

CITY COUNCIL—OFFICIAL.

ADJOURNED MEETING.

CITY HALL, NEW ORLEANS, Wednesday, December 19, 1877. The Council met this day at 11 o'clock a. m. pursuant to adjournment. Present, Hon. Ed. Pilsbury, Mayor, presiding; and Administrators Brown, Cavano, Denis, Diamond, Edwards, McCaffrey and Rengstorff...

The minutes of the previous meetings were approved and their reading dispensed with. Communications from the Mayor and Administrators.

The following message from the Mayor was read: MAYORALTY OF NEW ORLEANS, City Hall, December 18, 1877. To the City Council:

I return herewith for amendment a resolution of the Council, adopted at its last meeting, granting an extension of six months, to date from December 11, 1877, to Joseph Raymond, to build an addition to Washington Avenue market house, as per ordinance No. 3624 A. B.,...

Mr. Edwards moved to reconsider the vote by which the resolution was adopted. The motion having been adopted, Mr. Edwards moved to insert: "This permission is understood not to impair the right of the city to the reversion of the property at the expiration of nineteen years and six months, from May 17, 1876,...

The amendment was accepted and the resolution adopted. The following message from the Mayor was also read: MAYORALTY OF NEW ORLEANS, City Hall, December 18, 1877. To the City Council:

I return herewith for amendment a resolution of the Council, adopted at its last meeting, refunding the sum of \$290 to the Deobalsie Brick Company. ED. PILSBURY, Mayor.

Mr. Edwards moved to strike out the words "by the wharfinger of the Sixth District." There being no objection the resolution thus amended was adopted.

Financial Business on Final Passage. Mr. Brown called up the following ordinances, which, having been read twice, were now on their third reading, and the yeas and nays having been called they were all adopted unanimously:

1. An ordinance providing for the payment of the several accounts therein named, beginning "A. Emile Scheidecker," and amounting to \$926 60. 2. An ordinance in favor of J. D. Houston, Criminal Sheriff, for November, 1877, amounting to \$376 68.

Reports of Committees.

By Mr. Cavano— 1. Favorably by resolution on the petition of B. W. Boland, to erect a steam engine at No. 31 Peters street. 2. Favorably by resolution on the petition of M. Carroll, to erect a blacksmith shop corner of Julia and Front streets.

3. Favorably by resolutions on the petition of Henry Ois, for permission to erect a saw mill and wharf on the river front, between Marengo and Milan streets. By Mr. Rengstorff— Unfavorably on the petitions of Widow L. Castin, J. B. Alexander and estate of J. B. Murdoch, for reduction of their respective assessments. Adopted.

By Mr. Brown— Favorably by ordinance on the petitions of E. Tobey, to be paid for services rendered as Treasurer of Metropolitan Police Board, and Chandler & Ashby, for payment of coal delivered to police stations in January, 1877.

By Mr. McCaffrey— 1. Favorably by resolution of the petition of E. A. Palfrey, chairman of Lee Monumental Committee, to have street pilings deposited in Tivoli Circle. 2.

DEPARTMENT OF IMPROVEMENTS. City Hall, New Orleans, Dec. 18, 1877. To the City Council: Gentlemen—Upon petition of residents on Third street, between Howard and Dryades streets, for the construction of sidewalks, I respectfully beg leave to report:

That the petition for constructing was published in the New Orleans Democrat during the space of thirty days, as provided for in article twenty-four of the city charter. At the meeting of the Council held November 27, 1877, a petition protesting against said work was received and signed by residents along said street representing a frontage of 757 feet.

By report of the Surveyor the full contents of property along said streets is 1800 feet. The petition protesting against the work prayed for is represented by 787 feet, more than a majority. Under the majority of frontage is against the construction of sidewalks the full contents of property along said streets of the city charter, and the work cannot be authorized. Respectfully,

JNO. McCAFFREY, Administrator. The following reports were read: To his Honor the Mayor and the Council of Administrators of the city of New Orleans:

Your committee, to whom were referred the communication of the Administrator of Public Accounts of November 13, 1877, concerning the non-payment of fees collected by the judge of the First Recorder's Court, as well as the letter of the Administrator of Improvements of October 24, 1877, relating to certain arrests for obstructing the sidewalks in violation of ordinance No. 1955, Administration Series, with the accompanying document, also the complaint of Sergeant R. A. Ryan, of the Crescent City Police, against the judge of the First Recorder's Court, for refusing police officers who arrested a United States naval deserter the privilege of carrying the prisoner on board his ship to collect the fine and claim a reward from the United States for his apprehension and return, and also another complaint from the same officer relative to the same deserter, which subsequently, on a reconsideration of this intention, were turned into the city treasury.

2. That it is proper to remark, before considering the other grounds of complaint, that your committee has grave doubts as to whether the judicial action of a magistrate can be inquired into, save on an allegation of corrupt motives or other fraudulent action. In the case of violation of city ordinance No. 1955, Administration Series, and the discharge of the accused, it is proper to state that, not being a cause triable by the Superior Criminal Court, there is no record preserved of the evidence, and we could only resort to verbal testimony, and the reasons assigned by the judge, who stated that the prosecution appeared to be malicious, the arrest exceptional and partial, and oppressive in curtailing the privilege of partially obstructing the sidewalk, while others were allowed to do so to a greater extent with perfect impunity. It must be presumed that a cause triable by the Superior Criminal Court, there is no record preserved of the evidence, and we could only resort to verbal testimony, and the reasons assigned by the judge, who stated that the prosecution appeared to be malicious, the arrest exceptional and partial, and oppressive in curtailing the privilege of partially obstructing the sidewalk, while others were allowed to do so to a greater extent with perfect impunity.

3. Resolved, That permission be and is hereby granted to Henry Ois to erect a saw mill and construct a wharf on the river front, between Marengo and Milan streets, in the Sixth District of this city, for the purpose of carrying on the masonry and cedar business. Resolved further, That the cost of constructing said wharf shall be reimbursed to said Henry Ois out of the proceeds of levee dues collected from vessels and other craft landing at said wharf. Laid over.

4. An ordinance authorizing the Administrator of Commerce to have the landing posts restored to their proper place, and cause the same to be repaired and remunerated at the expense of the wharf lessee. Adopted. 5. An ordinance fixing the polling places in the several precincts of the Tenth and Eleventh Wards of this city. Adopted.

it is purposely allowed to remain unoperative, thus encouraging and inviting infractions. The complaint of Sergeant Ryan, Judge Smith and two other officers, who arrested a naval deserter from the Canons, to return him to his ship and claim the reward, is strange and anomalous for a non-commissioned officer commanding a precinct to make. The duty of collecting fines and claims is an arbitration of the judge and his court officers, as prisoners once lodged in the lock-up pass beyond the control of the arresting officers, and are in charge of the court and its officers alone. This case seems to present a different view, that the chief gist of the complaint seems to lie in the fact that Judge Smith did not vary the rule in this regard in order to relieve two police officers from the duty of guarding the prisoners and properly returning them to their ship, in order that they might collect a reward from the United States, which they were especially forbidden by rule 148 of the rules for the government of the Crescent City Police, from receiving or collecting without permission of the board, and it is further provided, in these words, "that it shall be a cause of removal from the force for any member thereof to receive any such reward, or present, without giving notice thereof to the board through the chief."

Be it ordained, That the right and privilege are hereby granted to Wm. Fagan, John W. Fairfax, Tom Bynum and their associates to lay and operate a railroad for freight and passengers on the neutral ground on Goodchildren street, from Elysian Fields street to the lower limits of the city, the same to be constructed within the time and under the following conditions, to wit: 1. A railroad, for steam or otherwise, commencing at the intersection of Goodchildren and Elysian Fields streets, running down Goodchildren street to the lower limits of the parish of Orleans; and that said company shall have the right to a suitable depot for the accommodation of trade and passengers on the neutral ground, at said intersection of Elysian Fields and Goodchildren streets, according to plans and specifications to be furnished by the City Surveyor.

2. All materials used in the construction of the road to be of the best quality and of the following dimensions: cross ties to be of cypress, nine feet long, six inches thick and showing a face of no less than eight inches. The rails to be of T. iron, and weighing not less than forty pounds per lineal yard. 3. The paving of the streets, wherever paved, shall be in such a manner as to be necessary for the safe use of the road, to be taken up, and in like manner after the road has been laid, and in no manner shall the bed have four feet of gravel and lake sand, the same having first been rammed, returned to the proper place and the street put in good order without delay.

4. In regard to the release of Henry Andry, alias B. Kouitz, charged with being drunk, disorderly and using obscene language, your committee found, there being no record of evidence kept, that by the oral testimony of the witness charged was only maintained by the officer making the affidavit, while it was directly disproved by the testimony of two respectable witnesses; that while it was true, the officer after hearing the evidence for the defense requested a continuance for the purpose of procuring other testimony, it was also true that the judge decided, having gone to trial, closed the testimony for the prosecution and heard the witnesses for the defense, it was not proper to ask a continuance to procure other testimony. Your committee are of opinion that the decision of the magistrate was in accordance with law, and if there be blame to be attached anywhere, it should properly rest with the officer who proceeds with his case without the proper presentation of his case. Your committee are aware that the recent organization of the force, and the newness of many of the officers and men to their duties, are the cause of this official omission; but it is to be hoped that a closer attention to the requirements of the service, a devotion to discipline, and a studious regard to the duties of a magistrate, will result in the future to the discharge of their judicial duties, may in time work the desired change in our present police force, which, it is but fair to state, has in its short existence so far exceeded all other police forces in this city, and is a credit to the city.

In conclusion your committee would state that so far as the retention of fines was concerned, by Judge S. J. N. Smith, it is his opinion that it proceeded from an ill-advised view of his rights as a magistrate, which was promptly corrected, and in so far as the case of obstruction to pavements and the two complaints of Sergeant Ryan, we fail to find anything to reprehend, but on the contrary, believe the complaints to be without ground, and that the officers who were discharged in accordance with law and the rules of practice, your committee believe and recommend that he be exonerated from censure in the matter, and that the same be discharged from further consideration therof. New Orleans, December 17, 1877. CHAS. CAVANO, Administrator of Commerce, JOHN DIAMOND, Administrator of Police.

DEPARTMENT OF IMPROVEMENTS. Room No. 16, City Hall, New Orleans, December 18, 1877. To the honorable the City Council: Gentlemen—As a member of the committee appointed by the Council to examine the complaints against Judge E. J. N. Smith, and more fully summarized in the report of the majority, I respectfully beg leave to submit this as a minority report: When his Honor the Mayor thought proper to call attention to these several complaints, and the Council recognized at once the grave and important character of the same, your committee referring the matter to a committee of three, clothed with power to make a full, thorough and exhaustive examination, I was of the opinion that it was the expressed will of the Council that the irregularities complained of were to be completely corrected. A majority of the committee have presented to the Council a full vindication of Judge Smith's action; but upon what evidence or testimony they base their report is a matter beyond my remark.

The committee held but one meeting at which were received the verbal statements of Judge Smith and Mr. Leo Blessing; the former in explanation and the latter in direct denial. No further testimony was at the evidence in the meeting held, although the chairman was requested to call another session. This meeting was not a formal one, the questions in dispute were not argued or considered, and I really did not feel authorized to report upon the same, although the full scope and measure of what we are pleased to term "an investigation."

Nor can I agree with the views of the majority in entertaining grave doubts "as to whether the judicial action of a magistrate can be inquired into save on an allegation of corrupt motives or other fraudulent action." I cannot be induced to believe that any officer of the city government can arrogate to himself the prerogative of nullifying laws and ordinances at pleasure, without being carefully reviewed by a higher tribunal. The Council in this case is constituted the judge, as is the Legislature in the case of a State official charged with malfeasance in office. None of the charges against Judge Smith have been disproved except by his own testimony. In fact, no evidence of any nature whatsoever other than that aforesaid, has been adduced, and the subject is now, so far as an investigation is concerned, in precisely the same position it was when the attention of this honorable body was first called to the many irregularities of the First Recorder's Court.

Committees of investigation are appointed, I believe, for the purpose of instituting due search and inquiry into the matters complained of, and after carefully reviewing all the evidence available to give the public an impartial and full report—no matter what the consequences. This committee, unfortunately, did not consider the charges against Judge Smith of serious import, and are contented with a higher tribunal. I therefore respectfully beg the Council to excuse me, as a member of the committee, from endeavoring to gloss over the irregularities of any officer of the city government. I therefore dissent from the conclusions of the majority on the ground that the investigation into the complaints made against Judge S. J. N. Smith was not an investigation in fact, or such as was clearly contemplated by the Council, and in the absence of more convulsive testimony than that elicited, most respectfully decline being a party to a whitewash report. Respectfully submitted,

JOHN McCAFFREY, Administrator. Mr. Cavano said that all evidence introduced was examined, and that the majority report was fair and impartial. Mr. Denis moved that the majority report be adopted. Mr. Cavano seconded the motion and called for the yeas and nays, which were ordered with the following result: Yeas—Brown, Cavano, Denis, Diamond, Edwards and Rengstorff—6. Nay—McCaffrey—1. The Chair declared the majority report adopted. Ordinances and Resolutions Offered. By Mr. Cavano— 1. Resolution granting R. W. Boland permission to erect a steam engine at No. 31 Peters street. Adopted.

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6. An ordinance granting the right of way for a railroad from Elysian Fields street, running down Goodchildren street to the lower limits of the city of New Orleans. Be it ordained, That the right and privilege are hereby granted to Wm. Fagan, John W. Fairfax, Tom Bynum and their associates to lay and operate a railroad for freight and passengers on the neutral ground on Goodchildren street, from Elysian Fields street to the lower limits of the parish of Orleans; and that said company shall have the right to a suitable depot for the accommodation of trade and passengers on the neutral ground, at said intersection of Elysian Fields and Goodchildren streets, according to plans and specifications to be furnished by the City Surveyor.

7. All materials used in the construction of the road to be of the best quality and of the following dimensions: cross ties to be of cypress, nine feet long, six inches thick and showing a face of no less than eight inches. The rails to be of T. iron, and weighing not less than forty pounds per lineal yard. 8. The paving of the streets, wherever paved, shall be in such a manner as to be necessary for the safe use of the road, to be taken up, and in like manner after the road has been laid, and in no manner shall the bed have four feet of gravel and lake sand, the same having first been rammed, returned to the proper place and the street put in good order without delay.

9. In regard to the release of Henry Andry, alias B. Kouitz, charged with being drunk, disorderly and using obscene language, your committee found, there being no record of evidence kept, that by the oral testimony of the witness charged was only maintained by the officer making the affidavit, while it was directly disproved by the testimony of two respectable witnesses; that while it was true, the officer after hearing the evidence for the defense requested a continuance for the purpose of procuring other testimony, it was also true that the judge decided, having gone to trial, closed the testimony for the prosecution and heard the witnesses for the defense, it was not proper to ask a continuance to procure other testimony. Your committee are of opinion that the decision of the magistrate was in accordance with law, and if there be blame to be attached anywhere, it should properly rest with the officer who proceeds with his case without the proper presentation of his case. Your committee are aware that the recent organization of the force, and the newness of many of the officers and men to their duties, are the cause of this official omission; but it is to be hoped that a closer attention to the requirements of the service, a devotion to discipline, and a studious regard to the duties of a magistrate, will result in the future to the discharge of their judicial duties, may in time work the desired change in our present police force, which, it is but fair to state, has in its short existence so far exceeded all other police forces in this city, and is a credit to the city.

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of Finance and Public Accounts with power to act. NEW ORLEANS, December 18, 1877. Honorable Mayor and Board of Administrators of the City of New Orleans: Gentlemen—I have been directed by resolution of the Board of directors of the New Orleans Pacific Railway Company to inform your honorable body that they gratefully appreciate its intention to grant them a lease of their company sufficient space for depot purposes as may be required, of any lands that may finally be ceded by the city for a Union Depot on Basin street, Claiborne street, or other suitable location.

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DEPARTMENT OF IMPROVEMENTS. Room No. 16, City Hall, New Orleans, December 18, 1877. To the honorable the City Council: Gentlemen—As a member of the committee appointed by the Council to examine the complaints against Judge E. J. N. Smith, and more fully summarized in the report of the majority, I respectfully beg leave to submit this as a minority report: When his Honor the Mayor thought proper to call attention to these several complaints, and the Council recognized at once the grave and important character of the same, your committee referring the matter to a committee of three, clothed with power to make a full, thorough and exhaustive examination, I was of the opinion that it was the expressed will of the Council that the irregularities complained of were to be completely corrected. A majority of the committee have presented to the Council a full vindication of Judge Smith's action; but upon what evidence or testimony they base their report is a matter beyond my remark.

of Finance and Public Accounts with power to act. NEW ORLEANS, December 18, 1877. Honorable Mayor and Board of Administrators of the City of New Orleans: Gentlemen—I have been directed by resolution of the Board of directors of the New Orleans Pacific Railway Company to inform your honorable body that they gratefully appreciate its intention to grant them a lease of their company sufficient space for depot purposes as may be required, of any lands that may finally be ceded by the city for a Union Depot on Basin street, Claiborne street, or other suitable location.

6. An ordinance granting the right of way for a railroad from Elysian Fields street, running down Goodchildren street to the lower limits of the city of New Orleans. Be it ordained, That the right and privilege are hereby granted to Wm. Fagan, John W. Fairfax, Tom Bynum and their associates to lay and operate a railroad for freight and passengers on the neutral ground on Goodchildren street, from Elysian Fields street to the lower limits of the city, the same to be constructed within the time and under the following conditions, to wit: 1. A railroad, for steam or otherwise, commencing at the intersection of Goodchildren and Elysian Fields streets, running down Goodchildren street to the lower limits of the parish of Orleans; and that said company shall have the right to a suitable depot for the accommodation of trade and passengers on the neutral ground, at said intersection of Elysian Fields and Goodchildren streets, according to plans and specifications to be furnished by the City Surveyor.

2. All materials used in the construction of the road to be of the best quality and of the following dimensions: cross ties to be of cypress, nine feet long, six inches thick and showing a face of no less than eight inches. The rails to be of T. iron, and weighing not less than forty pounds per lineal yard. 3. The paving of the streets, wherever paved, shall be in such a manner as to be necessary for the safe use of the road, to be taken up, and in like manner after the road has been laid, and in no manner shall the bed have four feet of gravel and lake sand, the same having first been rammed, returned to the proper place and the street put in good order without delay.

4. In regard to the release of Henry Andry, alias B. Kouitz, charged with being drunk, disorderly and using obscene language, your committee found, there being no record of evidence kept, that by the oral testimony of the witness charged was only maintained by the officer making the affidavit, while it was directly disproved by the testimony of two respectable witnesses; that while it was true, the officer after hearing the evidence for the defense requested a continuance for the purpose of procuring other testimony, it was also true that the judge decided, having gone to trial, closed the testimony for the prosecution and heard the witnesses for the defense, it was not proper to ask a continuance to procure other testimony. Your committee are of opinion that the decision of the magistrate was in accordance with law, and if there be blame to be attached anywhere, it should properly rest with the officer who proceeds with his case without the proper presentation of his case. Your committee are aware that the recent organization of the force, and the newness of many of the officers and men to their duties, are the cause of this official omission; but it is to be hoped that a closer attention to the requirements of the service, a devotion to discipline, and a studious regard to the duties of a magistrate, will result in the future to the discharge of their judicial duties, may in time work the desired change in our present police force, which, it is but fair to state, has in its short existence so far exceeded all other police forces in this city, and is a credit to the city.

In conclusion your committee would state that so far as the retention of fines was concerned, by Judge S. J. N. Smith, it is his opinion that it proceeded from an ill-advised view of his rights as a magistrate, which was promptly corrected, and in so far as the case of obstruction to pavements and the two complaints of Sergeant Ryan, we fail to find anything to reprehend, but on the contrary, believe the complaints to be without ground, and that the officers who were discharged in accordance with law and the rules of practice, your committee believe and recommend that he be exonerated from censure in the matter, and that the same be discharged from further consideration therof. New Orleans, December 17, 1877. CHAS. CAVANO, Administrator of Commerce, JOHN DIAMOND, Administrator of Police.

DEPARTMENT OF IMPROVEMENTS. Room No. 16, City Hall, New Orleans, December 18, 1877. To the honorable the City Council: Gentlemen—As a member of the committee appointed by the Council to examine the complaints against Judge E. J. N. Smith, and more fully summarized in the report of the majority, I respectfully beg leave to submit this as a minority report: When his Honor the Mayor thought proper to call attention to these several complaints, and the Council recognized at once the grave and important character of the same, your committee referring the matter to a committee of three, clothed with power to make a full, thorough and exhaustive examination, I was of the opinion that it was the expressed will of the Council that the irregularities complained of were to be completely corrected. A majority of the committee have presented to the Council a full vindication of Judge Smith's action; but upon what evidence or testimony they base their report is a matter beyond my remark.

The committee held but one meeting at which were received the verbal statements of Judge Smith and Mr. Leo Blessing; the former in explanation and the latter in direct denial. No further testimony was at the evidence in the meeting held, although the chairman was requested to call another session. This meeting was not a formal one, the questions in dispute were not argued or considered, and I really did not feel authorized to report upon the same, although the full scope and measure of what we are pleased to term "an investigation."

Nor can I agree with the views of the majority in entertaining grave doubts "as to whether the judicial action of a magistrate can be inquired into save on an allegation of corrupt motives or other fraudulent action." I cannot be induced to believe that any officer of the city government can arrogate to himself the prerogative of nullifying laws and ordinances at pleasure, without being carefully reviewed by a higher tribunal. The Council in this case is constituted the judge, as is the Legislature in the case of a State official charged with malfeasance in office. None of the charges against Judge Smith have been disproved except by his own testimony. In fact, no evidence of any nature whatsoever other than that aforesaid, has been adduced, and the subject is now, so far as an investigation is concerned, in precisely the same position it was when the attention of this honorable body was first called to the many irregularities of the First Recorder's Court.

Committees of investigation are appointed, I believe, for the purpose of instituting due search and inquiry into the matters complained of, and after carefully reviewing all the evidence available to give the public an impartial and full report—no matter what the consequences. This committee, unfortunately, did not consider the charges against Judge Smith of serious import, and are contented with a higher tribunal. I therefore respectfully beg the Council to excuse me, as a member of the committee, from endeavoring to gloss over the irregularities of any officer of the city government. I therefore dissent from the conclusions of the majority on the ground that the investigation into the complaints made against Judge S. J. N. Smith was not an investigation in fact, or such as was clearly contemplated by the Council, and in the absence of more convulsive testimony than that elicited, most respectfully decline being a party to a whitewash report. Respectfully submitted,

JOHN McCAFFREY, Administrator. Mr. Cavano said that all evidence introduced was examined, and that the majority report was fair and impartial. Mr. Denis moved that the majority report be adopted. Mr. Cavano seconded the motion and called for the yeas and nays, which were ordered with the following result: Yeas—Brown, Cavano, Denis, Diamond, Edwards and Rengstorff—6. Nay—McCaffrey—1. The Chair declared the majority report adopted. Ordinances and Resolutions Offered. By Mr. Cavano— 1. Resolution granting R. W. Boland permission to erect a steam engine at No. 31 Peters street. Adopted.

2. Resolution granting M. Carroll permission to erect a blacksmith shop corner Julia and Front streets. Adopted.

3. Resolved, That permission be and is hereby granted to Henry Ois to erect a saw mill and construct a wharf on the river front, between Marengo and Milan streets, in the Sixth District of this city, for the purpose of carrying on the masonry and cedar business. Resolved further, That the cost of constructing said wharf shall be reimbursed to said Henry Ois out of the proceeds of levee dues collected from vessels and other craft landing at said wharf. Laid over.

4. An ordinance authorizing the Administrator of Commerce to have the landing posts restored to their proper place, and cause the same to be repaired and remunerated at the expense of the wharf lessee. Adopted. 5. An ordinance fixing the polling places in the several precincts of the Tenth and Eleventh Wards of this city. Adopted.

6. An ordinance granting