversation he gave the outline of a scheme which he had determined to put into effect, but of which he had said nothing to his colleagues in the Cabinet. A penny-a-liner happened to be outside the House of Lords. He caught some words from the lips of the loud-talking Duke, saw at once that they bore an important relation to the existing politics of the day, and resolved to attempt a neat thing in the way of business.

Laying aside honor and delicacy as troublesome companions, he followed the two peers at a cautious distance, and picked up the loud words as they fell upon his ear. The night was dark, the tread of his steps was made light for the occasion, and he escaped detection during a long portion of the Duke's walk to Aspley House. Returning to his lodgings, the "liner" got up an account of the momentous policy intended by the noble Duke at the head of his majesty's government, written in the proper newspaper style. Knowing that none of the papers would place trust in any flimsy from a "liner" if sent in the usual way, on a subject so peculiarly special and momentous as this, he adopted another plan. Mr. Black, editor of the *Morning Chronicle*, had that day given a "leader" of his own, in which the Duke was severely handled for refusing to make known his plans in the House of Lords. The "liner" went to Mr. Black, handed him the article he had prepared, and, on being pressed, candidly avowed the maneuver he had adopted. The temptation was too great to be resisted; Mr. Black accepted the "liner's" article, paid for it handsomely, and inserted it next morning as a double-leaded article. The effect was immense.

The conductors of the other papers were surprised and vexed at being thus forestalled by the *Morning Chronicle*; the Whigs were elated at the disclosures thus made, the Tories were mortified at having been thus kept in the dark by the ministers of their choice; the Duke's colleagues in the Cabinet were something more than mortified at having been deemed equally unworthy of his trust; and the clubs discussed the affair day after day. Many influential members of Parliament called upon William Clements, principal proprietor of the *Morning Chronicle*, and asked him to tell them "in confidence" how the information was obtained; but until the article produced its full effect in relation to the party politics of the day, Mr. Black would not tell his own employer the history of the secret. As the Duke had not committed his plan to paper, and had communicated it orally only to his friend, the peer, his suspicions alighted in that quarter, and much unpleasantness resulted, until the real truth came out.

Meteorological and River Report.

The signal service, United States army, reports, for the benefit of commerce, the meteorological record, and rise or fall of the rivers, at 5:43 P. M., local time, yesterday, as follows:

Place.	Temp.	Wind.	Weather.
Cairo	71	W.	Fair.
Chicago	40	N. E.	Clear.
Cincinnati	64	S. W.	Fair.
Davenport	56	S. W.	Fair.
Galveston	72	S.	Fair.
Indianola	75	S.	Fair.
Keokuk	54	S. W.	Fair.
Leavenworth	65	S.	Clear.
Louisville	66	W.	Fair.
Memphis	72	W.	Fair.
Nashville	67	W.	Clear.
New Orleans	71	S.	Fair.
Omaha	52	S.	Fair.
Pittsburg	54	S. W.	Fair.
Shreveport	77	S. W.	Fair.
St. Louis	62	S. W.	Fair.
Vicksburg	76	S. W.	Clear.
St. Paul	30	S.	Fair.

THE RIVERS

Stations	Rise last 24 hours.	Fall last 24 hours.	Above or below water mark Ft.	In.
St. Paul	[illegible]		[illegible]	[illegible]
Omaha	[illegible]	12	[illegible]	[illegible]
Leavenworth	1	..	[illegible]	[illegible]
Keokuk	2	..	[illegible]	[illegible]
Cairo	..	6	[illegible]	[illegible]
St. Louis	2	..	21	[illegible]
Pittsburg	..	4	[illegible]	2
Cincinnati	..	4	4	[illegible]
Louisville	..	18	[illegible]	[illegible]
Memphis	..	..	12	[illegible]
Vicksburg	2	..	[illegible]	[illegible]
Shreveport	4	..	1	[illegible]
Nashville	..	..	7	[illegible]

The river here is three feet seven inches below high water mark of 1871.

Why is a man who makes additions to a false rumor like one who has confidence in all that is told him? Because he relies on all that he hears.

COURT RECORD.

SATURDAY, APRIL 19, 1873.

Superior District Court.

Crescent City Live Stock Landing and Slaughterhouse Company vs. Martin and Henry Nicholas.—Petitioner represents defendants are indebted to plaintiffs for $16,832 40 for the following penalties:

Violation of the first section of the charter in landing and slaughtering twenty-eight beeves, $250 each offense; of the third section in landing, yarding and keeping twenty-eight beeves, $250 each offense; of the fifth section in using as a slaughterhouse other premises than those of the company twenty eight beeves at a penalty of $100; of the seventh section in not paying the company's fee of $1 each beef, and not delivering hoofs, horns and heads, thirty cents each, all to the irreparable injury of complainants.

State of Louisiana vs. Schmidt & Zeigler.—On showing to the court that the defendants had paid their fax, ordered that the injunction be dissolved.

State of Louisiana vs. Wheelock, Finlay & Co.—On showing to the court the tax of defendants had been paid, ordered that the rule for contempt be discontinued and suit dismissed.

E. T. Manning vs. city of New Orleans.—Devolutive appeal allowed.

City of New Orleans vs. François Lacroix.—New trial refused.

First District Court.

Hearing of motion for new trial. State vs. Julia Brooks.—Fixed for twenty fifth.

State vs. John Roach, murder.—Motion to reduce bail denied.

State vs. Willard Johnson, larceny.—Sentence: Eighteen months' hard labor at State Penitentiary.

State vs. Washington Banks, larceny.—Sentence: One year at hard labor in State Penitentiary.

State vs. Thompson Bradley, assault and battery.—Plea of guilty. Sentence: One day in Parish Prison.

State vs. Timothy Hays, murder.—Motion for new trial denied.

Mr. and Mrs. Malloy, on four charges of receiving stolen property; Abraham Beer, charged with false imprisonment by Mary B. Wagman, pleaded not guilty.

State vs. Pierre Dumas.—Assault with intent to kill. Verdict of the jury: Guilty of assault.

State vs. Frank Renaldo.—Entering a vessel in the night time with intent to steal, and assault with intent to rob. Verdict of jury: Guilty.

Second District Court.

Successions of David Marquez, Pierre How and Morris Tobin opened.

Third District Court.

Judge Meunier has rendered the following opinion, which is of special interest to justices of the peace and and litigants in this court:

State of Louisiana, *ex relatione* W. M. Abernathy, vs. the third justice of the peace for the parish of Orleans. Application for a writ of mandamus.—The relator alleges that he is the defendant in a suit now pending on appeal before this court from the Third Justice Court for the parish of Orleans, entitled Joseph Duvigneaud vs. W. M. Abernathy, No. 21,497 on the docket of said justice court; that by virtue of a writ of provisional seizure, issued in said suit, his furniture has been taken into and still remains in the possession and custody of the constable of said justice court; that when said furniture was first seized, the relator gave a release bond payable to the constable, which was set aside, on motion of plaintiff, Joseph Duvigneaud, on the ground that said bond should have been made payable to the justice of the peace, and not to the constable; that as the error in making out said bond was not attributable to the relator, his right was reserved him to give a new bond; that before succeeding in finding a security, the suit of Joseph Duvigneaud against him (relator) was decided before the court *a quo*, and that on applying to the third justice of the peace and offering to give a bond according to law for the release of his furniture provisionally seized, the said justice refused, and is still refusing to take said bond—thereby depriving the relator of the right granted him by law to have his property restored to his possession, and thereby also refusing to perform the duty imposed upon him by virtue of his office. And the relator prays for a writ of mandamus directed to said justice of the peace, ordering him to perform the duty imposed upon him by law and to release the furniture provisionally seized, on relator giving bond according to article 1127 of the Code of Practice.

In his answer, the justice says that the petition of the relator sets forth no cause of right for the writ of mandamus, in this, that a judgment has been rendered against him in the above stated suit of Joseph Duvigneaud vs. W. M. Abernathy, and that after judgment no property provisionally seized can be released on bond; and, further answering, respondent pleads the general issue, and says that he has no right to grant the release asked for by the relator.

This case presents three questions for the consideration of this court: 1. Has the relator the right to bond, at this stage of the proceedings, his property provisionally seized? 2. The suit in which the provisional seizure has issued being now on appeal before this court, can the relator apply to the judge *a quo* to bond said property? 3. Is the mandamus the proper remedy to compel the justice of the peace to perform the duty imposed upon him by law in a case like the present one—that is, to accept a bond and release the property provisionally seized?

First—By article 1127 of the Code of Practice, any person whose property shall have been seized, attached, sequestrated or provisionally seized, shall obtain a restoration of his property if he gives to the justice of the peace his bond, with a good security, in double the amount claimed, to satisfy the judgment that may be rendered against him. There is no time, no limit fixed by law within which the party whose property has been provisionally seized, attached, or sequestrated, must tender his release bond. His right to bond the property seized is absolute; it springs from the law itself, and may be exercised at any time during the pendency of the suit.

Second—The right claimed by the relator to bond his property provisionally seized is but a provisional or conservatory measure, which measure is independent of and does not touch the merits of the original controversy, and must be taken before the court below during the pendency of the appeal. "As a general rule, the jurisdiction of the lower court ceases as soon as the appeal bond is filed; yet the original demand is not so entirely and definitively out of the control and jurisdiction of the court *a quo*, as to preclude the judge thereof from granting any provisional and conservatory measure so as to secure the execution of the judgment to be rendered in the appellate court." 4 L., 256; 7 L., 188; 2 R., 556; 10 R., 152.

Third—"The object of a mandamus is to prevent a denial of justice, and it should therefore be issued in all cases where the law has assigned no relief by the ordinary means, and where justice and reason require that some mode should exist of redressing a wrong or an abuse, of whatever nature. This order may be issued at the discretion of the judge, even where the party has some other means of relief, when the public good and the administration of justice will require it."—C. P., articles 830 and 831.

The right given by article 1127 of the Code of Practice to a debtor to obtain the restoration of his property provisionally seized, by giving a bond of a certain amount to the justice of the peace who has issued the writ of seizure, is absolute. The law granting the privilege is imperative in its command, and to refuse to the relator in this case the exercise of his unquestionable legal rights would be, indeed, a flagrant denial of justice; and I am of opinion that the issuing of the writ of mandamus, both under article 830 of the Code of Practice and section 2083 of the Revised Statutes of 1870, will be consonant with right and justice in this case. Let, therefore, the writ of mandamus issue herein, as prayed for by relator's petition.

Fourth District Court.

The promissory note docket being entirely clear, unappealable cases were called and fixed for the day of promissory notes, viz.:

Fifth District Court—Decision by Judge Cullom—Agency and Negotiable Paper.

Feucht & Lockhart vs. William Hogan.—The petitioners allege that the defendant owes them $335 15, with five per cent per annum interest thereon from March 29, A. D. 1872, until paid. They aver that one R. Wilson, of Satartia, in the State of Mississippi, drew a certain sight draft, or bill of exchange, for that amount, payable to their order, dated March 29, 1872. That they never parted with their ownership thereof by indorsement or otherwise, but that they were still the owners of it when, on or about the fifth day of April, A. D. 1872, the defendant paid said draft, or bill of exchange, to one L. R. Hesser, who was in no manner authorized either to indorse the same for them, or to receive payment, but who did indorse it, and receive payment, without their knowledge or consent. That they were never informed of the indorsement, nor of the payment, until afterward. They allege that the payment thereof, under said circumstances, did not discharge him from liability for the amount to petitioners. They pray for judgment for said sum of $335 15 with legal interest therein from March 29, 1872, together with all costs, and for general relief.

The defendant first filed an exception alleging that the petition set forth no cause of action, and on the eighteenth day of December, A. D. 1872, filed an answer, reserving the benefit of the exception and adopting it as part of the answer, denied all and singular the plaintiffs' allegations which tend in any manner to render him liable to the petitioners. He prays that the demand be rejected and the suit dismissed at plaintiffs' cost.

On the twenty-fourth of April, 1872, the plaintiffs wrote to the defendant, and stated that "no one was authorized to sign their name, that they had never given any one authority to sign their name in any manner, nor to accept drafts, indorse paper of any kind, nor to sign checks.' On the second of May, 1872, they again wrote to defendant, stating substantially the same thing.

The draft given by Wilson reads as follows:

$335 15. SATARTIA, March 29, 1872.

At sight, please pay to the order of Feucht & Lockhart $335 15, value received, and charge to account of your obedient servant,

R. WILSON.

To W. H. Hogan, Esq., New Orleans.

Indorsed Feucht & Lockhart.

On the twenty-second of April, 1872, the defendant wrote to the plaintiffs at Memphis, saying:

GENTLEMEN—The draft referred to was paid in my office in the presence of Mr. Wilson, and at his request, to a man who signed your firm's name. Both came here together. Yours, truly, W. H. HOGAN.

Fourteen days after this draft was given, Wilson was notified that Hesser, who indorsed and collected the draft, had been dismissed from the service of Messrs. Feucht & Lockhart.

On the trial of this case a statement of facts was made to the court, which was in substance as follows:

Hesser was, at the time the draft was given by Wilson, and at time of its collection, the agent of the plaintiffs. He had full authority to sell goods for them and to collect bills therefor. That when he presented the draft for collection at the office of the defendant, the drawer, Mr. Wilson, was present and instructed him to pay it, whereupon he did so.

The plaintiffs' counsel maintain that although Hesser, as agent, had authority to collect bills for goods sold by him for the plaintiffs, he did not have authority to indorse the firm's name on drafts, notes, etc. That such authority must be special to bind the firm; and to establish this proposition he cites article 2997 of the Revised Civil Code, section five, which declares that the power must be express "to draw or indorse bills of exchange or promissory notes." Also, in the case of Dick vs. Leverich, 11 L., 573, in which the Supreme Court held that "the acceptor who in error pays a holder without right to receive, may recover back the amount." The right of Hesser to collect the bills in the case before me is acknowledged. Also, the case of Jackson vs. Commercial Bank 2 R., p. 138, where the court said: "The forged indorsement of a negotiable bill passes no title to an innocent indorsee, and the owner may recover of the acceptor, from whom such indorsee has received payment, unless made through the owner's fault; but the fault must be shown, and the burden of proof is on the party who justifies the payment.' In this instance Hesser had never been authorized to accept drafts, nor to indorse them. (See Feucht & Lockhart's letter already quoted, of April twenty-fourth, A. D. 1872).

In Vanbibber vs. the Bank of Louisiana page 481, 14 An., the court said: "In payment of a debt due plaintiffs, their collector, such being their usual mode of doing business, took the debtor's check, payable to their order, and, although never authorized to indorse for them, forged their indorsement, and the check was paid by the drawer, a bank, whether to him or a stranger did not appear. The drawer, a customer of the bank, was in the habit of drawing his checks to order; but plaintiff's signature was not on the signature book of the bank.

"Plaintiffs having used all diligence, but in vain, to arrest their collector, sued the bank, which it was held must pay the amount of the check." In this case it was considered that the title to the check was in plaintiffs, who were not fictitious payees; that the title was not divested by an act of the collector, beyond the scope of his agency—in the case before me the taking of the draft, as well as the indorsement thereon, were acts beyond the scope of Hesser's authority, if they may not be considered as merely acts of collection—that plaintiffs had been guilty of no negligence, while the bank had; that there was a privity of contract between them, the bank having undertaken to pay its depositor's money to such parties as the latter might designate; that the bank holding the money of the drawer was bound to obey the drawer's instructions (precisely what the defendant did in the case before me); that by undertaking to obey the instructions to pay plaintiffs (by no means the fact here) it became their agent, and so was liable to account as well to them as to the drawer of the check." In the case at bar there was no privity between the defendant and the plaintiffs, and consequently no agency on the part of the former. He had not undertaken to pay their draft, but was the agent of Wilson, the drawer, whose orders and instructions he was bound to obey. In David vs. Neven, 10 An., p. 612, the court said: "An agent authorized to collect a debt due plaintiff by defendant, received from the latter his note payable to the former, and having indorsed it as plaintiff's agent, sold it to a third person, to whom it was paid by defendant. Plaintiff never received the money, and the agent's authority to indorse was not shown; held, that defendant was not discharged."

This is not a parallel case with the one at bar. There is a very well defined distinction between a promissory note which is held in possession by the payee, and a draft which he has never seen, and which he says he never authorized to be taken. In the first instance he has approved and accepted the note, thereby establishing a privity between him and the promissor who is supposed to know all about it, and who is bound to pay the payee or his order. In the second, he has never seen the draft, never authorized it, is no party to it, and never had any privity with the acceptor, who was bound to obey the drawer alone.

The case of Smith vs. Mechanics' Bank, reported in the 5 An., p. 611, does not strengthen the plaintiff's plea herein. In fact the dissenting opinion of Judge Spdell is the only feature in that case which seems favorable to the position taken by the plaintiff's counsel in this, while those of Chief Justice Eustis, Associate Justices Preston and Rost are in harmony with the more recent adjudications on the point at issue.

The duty of a bank or other depositary, is simply to obey the depositor's orders. It is nothing more or less than the depositor's agent. He has the entire and perfect right to control the funds deposited by him, until there has been an acceptance by the depositary of orders drawn by the depositor. He has nothing whatever to do with the payee of any draft or check until it has been accepted. The drawer may countermand the order to pay at any time before acceptance. There is no privity between the payee and the depositary until the power of the drawer has terminated and exists no longer. "The bank is not, and has no right to constitute itself the agent of holders of checks on it, however honest may be their claims or hard their case. It not only owes them no duty, but it has not even the power to act in their behalf." See Morse on Banks and Banking, pp. 278, 279, 280, and authorities there cited. In the case of the Bank of the Republic vs. Millard, 10 Wallace, p. 152, *et seq.*, Judge Davis held "that the holder of a bank check can not sue the bank for refusing payment in the absence of proof that it was accepted by the bank or charged against the drawer." This ruling necessarily results from the reasoning above given. The judge, in giving his reasons for this decree, said: "On principle, there can be no foundation for an action on the part of the holder, unless there is privity of contract between him and the bank. How can there be such a privity when the bank owes no duty, and is under no obligation to the holder? The holder takes the check on the credit of the drawer, in the belief that he has funds to meet it, but in no sense can the bank be said to be connected with the transaction." * * * "If, then, the bank did not contract with the holder of the check to pay it at the time it was given, how can it be said that it owes any duty to the holder until the check is presented and accepted? The right of the depositor, as was said by an eminent judge, is a 'chose in action,' and his check does not transfer the debt or give a lien upon it to a third person without the assent of the depositary. This is a well established principle of law, and is sustained by the English and American decisions." The reasoning in this case, as well as the authority of Morse on Banks and Banking, before cited, appears to me to be impregnable. It is true that Hesser had no power to indorse for Feucht & Lockhart, but he had authority to collect. Let us suppose that, in lieu of giving a draft, Wilson had given money to Hesser? There is no doubt but that it would have been held a valid payment. The giving of a draft was in payment. But let us suppose that it was not. Hogan was the depositary and agent of Wilson. He was bound to obey his orders. Wilson was present when the draft was presented, and ordered him to pay it. Being bound to do it, should he not be protected in obeying? Again, suppose Hogan had objected to paying for want of authority in Hesser to indorse the draft. Wilson being present could very safely have destroyed the draft, drawn the money by a new one or by giving a receipt, and have paid the money to Hesser. The verbal order to pay him sufficed to protect Hogan in doing so. For these reasons the exception is sustained, and judgment awarded in favor of defendant, with costs.

AMUSEMENTS.

Varieties Theatre.

The house was well filled at the matinee yesterday, the last of the season. "Divorce" was the closing performance of the season last night, and the benefit of Mr. George Wang, the treasurer, was substantial in its results to that gentleman.

Academy of Music.

The only theatre open to-night will be the Academy of Music, when "Masonry Exposed," and "The Rehearsal," will be produced for the last time, followed by the "Female Minstrel." To-morrow evening Pauline Markham and her burlesque troupe.

Adventures of an English Detective.

[From the New York Telegram.]

Everybody who has read the works of Charles Dickens is familiar with the character of the English detective. It is not every one, however, who has had an opportunity of gazing upon that important noun in the first person singular, until a few days ago, when a batch of nobby looking men arrived from Old Jewry, London, in pursuit of the Bank of England forgers. One of them stopped at a famous uptown hotel, not a hundred yards from Union Square. He was a natty, well built fellow, albeit somewhat "loud" in the display of his pronounced English toilet, sported his mutton chop whiskers to the full, and swung a cane with all the grace of an accomplished promenader on Rotten row. He admired what little he had seen of the "blarsted" country, but desired to know more. He wanted to view the wonders of the metropolis by gaslight; to obtain by personal experience a knowledge of the social substratum, and to gather sufficient material for a book, entitled "My Experience in New York." It is needless to say his ambition was gratified. The night before his departure for Havana, where he was to take charge of Bidwell, the mate of M'Donald, was selected as a fitting time for the tour. Before starting it was suggested that he should leave behind any articles of value he might have upon his person, in order to avoid the possible contingency of being plundered. But, oh, no! "What," he exclaimed, "rob me, an Hengliish fly cop from twenty-six Old Jewry, E. C. Preposterous! It can't be done, sir," and the mutton-chop whiskers, in the intensity of the detective's emphasis, took a deeper shade than even auburn. Yes, he was indignant at the bare suggestion.

"Very well," remarked his *confrere* of the American force; "you pays your money and you takes your choice."

So the party started. They visited gambling houses, the green rooms of the theatres, the night lodgers in the station houses, the slums of the city and the fashionable homes of the *demi monde*; in brief, they went the "Grand Rounds."

Four o'clock in