

COURT RECORD.

WEDNESDAY, APRIL 15, 1874.

United States District Court.

IN ADMIRALTY.

James Levi et al. vs. Home Mutual Insurance Company. Judgment for defendant for \$200 and five per cent interest.

Supreme Court.

The following supplemental opinion was rendered: Mississippi and Mexican Gulf Ship Canal Company vs. Superior District Court. On application of Warner Norden, a rule nisi was issued against the judge of the Superior District Court, to show cause on Monday, twenty-sixth instant, why a suspensive appeal should not be granted.

The State and sheriff, W. P. Harper, are prohibited from proceeding further till the rule is determined.

Superior District Court.

Judge Hawkins rendered the following decision: City of New Orleans vs. James Stafford; James Stafford vs. City of New Orleans.

The act of 1874, entitled, an act to regulate the private markets in the city of New Orleans and for other purposes, fails to disclose the signature of the Governor to the act. Section first of this act makes it unlawful for any person to open, conduct, carry on or continue any private market for the sale of fresh meats, poultry, fresh fish, etc., in the city of New Orleans within five squares of any public market under the jurisdiction and authority of the administrator of commerce of the city of New Orleans. Section second provides that any person who opens, conducts, carries on or continues any private market, or is in any way connected with the same, shall be liable to a fine of not more than \$100, and to imprisonment for not more than thirty days.

Under this statute the city of New Orleans has asked the court for a writ of injunction restraining any person from doing any of the things forbidden in this act. I am unable to see how the city can appear and demand the forbidding of any person to do any of the things forbidden in this act. The city of New Orleans, under her charter, has the right to regulate the public markets of the city, and to sell and dispose of these markets. She has been, as the evidence shows, that on the first of January, or thereabout, the city of New Orleans sold to different parties the leases of all these public markets in the city for a period of one year. This sale was made in conformity with the obligations of such leases for the price had given them the use of these markets for one year. Unless it be shown that there is any danger of a violation of the law, it does not make a difference to the city whether it is done by these markets; she has no interest in seeing that the markets shall have the exclusive right and control of the sale of meat; it makes no difference to the city. It is a little singular that the administrator of commerce has been named in this act, and that the city was charged by the Legislature to see that this law should be executed.

Mr. Stafford, the person against whom the city asks the writ of injunction, makes a demand in return against the city for a prohibition, asking that the city of New Orleans be enjoined from interfering with his business as owner of a private market. He shows a license from the city and also one from the State which conflicts with the law. It is urged that the city of New Orleans having imposed a license in this case, consequently, this license of Mr. Stafford is not sufficient. I find, however, in looking into the act No. 134 of 1874, that it is still in force, and that at the time the license was issued, that the city is directed to license every person who opens and keeps open at all proper hours of the day any private market, or stalls, or any part of the city of New Orleans, for the sale of meats, game, poultry, vegetables, fruit and fresh fish, subject to the general sanitary ordinance of the City Council, and the payment of the license required for retailers of provisions. The ordinance fixing the amount of this license has not been promulgated, but in the absence of it, the license would presume that it is not higher than the license paid in this case—it certainly is not \$300. The court will take judicial notice of the fact that the license is not \$300, or anything approaching that amount. Consequently the city, when it sues that every person keeping a private market in the city of New Orleans, violated the provisions of this statute, and her act is absolutely void, and binding on nobody. Mr. Stafford having obtained that license, which is not in violation of the law, which gave him a right to do it, and it is beyond the power of the Legislature or anybody else to disturb that contract. The city of New Orleans has no right to raise the question at all; nor has the Legislature the right to violate that right, because it is a right he had acquired under a contract. Nobody, even without a new constitution, can disturb his right, because the constitution of the United States secures contracts and places them above every other act which men may do, either in civil or in criminal sovereign capacity. He then acquired a right independent of all legislation and of all statutes, to carry on this business for the time allowed by the law, and as far as that is concerned, whether the act now sought to be enforced is constitutional or unconstitutional, it could not impair the rights of any person who has contracted; nor can it be done to any person who has acquired rights, or even had the right to demand license under the act of 1874, because, as will be seen by a comparison of the act of 1874 with the act of 1874 in its title and in its provisions, specially recognizes the existence and force of the act of 1874; it is an act to regulate the private markets in the city of 1867 created. Now, the act of 1874 infringes in no way upon the act of 1867, because that act is the foundation from which the private markets spring. The act of 1874 simply regulates the markets which are created and authorized to be brought into existence by the act of 1867. Now, the question comes as to what is regulated by the act of 1874. The act of 1874 provides that within twelve squares of a public market no private market shall hereafter be established, and provides means by which those already established may be located, clearly recognizing the right to establish private markets; doing away with all these objections that enter into the question of police sanitary laws, and discloses nothing of that character. The police power could not be invoked at all, because the act destroys the idea that it is at all an exercise of that power.

I must remark here that the title of the act of 1874 is defective in its face, and does not disclose what is in the body of the act. There is nothing indicative there in reference to the preservation of the health of the city of New Orleans or its police regulations. The term "regulate," as used here, would imply that some method was pointed out by which the market itself would be conducted, and not the locality indicated. The public markets have no locality given them by the act authorizing them, nor have the private markets. The act creating them speaks of them as matters that may be located anywhere in the city, meaning, of course, anywhere where it is practicable. No one would imagine that under this grant any person could set up a market place in the city streets. The police power would prevent anything of that kind, as well as the erection of a store, or a whisky shop, or anything of that kind in the streets, but it is not to be construed to mean any place where it would be practicable, and where it would not interfere with the sanitary right of the city. The act itself, creating

THE CREVASSES.

An Inspection Trip Down the River—Terrible Accident—A Tagboat Capsized and Thirteen Lives Lost.

General Thompson, State engineer, accompanied by General Longstreet, Commissioner of engineers, Colonel Wrotnowski, assistant State engineer, and John G. Longstreet, civil engineer, took passage on the boat and fleet steamer Mary Ida, Captain Ritz, yesterday morning about ten o'clock, for the purpose of making an inspection of the crevasses at Bellechasse, on the right bank, and Greenwood, on the left bank of the Mississippi. The boat arrived at the Bellechasse crevasse about twelve and from there the work of closing the crevasse progressed under the direction of Captain M. W. Darton. There were about 150 men at work here. The gap to be closed is about 80 feet wide, and the water has washed out to the depth of fifteen feet. The engineers estimated that the water was running through the gap at the rate of six million an hour and about forty million cubic feet per hour. The prospect for closing the Bellechasse crevasse is good, if the money is furnished promptly to do the work. Considering the interests involved in permitting this crevasse to remain open, it is important that it should be closed as soon as possible.

While the boat was lying at Bellechasse the effect of the demoralization of the work on the crevasse, and will undoubtedly cause some delay in the work. The tug Richard, belonging to Mr. L. J. Higley, of this city, proprietor of the grain elevator, and commanded by Captain A. Joachim, captured and sunk just below where the work on the crevasse was being done. By this accident thirteen men were drowned. The following are their names, as far as could be ascertained: Harrison Taylor, John Williams, William Russell, Ben—, Sam Scott, Alfred Kaul, William Hall and Rene Jaye. Besides these there were three colored men and one white man lost, whose names could not be ascertained. The white man was a relative of Captain Jeanfrax, and was in business with him in the parish of Plaquemine. The freeman of the tug was also lost. His name was Edward Gaiters. He was a colored man and had a family living on Tuldoane street. The three colored men whose names could not be ascertained belonged to the Baker plantation, located four or five miles above the crevasse. The only persons saved were Captain Joachim, James Whitesides, the engineer, and a colored man, Mr. D. A. Chaffraux, who was on the point of boarding the boat when she sunk, thus having a narrow escape.

The sinking of the boat was so sudden that it was impossible to render any assistance. After the accident the Mary Ida proceeded down to the crevasse at the Greenwood plantation. Here the work was found progressing with great energy and system, leaving no doubt but that the crevasse would be closed by next Monday. The crevasse here is about 100 feet wide, with a depth not greater than three feet. The whole work is under the management of that skillful and indefatigable planner, John Dymond, assisted by Captain S. W. Sawyer, the champion crevasse closer, Mr. Ned Smith, one of the most experienced sugar planters in Louisiana, who manages labor with wonderful skill and effect, Mr. A. V. Brady, chief quartermaster and cook, and energetic H. P. Kernechan, who is also a well known planter on the coast.

The prompt action of Mr. Thomas H. Miller, of the firm of J. W. Burbridge & Co., of this city, in forwarding lumber, sacks and supplies, has been of great service, and is in keeping with his well known administrative abilities. There is another gentleman who is deserving of mention in this connection, and that is Captain R. D. Mitchell. He has, we understand, been of much service on the work, without having any interest beyond that taken for his friends. The laborers on both of these works deserve a great deal of credit for the manner in which they work, enduring much hardship, and laboring late and early without a murmur. It is estimated that about 2500 acres of growing cane, the finest in the State, will be lost if this crevasse is not stopped. The case is growing on the following plantations: The Belle Air, the Woodlawn, the Fairview and the Fanny, belonging to John Dymond; the Union, belonging to J. W. Burbridge & Co.; the Linwood, belonging to S. W. Sawyer; the Seaside, belonging to H. P. Kernechan, and the Catherine, belonging to S. Horner & Son.

Succession of Sulmanite Benit, wife of Edward A. Michel, opened.

Charles Maduel, dated testamentary executor, etc., and M. D. F. Caballero, wife of Jose Maria Conte, vs. P. H. Mousseaux, et al.—The defendants except to the petition for the settlement of the estate of the deceased. That this court has no jurisdiction over this case, the plaintiffs representing a succession. This is not tenable. Representatives of a succession may sue in any court having jurisdiction over the estate of the decedent, otherwise it was impossible to reconcile the articles of the Code of Practice. A certain court alone has jurisdiction in this case, and that is the court in which it has been opened. It, therefore, must be used in that court. An individual must be sued before the court having jurisdiction over the estate of the decedent in any other court whenever the enforcement of his rights requires it. The exclusive powers of probate courts are enumerated in article 424 of the Code of Practice, and they will be found not to cover this case. Their jurisdiction could not be extended to any case not specially provided for by law. See S. L. 243; R. L. 28; H. L. 331.

Defendant vs. Charles Maduel, executor of the estate of Jose Maria Conte, et al.

The certificate of the clerk of the Second District Court, in relation to the petition for an authentic copy of judgment decreeing him to be dated testamentary executor, etc. The judge's certificate is useless. It is excepted that the petition shows no cause of action, can not occur, as, in no opinion, a sufficient cause is alleged.

It is excepted that there is a misjoinder of parties plaintiffs herein. That Mrs. Conte does not set for any court, where she can claim to become a party to this suit, and has made no showing that she does not allege that she has any interest in the estate of the deceased. There is no apparent ground for this exception, but it disappears after a close inspection of the petition. She nowhere alleges her heirship, nor does she set for any court, or the estate of Jose Maria Conte, or the estate of Jose Maria Pizarro Martinez, was made the dated testamentary executor. But she does allege that she is the widow of the deceased, and that she is entitled to an account of his executorship, which she opposed, and which the Second District Court dismissed; that the Supreme Court reversed the judgment of the district court, and rendered judgment in her favor against the executor, for sums amounting to \$12,714 23, with interest. She further alleges that the present defendants are bound as judicial sureties of Martinez, executor, etc., unto her, with Maduel as dated testamentary executor of Caballero, jointly and severally, and in solidum, for the amount of their bond, \$35,000, and she claims judgment against these sureties for the full amount of the judgment rendered in her favor by the Supreme Court against her principal, Francisco Pizarro Martinez. If, then, she set for the Supreme Court to render such a decree, in her favor, she undoubtedly has a standing in this case herein. The exception must be overruled.

SALE CONTINUED.—The sale by the sheriff at No. 131 Poydras street, of saddlery and saddle-making, will be continued to-day at 9 P. M.

LOUISIANA JOCKEY CLUB.

Third Day of the Meeting.

There was a fair attendance yesterday, perhaps not quite so large as on the other two days, but still a very fine attendance. The ladies were out in force, and the peculiar accommodations of the city had been strained to their utmost to bring out the beauty and cheerfulness. The weather was slightly frosty in appearance. We had a glimpse of sunshine, and then the clouds would bank up again, and a close, hot western wind would tell of an imminent shower. The rain god stayed his hand, however, and the day passed off without necessitating a resort to parachutes or wraps or carriage aprons.

For the first race a mile dash, as published in yesterday's REPUBLICAN; there were seven entries, but only six started; John McDonald having been withdrawn on account of lameness. The others, Quirt, Falmouth, I. O. U., Chief Engineer, Revenge, and Chris Doyle, came to the post at the call in good order, fresh and frolicsome. The first effort at a start resulted in Engineer's running away, and he could only be checked after making the circuit of the course. The second attempt resulted the same way, Engineer refusing to obey the recall, and dashing around the track on his own hook.

The next break got them well away together, Falmouth getting the lead, I. O. U. second, Quirt third, Chris Doyle fourth, Revenge and Chief Engineer behind. At the quarter I. O. U. who had lapped Falmouth for a short distance, passed to first, leaving Falmouth second, Chris Doyle third, Quirt fourth, Revenge fifth and Engineer, the runaway, already badly left. At the half they were pretty well scattered, Lewis' entries being virtually out of the race. It was herabouts that Quirt made fair for position, and went rapidly from fourth to second place. I. O. U. still pegged away a close second, Chris Doyle and Falmouth fretting away in the immediate rear, Revenge at a safe distance and the Engineer out of sight. The finish was quite neat and pretty, Quirt winning by a half length, and the other horses in the same positions as noted at the three quarter pole.

The second race, mile heats, for all ages, showed up five starters, Mary L. having been withdrawn by consent. In accordance with club rules, the fact that Lotta Moore carried four pounds over weight was duly and officially announced by the president. Bets and pools on the bay filly, therefore, stand. At the start, Lotta Moore was slightly the favorite at \$0 to \$5 against Orlean; Quartermaster bringing only \$18, and the field \$17.

The start for the first heat showed Orlean in the fore, Quartermaster well up behind, Edwin Adams third, Falmouth fourth, and Lotta Moore last. No change to the half mile, but here Lotta Moore took fourth place from Falmouth. The pace was forced to its utmost, and at the three-quarters Orlean was slightly leading. Quartermaster second, Lotta Moore and Adams a closely attached third, and Falmouth dropped astern. Coming down the home stretch, Lotta Moore let out, and came side and side with Orlean, until within a few yards of the stand, when she plunged ahead and reached the score, winner of the heat by half a head; Orlean second; Quartermaster fourth, and Falmouth distanced.

Betting now got a little wild. Some thought that Lotta Moore had been held back too long, and considered her good to win if properly managed. Others banked on the horse with the bird's name as he had already won twice and shown himself a good one to stay.

The second heat at the start showed Edwin Adams a trifle ahead, Orlean second, Quartermaster and Lotta Moore side and side for third place. At the quarter Adams still led, Orlean second, Quartermaster third, and Lotta Moore last. Place, Edwin Adams ranging second, Lotta Moore putting on a spurt and reaching to a good third and the Quartermaster in the rear as such gentry are usually found. At the finish Orlean led by five lengths, Adams, second, Lotta Moore third and Quartermaster last.

Discussion about the third heat showed Orlean a favorite, though very few bets were made. As there were but two horses to run Orlean was narrowed down and the filly appeared the correctness of this judgment for Orlean took the lead at the start, at the quarter led two lengths, at the half forty yards and could have augmented the distance had he wished. He came in winner in an easy canter, six lengths ahead of the field. The third race was not much interest. Silent Friend had the call against Bessie Lee at one, five to one and even ten to one. Bessie took the lead at the start, the Friend playing a waiting race. He let the bay mare lead for two miles and a half when he swept easily to the front, coming in winner without effort, a clear length ahead. We append synopsis of the third day's sport in the following summary:

First Race.—One mile, with 100 pounds on each horse, three to carry their proper weight; three pounds allowed to mares and geldings; club purse \$400; first horse \$350, second horse \$50.

A. B. Hichcock's ch. f. Quirt, 4 years old, by Edwin Adams, 2:10 1/2. Lotta Moore, 3 years old, by the West, dam Isadora, full 35 pounds. M. W. White's b. g. Chris Doyle, aged 4 years, by Harry, dam by Edwin Adams, full 35 pounds. W. A. Lewis's ch. g. Revenge, aged 5 years, by Bonnie, dam by Edwin Adams, full 35 pounds. A. B. Lewis's ch. g. Chief Engineer, aged 5 years, by Bonnie, dam by Edwin Adams, full 35 pounds. By R. V. Bell, dam Victoria, 35 pounds. Time—1:45.

Second Race.—Mile heats for all ages; club purse \$600; first horse \$500, second horse \$100. Lotta Moore carrying four pounds over weight, as announced.

A. B. Lewis's ch. f. Quirt, aged 4 years, by Edwin Adams, 2:10 1/2. Lotta Moore, 3 years old, by the West, dam Isadora, full 35 pounds. M. W. White's b. g. Chris Doyle, aged 4 years, by Harry, dam by Edwin Adams, full 35 pounds. W. A. Lewis's ch. g. Revenge, aged 5 years, by Bonnie, dam by Edwin Adams, full 35 pounds. A. B. Lewis's ch. g. Chief Engineer, aged 5 years, by Bonnie, dam by Edwin Adams, full 35 pounds. By R. V. Bell, dam Victoria, 35 pounds. Time—1:45.

Third Race.—Three miles, for all ages; club purse \$700; first horse \$500, second horse \$150.

W. Jennings's ch. h. Silent Friend, 5 years old, by Bonnie, dam by Edwin Adams, full 35 pounds. A. B. Lewis's ch. b. m. Bessie Lee, 5 years old, by Bonnie, dam by Edwin Adams, full 35 pounds. By R. V. Bell, dam Victoria, 35 pounds. Time—5:41 1/2.

As evidencing that the Friend only bided

BY TELEGRAPH.

CONGRESS.

WASHINGTON, April 15.—The bill paying school teachers passed. It taxes the personal property of citizens of the States who are here under public employment and deduct their children at the expense of the district.

Mr. West made an able effort in behalf of the Kellogg government in Louisiana. The bill was passed by a majority of 118 to 100. Mr. Carpenter said he had seen a telegram from New Orleans stating that although the Legislature of Louisiana had passed a resolution to elect Kellogg, it had, on the last day of the session, re-elected it.

Mr. West said he had no knowledge of such proceedings. Mr. Hamilton of Maryland, said that being a member of the Committee on Privileges and Elections, he deemed it to be his duty to say something on Louisiana affairs generally. The facts differed from those in any preceding case, and were filled with evidence of fraud, tyranny and corruption.

Mr. West read a telegram from Governor Kellogg, stating he had been informed that some of the last ditchers had telegraphed Senator Carpenter that he (Kellogg) had a bill before him to repeal the new election law. Mr. West said he had never heard of this until now.

Mr. Hamilton read a communication signed by E. O. Zachary, a New Orleans citizen, asserting that Kellogg had in his possession the new bill, which would give him control of the whole election machinery.

Mr. West said he had no knowledge of any such thing, but even if it were so, he charged that from the other side of this chamber, and the complaint of using election machinery comes with rather bad grace from that side.

Mr. Bayard said if any meaning could be gathered from the remarks of the Senator from Louisiana (West), it was an admission that such a repealing act had passed and subsequently an act passed repealing the Kellogg law. It was a repeal of the Kellogg law, and the machinery comes with rather bad grace from that side.

Mr. West—The Senator from Louisiana does not admit anything of the kind. Mr. Bayard—No, sir; he does not admit; he has not the candor to state the fact. He merely says he does not know as to facts. He is professing to speak from special knowledge of truth of facts in Louisiana, and says here to-day in regard to this most important fact he has no knowledge whatever.

Mr. West—And he says the truth; he has no knowledge of it; he does not know in any way; he never heard of it; it is new to him. That is what I mean, without equivocation or reservation in any way.

Mr. Hamilton, resuming his argument, related the testimony of the Senator from Louisiana in regard to Louisiana, the election of Senators by two Legislatures of that State, and the action of the committee. He said he had no objection to the whole Louisiana matter should have been referred to the committee, and a report of the committee made upon the whole subject.

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WASHINGTON.

Speech of Senator West on Louisiana Affairs.

WASHINGTON, April 15.—Senator West took the following grounds in his speech on Louisiana affairs: That all the information the Senate is in possession of in regard to the form of the bill in Louisiana is entirely untrue, and not related to the fact. The issue made, so far, has not been upon the rights of the voters, but on the broad and popular question of the right of the people to elect their representatives to the Senate.

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THE TEMPERATURE.

The thermometer at Louis Frigero's, No. 50 Chartres street, on April 15, stood as follows: At 8 A. M., 70°; at 2 P. M., 80°; at 6 P. M., 77°. Lowest point during the night of April 14, 69°.

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THE CURRENCY BILL.

The question of whether or not the President will veto the finance bill. The pressure is heavy. The opinion, however, is that he will sign it.

French Consul Recognized. The President recognized Joseph August Potevin, vice consul for Louisiana at New Orleans; Charles Pillebois, ditto at Mobile.

A Cotton Claim. Mr. Lamar, of New York, recently obtained judgment of the Court of Claims for passing by a cotton claim.

Mr. Cheever, administrator of his deceased brother, who it was claimed had an interest in the claim, filed a bill in the Equity Court of the district to prevent the money from being paid out. The court attempted to restrain the payment of the money by the treasury, it would have little else to do. It was only by a writ that he made personally, or against the real or personal estate of the party that the court could act. He resisted the restraining order, the result being that the money was not taken in this district.

Arrival of Livingstone's Remains. The remains of Dr. Livingstone were landed to-day. The ceremonies were impressive.

Colliery Explosion. A coal mine explosion occurred at Dikensfield, near Ashton-under-Lyne to-day. Forty-six bodies have been recovered. It is supposed more persons were killed than 100 men who were left in the mine alive after the accident, have been safely rescued. The explosion was caused by a naked light.

Trial of a Bishop. Bishop Ledochowski, of Posen, for violation of ecclesiastical laws, resulted in condemnation to dismissal from his see. No appeal from judgment will be allowed.

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