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COURT RECORD.

SATURDAY, MAY 22, 1875.

Supreme Court.

The following decision, by Chief Justice Ludeling, was rendered on Monday, and an abstract published in Tuesday's REPUBLICAN. The reasons of the court in refusing to declare the election in Carroll parish illegally conducted and, therefore, void, having attracted much attention, the opinion is published in extenso:

No. 5521. Nicholas Barton et al., vs. Charles Hicks et al., appellants.—From Thirteenth Judicial District. A motion to dismiss this appeal has been made on the ground that the certificate to the transcript is signed by the deputy clerk.

The motion is refused for the following reasons:

1. Because the motion was not filed within three judicial days after the return day. 17 An., 21; 18 An., 191; 19 An., 276; 20 An., 20; 21 An., 329; 11 An., 545; 7 N. S., 271.

2. Because a defect in a certificate would be no cause to dismiss an appeal, the fault being attributable to the officer whose duty it is to make the certificate. R. S., sec. 36.

3. Because a deputy clerk is an officer known to the law, and he is authorized to sign certificates. C. P., 78; 3 An., 274; Downs vs. Taskington, 15 La., 33; Bank of Louisiana vs. Watson.

ON THE MERITS.

Seven persons who were candidates upon the same ticket for different offices, to wit: Nicholas Burton, for sheriff; M. Dubose, for parish judge; and David King, C. E. Shearer, Jackson Snelling, Henry Price and John Holloway, for police jurors, instituted this suit against the persons who were candidates for said offices on the other ticket, at the election in Carroll parish in November last.

They allege that the election was null and void because of the various irregularities and illegalities in the appointment of commissioners to hold the election, in the manner of holding it, and frauds committed by the commissioners at the different precincts, and the acts of other persons interested in the election, in violation of the statutes of the State and of the United States, known as the enforcement act, as follows, to wit: That the commissioners were not selected from the different political parties, nor were they of good standing; that said commissioners did not take the oath prescribed by law, nor did they examine the ballot boxes before commencing to receive votes; that the election in ward No. 1 was not held at the proper place; that the election in said ward was held in a small room away from the public view of the voters, and a large number of the ballots or votes cast in said ward were not placed in view of the voters, nor taken from their hands by the commissioners receiving the ballots.

That the commissioner (Jackson) who received the ballots was seen to change several ballots placed in his hands and deposit in the box tickets other than those handed him by the voters. That Cain Sartain, a candidate, cast several different ballots at said election, at said precinct. That the tally sheets of the votes cast at said election were not closed and signed by six o'clock the day following the election. That the same were changed after six o'clock on said day, and made different from what they were first made up after the election. That neither the tally sheets nor ballot box containing ballots cast at said precinct have been deposited in the office of the clerk of the district court, although Daniel Jackson, one of the commissioners, is himself clerk of said court.

They further charge irregularities and fraud at the other precincts of the parish, and pray that the election be declared null and void; and they further pray that should the court decide that the election held at wards Nos. 4 and 5 was valid notwithstanding the irregularities and fraud complained of, and that the election was null and void at all the other precincts, that in that event they be declared elected to the various offices for which they were candidates.

The defendants severally filed exceptions stating that there was an improper joinder of plaintiffs and defendants, that several different plaintiffs were claiming different things; different defendants in the same suit. Moss further plead that the court was without jurisdiction *ratione materiae*, to entertain the suit as to his office that of parish judge, and the candidates for police jury severally pleaded to the jurisdiction of the court, because the emoluments of the office did not exceed $500. These exceptions were overruled. On the trial, the defendants severally claimed the right to challenge ten jurors under the act of 1855; this was denied them, and they took a bill of exceptions to the ruling. If it was ever contemplated that several plaintiffs claiming different offices could unite to bring a suit against several defendants, it is manifest from the unambiguous language of the law in regard to contested election, that each defendant would have the right which was claimed and refused in the district court. Sec. 1129 of the Revised Statutes treating of the trial of contested election cases declares that: "In impaneling the jury each party shall be entitled to ten peremptory challenges." Another bill of exceptions was taken to the ruling of the court *a quo*, refusing to permit the defendants to prove by parol what the actual votes were, which were cast at every precinct for each candidate. The circumstances under which the defendants offered parol proof were as follows: After the trial had commenced a rule was taken on the clerk of the court to produce the ballot boxes and tally sheets, which section thirteen, act of 1873 directs shall be delivered to the clerk.

The clerk answered that they were not in his possession, but in the possession of R. K. Anderson, his deputy. A rule was then taken against Anderson, but the coroner's returns show that he could not be found in the parish, and that he had gone to New Orleans. Thereupon the plaintiffs applied for a continuance. In their application for which they swore that they expected to prove by the production of said ballot-boxes, that the ballots and returns had been so tampered with that no election can be declared in said parish. They subsequently made another affidavit in which they state that they expect to prove by the ballot-boxes and returns * * * were not made out and sworn to as the law requires, and they will not show the same results as the ballots in the boxes.

To avoid a continuance the defendants admitted that the returns made out for the last election in this parish were not made out and sworn to as the law requires, and that the ballots in the boxes for ward No. 1 will not show the same result as the returns.

It seems to us that if the statements in the affidavit be true, that the ballots and returns in the ballot boxes called for have been tampered with so as to render them unreliable as evidence, that the result of the election as ascertained and announced by the commissioners of election at each precinct might have been proved by the next best evidence in existence.

The defendants are not charged with the irregularities or frauds complained of in conducting the election; nor are they charged with having said boxes, nor with tampering with them. Under these circumstances there are no presumtions against the defendants, and they had the same right that plaintiffs had to introduce the best evidence which the nature of the case admitted of.

But, we do not perceive that the refusal of the judge injured the defendants, as the onus of proving that the election was null and void, or that they were elected, was upon the plaintiffs, and they have introduced no evidence to establish fraud, illegality or irregularity at the election except as to wards Nos. 1 and 2, besides the admissions of defendants made as above stated; but they do not allege or attempt to prove that if the entire vote of wards Nos. 3 and 1 were thrown out they would be elected, they only claim that this would be the result if all the wards in the parish except wards Nos. 4 and 5 were rejected, thereby admitting that they were not elected.

As already stated, the only evidence offered by the plaintiffs was the admissions aforesaid, and the testimony of witnesses as to what occurred in relation to the election at wards Nos. 1 and 2. The only witness offered by plaintiff who testified in regard to ward No. 2, is T. F. Montgomery, he says, "I was at the voting precinct of ward No. 2, in this parish, on the second of November last; the tally list was closed and signed Tuesday night following the election, between eight and ten o'clock; I was a commissioner of election at said precinct; all the tally sheets and ballots were locked up in the box after the counting of the votes; the tally sheets were not signed that night; I did not sign the tally sheets at all." On cross-examination, he said: "The reason that I did not sign the tally sheets that night was because the commissioners did not think the law compelled them to do so; it was not on account of any unfairness or irregularity in the election at said polling precinct at the time of closing the polls that I did not sign them; the tally list was correct at the time it was made out; we completed the list sometime Tuesday night following the election, between ten and eleven o'clock; I won't be positive about the time, but it was after dark; the election, the counting of the ballots and the making out of the tally lists at said precinct was fair while I was present; there were no frauds or irregularities in the voting or counting of votes and making out of the tally sheets at said precinct so far as I know; If there had been any, I would have been apt to have known it, for I watched very closely." When recalled, he stated: "The commissioners did not, while I was with them, make out a list of all the persons voted for, the number of votes received by each, and sign and swear to the same. I never did sign such a list. I don't know that the box containing the ballots and tally lists was deposited with the clerk of the court. We counted the votes, and made a record of what each man received, and put down the name of each candidate and the offices for which they were voted, and the number of votes each man received. There were there such tally lists as above described made out by the commissioners. On closing the polls, each commissioner swore to the number of votes polled. They did not swear to the returns above described in my presence."

It is manifest that no court could hold that the election at that precinct was illegal, null and void.

in regard to what occurred at ward one, the facts, as disclosed by the evidence, appear to be that the commissioners of election opened the polls at the door of a small house; that a rail which was placed across the door to keep voters from pressing against the table on which the ballot box stood, was broken by the pressure of the crowd, and the commissioner found it necessary to receive the ballots at a window of the same house; this window was between five and a half and seven feet high; Rhodes, a witness, swears the exact height to be five feet nine inches; that when the voter stood at the window he could not see the ballot box, but he could see the commisioners, and the box was in full view of those who stood a little distance from the window. It appears that the officers of election and some of the candidates on both sides were inside the house and near the ballot box. It further appears that those who desired to handed their ballots, with their registration papers, to the commissioners, who received them, and that the ballots were deposited in the ballot box. It appears further that a large number of persons voted by putting their ballots and registration papers at the end of sticks and thus reached over the heads of those who stood between them and the window. The witnesses are not agreed about the number who thus voted. One witness says about seventy-five, and another says about 111.

D. S. Vinsons wears as follows: I observed nothing wrong except the voting on sticks and that was a new style to me; those voting on sticks were standing at a distance from the window, and reaching over the heads of others who were close up to the window; I would have tried to vote in this way myself if I could have got a stick; those voting on a stick appeared to be in a hurry to vote."

T. B. Rhodes testified as follows: "I was one of the commissioners at voting place No. 1 of this parish at the last general election; N. Burton was there during the day; I did not hear him make any objections to the way the election was conducted; I heard him say four days after the election that the election was fairly conducted, except in his opinion I made a mistake of eleven ballots in counting off against him, and two persons that were not allowed to vote he thought would have voted for him if they had been allowed to vote; he made no objection at the election or after the counting of the votes that I heard; the exact height of the window where the ballot box was placed is five feet nine inches; no one was compelled to vote on sticks; those persons who were anxious to vote for fear of not having time to vote got sticks and placed their ballots on the end of them, and handed them up to the commissioners; the smallest man that I know of could vote by handing his ballot up to the commissioners with his hand." This testimony was corroborated by S. J. Galbrith, S. P. Austin, W. W. Benham and E. Meyer, and is not contradicted in any material parts by any witness. E. M. Spann testifies that he was a commissioner at ward No. 1; he says "Mr. Jackson and myself came to Providence with the first ward, and deposited said box in the clerk's office; the clerk of the court, Mr. Jackson, gave me his receipt for the box; we then went over to Mr. Lackey's office, and Mr. Jackson gave him, I believe, a copy of the returns; Mr. Lackey then demanded the box, and Mr. Jackson and myself both refused to give said box to him. I left him and Jackson talking about the box, and went down stairs; I saw Mr. Jackson afterward and I asked him what he had done with the box, and he told me he had deposited it with Mr. Anderson for safe keeping, and held his receipt for the same; this was Wednesday after the election, about ten o'clock; the tally list of ward No. 1 was in the box; the ballots were in the box also."

E. Meyer swears that he was deputy United States supervisor of said precinct; "I assisted in making out a list of the votes cast, the tally list was closed and signed about seven o'clock Tuesday evening; * * * I left two of the tally sheets with the commissioners and I kept one; * * * I was present from the time of my arrival to the close of the polls; was at the box all the time except about half an hour at two different times; I watched the progress of the election closely, had there been any fraud or malpractice in depositing the ballots in the box, so far as I know of I did not see Mr. Jackson put in any wrong ballot, except that one voter handed up on a stick two tickets with his registration papers, which dropped on the floor, and Jackson put in only one of the two; one of the tickets was red and the other white, and he put in the red ticket."

Mr. Jackson swears that the election was carried on fairer than I ever saw it before; Mr. Burton, the candidate for sheriff, was present during the entire day, he was in the room all the time; I heard no complaint made by him whatever, he was there when we commenced counting the votes until we closed, and signed one of the tally lists and afterward erased his name.

This is the sum and substance of the testimony on the subject of voting with sticks and at the high window, and of the irregularities at said election, except the testimony of two witnesses offered by the plaintiffs in regard to other irregularities. Henry Atkins testifies as follows: "I saw one man cast more than one ballot on that day; he cast three to my knowledge; and I asked him why he did it, and he said he was doing it for other persons." On cross examination he states: "The man who voted several times was Cain Sartain; Cain Sartain told me that they were for other persons; of these ballots the commissioners called names and passed back the registration papers, and did not call Cain Sartain's name; I handed in tickets the same as Sartain, and the commissioners refused until I called their remembrance to Sartain, and they then allowed me to do the same; I was a candidate on the opposite ticket." Cesar Johnson testifies: "I saw ballets handed up very high; I could not see where they went to; with the papers that were returned some had money returned with them; some one had one, some had two and some had three bills; I heard two cry out, 'Oh, Jackson, greenbacks,' and when the papers came back they had greenbacks with them."

If testimony so absurd and incredible could demand any notice, it is sufficient to say that it is contradicted by nearly every witness who testified in regard to what occurred at that precinct. Mr. Burton, one of the plaintiffs, was at that precinct and near the box, and he has testified in this case, but he does not say a word about bribery. His testimony is in substance that he saw Mr. Jackson change one vote, and that the window was six feet ten inches high when he measured it.

It is evident from the foregoing evidence that the irregularities shown thereby resulted from a want of information on the part of the officers of the election, and that said irregularities did not in any manner affect the result of the election.

In regard to ward No. 2, the irregularities seem to be that one of the commissioners did not sign the returns because he thought it was not necessary; and the correctness of the returns were not sworn to in the presence of all the commissioners, and the counting of the votes was not completed within twenty-four hours after the election.

At ward No. 1 the voting on sticks and at a high window had to reach up to hand his ballot to the commisioners, was certainly novel, but the excuse for this is given in the foregoing evidence; and the evidence leaves no doubt on our mind that the ballots were fairly deposited in the ballot-box; that no fraud was perpetrated at the election, and that the votes were honestly counted. The fact that the ballot-box could not be seen by those voters who stood near the window, can not be a cause to annul the election. In Augustine vs. Eggleston, 12 An. 366, this court said: "The mere position of an election box without any resulting injury does not avoid an election."

Now, conceding what the defendant admitted to avoid a continuance, "that the returns made out for election in this parish were not made out and sworn to as the law requires, and that the ballots for ward No. 1 will not show the same result as the returns," can that defeat an election in the parish? It has been often decided that the failure to comply with the directory clauses of an election law will not annul an election; courts can not affix to the omission a consequence which the Legislature has not affixed. 9 An., 577; 10 An., 732; act of 1873, p. 15. There is an essential difference between the act of voting and the police provisions to secure the evidence of the act. If the votes be deposited the object of the election is attained, and its validity can not be affected by the non-observance of the directory provisions. 13 An., 301.

The act of 1873, No. 98, provides for the punishment of those who violate its provisions, and the criminal courts of the State have cognizance of such matters. The law does not authorize the election to be set aside, except for fraud, intimidation, violence or corruption at or before the election, and then only when such fraud, violence, intimidation, etc., had the effect to change the result of the election. Errors of judgment are inevitable, but fraud, intimidation and violence the law can and should provide against." Cooley's Limitations, 621. The same author says: "When an election is thus rendered irregular, whether the irregularity shall avoid it or not must depend generally upon the effect the irregularity may have had in obstructing the complete expression of the popular will or the production of satisfactory evidence thereof. Election statutes are to be treated as other statutes, but with a leaning to liberality, in view of the great public purposes which they accomplish, and except where they specifically provide that a thing shall be done in the manner indicated, and not otherwise, their provisions, designed for the information and guidance of the officers, must be regarded as directory only, and the election will not be defeated by a failure to comply with them, provided the irregularity has not hindered any who were entitled from exercising the right of suffrage, or rendered doubtful the evidences from which the result was to be declared." 618; and it was said in People vs. Cook, 14 Barb., 259; and 8 N. Y., 67, "that any irregularity in conducting an election, which does not deprive a legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive a benefit from it, should be overlooked in a proceeding to try the right to an office depending on such election. This rule is an eminently proper one, and it furnishes a very satisfactory test as to what is essential and what is not in election laws, and when a party contests an election on the ground of these or any similar irregularities, he ought to aver, and be able to show, that the result was affected by them." Cooley's C. Lim., p. 619; 13 An., 175.

The plaintiffs do not allege that they were elected; they do not allege or attempt to prove that the irregularities complained of changed the result of the election; and where the defendants offered to prove what the actual vote was at each precinct in the parish, as shown by the count of votes at the polls, the plaintiffs objected, on the ground that the ballot boxes were not produced, and this objection was sustained, notwithstanding the facts that the plaintiffs had alleged in their petition that the ballot boxes had not been returned to and kept in the clerk's office, as required by law, and that plaintiffs had sworn that the ballot boxes had been so tampered with and the ballots so changed or altered as to render them unreliable. Judge Cooley says: "If, however, the ballot boxes have not been kept as required by law, and surrounded by such securities as the law has prescribed, with a view to their safe preservation as the best evidence of the election, it would seem that they should not be received in evidence at all," etc; 625; 14 Mich., 320. The rejection of other evidence, on account of the absence of ballots which would not be legal evidence if in court, was certainly very strange. The conclusion to which we have come renders it unnecessary to pass upon the exceptions of the defendants. It is, therefore, ordered and adjudged that the verdict of the jury be set aside; that the judgment of the lower court be annulled, and that the plaintiffs' suit be dismissed with costs.

BY JUSTICE TALIAFERRO.

No. 5745. Teutonia Insurance Company vs. Thomas O'Conner et al.—Appeal from the Superior District Court.

The petition set forth that the Teutonia Insurance Company has, on its own account, with the view of protecting property insured by it against destruction by fire, brought into use "Babcock's fire extinguisher," an engine of a small order, which is very useful in the quick and easy suppression of fires in many instances, particularly in their incipiency, owing to their aptitude for use at a moment's notice, the rapidity with which they can be transferred to the place where a fire occurs, and the facility with which they may be worked; one of the smaller class of them being easily carried and operated by one man. That for several years past the company has, by its agents, caused the machine to be used to great advantage in the extinguishment of fires, in some instances by reaching buildings on fire before the larger fire engines could be run to the place required, owing to the bad state of roads and other impediments sometimes occurring; that the plaintiffs have for some time caused the engines to be used at fires, together with the common fire engines used by the fire companies, and with their consent and approval, and in all such cases subordinately to and under the direction of the engineer controlling and directing the operations at fires. The plaintiffs complain that on or about the twentieth of January, 1875, the Firemen's Charitable Association, availing itself, to the exclusive right vested in it by an ordinance of the city of New Orleans, to control, and direct the means to be used in the extinguishment of fires, and the members of which association, being actuated by malice toward the petitioners, and with the intent of injuring them, did adopt the following resolution, viz:

Resolved, That the chief engineer of the department, Thomas O'Connor, be instructed to prevent the Babcock engines from running to fires, and if they persist, to send them and the men working them to prison.

They (plaintiffs) aver that about that time, at a fire on First street, several of the Babcock engines were pushed on in advance of the fire department's engines and were being successfully used against the progress of the fire, when the men working the Babcock engine were interrupted by the chief engineer of the Firemen's Charitable Association, at whose request and by whose direction the men operating the Babcock engines were arrested by certain officers of the Metropolitan Police force and sent to the lockup of the Fourth Municipa Plolice Court, where charges were preferred against them of violating said city ordinance No. 1210 by the slad City Engineer O'Connor, which they were bound over to answer by the judge of that court.

They (plaintiffs) charge that the city is without authority to confer upon the said association such exclusive right under its charter, and that the same is repugnant to the principles of common equity and subversive of the same. The plaintiffs aver that they have sustained great damage by the action of the said Chief Engineer O'Connor, the Firemen's Charitable Association and the Metropolitan Police force, and in the full sum of one thousand dollars, for which said parties are liable in solido. That said parties threaten and intend to further carry out the aforesaid resolution and to prevent plaintiffs from using its said extinguisher; that said action will cause them irreparable injury and that a suit of injunction is necessary to protect the plaintiff's rights in the premises.

The plaintiffs prayed that a writ of injunction issue to restrain the defendants from interfering with them in the premises, and they pray judgment in solido against them for $1000 as damages and all costs of suit. An injunction was granted as prayed for.

The Firemen's Charitable Association and Thomas O'Connor, chief engineer, answered, denying generally and specially all the allegations of the plaintiffs' petition.

They assert the right of the State to confer the exclusive power and authority over the subject of fires to the municipal corporation of New Orleans; that the State has, by the city charter, granted that exclusive power to the corporation over the subject, and that the city, in its contract with the Firemen's Charitable Association to extinguish fires, has conferred, as it had a right to do, upon the said association, the authority complained of by plaintiffs. The defendants answer further that the Babcock fire extinguisher, in none of its sizes, shapes and forms, is effectual in extinguishing fire or putting out flame, except in its incipient stage, and owing to the very limited benefit arising at any time and under any circumstances from the use of such machine, the employment thereof at fires, where its presence is calculated to produce certain injurious results, is not only inexpedient but improper, and ought not to be sustained by the court.

The defendants set forth at length the provisions of the city charter on the subject of the extinguishment of fires within its incorporated limits, and claiming the city's right to adopt any and all proper rules in relation thereto. The defendants set up a reconventional demand against the plaintiffs of $5000 as damages, caused by the illegal acts and conduct of plaintiffs in the premises, and by expenses of attorney's fees, which defendants have been forced to incur. The defendants charge that plaintiffs and the board of underwriters and other insurance companies and associations of New Orleans have maliciously, improperly and unlawfully combined and confederated together to embarrass the Firemen's Charitable Association, and unjustly and unlawfully to bring about its dissolution. The defendants pray that on the original action judgment be rendered in their favor; that plaintiffs be cited to answer defendants' reconventional demand; that the injunction be dissolved; that defendants recover from the plaintiffs $5000, with interest at five per cent per annum from judicial demand, with costs, etc.

The judgment of the lower court perpetuated the injunction restraining the Firemen's Charitable Association and Thomas O'Connor, its chief engineer, and the Board of Metropolitan Police, from carrying into effect the resolution of the board of directors of the said association, instructing its chief engineer to prevent the Babcock engines from running to fires, and to imprison the men working the same. The defendants were restrained by the judgment from interfering with the plaintiff's employes in the use of the Babcock extinguishers as long as they do not interfere with or impede the action of the officers and members of the fire department.

The defendants' reconventional demand was dismissed, with costs.

The defendants have appealed. The point made in the defense is that from the nature of the object or purpose of extinguishing fires, it is essential to efficient action; that the means used, the methods adopted and the physical efforts made in resisting the terrible power of the destructive element of fire, should be directed by one mind; that there should be unity of action; that the power of the fire engineer during the struggle should be as complete and absolute as the case of Cæsar at Pharsalia or Napoleon at Austerlitz; and that his movements and operations should not be impeded or interfered with by others using different engines and different methods than his own; he being the judge of what constitutes impediment or interference. We find no objection to this doctrine. But we do not understand that the plaintiffs assume the right to use their engines at fires where the fire companies are in action, otherwise than under the direction of the managers and subject to their orders. The evidence is that the Babcock extinguisher has been often used in this manner by the consent and under the control of the directors at fires.

The proof is abundant that these engines are capable of important services in cases often occurring where they may hurriedly be sent to a house on fire in time to extinguish the fire before it becomes unmanageable, and which might destroy the building before the heavier and more tardy engines could reach the spot. Outstripping these in speed, and successfully performing the work to be done before their arrival, can not be called interfering with or impeding them in the exercise of their functions.

It is we suppose true, from the testimony, that the gas used by the Babcock extinguisher is within contracted limits, and in the incipient stage of fires, most potent in the destruction of flame, and may be productive of incalculable benefit in saving buildings from destruction, by the prompt and efficient use before the fire gains the ascendency and bids defiance to all effort to suppress it.

Surely in all such cases—and we may easily perceive that very many such may occur—there can be no wrong in resorting to the use of these engines. While, therefore, they are used without, by such use, interfering with or being in the way of the operations of the fire department, the plaintiffs or others may lawfully use them without incurring responsibility.

We must regard the resolution of the board of directors of the Firemen's Charitable Association, passed on the twenty-sixth of January, 1875, as more stringent and sweeping than it had a right to pass. Its purport is to abolish the use of the Babcock extinguisher within the limit of the city of New Orleans under any and all circumstances whatever. The chief engineer is clothed with power and instructed "to prevent the Babcock engines from running to fires," and the resolution provides that if they persist the engineer shall "send them and the men working them to prison." This is an unwarranted stretch of power.

The decree of the lower court was properly rendered. Judgment affirmed.

Superior District Court.

State ex rel. Oscar J. Forstall vs. Board of Liquidation.—Relator alleges ownership of railway bonds of the New Orleans, Jackson and Great Northern, of the New Orleans, Opelousas and Great Western and Vicksburg, Shreveport and Texas railways, under act No. 35 of 1865; of levee bonds under act No. 115 of 1867 and act No. 32 of 1870; of the Navigation Company under act No. 146 of 1870; for relief of treasury under act No. 277 of 1853, and others under act of February 15, 1869; that the Board of Liquidation refuse to receive and fund them, pleading the supplemental act to the funding bill No. 11 of 1875; that this being contradictory of No. 3 of 1874, is in violation of the compact of the State. Rule to show cause issued for May 27.

How General Polk Was Killed.

A correspondent writes the following interesting sketch to the New York *Herald:*

To the Editor of the Herald:

In your review of "Sherman's Memoirs" what purports to be a statement of the manner in which General Polk was killed is given, from which it appears that Sherman called General Howard's attention to a group of officers on Pine mountain, and "ordered him to compel it to keep under cover." Will you permit one who was attached to General Howard's headquarters, and who was by his side daily on the Atlanta campaign—one who, with Howard and other officers, sat our horses beside the Fifth Indiana battery that fired the fatal shot—to give the true story from my notes made that morning and published in a Western daily a few weeks afterward? There certainly is a grievous error either in your review or in Sherman's description of the tragedy. General Sherman was not there and could not have seen the shot fired. General Sherman may have, however, as he rode to the rear, where he met Howard, called his attention to what he (Howard) would see when our party reached General David Stanley's front. The facts—in which I am sure I will be sustained in the main by Generals Howard and Stanley and the staff officers present—are these:

On June 14 General Howard and staff left their headquarters for the front, where Stanley's division of Howard's (Fourth) corps had broken camp and were waiting the order to attack Pine mountain. It was just after sunrise. A mile or two in rear of the advance Howard met Sherman, but the conversation between them I did not hear, as the two Generals conversed aside. Howard and staff joined Stanley and his staff on the road, in full view of Pine mountain, and as we drew rein and exchanged greetings Stanley exclaimed:

"Howard, do you see that group up there on the crest of the mountain? I wonder who they are."

We all brought our field glasses to bear upon the point indicated and could plainly see three persons standing in front of a line of breastworks and a larger group in the background. We could not tell whether they were officers or privates, but as it was evident that they were watching our movements Stanley suggested that a few shots be fired to drive them under cover. Howard, who had suggested that perhaps Bishop Polk was in the party, made no objections, when Stanley turned to Captain Simonson, his chief of artillery, with the remark—

"Simonson, can't you unlimber; put a shot into the group and give the bishop a morning salutation?"

"I'll try," was Simonson's laconic reply. And away he galloped to the rear. A few minutes later a section of the Fifth Indiana Battery (Simonson's) was unlimbered within twenty feet of us. The lieutenant sighted the gun and the shot exploded over and to the right of the gun. Here my memory fails me, but my impression is a second shot was sighted and fired by the lieutenant with no better effect. Simonson, when the gun had been reloaded, dismounted and said: "Here, lieutenant, let me try it." He took the range and the messenger of death sped on its mission. Our glasses were bent upon the group and we observed a commotion as the shot took effect in the group that scattered to the rear. While Simonson was upon his knees sighting the gun for another discharge, Captain Leonard, chief of Howard's signal corps, sitting on his horse beside me, read the Confederate signal code that our officers had interpreted at Lookout mountain, and caught the words: "General Polk is killed!" With a look of amazement Leonard turned to Howard and Stanley and exclaimed:

"General Polk is killed!"

"What!" exclaimed Howard; "have you interpreted the signal correctly?"

"Yes, General; Simonson's last shot killed him. They are signaling it along the line."

The young men of the staff who were cracking jokes instantly ceased, and for a moment none spoke. Then Howard said:

"Well, a Christian has fallen. Such is war."

Just then Simonson caught the words, "Bishop Polk is killed!"

He was sighting the gun, and, lifting his eyes, that glared fearfully, exclaimed:

"What is that, Leonard?"

"Bishop Polk is killed! Your last shot did it. They are signaling it over the mountains," I replied.

Simonson's head dropped upon the "vent," where it rested a moment. Then, raising his eyes, he exclaimed:

"Thank God! Yesterday they killed my dear brother; I have killed a lieutenant general and am avenged!"

Without discharging the piece Simonson arose, remounted and joined the staff. Silently he repaired to his regular duties, and, the line being formed, we advanced slowly against the mountain, every one of us feeling that we would have rejoiced had some other than Louisiana's fighting Bishop gone down before Simonson's first and only shot. The enemy was so demoralized that he evacuated the mountain, and half an hour afterward we stood upon the spot where Polk fell and saw the ground stained with his blood. A day or two after poor Simonson, the only one of us who rejoiced at the Bishop's death, fell, shot on the skirmish line in Ackworth woods.

Then was the Confederacy avenged. It is possible that General Sherman had been to the front that morning, and, seeing the group referred to, ordered Howard to disperse it; but certain it is he was nowhere near Howard when Simonson's shot felt for the heart of Leonidas Polk, the fighting Bishop.

SHERIFF'S SALES.

Manuel Abascal vs. Francis P. Killeen.

SIXTH DISTRICT COURT FOR THE PARISH of Orleans, No. 7473.—By virtue of a writ of seizure and sale to me directed by the honorable the Sixth District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, at the Merchants and Auctioneers' Exchange, Royal street, between Canal and Customhouse streets, in the Second District of this city, on SATURDAY, June 19, 1875, at twelve o'clock M., the following described property, to wit—

A CERTAIN LOT OF GROUND, together with the buildings and improvements thereon and all the appurtenances thereunto belonging, situated in the Fifth District of this city, designated by the number twenty-eight of square number three, bounded by Pierre, Verret, Olivier and Alix streets, according to a plan deposited in the book of plans number one, as plan number one, in the office of S. Magner, late a notary public in this city, which lot measures thirty-one feet six inches front on Olivier street, the same width in the rear, by a depth of one hundred and forty-two feet, between parallel lines. Being the same property purchased by defendant herein from Widow James L. Titus and others, per act executed on the fifth of August, 1871, before Octave Morel, a notary public in this city.

Seized in the above suit.

Terms and Conditions—1. In cash for a sufficient amount to pay plaintiff's claim, say the sum of five hundred and thirty-three dollars and thirty-three and one third cents, with interest thereon at eight per cent per annum from the twenty-fifth day of February, 1875, until the day of sale, five per cent attorney's fees, three dollars costs of copy of act and costs of suit. 2. The purchaser to assume (to the extent of the amount of his bid) the payment of two promissory notes secured by mortgage on said property, dated on the twenty-fifth day of February, 1874 drawn by defendant to his own order and indorsed by himself, each for the sum of five hundred and thirty-three dollars and thirty-three and one-third cents, payable respectively at two and three years from date, and bearing interest at the rate of eight per cent per annum from maturity until paid. 3. And the balance of the price of adjudication, if any, cash on the spot.

EUGENE WAGGAMAN,
Civil Sheriff of the Parish of Orleans.
my19 22 30 je1

SHERIFF'S SALES.

Patrick Farley vs. Succession of Joseph Lobrano.

SIXTH DISTRICT COURT FOR THE PARISH OF Orleans, No. 7697.—By virtue of a writ of seizure and sale to me directed by the honorable the Sixth District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, at the Merchants and Auctioneers' Exchange, Royal street, between Canal and Customhouse streets, in the Second District of this city, on MONDAY, June 7, 1875, at twelve o'clock M., the following described property, to wit—

A CERTAIN LOT OF GROUND, together with all the improvements thereon and the rights, ways, privileges and appurtenances thereunto belonging or in any wise appertaining, situated in the First District of this city, in the square bounded by Pilie, Water, Thalia and Terpsichore streets, designated by the number one on a plan drawn by Louis H. Pilie, late surveyor, dated June 13, 1871, and measuring thirty feet nine inches one line front on Pilie street, and also upon Water street, by a depth and front on Thalia street of one hundred and twenty feet, American measure. Being the same property acquired by Joseph Lobrano by purchase from Mrs. Ann P. Matthews, as per act passed before P. Charles Cuvellier, late a notary public in this city, on the first day of July, 1871.

Seized in the above suit.

Terms—Cash on the spot.

EUGENE WAGGAMAN,
Civil Sheriff of the Parish of Orleans.
my6 16 23 je6

Annis de Bouchel, Widow of Charles F. Bertette, vs. Jean Lestrem.

SIXTH DISTRICT COURT FOR THE PARISH OF Orleans, No. 7415.—By virtue of a writ of fieri facias to me directed by the honorable the Sixth District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, at the Merchants and Auctioneers' Exchange, Royal street, between Canal and Customhouse streets, in the Second District of this city, on SATURDAY, June 12, 1875, at twelve o'clock M., the following described property, to wit—

A CERTAIN LOT OF GROUND, with the buildings and improvements thereon, situated in the Second District of this city, said lot of ground being designated as number five in square number fifty six, bounded by Orleans, Villere, Marais and St. Peter streets, on a plan drawn by L. H. Pilie, late deputy surveyor, dated December 2, 1844, and deposited in the office of Jules Mossy, notary public in this city, and measures twenty-eight feet five inches front on each Orleans and St. Peter streets, one hundred and fourteen feet five inches six lines in depth between parallel lines, American measure, which property was acquired by the defendant herein by purchase from the succession of Lucien Guillaume Hillsgberg as per act passed before Jules Mossy, notary public in this city, under date of August 17, 1846.

Seized in the above suit.

Terms—Cash on the spot.

EUGENE WAGGAMAN,
my11 16 23 je12 Civil Sheriff of the Parish of Orleans.

Henry Renshaw, Testamentary Executor of Robert Geddes, vs. Z. Foley.

SIXTH DISTRICT COURT FOR THE PARISH OF Orleans, No. 7653.—By virtue of a writ of seizure and sale to me directed by the honorable the Sixth District Court for the parish of Orleans, in the above entitled cause, I will proceed to sell at public auction, at the Merchants and Auctioneers' Exchange, Royal street, between Canal and Customhouse streets, in the Second District of this city, on MONDAY, June 7, 1875, at twelve o'clock M., the following described property, to wit—

ALL AND SINGULAR THAT CERTAIN PIECE OR PORTION OF GROUND, together with the buildings and improvements thereon, and all rights, ways, privileges and appurtenances thereunto belonging or in anywise appertaining, and more particularly all rights of accretion or batture thereto attached, situated in the Fifth District of the city of New Orleans, on the right bank of the Mississippi river, comprising part of the piece of ground marked "Warehouse" on the original plan of the Brooklyn Warehouse Company property, made by W. T. Thompson, late surveyor, under date of the seventh of March, 1849, and deposited in the office of Joseph K. Beard, then a notary public in New Orleans, and embracing all that space or portion lying and being between the public road or Patterson street, the Mississippi river, the continuation to the river of the line dividing lots numbers five and six of square number two, and the continuation to the river of the line dividing lots numbers three and four of square number three of the aforesaid plan; being the same property acquired by the defendant herein from Robert Geddes, by act dated the tenth of January, 1872, passed before Andrew Hero, Jr., notary public in this city.

Seized in the above suit.

Terms—Cash on the spot.

EUGENE WAGGAMAN,
Civil Sheriff of the Parish of Orleans.
my11 16 23 je12

Citizens' Bank of Louisiana vs. Edouard Fleuri.

SUPERIOR DISTRICT COURT FOR THE P