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COURT RECORD.

MONDAY, APRIL 6, 1874.

United States Circuit Court.

The following decision was rendered by Judge Woods:

E. K. Converse and others vs. John W. Cannon and others.—This cause is submitted for final hearing upon the bill, answer, replication and evidence.

The complainants allege that they are the assignees of a patent issued to one A. John Bell, dated January 22, 1861, for an "improvement in steamboat staging;" that they are also the assignees of two patents issued to one Hannibal S. Blood, the first dated June 7, 1870, being a new and useful improvement in derrick or hoisting crane, and relating particularly to a means for avoiding the labor and delay incident to hauling and manipulating heavy landing stages used on steamboats and water crafts by manual labor," and the second being a patent dated March 26, 1872, for an "improvement in derricks." That all of the inventions named in said three letters patent relate to the manner and mode of manipulating and hauling stages used on steamboats and water craft for landing freight and passengers whereby manual labor is in a great measure dispensed with, and great economy in the navigation of such vessels effected, as well as a large decrease of expenses in the navigation and use of such vessels and water craft.

That the defendants, John W. Cannon and William Campbell, the first largely interested in the steamer Robert E. Lee, as owner, and the latter being her master, are using upon said boat two several machines which are substantially in their mode of construction the same as the machine described in said three letters patent.

The bill prays for a perpetual injunction against the defendants to restrain them from infringing upon the patents owned by the complainants, by the use of said machine now employed by them on the steamer Robert E. Lee.

The answer of defendants denies any infringement of the patents held by complainants, and claims that they use an apparatus invented by one John Perkins, and patented to him by letters dated May 7, 1872, which differs substantially and materially from the apparatus covered by the patents owned by complainants, and is not an infringement thereon.

The answer further alleges that the results attained by the contrivance patented to Blood were accomplished by Crane, described upon pages 349, 350, vol. 1, of Appleton's Dictionary of Mechanics, published in 1865, one of which, it is therein stated, had been used at the United States dry dock at Brooklyn, New York, and one in the construction of the Erie canal by which heavy weights were moved toward or from the mast, and hoisted or lowered to the required position by means of ropes and pulleys.

That the results accomplished by the contrivance patented to Blood were accomplished during the late war by the Marine Brigade. By the application of steam power heavy stages were raised, launched out and lowered into position on the bank, and again raised, launched inward and lowered into position on the boat, so that the results contemplated and claimed to be accomplished by the contrivance of Blood, of raising, lowering stages, by applying steam power to a suitable apparatus, were well known, as well as the contrivance by which such results were accomplished, and were in public use long before Blood's patent.

The answer claims that the apparatus covered by the Blood patents are not useful, and their use has been abandoned.

An amended answer has been filed, which, besides describing more particularly the contrivance used by the marine brigade, alleges that in December, 1868, one J. Frank Hicks used a derrick or crane provided with ropes and pulleys, and operated by steam power, for the purposes of a freight hoister on board the steamer Magenta, and for hoisting and managing the staging on said steamer.

The schedule attached to the letters patent of A. John Bell, states that the object of his invention is "a more rapid, easy and effective means of shipping and unshipping the stage planks from steam water crafts, and consists in a mode of operating said planks by connection with one of the steam engines employed to work on board the vessels."

His claim is thus stated: "I claim as new and of my invention, and desire to secure by letters patent the arrangement of the staging C, power windlass E, F, G, H, I, and supporting apparatus J, K, L, the whole being constructed and operating substantially as and for the object set forth."

The staging shown in the drawing is the ordinary one used on steamboats, upon the outer end of which is a bail, to which is attached a rope which leads to the upper end of a gaff, the foot of which rests on the deck, while the upper end is supported by a rope attached to an upright mast or spar. This gaff and mast and the rope connecting them constitute, to all intents and purposes, a derrick, differing mainly from the derrick in common use by the fact that the foot of the gaff or boom rests on the deck instead of resting against the mast or spar, so that we have a staging suspended, at or by the bail at one end, to a derrick.

The staging so attached to the derrick is connected with a power windlass by which the stage is shoved out or drawn in, and the end of the staging, as it is pushed out, may be adjusted to the height of the bank upon which its outer end is to rest by the slipping of the rope attached to the bail. On the edge of the gunwale of the boat is a roller to enable the stage to move with greater facility.

The two patents issued to Hannibal S. Blood, which have been assigned to complainants, and the patent to William J. Perkins, under which the defendants seek to protect themselves, are simply infringements upon the derrick in common use, and nothing more.

The most cursory reading of Bell's patent shows that it is not intended to cover a derrick, nor a steamboat stage, nor a power windlass, operated by steam or other power. The invention claimed by Bell is for the combination of these three well known contrivances to accomplish the handling of the stage with ease and rapidity.

The roller on the gunwale of the boat is not an essential part of the combination, and is not mentioned in the patentee's claim. This reference approved.

It is no defense to a suit for the infringement of this patent to set up that the defendant has improved upon the derrick, or upon the windlass, or upon the stage. If the combination is used, although some of its separate parts may be improved, it is an infringement.

The answer of the defendants does not deny that they handle and manipulate a steamboat stage by attaching it to a derrick by a rope, and raise or lower it by means of a power windlass. They set up merely that they use an improved derrick, different from the derrick shown in the specification of A. John Bell's patent, and different from the derrick covered by the patents of Hannibal S. Blood.

In passing upon this issue of infringement, the question to be determined is whether under a variation of form or by the use of a thing which bears a different name the defendant accomplished by his machine the same purpose or effect as that accomplished by the patentee, or whether there is a real change of structure or purpose.

If the change introduced by the defendants constitutes a mechanical equivalent in reference to the means used by the patentee, and if, besides being an equivalent, it accomplishes something useful beyond the effect or purpose accomplished by the patentee, it will still be an infringement as respects what is covered by the patent, although the further advantage may be a patentable subject as an improvement on the former invention. Drummond in Foss vs. Herbert, 2 Fisher 31.

The material question is not whether the same elements of motion or the same component parts are used, but whether the given effect is pro-substantially by the same mode of operation and the same combination of power in both machines. Story, Judge, in Odiorne vs. Winkley, 2 Gall., 54.

In determining the question of infringement we are not to determine about similarities or differences merely by the name of things, but are to look to the machines or their several devices or elements in the light of what they do, or what office or function they perform and how they perform it, and to find that a thing is substantially the same as another if it performs substantially the same function in substantially the same way to obtain the same result. Clifford, J.—The Union Refinery vs. Mathessen, 2 Fisher, 602.

The rule is, and so it has been settled, that if two machines be substantially the same and operate in the same manner, though they may differ in form, proportions and utility, they are the same in principle. Washington, J., in Evans vs. Eaton, 3 Wash., 449.

As between a device conceded to be new and a device claimed to infringe, because an equivalent the alleged infringer could not protect himself by showing that although his device was the equivalent of the patentee's device in all its functions and in its construction and mode of operation, yet by other additional features it performed other and useful functions, such a device though an improvement upon the patented one would be an appropriation of it. Wooruff, J. in Sarven vs. Hall, Official Patent Reports, vol. 1. 437.

To constitute an infringement the contrivances for the purposes in view must be substantially identical and that is substantial identity which comprehends the application of the principle of the invention. Page vs. Ferry, 1 Fisher, 299.

It makes no matter what additions to or modifications of a patentee's invention a defendant may have made, if he has taken what belonged to the patentee he has infringed, although with his improvement the original machine or device may be much more useful. Sprague, J., Howe vs. Morton, 1 Fisher, 587.

Applying these principles to the case in hand there can be no doubt that the defendants have appropriated the invention covered by the patent of A. John Bell.

That they may have improved upon parts of the combination may be true, but they are using the idea first suggested by Bell and covered by his patent, namely, the handling of a steamboat stage by means of a rope attached to a derrick, through force applied by a power windlass. The variations which have been made in the method of attaching the rope, in the form of the derrick, in the position in which the stage is placed on the deck, are immaterial variations which do not affect the question of infringement.

As the patent to Bell bears date prior to the use of stages by the Marine Brigade or to the publication in Appleton's Dictionary of Mechanics, the defense of want of novelty can not be maintained.

The averment that the device of Bell is not useful can not be sustained. All the law requires as to utility is that the invention should not be frivolous or dangerous. It does not require any degree of utility. If the invention is useful at all that suffices. Cox vs. Griggs, 2 Fisher, 174. Hoffheins vs. Brandt, 3 Fisher, 218.

The result of these views is that there must be a decree for complainants directing a perpetual injunction to go against defendants, as prayed in the bill, and a reference to a master for an account of profits.

Supreme Court.

Present all the judges.

The following decisions were rendered:

BY CHIEF JUSTICE LUDELING.

No. 4991. Thomas Brady, appellant, vs. the parish of Ascension.—From Fourth Judicial District. Plaintiff's trading boat was destroyed by a mob in 1870, and he sued the parish for $12,678. March, 1871, the police jury passed a resolution to compromise for $7585 in bonds, and repealed it in May, 1872. This is a second suit to enforce the compromise in dollars. The exception of res judicata is sustained. 19 L. 328; 12 A. 197; 14 A. 797. This court has the right to pass on an exception, although the court below did not, as the whole case is before it. Judgment affirmed.

No. 4829. Mrs. Josephine Decuir vs. John G. Benson, appellant.—From Fifth District Court of Orleans. Plaintiff, in July, 1872, was refused a berth on the Governor Allen, and the right to take her meals at the table with the other passengers. The court below gave damages of $1000. The defendant's exception to the jurisdiction of the court was properly overruled. 20 A., 432; 22 How., 244. The evidence sustains the plaintiff's case, and the defendant said he refused her a berth on account of her color; that it was "contrary to the rules of the boat." Act No. 38 of 1869 is not in conflict with the constitution, as it does not make any regulation of commerce. The first section provides that common carriers may refuse to receive or may expel passengers when they refuse to pay their fare, are of infamous character, guilty of bad conduct, etc., provided that no discrimination be made on account of race or color. The fourth section gives the right of action. The law was enacted solely to protect the newly enfranchised citizens of the United States in Louisiana from the effects of prejudice against them. It does not violate article fourteen. No one is deprived by it of life, liberty or property without due process of law. The position that because one's property can not be taken without due process of law, therefore a common carrier can conduct his business as he chooses, without reference to the rights of the public, is so illogical that it is only necessary to state it to expose its fallacy. A common carrier of passengers must receive all who offer, carry them over the whole route, demand only the usual compensation and *treat all alike*, and for failure is responsible to the extent of the damage. Chamberlain vs. Chandler, 3 Mason, 142; Keene vs. Lizardi, 5 La., 431; Black vs. Bannermann, 10 A., 1; 1 McLean, 550; 3 McLean, 24; Parson's Mercantile Law, 207; 3 Kent, 160. The right of the plaintiff to sue would be the same, whether act thirty-eight existed or not, but the act is in perfect accord with the constitution of the United States. Colored people have all the rights which white people enjoy. Successor of Caballero; Hoss & Elder vs. Hart et al., 25 A. Mrs. Decuir was denied the right to go into the ladies' cabin and was forced to stay in the "colored bureau." If she had been white it will not be denied she would have had just cause of complaint. In Coger vs. N. W. Union Packet Co., Chief Justice Beck, of Iowa, uses the following language, which we adopt:

"These rights and privileges rest upon the equality of all before the law, the very foundation principle of our government. If the negro must submit to different treatment—to accommodations inferior to those given to the white man—when transported by public carriers he is deprived of the benefits of this very equality. His contract would not secure him the same privileges and the same rights that a like contract made with the same party by his white fellow-citizens would bestow upon the latter." Am. Law Reg., March, 1874. A common carrier may make reasonable rules, but a regulation that is founded on prejudice, and, which is contrary to law, is not reasonable. The appellee has not asked for an increase of the judgment. It is, therefore, ordered the judgment be affirmed.

Justice Wyly, dissenting, considers that the Governor Allen, engaged in commerce between the States of Louisiana and Mississippi, was not bound to observe the local legislation regulating the entertainment of passengers, and that the State of Louisiana has no power to pass such an act. It was to prevent the conflict of authority that commerce is required to be regulated by Congress. The defendant proved it was the universal custom to have two tables. **The regulation was known to plaintiff. Her counsel was refused permission that she should travel with white passengers. She refused to accept the accommodations provided for her. She paid $5 fare, the rate for colored people, that for white being $7. In my opinion the contract was made in reference to the custom of the boat. It** is not complained that the fare was not as good in the colored cabin, but that there was a discrimination. She had no contract for passage in the cabin with the white passengers. If the clerk had first consented and then refused, she might have had a case for damages. The authorities quoted would then be applicable. The plaintiff impliedly accepted defendant's offer to carry her in the colored cabin. If a white passenger was denied accommodation in the colored cabin he could not claim damages. I find no breach of contract and nothing in the common law to prevent regulations for the common benefit of passengers. For this State to interfere its enactments, and for this court to apply them to a subject solely confided by the constitution of the United States to Congress is a glaring usurpation of authority.

BY JUSTICE TALIAFERRO.

No. 3307. Barker B. Pegram vs. John B. Cooper, appellant.—From Sixth District Court of Orleans. The court below erred in not admitting evidence to show failure of consideration. Judgment annulled and case remanded.

No. 4898. State ex rel. P. P. Carroll vs. Philogene Jorda, appellant. Plaintiff alleges he was elected parish judge of St. Bernard, and that defendant is an intruder. The exception that the intrusion act is repealed by the act of March 5, 1873, regulating contests for judicial office is overruled. The commission of Governor Warmoth, issued before the returns were made, is a nullity. The plaintiff holds the legal commission from Gov. Pinchback. Judgment affirmed.

No. 3115. Ellison Creevy and Euley, liquidators, vs. E. W. Burbank, appellant.—From Fourth District Court of Orleans. The appeal having been returnable the third Monday of January, and the transcript not having been filed till January 28, an interval of more than three judicial days, it is dismissed.

No. 4943. F. C. Mahan vs. E. B. Benton.—Motion to dismiss appeal from Fifth District Court, as the case is an injunction to restrain proceedings in relation to a sum amounting to just $500, is granted. The case is the same as Oglesby vs. Helm. (See opinion book.)

No. 4770. Kendig & Co. vs. city of New Orleans, appellant.—From Superior District Court. On rehearing. The decree having been rendered on insufficient evidence, is reversed. The decision of the court below is affirmed, the injunction to rest on the state of facts existing at the trial of the cause, without prejudice to the city to set up a claim to the quiet and undisturbed possession of the place in controversy under any ordinance revoking the permit granted to Kendig & Co.

No. 3117. Frederick Wang vs. Spencer Field, appellant.—From Fourth District Court of Orleans. The plaintiff founds his right on article 3268 of the Civil Code to have a separate appraisement made when the vendor of lands is opposed by workmen seeking payment for a work erected on the land, and yet failed to comply with the provisions. Judgment reversed and suit dismissed, the right being reserved to plaintiff to renew proceedings.

No. 3289. William Drew vs. Attakapas Mail Transportation Company et al., appellants. From the Fourth District Court of Orleans.—Suit for $748, damages for a collision, the plaintiff alleging he was owner of the Mary Gray. Defense offered to prove he was only the charterer, and the evidence was improperly excluded. There being no evidence of interest to enable the plaintiff to prosecute a suit for damages he fails in his case. Judgment annulled.

No. 4892. Succession of Louis F. Foucher, Marquis De Circe.—From Second District Court of Orleans. Gabrielle Correjolles, February 3, 1869, contracted with the parish of Jefferson to build a shell road on St. Charles street, under authority of the act of 1868. He received the proper bills made out by the parish officers for collection from the property holders. The property of Foucher, Marquis of Circe, was on the south side and the road constructed on the north side. It is contended the middle ground, whether owned by the railroad or the public, should bear a portion of the cost. It belongs to the city, which is bound to pay one-half of the expense. Marqueze vs. city of New Orleans, 13 A., 320. Judgment of lower court in favor of the succession affirmed.

No. 5074. Robinson Mumford, appellant, vs. Mrs. Sarah T. Bowman.—From Seventh Judicial District. Judgment affirmed. Justice Howell dissenting.

BY JUSTICE HOWELL.

No. 3312. Glover & Odendahl vs. George B. Shute, Citizens' Bank intervenor and appellant.—From Fourth District Court of Orleans.—The plaintiffs failed to show their privilege was properly secured, and the intervenor's plea is sustained. Judgment reversed, intervenor being decreed to be entitled to the proceeds sequestered.

No. 4618. State of Louisiana vs. Charles Clinton, Auditor, and Antoine Dubuclet, Treasurer.—New Orleans, Mobile and Texas Railroad Company, intervenor on rehearing. The doctrine of tender was improperly applied in our former opinion. The State did not sue to annul the contract of sale and recover back the bonds given as the price. The law officer of the State, representing his principal, simply asked that the fiscal agents of the State be prohibited from paying the bonds and coupons described in the petition, on the ground, among others, that the laws authorizing the issuance of the bonds and making appropriations to pay the coupons are unconstitutional. The suit was not against the holders of the bonds or the parties to the contract, and there was no one to whom the tender of the certificate of stock could be made. The injunction or prohibition issued on the petition of the Attorney General made it legally impossible, while it existed, for the fiscal agents to pay, and in this way only were the rights of the intervening company affected and the necessity imposed on the company to take some legal proceedings to obtain payment. They chose to intervene in these proceedings in order to assert their rights and remove the obstruction to their access to the State treasury. They are, therefore, not in a position to plead that a tender of the stock should have been made to them before the issuance of the injunction herein, although it practically closed the treasury to them. But any judgment in the suit, to which they were not made parties, would not have been *res judicata* as to them.

The question arises, are they, having made themselves parties, entitled to have the injunction removed so far as it affects them? The case is not without difficulty. It is submitted on the pleadings, with the single admission that the State holds the certificate of stock made, we presume, with reference to the plea of tender, and we are expected to determine the rights of the parties in interest, vast as they may be, upon the face of the papers. It is contended, on behalf of the State and the people of the State, that the obligation of the State to indorse the second mortgage bonds of the intervening company, and in lieu of which the purchaser of stock was substituted, was contingent, and that the conditions upon which that obligation was to be fixed had failed prior to the passage of the act authorizing the purchase of the stock and issuance of the bonds to pay for it, and hence the issuance of the bonds was the creation of a debt in violation of the prohibitive amendment to the constitution. This failure is said to be notorious, to wit, the nonconstruction of the branch road, or any part thereof, within the time prescribed by act No. 22 of 1869, under the provisions of which the company's bonds were to be guaranteed. If it be true that at the date of the said act No. 95 the obligation of the State in favor of the railroad company was extinguished or had lapsed the said act No. 95, authorizing the issuance of the bonds in question, was the creation of a new debt, but we are not prepared to say that such a fact may be judicially noticed, even in behalf of the public. **But its importance is such that we are unwilling to hold the public responsible for the omission to furnish the necessary proof, and we have concluded to remand the case for evidence on the point, and such** other proceedings as may be requisite. It is, therefore, ordered, that our decree herein be set aside, that the judgment appealed from be reversed, and this case be remanded for the taking of evidence and to be proceeded in according to law.

No. 4967. Succession of Etienne Carlon.—From Second District Court of Orleans. Judgment reversed. The rule taken by appellees, on the administrator, A. E. Carlon, is dismissed.

No. 5063. George L. Walton vs. Police jury of Concordia.—From Thirteenth Judicial District. Judgment declared null and action dismissed.

No. 5190. State ex rel. Hays and Benton vs. judge of the Superior District Court.—Mandamus made peremptory to grant an appeal from a judgment making absolute a rule to set aside a transfer of certain judgments, the amount involved being over $500.

BY JUSTICE WYLY.

No. 3268. Jean Pardo's heirs vs. A. A. Pardo, appellant.—From the Sixth District Court of Orleans. The defendant is estopped from denying the truth of his oath in the insolvent court. In the face of the schedule filed by him he can not set up an account against his brother dating back to 1840. If it was a valid claim it should have been put on the schedule. Judgment affirmed.

No. 2953. Spaulding, Bidwell & McDonough, appellants vs. Rhoda Rosewood.—From Fourth District Court of Orleans. Plaintiffs allege defendant broke her engagement to play and has instituted nine suits to compel payment, and that they have enjoined the further prosecution of the suits in the Fourth District Court, which, on a hearing, properly dissolved the injunction. Act No. 2 of 1870, section three, gave the Eighth District Court exclusive jurisdiction of injunctions, except in cases before other judges who have issued an order of seizure. The Fourth District Court was without jurisdiction. Besides it had no authority to restrain the trial of defendants' suits before justices of the peace.

No. 3284. Cohen & Wilson vs. George W. Avery et als., appellants. From Fifth District Court of Orleans.—Plaintiffs seized the property of Joseph Canale for $941 85, and Garcia y Mora enjoined the sale—22 A. 417. The sheriff, Avery, improperly released the property pending the action, and judgment was given against him for the amount. The sureties on the injunction bond appealed, Avery did not. There is no legal obligation between appellees and appellants. Judgment against Mora, and of Avery in warranty against Mora reversed.

No. 3286. P. Gallagher vs. B. Abadie, appellant.—From the Sixth District Court of Orleans. There is no evidence the property was seized, or that there was a sufficient advertisement. A justice of the peace has no authority to appoint an appraiser in behalf of the defendant. The sale was invalid. The plaintiffs, finding that the property had been illegally sold, properly refused to ratify the sale. Judgment affirmed.

No. 3111. E. A. Switzer vs. Steamboat Frolic, E. E. Norton, assignee and appellant.—From Fifth District Court of Orleans. Suit for wages, the defendants having subsequently been declared bankrupts. It is a personal action against the owners to enforce the lien under. R. S., 3204, and C. P., 285, 289. It is not a proceeding *in rem*, and the State court has jurisdiction. 11 Wal., 185. The State court having obtained lawful jurisdiction, could not be divested of it by the bankrupt court. Bump's Bankruptcy, 187, 198, 199. Judgment affirmed.

No. 3291. Wheeless & Pratt vs. F. M. Fisk, appellant.—From Fourth District Court of Orleans. The discharge in bankruptcy will protect the defendant from responsibility to the plaintiff, but can not avail to dismiss the appeal. Case continued, that the assignee may be cited.

No. 5095. John Gordon, administrator, vs. Fahrenberg & Penn, appellants—From Thirteenth Judicial District. The land in controversy belonged to John Ruth, who conveyed it to John K. Ruth, by deed subsequently destroyed by fire. No advertisement of the destruction of it was necessary to prove its contents. 8 A., 130; 15 A., 463. As against a mere possessor without title a joint heir may maintain a petitory action. 3 L., 128; heirs of Thompson vs. Berdger, 23 A. Judgment amended by striking out the part giving plaintiff 50,000 feet of lumber, and the judgment in reconvention and otherwise affirmed, the right being reserved to Penn to remove the saw mill.

BY JUSTICE MORGAN.

No. 3504. Victor Tauner vs. S. Cambon, appellant.—From Sixth District Court of Orleans. The evidence is not satisfactory that the plaintiff was employed on a contract for a year, and it is not shown that such is the custom in defendant's business. He was discharged because he closed the store at an unreasonable hour. He was paid for the time he worked, and took the money without objection. Judgment reversed.

No. 3287. Herman Budinski vs. Spaulding, Bidwell & McDonough, appellants.—From the Eighth District Court of Orleans. Plaintiff shows by written contract that he was employed to play the second French horn for thirty weeks, at $25 per week, and that he was discharged without cause at the end of seven. Defendants deny the discharge, but had told plaintiff not to play and to go away, which we think sufficient. No justification is alleged. The plaintiff is entitled to pay for the whole term. C. C., 2749. Judgment affirmed.

No. 3285. William J. Taylor, appellant, vs. Kehlor, Updike & Co.—From Sixth District Court of Orleans. Plaintiff being employed on a contract for one year and discharged without cause at the end of a few months, is entitled to full pay under C. C. 2749. Judgment reversed, plaintiff to recover $1600 costs and privilege.

No. 4805. Louis Barthol vs. city of New Orleans, appellant.—From Superior District Court. Plaintiff enjoins defendant from collecting rates for lease of a stall in St. Mary market, claiming that it is a tax on his occupation. It is not a tax, but a rent and does not violate the constitution. It was a contract, under the ordinance, between the plaintiff and the city. Judgment reversed and injunction dissolved.

No. 4806. Jean Dubarry vs. City of New Orleans, appellant.—From Superior District Court. Judgment reversed and injunction dissolven.

No. 4821. Succession of Constant Hearing.—From Second District Court of Orleans. The creditors attempt to force the widow to place on the inventory several policies of insurance, which were issued in favor of the wife and child. There had been a separation of property and a judgment against the husband for $2500. He paid the wife $475 50, and transferred the furniture in house No. 21 Hospital street. No opinion is expressed on the effect of the separation. A man may take out a policy on his life in the name of another, or may transfer to whom he pleases. It is not a piece of property, but the evidence of a contract. If the policy is issued to the wife the amount belongs to her. If she could be compelled to inventory it, its object would be destroyed. Judgment affirmed.

Chief Justice Ludeling dissenting, says he has no doubt the polices belong to the succession, for they were a part of the community of acquests and gains existing between the husband and wife at the time the polices were acquired. C. C. 2402. The right to the money was vested the moment the policies were signed, and existed during the marriage. Succession of Richardson, 14 A. 1, and succession of Kuglie, 23 A., do not apply. Rights vested in the person in whose favor the stipulation is made from the date of the contract is acquired during the community and must belong to it, unless insurance policies form an exception to the general rule. The law forbids contracts between husbands and wifes, except in a few instances, and an insurance policy is not such an exception.

Superior District Court.

John Langles vs. New Orleans and Carrollton Railroad Company.—Petitioner alleges that January 19, about 10 A. M., while driving his buggy and exercising due care he and his companion were run into by car No. 1, belonging to defendant, at the intersection of Delord street and Tivoli circle; that the car was carelessly driven at great speed; that his buggy was broken, his horse wounded, and his companion and himself injured, and prays for damages of $500.

First District Court.

NOLLE PROSEQUI ENTERED.

State vs. Thomas and Mrs. Malloy.—Knowingly receiving stolen goods.

State vs. Richard Evans.—Bribery.

SENTENCED.

Carrying concealed weapon—Charles Coughlin; fine of ten cents.

Assault and battery—John Gray, two cases; one day and one hour.

Tom Boston; one day.

Joe Planellas, fine of $75.

Second District Court.

Successions of Mrs. Mary Morgan, wife of Philippe Mailhes; Richard B. Campbell and Patrick Halpin opened.

John, Joseph and Terrence Francis Ward pray to be emancipated.

Fifth District Court.

Judge Cullom rendered the following decision:

John T. Moore vs. New Orleans Mutual Insurance Company; same vs. same; Emile Taneret vs. Mutual Insurance Company.—John T. Moore & Co. took out a policy of insurance, November 29, 1872, of $7000, on a sugarhouse and contents in Pointe Coupee, to expire December 27, and paid the premium. The property destroyed was furnished by them as commission merchants. The second suit is for $20,000 on a policy of one year, to commence February 12, 1872. The fire occurred December 1, 1872. The defense claims the loss was caused by an explosion of boilers.

The testimony of experts shows the loss by fire to have been certainly $75,000. The loss by the explosion is estimated at $6000. It occurred on Friday. The fire was discovered Sunday morning, forty-eight hours after, and can hardly have been caused by it. There was no apprehension on the part of those about the sugarhouse, for they slept within the walls after it occurred. The theory of the defense must be rejected. Phillips Ins., sec. 1132; Livic vs. Janson, 12 East, 653; Ionides vs. Universal Marine Insurance Company, 14 C. B., N. S. 259; E. C. L. R. 108. The fire did not occur through any negligence on the part of the plaintiffs, and their right to recover must follow. Philips Ins. 79, sec. 132; Flanders Ins. 58; Duer 161, 211; 2 Pars. Cont. 446. As to burden of proof see Flanders, 495; Phillips 712, sec. 1160; 2 Green; Ev. 395, 401; 4 Mason 441; 14 Ark. 264.

It is claimed that if the insurers are liable they should be subrogated to the mortgagee's rights. Cushing vs. Thompson, 34 Me., 496; King vs. State Insurance Company, 7 Cush., 1; Smith vs. Columbia Insurance Company, 17 Penn. State, 253; Insurance Company vs. Updegraff, 21 ib., 513; Ætna Insurance Company vs. Tyler, 16 Wend., 385, 397; Carpenter vs. Providence Washington Insurance Company, 16 Peters, 495, 501. Our Supreme Court has not passed on the question. Insurance contemplates simple indemnity, and the premium is all the company contracts for. The doctrine of subrogation should be enforced whenever the loss is caused by the debtor, but not carried to any greater extent. Mason vs. Swinsbury, 3 Doug., 61; Hart vs. Western Railroad Company, 13 Met., 99; White vs. Brown, 2 Cush., 412; Suffolk Fire Insurance Company vs. Boyden, 9 Allen, 123; Civil Code, 2159 to 2162. Judgment for plaintiff, rejecting defendant's alleged rights of subrogation.

The Temperature.

Mr. Louis Frigerio, No. 50 Chartres street reports the weather for the past two days as follows:

	8 A. M.	2 P. M.	6 P. M.
April 5	68	74	71
April 6	68	77	73

Lowest point during the night of April 5, 55°. Rain during the night of April 4 and day of April 5, one and seven-tenths of an inch.

VALUABLE IMPROVED AND VACANT REAL ESTATE AND STOCK AT AUCTION BY THE SHERIFF.—We are requested to call the attention of the public to the sales at auction to be made this day, at noon, at the Merchants and Auctioneers' Exchange, Royal street, by the sheriff of the parish of Orleans. Said sales comprise:

1. A lot or parcel of ground, with all the buildings and improvements thereon, situated in the Fourth District of this city, at the corner of First and Camp streets.

2. A portion or lot of ground, situated in the same district, at the corner of Third and Baronne streets.

3. Two lots of ground, with all the buildings and improvements thereon, situated in the First District, on Liberty street, between Lafayette and Poydras streets.

4. A lot of ground, situated in the same district, on Camp street, between Julia and St. Joseph streets.

5. A lot of ground, with the buildings and improvements thereon, situated in the Second District of this city, at the corner of Burgundy and St. Peter streets.

6. And shares of stock.

For full particulars and terms see advertisements.

St. John's Episcopal Church Concert.

The next best concert to come off will be for the benefit of the St. John's Episcopal Church, situated at the corner of Third and Annunciation streets, and it will be given to-morrow evening at Grunewald Hall. The programme will be found in another column, and the performers to assist include some of the best of our professional and amateur artists. Since the first announcement of this concert published, Mr. Marks Kaiser has volunteered his valuable services, and will appear to-morrow evening in conjunction with the artists previously announced. The talent engaged, and the object for which the concert will be given, should draw many people to the entertainment.

Another magnificent scheme.
Another magnificent scheme.
Another magnificent scheme.
Another magnificent scheme.
Another magnificent scheme.
The Louisiana Lottery draws again April 18.
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Billiards.

The tournament for the State championship commenced last evening at the Crescent Hall club room, by a game between Messrs. Arthur Coste and John Miller, of 200 points, French caroms. Neither player distinguished himself by being up to his usual mark. The largest runs were 18, with which Mr. Coste opened, and 17 in the fifty second inning. It required 71 innings to terminate the game, which only gives Mr. Coste an average of 2 68-71. Mr. Miller made 141 points, only averaging 2 1-70.

Messrs. Louis Abrams and John Quaid then played a game of 300 points, four ball American caroms, resulting in a score of 300 for Abrams, and 171 for Quaid. Abrams, average was 8½, Quaid's 4 3-7.

The games this evening will be between Messrs. Coste and Maggioli, and Abrams and Hoa.

BY TELEGRAPH.

CONGRESS.

Senate.

WASHINGTON, April 6.—Mr. Johnston presented a memorial from the eldest son of the Mrs. Robert E. Lee, G. W. Custis Lee, setting forth the defects in the title of the United States to the Arlington House, which was devised to him by his grandfather.

Mr. Johnson said that Mr. Lee recognized the use to which the Arlington property had been put, and had now no wish to destroy it. All that he wished was that the matter be referred to the court of claims for such reasonable compensation as was due him. Mr. Johnson introduced a bill referring the matter to the court of claims, which, with the memorial, was referred to the Judiciary Committee.

The Louisville and Portland canal bill was referred to the Finance Committee.

The Senate, by a vote of 29 to 24, passed the financial bill, provisions of which fix the maximum of the legal tender circulation at $400,000,000, and provides for an increase in the national bank circulation to $46,000,000, making the amount of that currency also $400,000,000.

All amendments looking to free banking or specie resumption were voted down, but a feature was incorporated in the bill requiring national banks to keep, as part of the reserve, one-quarter part of the coin received by them as interest on bonds of the United States deposited as security for circulating notes or government deposits, and that hereafter only one-fourth of the reserve now prescribed by law for national banking associations shall consist of balances due to an association, available for the redemption of its circulating notes from associations in cities of redemption, and upon which balances no interest shall be paid.

House.

The Election Committee made a report in the Kentucky case that Young, the sitting member, is entitled to the seat. Ordered printed.

The bill to suspend impeached officers, pending trial, was made the special order for Tuesday of next week.

WASHINGTON.

A New Phase of the Canal Question—Statement of General Hebert and Professor Forshey.

WASHINGTON, April 5.—The following statements are authorized by ex-Governor P. O. Hebert and Professor C. G. Forshey:

In response to Senator West's telegram to New Orleans, and in pursuance of their duty as representing the Chamber of Commerce of that city, they have to say:

"That but for the manner in which their names are introduced into that dispatch they would have left Senator West to the people of Louisiana with the bare announcement of his defection from the advocacy of the canal and the espousal of the Eads jetty plan. He knows his own relation to that people, and they know best by what measures to treat a fact so astounding, in the face of the past history of Senator West's authorship of the Senate bill for the Fort St. Philip canal and his recognized championship of this measure, so dear to every inhabitant of that State.

But Senator West has taken the liberty to impute to Messrs. Hebert and Forshey statements before the Senate committee in association with those of Mr. Eads, the result of the inducing of the committee to view with some favor the plan of Mr. Eads, and, with proper self-respect, they object to the manner of Senator West presenting this influence. The engineering arguments and unwarranted application of General Humphrey's opinions they will not review further than to recall special attention to them. Their own remarks before the committee have already been given to the public, and they refer to them with entire confidence in the verdict of any jury of scientists, practical engineers, or men of intelligent brain, at home or abroad.

Believing the Senate committee form an entirely competent jury, they have to deny that up to this moment that jury have voted in favor of the Eads scheme.

This they understood to have been the status of affairs in that committee. Its labors in the great matter of transportation were wise and its voluminous reports; and in dividing out its work, the parts apportioned among the members were naturally those indicated by localities; and thus Senator West found means to give the shape and direction which the improvements at the mouth of the Mississippi should take. Had Senator West been true to his antecedents in this respect, he would have reported the Fort St. Bhilip canal in preference to the Eads scheme.

Ex-Governor Hebert and Professor Forshey further report that they consider themselves improperly dealt with by Senator West in the premises. They have been avoided by the Senator, and though the professor had, by direction of the president of the New Orleans Chamber of Commerce, been instructed to report directly to Senator West for introduction and guidance in prosecuting his mission, the Senator received the mission with apparent earnest promise of aid, but never paid the professor any attention whatever, or offered or gave him a single introduction.

The same is true as to Governor Hebert. Senator West's pretext of being very busy had lasted for weeks, and they had been invited to appear before the House committee when Captain Eads had recovered his health and returned. Hebert and Forshey were invited with him before the Senate committee, General West escorting them to the committee room from his own office, announcing them in general terms. West appeared heartily to espouse their views, and to suggest the line of questions and answers. They were entirely satisfied with Senator West's manner and sincerity at the time, though they have reason now to doubt whether it was even then justified.

He has avoided them ever since, and only on Professor Forshey's going to call on him after two days' repudiating the rumors of his defection did he learn the facts in person, and he reported them to Governor Hebert, the latter being too indignant to join in the inquiry. They recognize the full right of any member of a legislative body to be guided by his best judgment in matters of legislation, but deny his right to keep those depending on his consistency in the dark as to extreme changes, especially in a measure like this, that had been two years prominently before his people as a leading and vital matter, and in which he has led in their unanimous wish.

They view this defection as astounding to themselves and repulsive to the people of Louisiana. They further feel confident that the scheme of a contractor, blinded and crazed by the stupendous amount of money contemplated and by the adulation of a swarm of admirers such sums always attract, will not be able to induce Congress to turn aside from the guidance of their legitimate advisers in all such measures—their honored corps of engineers—thus leaving the stranded commerce of the Mississippi valley to await this utterly condemned and impossible experiment.

Probabilities of Secretary Richardson's Resignation.

WASHINGTON, April 6.—With reference to the reports in circulation that Secretary Richardson intends to resign, that gentleman to-day said that whatever may be his intentions in this regard he has communicated with no one, and that when he does make up his mind to retire from the Treasury Department he will take care that it is immediately made public, and that the present rumors grew out of the well known fact that he has been pressed for two or three years to go into private business.

Mr. Richardson said to-day that the President has never communicated with him upon the subject of his retirement from the treasury.

Agricultural.

The House Committee on Agriculture unanimously instructed their chairman to report a bill passing free through the mails seeds, cuttings and plants from the Agricultural Department.

The Agricultural Committee have agreed to report a bill that cattle shall not be kept on the cars more than twenty-four hours without food and water.

Senator Sprague's House Seized.

Senator Sprague's fine house here has been seized in bankruptcy proceedings.

Important Decisions in the Supreme Court.

Justice Clifford, of the Supreme Court, read a long and important opinion to-day in the case of Wilson et al. vs. Bell et al., on appeal from Louisiana, reversing the judgment of the lower court and sending it back for a trial de novo, with leave to libellant to amend libels so as to claim a maritime lien, intimating that when that question comes fairly before the court it will be held to apply to vessels for supplies at home ports. John A. Grow for appellants and Thomas J. Durant for appellees.

Chief Justice Waite, of the Supreme Court, in the case of Rodd et al vs. Heartt et al., also an appeal from Louisiana, announced the unanimous decree of the court that this case be reargued on the second Monday of the next term, when there will be a full bench (two of the judges having been absent at the first hearing), with leave to all parties who are interested in appeals involving the same question to come in and participate in the argument.

The question involved is the jurisdiction of courts of admiralty in cases of supplies to vessels in home ports.

Thomas J. Semmes for appellants and John A. Grow for appellees.

On account of the absence of Judge Davis the Stockdale cases against the Merchants' Mutual Insurance Company and other corporations were again postponed by the Supreme Court, and probably will not come up until Wednesday.

General Sheldon's New Dredging Bill.

In the House General Sheldon to-day introduced the following bill, and had it referred to the Committee on Commerce:

Be it enacted, etc., That the Secretary of War is thereby authorized and directed to enter into a contract with the McLean Dredge Company for making and maintaining a channel twenty feet deep at ordinary flood tide through one of the mouths of the Mississippi river, that they may be navigated safely and expeditiously by vessels drawing twenty feet of water, and that he shall contract to pay said company $100,000 after they have obtained and maintained for six months the channel herein provided for, and in addition thereto he shall pay monthly to said company $15,000 per month for each month that the channel shall be maintained at the twenty feet provided for, beginning from the date that shall be shown that said channel was of said depth and free for navigation, and provided further that for each additional foot in depth up to twenty-five feet that is maintained by said company it shall be paid $5000 per month additional.

Be it further enacted, etc., That if said company shall fail during any one month to maintain full twenty feet of water, as provided for, no payment shall be made for that month; and if there be a continuous failure on the part of said company for two months to comply with its contract, the Secretary of War may use the funds herein appropriated in such manner as he may deem best to secure the object of this act, and such official inspections shall be made from time to time as may be deemed necessary to fully inform the Department of the true condition and progress of work herein provided for.

Be it enacted, etc., That the contract herein provided for shall continue in force for five years, unless forfeited by failure to perform work named, and the sum of —— is hereby appropriated out of the moneys in the treasury not otherwise appropriated for the purposes herein named.

Mr. Sheldon desires to say that the above bill does not antagonize the St. Philip canal, but is intended for immediate relief. The dredging system is the same as that of the Chamber of Commerce, recommended and indorsed upon the motion of Colonel Wolfley in 1870.

Another Appeal for the Fort St. Philip Canal.

The following was laid on the table of Senators and Representatives to-day: Mud lump blockade at mouths of the passes; forty-seven vessels blockaded at Southwest Pass, and one hoisted upon a mud lump that has suddenly reared its head right across the channel; Major Howell directing the great dredges at Pass-a-l'Outre, replies to the prayer for relief that he can not respond, because his own pass is blocked by a vessel on a new mud lump in the channel, but in two days he feels confident that he can get her off with his dredges; he is he is under orders to work away on that pass in order to keep it open and the Southwest Pass will have to take care of itself. For pity and economy's sake, if not in the interests of the commerce of the Mississippi valley, give us the Fort St. Philip canal, that all engineers agree and know will be a permanent channel for deep navigation, out of reach of the inevitable mud lumps that weekly, daily and hourly menace the channels at the mouth of the river. The lifting power of the mud lumps is irresistible, and must destroy any jetties or other works of man, under which they are liable to rise. Forty-seven mud lumps flanked the bar of the Southwest Pass on the last coast survey.

P. O. HEBERT,
C. G. FORSHEY,
Civil Engineers, of Louisiana.

ELECTION.

The Election in Connecticut.

HARTFORD, April 6.—It is impossible to give anything definite about the result of the election. The weather is fine and the traveling good, but the vote will not be a heavy one. In this city it is probable the Democratic majority will be from 400 to 500 for Governor, but there is a chance of the election of a Republican mayor. The Prohibitionists' vote in the State will be much larger than last year. Advices to-day show that they are working hard in several localities. It is generally thought there will be no election of Governor by the people.

Fifty-five towns give Harrison 10,272, Ingersoll 11,995, Smith 1445.

NEW HAVEN, April 6.—Notwithstanding the fine weather the vote in the city is light. Harrison, Republican candidate for Governor, runs well, and will nearly equal Ingersoll here. The Gallagher Democracy, casting a vote of eight, is for Harrison.

L. B. Morris, Democratic candidate for Senator will probably be elected. The struggle over representatives is very close, and probably one from each ticket will be elected.

The Prohibitionists are polling a heavy vote, probably three times that of last year in this city. If voting is of the same character throughout the State, it is likely the State ticket will be thrown into the Legislature.

NEW YORK.

Tweed at Blackwell.

NEW YORK, April 6.—In consequence of disclosures that Tweed, instead of occupying a convict's cell in the Blackwell's Island penitentiary, is in possession of a comfortable room in the centre building of the institution, fitted up for his comfort, his secretary says he is given a room and a little more liberty than the other prisoners, from purely humane reasons. It became a question with the authorities as to whether or not some relaxation of prison discipline in his case was not necessary as an absolute necessity of health.

Tweed was extraordinarily corpulent, and to enable him to move about with any comfort he was obliged to have his body bound up tight in clothes, and he is already in ill health.

His sentence had a crushing effect upon his nervous system, and his condition at present was really pitiable. No prisoner in the penitentiary felt his punishment so keenly.

If it was insisted upon that he should be

[CONTINUED ON FOURTH PAGE.]