New Orleans Republican.

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COURT RECORD.

SATURDAY, MARCH 21, 1874.

United States Circuit Court.

John L. Macaulay et al. vs. William Pitt Kellogg, Governor, Charles Clinton, Auditor, et al.—Judge Woods rendered the following decision on complainant's motion for an injunction.

The bill is filed by John L. Macaulay, of the State of New York, on behalf of himself and all others who are similarly situated, and who are willing to make themselves parties complainants against William P. Kellogg, who is Governor of the State of Louisiana; Charles Clinton, who is Auditor of Public Accounts of the State of Louisiana; Antoine Dubuclet, who is Treasurer of the State of Louisiana, and the Louisiana National Bank, all of the defendants being citizens of the State of Louisiana.

The bill avers, in substance, that complainant is the holder and owner of certain bonds of the State of Louisiana, purchased by him in open market before the maturity thereof, to wit: Eighty bonds of the par value of $45,000, with interest coupons attached, issued by virtue of an act of the Legislature, No. 15, approved February 12, 1866; eleven bonds of the par value of $11,000, known as the North Louisiana and Texas railroad bonds, with interest coupons attached, issued by virtue of an act, No. 108, approved September 26, 1868, and the acts amendatory thereof, and indorsed in accordance with section twelve of said act by the president and board of directors of said railroad, so as to pass by delivery; fifteen bonds payable to bearer of the par value of $15,000, with interest coupons attached, known as floating debt bonds, issued by virtue of act No. 69, approved March 16, 1870.

That said act No. 15 of the year 1866 provided that on the first Monday of January of each and every year, after the passage of said act, the Auditor and Treasurer, under the direction of the Governor, should set apart the sum of $75,000 from the receipts of the treasury, to be applied to the purchase of said bonds, and that on the first Monday of January of every year, until the final payment of said bonds, the Auditor and Treasurer, under the direction of the Governor, should set apart the sum necessary to pay the current interest on the same, and that on the faith of these provisions of law, complainant purchased the bonds issued under said act.

That complainant purchased the bonds issued under act No. 108 of the year 1868, upon the faith of the contracts therein contained, as well as upon the faith of the contracts contained in act No. 69 of the year 1870, and approved March 16, hereafter referred to.

That complainant purchased the said bonds issued under said act No. 69, approved March 16, 1870, upon the faith of the agreements therein contained, to the effect that the Auditor of Public Accounts should annually lay a tax upon the total assessed value of the real and personal property of the State sufficient to pay the annual interest and one-fortieth part of the principal of said bonds; that said tax should "be collected in currency and paid into the treasury of the State," and should be credited to a special fund to be known as the "floating debt bonds' fund," and the amount so credited from year to year was thereby annually appropriated to the payment of the principal and part of the interest of said bonds. Said act further provided that "after April 1, 1870, lawful money of the United States only should be receivable for taxes and licenses due the State."

That complainant purchased all of said bonds after the enactment of act No. 68, approved March 16, 1870, and upon the faith of the contracts therein contained. That by section nine of said act it was provided that the Auditor of Public Accounts should, at the close of each year, estimate what sum levied upon the entire taxable property of the State would be sufficient to pay the interest on all bonds issued by the State, and that the sum so ascertained was thereby annually levied upon the taxable property of the State; that the tax so levied should be collected as other taxes and should be known as the interest tax, and when paid into the treasury should be credited to a fund to be called the interest tax fund, and should be held sacred for the payment of interest upon the bonds of the State.

That complainant purchased all of said bonds on the faith of article 114 of the constitution of the State of Louisiana, adopted in 1864, and of article 111 of the constitution adopted in 1868, which provides that whenever the Legislature shall contract a debt exceeding in amount $100,000, unless in case of war, to repel invasion or suppress insurrection, they shall in the law creating the debt provide adequate ways and means for the payment of current interest, and of the principal when the same shall become due, and the said law shall be irrepealable until principal and interest are fully discharged, unless the repealing law contains some other adequate provision for payment of principal and interest of the debt, and also on the faith of article 110 of the constitution of 1868, forbidding the passage of any law impairing the obligation of a contract or divesting vested rights, and upon the faith of the provision of the constitution of the United States prohibiting a State to pass any law impairing the obligation of contracts. That more than $100,000 of bonds have been issued under each of the laws under which the bonds held by complainant have been put forth.

That none of the foregoing contracts have been performed, but, on the contrary, defendants, Kellogg, Clinton and Dubuclet, have given out that no interest maturing after December 31, 1873, on the bonds of the State issued before that date shall be paid, nor shall any principal of said bonds be redeemed, and have given out and declared that they will not levy and collect the taxes provided by the aforesaid special contracts of the State, and will not set apart the special and sacred funds then agreed to be set apart, and will not redeem any principal of said bonds.

That Kellogg, Clinton and Dubuclet have also given out that for all delinquent taxes of the State accrued prior to January 1, 1874, including taxes theretofore levied for the interest and sinking fund of said bonds, except to the amount of two mills, the outstanding warrants of the State drawn for other purposes will be received in payment to the amount of two millions of dollars, instead of the lawful money specially contracted to be collected as now set forth. That one and a half millions of said delinquent taxes belong to the funds set apart for the payment of the interest on said bonds and the redemption of the principal.

That said Kellogg, Clinton and Dubuclet give out that their past and proposed violations of the contracts of the State, as above set forth, have been and are intended to be done under a plan to fund the State debt. That in pursuance of this plan they have persuaded the Legislature to pass an act known as the funding bill, being act No. 3, approved January 24, 1874.

This act provides in substance that the Governor, Auditor, Treasurer, and other State officers therein named, shall prepare and issue bonds, to be known as consolidated bonds of the State of Louisiana, to the amount of $15,000,000, if necessary, payable in forty years, with interest payable semi-annually in United States lawful money.

That said bonds shall be exchanged by the officers aforesaid for all valid bonds and warrants of the State issued previous to the passage of the act, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants, and that the consolidated bonds should be used for the purpose of such exchange and no other.

The bill further provides that a tax of five and a half mills on the dollar shall be levied and collected to pay the principal and interest of said consolidated bonds, and that the total tax for interest and all other State purposes, except the support of public schools, shall never hereafter exceed twelve and a half mills on the dollar, and that until July 1, 1874, all valid Auditor's warrants issued for debts due prior to January 1, 1874, shall be received for all back taxes, licenses and interest and penalties thereon due prior to January 1, 1874, except two mills for school fund, three mills for levee construction and repair fund, and two mills to the interest fund for the purpose of paying any interest in arrears accruing on the bonded debt of the State prior to the passage of the act.

This act, the bill of complaint alleges, the defendants propose to execute, and pretend it is their duty to do so; whereas the said act is a nullity, because it is a violation of the constitution of the State of Louisiana, as above shown, and of the constitution of the United States, in that it impairs the obligation of the said contracts made by the State of Louisiana with complainant and other holders of the bonds of the State; that said act No. 3 of the year 1874 purports at once to do away with all taxes heretofore levied and agreed to be collected for interest and principal of complainant's bonds and other bonds heretofore issued, and to substitute a tax of five and a half mills only for the payment of the principal and interest of said consolidated bonds, whereas the bonds of the State heretofore issued amount to the sum of $22,433,800, and to comply with the contracts under which they have been issued, would require an annual tax of eleven and a half mills on the dollar.

That it is the unlawful purpose of said act and the defendants to so construe and are about to execute it, to repudiate all of said contracts made with complainant and other holders of the bonds of the State with reference to the levy and collection of taxes for the principal and interest of said bonds, to nullity and hold for naught the said laws under which the outstanding bonds have been issued; to collect in future only five and one-half mills of interest tax, which is less than half what is required to fulfill all the contracts under which the bonds outstanding have been issued, and to apply the proceeds of this inadequate tax not to the bonds held by complainant and others, but to the so-called new consolidated bonds, to be hereafter issued to the extent of $15,000,000, and to receive Auditor's warrants heretofore issued and remaining unpaid for upward of $1,200,000 of delinquent interest taxes which the State had agreed should be collected only in lawful money and applied to the payment of the principal and interest of the outstanding bonds, and that the receipt of warrants for said delinquent taxes is in violation of the contract of the State to collect said interest and sinking fund taxes in lawful money, under which said bonds were issued, and on the faith of which they were purchased and are now held by complainant and others.

The bill further alleges that there is now in the treasury $500,000 interest tax funds, and large additional amounts belonging to said tax funds should be received monthly and quarterly; but defendants give out and declare that they will now have no further use for said special funds as they will pay no more interest maturing after December 31, 1873, on the outstanding bonds of the State, but, as complainant is advised, will not only receive Auditor's warrants for said back taxes, but will direct all cash interest funds to the payment of other expenses of the State.

That these acts and declarations of defendants are with the intent to coerce complainant and other holders of the bonds of the State to acquiesce in the said "funding" scheme; that unless restrained they will actively and passively violate the obligations of the several contracts herein set forth, and will collect about $1,250,000 of delinquent interest taxes in warrants worthless to complainant and other holders of bonds; will divert the interest funds now in the treasury to the payment of other expenses of the State; will refuse payment of all coupons maturing after December 31, 1873, on outstanding bonds, and suspend and refuse the redemption of said bonds.

The bill prays that defendants may be restrained from executing said act No. 3 of 1874; from reducing the tax, the interest tax heretofore agreed to be collected for the present and future years for the interest and principal of the State bonds now outstanding in anywise, except in strict accordance with the laws under which they were issued; from collecting and receiving any delinquent or other interest taxes under said laws in Auditor's warrants or in anything except lawful money; from hindering or delaying the estimate and collection of taxes for interest and sinking funds under the said laws of the General Assembly No. 15, of 1866; No. 108, of 1868; No. 68, of 1870, and No. 64, of 1870; from paying any interest funds now in the treasury, or hereafter to come into the treasury, for any purpose save upon the principal and interest of bonds as provided by the several contracts herembefore set forth; from in anywise hindering or delaying the payment of any interest coupons of any of the said outstanding bonds of the State under any of the pretences or devices of said act No. 3; and from in any way hindering or delaying the estimate and collection of interest and sinking funds provided for by law prior to the adoption of said act No. 3, of 1874, the payment of the interest thereunder, or the redemption of the principal of said bonds.

The bill further prays that the defendants may be decreed to comply with and specifically perform the said contracts of the State by setting apart the funds agreed therein to be set apart by estimating the amount of tax required to comply with said contracts, by collecting the same as provided by said contracts, by depositing and holding the proceeds of the same according to said agreements, and by paying the interest on said bonds as it shall mature, and redeeming the principal thereof according to said agreements.

An amended bill, filed on the sixteenth of March, sets out the provisions of an act, No. 55, passed by the General Assembly of Louisiana and approved March 14, 1874, the general purpose and effect of which is to forbid and prevent any officer of the State from assessing collecting or enforcing the payment of any tax for the payment of the principal and interest of the State debt, the assessment and collecting of which is not specially provided for by some act of the General Assembly passed since the first day of January, 1874, and to forbid the Governor, Auditor and Treasurer from setting apart any funds for the payment of the principal or interest of any bonds issued prior to January 1, 1874.

Several persons holding bonds of the State of Louisiana have filed petitions praying to be made parties complainant, which it is unnecessary particularly to notice.

Upon these bills, original and amended, the complainant moves the court to issue the injunction prayed for in the original bill.

It is obvious to remark that there are insuperable objections to so much of the prayer for relief as asks that the defendants may be decreed to comply with and specifically perform the contracts of the State by estimating and collecting the interest and sinking fund tax and applying it to the payment of the principal and interest on the bonds. The objection is that if there is a remedy at all it is a remedy at law, namely, by the issuance of the writ of mandamus. If this suit were brought against a municipal corporation and its officers to compel the collection of a tax to pay the interest on its bonds, the plain, adequate and complete remedy would be the legal writ of mandamus. It is true that before the writ could issue the bondholders must have recovered a judgment at law on their bonds. Bath County vs. Avery, 13 Wall., 247; Graham vs. Norton, 15 Wall., 427.

It may be replied to this that the bondholders can not lay the necessary foundation for the writ of mandamus in the United States courts, because they are prohibited from suing the State by the eleventh amendment to the constitution of the United States. But this fact may prove that there is no remedy for the complaints in the United States courts. It certainly does not follow that because there are obstacles to the adoption of the plain legal remedy, that therefore the remedy is in equity. It might as well be claimed that because the bondholders could not go into a court of law and recover a judgment against the State upon his bonds, he might, therefore, go into equity and seek a decree against the officers of the State for the amount due on his bonds.

When the eleventh amendment to the constitution declares, "that the judicial power of the United States shall not be construed to extend to any suit at law or in equity, commenced or prosecuted against one of the United States by citizens of another State, or subjects of any foreign State," the purpose is clear to exempt States from suits upon their contracts, either at law or equity; and the fact that this amendment interposes an obstacle to a suit at law against a State does not give a court of equity jurisdiction to enforce the same contract, on the pretext that there is no remedy at law. Suits in both forms against the State are prohibited.

It is evident, therefore, that should this bill come on for final hearing, the decree prayed for could not be granted.

We may, however, consider the bill as one for injunction only; and the question now presented is, can and ought the court to allow the injunction to go as prayed for?

It is claimed by the bill, and conceded by counsel for defendants, that the bonds of the State of Louisiana held by complainants are contracts; that the laws under which these bonds were issued, and which provide for the levy and collection of taxes to pay the interest and reduce the principal, and declared that the same should be annually continued until the principal and interest of said bonds were fully paid; that these provisions of law entered into and formed a part of the contract between the State and the bondholder just as completely as if the laws themselves were inserted in the body of the bonds. The State has therefore contracted that at a certain date named in the bonds she will pay the principal; that in the meantime she will pay the interest semi-annually to the holder of the bonds, and as an assurance that this part of her contract will be performed, she promises, further, that she will levy and collect an annual tax to make these payments, and that the revenues raised by this tax shall be set apart for the purpose of paying said interest and principal.

It is conceded that the State has made this contract with the complainants in this case.

Now, to what ends is the injunction sought in this case. They are twofold.

1. To compel the officers of the State to execute the contracts of the State, by estimating, levying, collecting and applying to the payment of the bonds the tax originally provided by law for the payment of the interest and the redemption of the principal. It is true, the prayer for injunction is that the officers of the State may be restrained from hindering or delaying the estimate, levy and collection of the tax, etc. But as the defendants are the officers whose duty it is to estimate, levy and collect, it is clear that such an injunction from this court would be mandatory, and compel the performance of affirmative acts.

2. To restrain the State officers from receiving delinquent taxes in Auditor's warrants instead of lawful money of the United States.

The first question presented by the prayer for injunction is, can the officers of the State be compelled by injunction to do an affirmative act?

The complainant claims that the funding bill, and the act of March 14, 1874, which in effect prohibit the collection of taxes for the payment of the principal and interest of the outstanding bonds of the State, are unconstitutional and therefore void. If this be conceded, then the case is in the same plight as if these acts just named had never been passed, and as if the officers of the State, without pretence of warrant of law, were refusing to levy and collect the taxes, which the State had agreed should be levied and collected and applied to the payment of these bonds. Has this court the power, by injunction, to compel them by mandatory injunction to do an affirmative act?

The authorities are adverse. The case of Walkley vs. city of Muscatine, 6 Wallace, 483, was a bill in equity, to compel the authorities of the city of Muscatine to levy a tax upon the property of the inhabitants for the purpose of paying the interest on certain bonds issued by the city. It appeared that a judgment had been recovered in the same court against the city for $7666, interest due on the bonds held by plaintiff; that execution had been issued and returned unsatisfied, no property being found liable to execution; that the mayor and aldermen had been requested to levy a tax to pay the judgment, but had refused; that the city authorities possessed the power under their charter to levy a tax of one per cent on the valuation of the city property, and had made a levy annually, but had appropriated the proceeds to other purposes, and had wholly neglected to pay the interest upon the bonds. The bill prayed that the mayor and aldermen might be decreed to levy the tax, and appropriate so much of the proceeds as might be sufficient to pay the judgment, interest and costs.

Upon this case the Supreme Court says: "We are of opinion that complainant has mistaken the appropriate remedy in the case which was by writ of mandamus from the Circuit Court."

We have been furnished with no authority for the substitution of a bill in equity and injunction for the writ of mandamus. An injunction is generally a preventive writ, not an affirmative remedy. It is sometimes used in the latter character, but this is in cases where it is used by the court to carry into effect its own decrees, as in putting the purchaser under a decree of foreclosure of a mortgage into possession of the premises. Even the exercise of this power was doubted till the case of Hershaw vs. Thompson, 4 John's Chg., 609, in which the learned chancellor, after an examination of the cases in England on the subject, came to the conclusion he possessed it not, however, by the writ of injunction, but by the writ of assistance.

In Rogers' Locomotive Works vs. Erie Railway Company, 20 New Jersey Equity Reports, page 379, the court, after a learned review of all the cases, both English and American, bearing upon the subject, announced the conclusion that a mandatory injunction will not be ordered upon a preliminary or interlocutory motion, but only upon final hearing, and then only to execute the decree or judgment of the court. It is only in cases of obstruction to easements or rights of like nature that maintaining a structure as a means of preventing their enjoyment will be restrained and the structure ordered to be removed as part of the means of restraining the defendant from interrupting the enjoyment of the right.

To the same effect is the case of Audenreid vs. Railroad Company, 68 Penn. State, 370. It is clear to my mind that the injunction asked for in the first branch of this motion falls within the category of mandatory injunctions and can not, therefore, be granted on motion.

A consideration of the second branch of the injunction asked, namely, to restrain the State officers from receiving delinquent taxes in Auditor's warrants, will show that this is an indirect way of praying for an injunction to compel the State officers to receive the delinquent taxes in lawful money of the United States according to the contract of the State as claimed by complainants. The complainants would not be satisfied should the State officers suspend the receipt of State warrants. The evident purpose of this part of the injunction is to compel them to receive lawful money, for unless the officers, after declining to receive Auditor's warrants, proceeded to collect the taxes in lawful money the complainant would take no advantage from his motion.

But the fatal objection to the motion of complainant is found in the character of his bill. It is either a suit in effect against the State of Louisiana or, if not, the parties defendant are merely nominal parties, having no real interest in the controversy. In either case no decree can be made in the cause.

This case is clearly distinguishable from the case of Osborne vs. the Bank of the United States, 9 Wheaton, 338, and that of Davis vs. Gray, 16 Wall., 203, and other cases cited by complainant.

In the case of Osborne vs. the bank the bill was filed by the bank to restrain Osborne, who was Auditor of the State of Ohio, from acting under a void law of a State in the collection of a tax levied upon the bank and for a decree against Curry, the late Treasurer, Sullivan, the incumbent Treasurer, and Osborne, the Auditor, for money illegally collected by them from the bank.

It was alleged in the bill that neither Cury nor Sullivan held the money as officers, but as individuals.

The court in this case held that the suit was well brought, because the State was not nominally a party to the record, and the parties made defendant had a real interest in the cause, since their personal responsibility was acknowledged, and, if denied, could be demonstrated.

In the case of Davis vs. Gray, Davis, who was defendant in the court below, and who was named upon the record as Governor of Texas, was sought to be enjoined from casting a cloud upon the title of complainant to certain lands in Texas by locating warrants thereon in pursuance of a void and unconstitutional enactment of the State. Although he professed to act as Governor he was impairing the rights of complainant without the authority of any valid law; he was acting in his own wrong, and upon his own responsibility and was personally liable.

In both these cases the object was to restrain individuals holding public offices from doing acts to the injury of complainant for which there was no legal warrant, and by the doing of which they incurred a personal liability. How different is the case under consideration. Here is an attempt to compel the public officers of a State to do positive and affirmative acts as such; to compel the carrying out of what the complainant conceives to be the law of the State, not in accordance with their own sense of duty and their own interpretation of the law.

In the case of Kentucky vs. Dennison, Governor, 24 Howard, 109, it was held that neither the Congress nor the courts of the United States could coerce a State officer as such to perform any duty imposed upon him by act of Congress. Does it not follow *a fortiori* that a court of the United States can not compel the Governor of a State to execute a law passed by the State?

In Osborne vs. the Bank and Davis vs. Grey it was held that a United States circuit court might, in a proper case in equity, enjoin a State officer from executing a State law in conflict with the constitution or a statute of the United States when such execution would violate the rights of complainant. But no case has yet decided that a circuit court of the United States can compel the executive and administrative officers of a State to execute the laws of the State.

The dilemma is this: If the suit is against the defendants in their official character, and the claims made upon them are in their official character, the State may be considered a party to the record. Madrazo vs. Governor of Georgia, 1 Peters, 110. If the suit is against the officers as individuals merely, and the offices they hold are given merely to describe their persons, they have no interest in the subject matter and no decree should go against them.

In the view I have taken of the case I have conceded what complainants claim, that the funding bill and the act of March 14, 1874, are both unconstitutional and void, and have regarded the case just as if those acts had never been passed, to wit: a bill to compel the defendants, officers of the State, to execute its laws. This may be done in the case of the officers of municipal corporations, but the sovereign power of a State can not be so coerced. To do so would be to substitute this court for the executive officers of the State, to supplant their views of duty and the obligations imposed upon them by their official oath by the discretion of this court and its official oath. In other words, it would be an undertaking on the part of this court to administer the State government. This the court has no power and no inclinntion to do.

In my judgment, this is to all intents and purposes a suit against the State. The officers of the State, including the chief executive, are sued in their official capacity to compel them to execute the laws of the State. It is a suit to enforce a contract of the State to pay money. The officers are not sued as individuals who happen to be in public office to prevent them from doing some act to the prejudice of complainant not warranted by law, as was the case in Osborne vs. the Bank and Davis vs. Gray. If a suit like this can be sustained then the eleventh amendment to the constitution of the United States is waste paper.

For the reasons stated, the motion for injunction is overruled.

Superior District Court.

The following petition was filed, but no order issued:

John G. Monrose vs. City of New Orleans.—Petition alleges a debt of the city of $6515 for commissions of two and a half per cent on the sale of the market for the year 1874 for $260,000.

George Woods vs. New Orleans Gaslight Company; Crescent City Gaslight Company vs. New Orleans Gaslight Company; State of Louisiana and City of New Orleans, intervenors.—These cases have been on trial two days. The first is an application for a restraining order, alleging the legal termination of the existence of the corporation April 1, 1875, to prevent the expenditure of the surplus funds or any act looking to the continuance of the charter. The plaintiff in the second suit alleges the termination of the defendant company's rights; that the pretense of continuation is a slander of title and is unconstitutional. Both ask for a perpetual injunction. The State intervenes in both cases, insisting on the termination of defendant's charter. The city of New Orleans also intervenes in the second suit, claiming that defendant's charter has been forfeited by non-performance; that the extension by the act of 1860 has never been accepted by the city; and also that the city has the right of purchase of the works April 1, 1875. Further, that the act creating the plaintiff company is unconstitutional, in violating the obligation of contracts and the vested rights of the city, and also claims that the Legislature has no power to grant a monopoly of making gas, as the city has the right without any legislative grant whatever.

The defendant answers both petitions of plaintiff and the three of the intervenors with the plea of *res judicata*, asserts the constitutionality of the act of extension and its acceptance by the city, and denies that of the act of 1870, incorporating the Crescent City Company, as it violates the obligation of contracts and vested rights, and also that the act was unlawfully altered by Governor Warmoth after passage and before promulgation by the insertion of other corporators, and was never legally approved.

The principal evidence in the case has been documentary, the plaintiffs proving their act of incorporation, and the defense showing the amount of property invested, cost of gas, number of consumers, etc. The State has put in no evidence, but only cross-examined witnesses. The city has yet two more witnesses to be examined on Monday, when the arguments will commence, each party being allowed four hours.

First District Court.

INFORMATIONS FILED.

Wounding less than mayhem—Lavinia Wilson.

Embezzlement—E. J. Connor, Peter Hitsom, George Hunston.

Larceny—Katie Shannon.

TRUE BILLS.

State vs. Anthony O'Rourke.—Arson.

State vs. John Powers, Bartley Collins, George Finnegan, Patrick Jones.—Breaking and entering a store in the night time, etc., and larceny.

State vs. Henry Hamilton and Jessie Woods.—Murder.

PLEADED NOT GUILTY.

Larceny—Dennis Dewning, Reuben Scott, Reuben Baker, John Foster, John Henry.

Assault and battery—W. J. O'Connor, A. Oliviero, Ch. Ferrant, one Lynch, George Lynch, F. Gans, Kate McCoy, John Frenchy.

Vagrancy—Theodore George.

Perjury—Henry Stige.

PLEADED GUILTY.

Larceny—James Rheinhard, alias Flashcoon.

AFFIDAVITS DISMISSED.

Henry Heslin, M. Elkin, Edward Webb, Joseph Kennedy, E. F. Moncreath, M. Lafourche, James Finn, John Kennedy, Mr. and Mrs. Cusick, John Rohtortom, Henrietta Page.

NOLLE PROSEQUI ENTERED.

State vs. William Drabing.—Assault and battery.

APPEAL GRANTED.

State vs. William Reilly.—Assault with intent to rob.

NEW TRIAL REFUSED.

State vs. Jose Planellas.—Assault and battery.

State vs. Ephraim Maurice.—Murder.

NEW TRIALS GRANTED.

State vs. George Hayes.—Murder.

SENTENCED.

State vs. Tony Long.—Assault and battery; one day in Parish Prison.

State vs. William Henry.—Larceny; six months in Penitentiary.

State vs. Gus Young.—Burglary and larceny. First count, two years; second count, one year in Penitentiary.

State vs. Andrew Walker.—Larceny. Six months in Penitentiary.

State vs. William Taylor.—Assault and battery; $10 fine.

State vs. Brown.—Assault and battery; $10 fine.

Second District Court.

Successions of Charles C. Weiss and Etienne Camblong opened.

Fifth District Court.

J. Q. A. Fellows vs. William P. Kellogg.—Defendant's answer denies the jurisdiction of the court, alleging that this is an action to compel the payment to plaintiff of money belonging to the State, and is either a suit against the State or in effect a mandamus on the respondent. In either case the Superior District Court for the parish of Orleans is vested with exclusive jurisdiction to hear and determine the cause. Wherefore he prays the suit be dismissed with costs.

Judge Cullom rendered the following decision:

George L. Gettworth and wife vs. Teutonia Insurance Company. On the challenge to the array of petit jurors:

On this, the thirteenth day of the jury term, the above entitled and numbered case was called for trial. The parties, properly represented by their attorneys, announced their readiness to proceed with the investigation, and the court ordered the jury to be called. Thereupon defendant's counsel filed a challenge to the array or panel of jurors, on the ground—

1. That the sheriff did not, in the month of December last, nor at any other time, furnish a list of all persons residing in the parish of Orleans who were liable to jury duty.

2. Because the jury box from which the jurors were drawn did not contain the names of all the qualified voters liable to jury service within the parish of Orleans, alleging that the jury box had been filled in 1870, and contained the names of many persons not qualified to serve as jurors, and that about 6000 names had already been drawn out of the jury box, and which had not been returned into the same at the time of drawing the present jury. That there were about 10,000 persons in the parish liable to jury duty whose names were not, and had never been, placed in the said jury box; that in 1872 there had been a revision of the registration of voters by which about 10,000 names had been added and about 5000 sticken off.

3. Because the names were not drawn nor written down, nor were the jurors summoned by the sheriff, nor by his duly qualified deputies.

4. Because the judge of the court excused about 100 of those summoned who were legally liable to jury duty, and who had no legal excuse.

This ground was entirely abandoned by the failure of counsel to offer any proof whatever of its verity. The first and second grounds are so intimately blended, by their necessary unity of theory as to the mode of forming the list, and placing the names in the jury box, kept by the sheriff, that I will consider them as a unit. The fourth ground, according to exceptor's enumeration, I will dismiss without comment, barely remarking that the evidence adduced entirely failed to establish its correctness.

Much of the argument of counsel in behalf of this exception (in substance a motion to quash and set aside the venire), was based on the laws which regulate the manner and mode of drawing juries in the country parishes of this State, and which have no application whatever to the drawing of juries in the parish of Orleans. Among others is the act "relative to juries in and for the State of Louisiana; to determine the qualification of jurors; to prescribe the manner and fix the time of drawing juries," etc., approved April 30, 1873, being act No. 94. It expressly excepts the parish of Orleans from its operation, and therefore can have no effect upon the question now before me.

I will therefore direct my inquiries to the interpretation and construction of those sections of the law which were intended for the parish of Orleans alone, so far as the furnishing of the list of voters and the manner of drawing the juries are concerned.

Every qualified voter residing in the parish of Orleans, except such are exempt by law, is bound to serve as a juror. Section 2143, Ray's Revised Statutes.

Section 2144, ibid, declares that: "It shall be the duty of the sheriff of the parish of Orleans, in the month of December, to furnish a list of all persons liable to jury duty residing in the parish of Orleans."

Sec. 2145, ibid: "Each jury shall consist of thirty-six jurors, except for the First District Court; they shall serve one month."

Section 2146: "Whenever a jury is to be drawn it shall be the duty of the sheriff to draw from the box the names of the jurors (the box alluded to is provided for in the second paragraph of section 2127 of Ray's Revised Statutes), and continue so to draw for each successive jury until all the names in said box have been drawn out, and no person shall be required to serve a second time upon the jury until all the names have been drawn from the box, and whenever the box shall be emptied the sheriff shall return all the names upon the jury list into the jury box and commence a new drawing."

Such is the law governing the manner of juries in the parish of Orleans, which has some features resembling that enacted for the country parishes, and but one which is identical, to wit: It is equally incumbent upon the sheriff to cause to be written on separate ballots of paper of uniform size, the name of each person found upon the list. These names are placed in the box kept by the sheriff, and from them the juries for the parish of Orleans are drawn. The decision in case of Flower vs. Legras, reported in the 25 An., and cited by counsel in support of his exception or motion to quash, has no earthly application to this, as it was interpretative of the law enacted for the country parishes, from the provisions of which the parish of Orleans is expressly excepted. Reverting, then, to the above cited special law for this parish, it will be observed that, by the emancipation of the colored population and the recognition of their political status as citizens, under and by virtue of the constitution of 1868, a very large number of persons was added to the list of those who, down to that time, had been liable to jury service. It is true that colored persons had already been legislatively pronounced qualified jurors by an act of 1867, I think; but there had not been that full, free and complete recognition of their various political rights, in all respects, which the constitution of 1868 finally established, and hence the necessity for a more comprehensive definition of the electors and jurors' qualifications. Hence sections 2143 Ray's Revised Statutes, already quoted, and 2144. This radical and material alteration of all pre existing laws on the subject, so far as they had ignored the rights of the colored population, superinduced an absolute necessity for the making of a new list which should comprise all persons liable to jury duty, and the furnishing of the same by the civil sheriff in accordance with section 2144, Ray's Revised Statutes. I know of no particular reasons why the Legislature made it incumbent on him to do it in the month of December. But it may be supposed, that the object was to make these laws operative as speedily as possible. The framers of them may be supposed to have indulged fearful apprehensions of the predelictions, influence and power, which the courts possessed, or were in some measure guided by, touching the exercise and enjoyment of some of the rights which the government had bestowed upon the colored population. Let all these surmises be as they may, the list was made by Sheriff C. S. Sauvinet, and since that time all persons, legally qualified, have been permitted and allowed to serve on the juries in all cases, whether the questions submitted involved any of the rights of colored persons or not. I can not concur with counsel in the plea that a new list of qualified jurors should be made in the month of December of each year, first, because a new registration is not made every year; second, because, in my opinion, it was never the object of the lawgiver to require the sheriff to ascertain who and how many are naturalized during the year, nor who nor how many reach the age of majority, or become resident citizens during each year; and lastly, because such an interpretation would render the law utterly impracticable and reduce it to a mass of contradictions and palpable absurdities. For instance, there are in the parish of Orleans not less than 45,000 qualified electors, of which number fully 25,000 are liable to jury duty. Such was the case when the original list was furnished by Sheriff Sauvinet. The law requires (section 2146) that the sheriff shall "draw from the jury box the names of the jurors, and continue to draw, for each successive jury, until all the names in said box have been drawn out." How can this be done if in December of each year he must put 25,000 names in the box? Besides, this system would prevent thousands from ever serving on the jury, and here let me remark that this is not only a duty, but a privilege to which each qualified elector is absolutely entitled—a privilege which to the colored man, in some instances of popular feeling, may justly be considered inestimable. But reverting to the argument of counsel, can it be supposed that in the lapse of one year the civil courts of this city could ever require the services of 25,000 jurors, when only thirty-six are allowed at any one term? The law is imperative that the sheriff shall continue to draw until all the names are drawn out of the box. Now, if according to counsel's argument, he must place all the names of all the electors in the box every December, it follows, that during the year, the civil courts should require the service of 25,000 jurors. Else they can not all be drawn out as the law requires. But, further still, the law declares that the jurors shall not be required to serve a "second time, until all the names have been drawn from the box." How would it be possible to avoid drawing them a second time, if after each drawing their names are to be placed in the box? Further still, "whenever the box shall be emptied, the sheriff shall return all the names upon the jury list into the jury box and commence a new drawing." Thus, it is plainly the intention of the lawgivers, that what is demanded by counsel shall not be done. That is, he requires that all the names shall be placed in the jury box each December, whereas the act declares they shall not be put back in it until it has been emptied. Now unless 25,000 jurors are annually drawn out there is no authority for putting any in the jury box. Considering therefore, that the great object of the lawgivers has been reached in conferring upon all the citizens of the State residing in the parish of Orleans, the right to exercise his equality in the interpretation and application of the laws to the conduct of men, and convinced that the civil sheriff has adopted the only course he could have pursued in the premises without giving rise to far more serious questions than those at issue, I must overrule the exception, and retain the jury as having been drawn and summoned to serve according to law.

Death of Colonel H. C. Ransom.

Lieutenant Colonel Hyatt C. Ransom, Deputy Quartermaster General, United States army, died at Jeffersonville last evening at eight o'clock. Colonel Ransom was a well known army officer, having at one time been on duty at this post as Chief Quartermaster for the Department of the Cumberland. In 1868 he was in charge of the government depot of Jeffersonville, and since then has occupied chief places in the Quartermaster's Department. For the past year he has been stationed at New Orleans, as Chief Quartermaster for the Department of the Gulf, and it was while there that he contracted the disease which ended in his death. His disease was the flux, or the ulceration of the bowels. He was brought to Jeffersonville a few weeks ago by the advice of his physician, and since his arrival there he has hung between life and death, and for the last week his death has been hourly anticipated. The deceased was married in Jeffersonville a few years ago to Miss Sarah Childs, a sister to the Hon. John F. Read, of that city. He was born in New York, graduated at West Point, and was appointed second lieutenant of mounted rifles, July 1, 1851; served with his command until his entry as a captain into the Quartermaster's Department, October 15, 1859, in which he was appointed to his last rank July 17, 1862. The time and place of the funeral of the deceased have not been announced.—*Louisville Commercial.*

Romantic Marriage in Staunton.

Miss Jennie Johnson of New Orleans, who had been a pupil at the Augusta Female Seminary, had known and loved a young merchant of the Crescent City, named Wilcox, before she went there. Wilcox loved the maiden fair. By preconcerted action he appeared in Staunton last August at the American Hotel, and by playing the cousin dodge on the unsuspecting academy principal, he was permitted several unobstructed interviews with his lady love. He finally got a license, and presenting the same to the Methodist parsonage, was duly married, he starting immediately for New Orleans, and she for the academy. The little wife kept the secret bravely till a week since, when she imparted it under injunction of the strictest sort about non revealment. Of course everybody in Staunton knew all about it in half an hour afterwards. *Paterfamilias* being summoned, took the matter philosophically, and carried his daughter to New Orleans. He remarked that he should endeavor to make the most out of it, and do all in his power to contribute to the prosperity and happiness of the strangely wedded pair. The *Valley Virginian* remarks thereupon: "Hereafter we think young cousins will have to come to Staunton pretty strongly authenticated before they will be permitted to pay their respects to the young ladies of any of our female schools."—*Richmond State Journal.*

Oakey Hall's Daughters.

The *Home Journal* says: "Ex-Mayor Hall, of New York, is blessed with five daughters, and is having each educated in some special pursuit, that she may thus be guarded against the vicissitudes of fortune. One of the daughters is a designer and etcher, having learned all the details of wood engraving at the Cooper Institute. Her designs for books and some for Frank Leslie's publications have attracted much attention. Another daughter is a writer of children's books, as well as an accomplished pianist. A third is receiving special training for the lyric stage, possessing a full, round, sweet chest voice. Another is already distinguished as a soubrette and character actress in private circles, while the fifth is perfecting herself as a modiste and milliner. These respective pursuits will perhaps never be utilized while Mr. Hall enjoys so large and lucrative a practice as at present, but it will be a comfort to him and his family to know that, if ever occasion arises, there are occupations open to the daughters beyond the usually forced and precarious ones of governesses, companions, etc."

MARGUERITE.

To-night I took her picture out,
And, looking long in the dear face,
I sought to find some little trace
Of the old smile; a shuddering doubt
Fell on my heart, for strange and cold
Seemed the pure face I loved of old,
So fair, so sweet,
My Marguerite!

There were the deep and perfect eyes,
The crown of hair, the chin, the mouth,
(How bitter is a frozen south!)
I tried to hear low voiced replies
To my soft chidings, but none came—
Only the echoes of her name—
My fair one sweet,
My Marguerite!

And did you love me once so well—
So well you could not bear to part?
Weeping you clung, while in my heart
A wealth of love I could not tell
Was yearning, burning, all for you.
Of all your words was one word true?
Tell me, my sweet,
My Marguerite!

I clasped your hands to give you strength,
I would not take your plighted word,
I said, "Fly free, fly free, my bird,"
But if the time shall come at length
When weary you shall seek for rest—
Come seek it—find it in my breast.
I love you sweet,
My Marguerite!

It may be that you thought me cold,
Because my love was so restrained;
It may be that your heart was pained,
You could not guess what was not told;
But while I seemed so strong to bear,
Darling, my heart was lying there,
Beneath your feet,
My Marguerite!
—*Victoria Magazine.*

Sherman on the Sea Coast Defences.

General Sherman puts no restraint on the expression of his contempt for the forts which furnish the principal argument against the reduction of the army. We have got the forts, therefore we must keep the troops to take care of the forts and preserve the property that is in them. General Sherman thus spits on these institutions: "Some of what are called military posts are mere collections of huts made of logs, adobes, or mere holes in the ground, and are about as much forts as prairie-dog villages might be called forts." Again: "My judgment has always been that on our seaboard we occupy too many little insignificant posts, called forts or batteries, which might as well be washed into the sea, and the quicker the better." There are one hundred and eighty-three posts from which quartermaster's returns are made. So long as any one of them on the seaboard is habitable, or can be made habitable, some officer will command the political or social influence to get himself quartered in it, and saved from service in Arizona, Texas, Wyoming and Dakota. These insignificant Atlantic and lake forts, utterly useless in a military sense, are exceedingly useful to officers who don't want to fight Indians, and invaluable as arguments for the retention of the army at its present figures. As they exist, they constitute the difficulty in the reduction of the staff. They make supernumerary officers and an overgrown staff necessary, and they are hung on to by the army for the express reason that they furnish employment to officers and give lieutenants and captains independent commands.

The people agree with General Sherman. The "prairie dog villages" and the insignificant Atlantic forts that "ought to be washed into the sea," should be abandoned forthwith. The army should be reduced. Then it should be consolidated. Then it should be stationed where alone an army is needed in the United States—in Dakota, Wyoming, Nebraska, Western Texas and Arizona. What is not wanted there, is not wanted anywhere. The people say, let the regular army be reduced.—*New York Sun.*

Will the Coming Man Steal?

It is unnecessary to make any invidious selection of instances to satify the people of this country at least that we are passing through a phase of dishonesty in individual, social and political life, such as has never before been known. But while it is unnecessary to particularize cases, it may not be uninstructive if we briefly summarize a classification of the different styles of fraud, swindling, embezzlement and other kinds of thievery which have come to our knowledge in a collection of transactions gleaned from exchanges in about two weeks' watching. Setting aside altogether, as too cumbersome and complicated to encounter, the various charges against the administration of the general and State governments, we may briefly enumerate the others, as follows: There are county, city and town treasuries robbed, sheriffs and other local officials have absconded with money, and there are presidents of banks, cashiers of banks and tellers of banks charged with embezzlement. There are a gas company in Cincinnati, the president of the Cleveland, Sandusky and Cincinnati railroad, and the treasurer of Wyoming county, Pennsylvania, accused of appropriating public and corporation moneys; there are school funds misappropriated here, negroes swindled by the most palpable frauds there, and blackmailing everywhere; there is the Groesbeck scandal, and the Brooklyn ring frauds, and Governor Moses, of South Carolina; in fact, we have statements collated in brief telegraphic simplicity, of the numerous orders of swindling, hailing from Washington, Richmond, Charleston, Montgomery, New Orleans, Cincinnati, Chicago, Louisville, Harrisburg, Jersey City, Elizabeth, and other cities too numerous to mention. As to election frauds, Indian frauds, illicit distilling—these are matters of daily occurrence; while the cases of individual dishonesty, and the cultivation of fraud in business and social relations, are apparently a necessity of our civilization. Never before has there been, in this country at least, such a lax spirit abroad, such disheartening evidence of national and personal demoralization. "Will the coming man steal?" We believe he will—if there is anything left to get away with surreptitiously.

Clubs are trumps in the next drawing.
Clubs are trumps in the next drawing.
Clubs are trumps in the next drawing.
Clubs are trumps in the next drawing.
Clubs are trumps in the next drawing.
So join together and get your tickets.
So join together and get your tickets.
So join together and get your tickets.
So join together and get your tickets.
So join together and get your tickets.

A Venerable Bell.

Last June Mr. A. R. Whittier purchased the bell formerly used in the Hanover Street Methodist Church of Boston, intending to have it placed in the belfry of the Methodist Church edifice at Hyde Park, now rapidly approaching completion. This bell weighs 1000 pounds, was cast by Paul Revere, and was the first bell made in Boston. At the time of the purchase the society that had for so many years responded to its calls had apparently ceased to exist. Since then, however, a new start has been made, and an association of ladies, headed by the wife of Supervisor Simmons, have applied to Mr. Whittier to have the contract annulled in order that the bell may be retained for the use of the society. Mr. Whittier has replied that in consideration of the many associations that must have endeared the bell to them, he is willing to return it on the following conditions: That they shall furnish the Methodist Society of Hyde Park with one as acceptable to them, and also obtain the consent of the 110 stockholders who contributed to the purchase of the bell.—*Boston Herald.*

Reduction of the Army.

The bill reported by Mr. Coburn in the House yesterday for the gradual reduction of the army provides for dispensing with five regiments of infantry, one of artillery and one of cavalry, and receive no more enlistments until the aggregate is reduced to the number of 25,000, rank and file, the reduction to take place January 1, 1875. No more commissions are to be issued, and any officer resigning before the above date will be allowed one year's pay in advance of time of resignation.

When the reduction is complete the force of the regular army will stand as follows: Twenty regiments of infantry, nine regiments of cavalry and four regiments of artillery.

The opinion prevails that it will not go through the House without much opposition. Should it do so, however, it will hardly survive a passage through the Senate, so officers need not be in haste about resigning their commissions.—*Washington Chronicle.*

A Troy paper, writing of the late Elder Knapp, speaks of incidents "in the early history of the corpse."