The New Orleans Bee.

OFFICE 73 CHARTRES STREET. NEW ORLEANS, FRIDAY MORNING, APRIL 28, 1871. 23rd YEAR.—Vol. XLIV.—Whole—15,355.

NEW ORLEANS DAILY BEE

DUPOUY & LEMIT, PUBLISHERS.
No. 73 Chartres street.

TERMS OF THE BEE.

Terms of Subscription—Daily, per month, in advance, $1; bi-monthly, $3; quarterly, $4. Price of the paper—single copy, 10 cents. The Bee Weekly is published every Tuesday and Friday morning. Subscription, $5 per annum, payable in advance.

Rates of Advertising—Transient advertisements having the run of the paper, first insertion, $1 per square; each subsequent insertion, 75 cents per square.

First or Editorial Page, transient advertisements, each insertion, $2 to be charged in advance or intervals to be charged at 5, new, each insertion.

Fourth or Editorial Page, monthly advertisements, each square, $10 per month.

Regular advertisers, who advertise largely, shall be allowed such discount from the above named transient rates as may be agreed upon. In no case shall such discount exceed 25 per cent.

All Business Notices of Advertisements to be charged 25 cents not per line, each insertion.

All transient advertisements must be paid for in advance.

All advertisements not marked for any number of insertions will be published six times.

All bills with regular advertisers shall be rendered monthly.

Weekly Edition.

TERMS—PER YEAR ..... $5.

NEW ORLEANS:
FRIDAY MORNING, APRIL 28, 1871.

Amusements This Evening.

ST. CHARLES THEATRE—Skiff & Gaylord's New Sensation Albino Minstrels.

ACADEMY OF MUSIC—Farwell benefit of Miss Lydia Thompson—"The Brigands" and "A Day in Paris."

THE CONFISCATION CASES.

We publish below the concluding portion of the dissenting opinion of Mr. Justice Field in the case of Miller's executor versus the United States. It contains the gist of the opinion which we are unable to give entire in this issue. We shall complete the publication in our issue of to-morrow.

This was a case of personal property—being stocks of two railroads in Michigan, owned by Samuel Miller, of Amherst county, Virginia, confiscated during the war without the knowledge of the owner. The only notice given of the proceeding was by publication for 15 days in Detroit, Michigan, which the District Attorney and court well knew Mr. Miller could not possibly see.

To constitute a valid seizure of property as a basis for a proceeding in rem, the party previously in possession must be dispossessed and unable any longer to exercise dominion over the property, and such dominion must be transferred to the officer making the seizure. No other seizure than this will sustain proceedings in rem, according to the established doctrine in admiralty and revenue cases, unless a different mode of seizure is specially prescribed by statute. No other mode would conserve the principle of notice to the party whose property was to be effected, which is essential to the validity of all judicial proceedings. "It is a principle of natural justice of universal obligation," says Chief Justice Marshall, "that before the rights of an individual be bound by judicial sentence, he shall have notice, either actual or implied, of the proceedings against him. Where these proceedings are against the person, notice is served personally or by publication; where they are in rem, notice is served upon the thing itself. This is necessary notice to all those who have any interest in the thing and is reasonable, because it is necessary and because it is the part of common and ordinary interest in all those who have any interest in it to guard that interest by persons who are in a situation to protect it."—(The Mary 9, Cranch 144.) The doctrine that notice to the owner is given by seizure of the thing, rests upon the presumption that the owners of property retain possession of it themselves, or place it in the care and management of persons who will represent them and communicate to them any proceedings taken against their interest in relation to it. In this case this doctrine is entirely disregarded. The notice given to the President of one company and the vice President of the other might, with propriety, have been given to any other strangers to the owner. How the Marshal could get possession of a thing which he did not touch or handle or control by placing notice to two individuals in Detroit, themselves having no control or possession of the property, surpasses my comprehension. Shares or stock in companies can only be seized in virtue of statutory provisions, which prescribe a mode of seizure equivalent to actual taking of possession. No such provisions existed in the law of Michigan, in which State the proceedings were had. The Attorney-General, in his instructions to the District Attorney in carrying out the act, directed that stocks should be seized according to the methods prescribed by the State law. As no such methods were prescribed by the law of Michigan, or specially prescribed by the court, the case was one for which no provision was made.

After the libel was filed there was no new attempt to make any other seizure of the property than the one previously made. The process of the court directed the Marshal to hold the stock which he had seized, referring, evidently, to the preliminary seizure. The Marshal returned that he had seized and held the property, referring, as I understand it, to such preliminary seizure.

But further, the act of Congress declares that the proceedings for the condemnation of the property seized shall conform, as nearly as may be, to proceedings in admiralty or revenue cases. Now, the act of 1799 prescribes the proceedings in revenue cases, and provides that after default "the court shall proceed to hear and determine the cause according to law." (1st Stat. at Large, p. 627, sec. 89.) And, in the case of The United States versus The Schooner Lion, that Sprague's Decisions, p. 400, Mr. Justice Swayne, whose great learning justly added weight to his opinions, gave a construction to this clause. A default had been properly entered, and it was contended by the District Attorney that condemnation followed of necessity, upon default without a hearing, but the learned Judge, citing the clause mentioned, said: "This makes it imperative that there shall be some hearing before a decree of forfeiture, but to what extent must depend upon the circumstances of the case. The court will inquire examine the allegations of the libel to see if they are sufficient in law, and the return of the Marshal and of the affidavit or affidavits as the District Attorney shall submit. Where it appears that the facts have been duly filed notice of the proceedings, and ample opportunity to intervene, and have voluntarily declined to do so, the additional evidence will be sufficient. Indeed, a willful default by the owners to answer and thereby make disclosure as to material facts within their knowledge, might, in itself, justify the court that a forfeiture should be decreed. *But the court will require the proposed to introduce full proof of the allegations in the libel whenever the circumstances shall make it reasonable.*" It will hardly be pretended that the circumstances in this case did not render it reasonable that such full proof should be had, and yet no such proof was had. The only proof offered was of a doubtful admission of the claimant, and consisted of the *ex-parte* deposition of a single witness to a conversation which he alleged he had had with the claimant in 1863 in Virginia.

But this is not all. The act of Congress of 1862 further provides, in proceeding the proceedings to be taken, that "if the property seized shall be found to have belonged to a person engaged in rebellion, or who has given aid or comfort thereto, the same shall be condemned." Evidently contemplated upon presentation of proofs, and, it appears to me, was intended as much as a part of the subsequent decree, as the verdict of a jury is authority for the subsequent judgment, and cannot stand such finding the decree cannot stand. The record discloses that no such finding was made, and that the decree even was never entered, as required by the 29th admiralty rule, that the libel be taken *pro confesso*, so as to justify the assumption that its allegations were true.

As the act is highly penal in its nature it would seem that, according to well-received rules, it should be strictly construed, and a rigid compliance with its provisions exacted. But the very opposite course in the construction of the act appears to have been adopted by the majority of the court.

I am of opinion that the judgment of the court below should be reversed. I am authorized to say that Mr. Justice Clifford concurs with me in this opinion.

ELEGANT DWELLING FOR SALE.—The attention of persons who are in search of a new, elegant and comfortable dwelling, situated in a healthy and fashionable part of the city, is directed to the advertisement of C. E. Girardey & Co., Auctioneers. We refer to the residence on Esplanade street, built last year and occupied as his dwelling by the late Cyprien Dufour. This building was constructed under the directions and supervision of its owner, and everything about it is of the most substantial character. The capacity of this dwelling is sufficient for a large family, and the location is one of the most beautiful in the city.

The property will be sold at auction at the Merchants' Exchange, Royal street, on Saturday, 29th inst., by C. E. Girardey & Co., Auctioneers, by order of the Second District Court for the parish of Orleans. The terms of sale are very favorable; one-fourth only is to be paid cash, and the balance at a credit of one, two, three and four years.

IMPORTANT TO BANKERS, CORPORATIONS AND MERCHANTS.—Mr. John W. Norris, General Southern Agent, for Diebold & Kimnale's Fire and Burglar Proof Safes, invites the attention of our readers in banking and mercantile circles to the advertisement in another column setting for the merits of these splendid constructions. He has just disposed of one of them to Messrs. A. Rochereau & Co., of this city, who are so highly pleased with the safe, its ability to resist all attempts to break it open, its beauty and its finish, that they have expressed in writing to Mr. Norris their entire satisfaction with the work. Their certificate is appended to the advertisement. Nothing can be added to the certificate of a house of the high standing of Messrs. Rochereau & Co. Mr. Norris can be found at No. 27 Canal street.

AMUSEMENTS.

ST. CHARLES THEATRE.—The Skiff and Gaylord corps of negro minstrels and humorists, of whom we have already had occasion to speak, are still performing at the St. Charles, and their entertainments embrace an exhibition of a panorama of interesting dissolving views.

ACADEMY OF MUSIC.—The Thompson troupe have nearly closed their engagement here for this season, and presently our citizens will be without the delightful recreation which they have enjoyed at the Academy since the advent of these incomparable burlesquers. But three nights more of the engagement remain. The accomplished and popular chief of the troupe, Miss Thompson, takes a benefit tonight, when two novelties on our stage, "The Brigands" and "A Day in Paris" will be presented with the entire force of the company.

Result of the Benefit for French Artists.

The special committee appointed on the part of the French Relief Committee of this city, to co-operate with Miss Lydia Thompson and the proprietors of the Academy of Music, concerning the benefit for the suffering artists in Paris, have forwarded to Miss Thompson and Messrs. Spalding, Bidwell and McDonough, the following letters in acknowledgment of the proceeds of the performance, eight hundred and forty-four dollars and twenty-five cents, which sum has been paid over to A. Rochereau, Esq., President of the committee, to be by him remitted to France.

NEW ORLEANS, April 27th, 1871.

To Miss Lydia Thompson.

Dear Madam—The matinée benefit so generously proffered by you in aid of the French artists suffering in Paris, and which took place yesterday morning at the Academy of Music, has produced in gross receipts the sum of eight hundred and forty-four dollars and twenty-five cents. Messrs. Spalding, Bidwell and McDonough having tendered gratuitously the use of the Academy and the services of their employés, and the press of the city having also contributed to the good work by freely advertising the performance. The total amount of the receipts without deduction will be remitted through Mr. A. Rochereau, President of the French Relief Committee to Baron Lyric Artists' Association in France, to be distributed among the sufferers, agreeably to your wishes.

The undersigned beg you to tender their thanks to the accomplished ladies and gentlemen of your troupe for the zeal and ability shown by them on this occasion; and they also respectfully express their high appreciation of the liberality which, united to grace and talent, has made you such a favorite with the public here and elsewhere throughout the United States.

Most respectfully,

Signed: Felix Limet, Victor Maignan, M. A. de Lizardi, J. Passama-Domenech, members of special committee.

NEW ORLEANS, April 27, 1871.

Messrs. Spalding, Bidwell & McDonough, Proprietors of the Academy of Music.

Gentlemen—We beg leave to acknowledge the receipt from your office of $300, which, together with $468 25 for tickets sold by the committee, forms a total amount of $844 25 as gross receipts for the benefit given yesterday at the Academy of Music for the relief of Miss Lydia Thompson and yourselves, which amount will be disposed of according to the wishes of Miss Thompson in aid of the artist sufferers in Paris.

Thanking you, gentlemen, for your liberal contribution towards this benevolent object, we remain.

Respectfully, yours.

A. Rochereau, Esq., President French Relief Committee.

Dear Madam—Please find enclosed the sum of $844 25 amount of gross receipts of the matinée given yesterday by Miss Lydia Thompson and the Academy of Music, for the benefit of the French artists sufferers by the late war in Paris. We respectfully request you to forward this sum to Baron Taylor, President of the Dramatic and Lyric Artists Association in France, to be distributed according to the wishes of Miss Lydia Thompson. We are pleased to add that Messrs. Spalding, Bidwell & McDonough having tendered gratuitously their theatre and the services of their employés, and the press of New Orleans having courteously granted the use of its columns, the whole of the gross receipts have been handed to this committee and are hereby remitted to you.

Respectfully, etc.,

Félix Limet, Victor Maignan, M. A. de Lizardi, J. Passama-Domenech, Members of the Committee.

We announce in another column the marriage of our esteemed confrère, Mr. John E. Leet, of the Abbeville *Meridional*, to Miss Modeste Caillier, of this city, and congratulate him upon the happy change thus made in his domestic circumstances.

☞ Gen. R. E. Lee, writing under date of January 13, 1867, says: "Its simple mechanism, and the experience my daughters have had in operating it, enable them to speak favorably of the Grover & Baker sewing machine, which I purchased some time since for my family. For sale by M. S. Hedrick, 118 and 120 Canal street, New Orleans. feb23 3m d&sw

CITY INTELLIGENCE.

The Annunciation Street Homicide.—Coroner Creagh was yesterday engaged again in the investigation of this case, and it will be resumed to-day. The sitting was entirely occupied in hearing a voluntary statement made by one of the prisoners, Earle, which is appended. The other prisoner, Garvey, we are informed, has refused to make a confession, substantially the same as that of Earle, except that he says Earle entered the house and committed the crime, while he remained outside:

Charles Earle—About three weeks ago John Garvey came to my house. He and my wife were sitting in my house. Garvey was talking to me as usual. He made use of a nasty expression. My wife got up and said she was going to see Mrs. Burket and for me to look out for the child. Garvey and I remained in the house while my wife was away. Garvey remarked that old Zollinger had plenty of money, that he saw his (Zollinger's) wife counting gold before the war. He knew that he must have two or three thousand dollars. I answered that I did not think the man could have so much money, as he was very particular about his rent. For the second month I was there, I could not pay the rent, until the next Sunday, Zollinger said that was a long time to wait.

Garvey then asked me if I knew where there was a good gofer. I said I did not know what is a gofer was, unless it was something that dug in the ground. He said that was not the kind of a gofer he wanted, that what he wanted was like the gofer that was cracked at the corner of Canal and Camp streets, (a jewelry store) that the man was in his house who did it. But he was now gone up the river, if he was here then they would have gone for Zollinger's money long ago. He then asked if I would go in with him and do it. I said I would not, and also respectfully refused to have anything to do with it. He said he would take my left hand for something—that he was not such a coward as I was, and asked me to go with him. I refused. He said, "Never mind; I will come for you at 9 o'clock." He went to his own house and brought the chisel and a revolver. I walked across the street.

We started for Seventh street. I asked: "What will we do if the officers of the beat see us this time of night?" He said never mind, I will blow his brains out before I will let him take us. Then went out Seventh street to the vacant lot between Laurel and Annunciation streets. I asked him what he was going to do there? He said: "Never mind, I have surveyed this place before. Follow me."

Witness here described how they got into the yard of Zollinger's house, and continued: My dog and the little dog were barking. I said, he had better get out. He said: "No, by God, as we have come so far we shall see the way the bed lays, and I'll go for her." I told him that I was in the fireside of the room. We went to the second door—it was open. He asked me if the other door was open? I told him I did not know. He said, in a loud voice, "follow me now." We went into the room. There was no noise but the barking of the little dog after we got in. He whispered to me to light a match. Then there was a stir in the bed. He stood by the bed. It was dark. I did not then have the match lit. I heard a kind of a shaking noise at the bed (witness imitated it as a single cough.) He stood by the bed and I lit the candle. Garvey bought the candle, about two weeks before, at the corner of Sixth and Tchoupitoulas streets, and kept it himself until that night.

I then went and opened the armoir—Garvey still at the bed. I pulled a trunk from under the bed. I examined the drawers of the armoir—also the trunk or box, and did not find any thing. Garvey came over from the bed and said the old woman had fainted or something—that she was quiet then. I took the candle and looked at a box behind the door and found it was locked. I told Garvey there was a key in one of the drawers of the armoir. He went and got the key and unlocked the chest. I examined the chest but found nothing. Garvey then got by me opened a little till in the chest, took a pocket-book out of it and handed it to me, and some papers fell out of it. We examined the book and took all the money out. I put it in my coat pocket. He said: "By God there is more money than that here—there is hard stuff somewhere." Garvey searched again and found a bag with a pocket-book in it. He said: "That's all."

Witness then described how they got out, pretty much as they got in through the back way, and the yard of the colored people's house, and down the road to St. Mary's Market. He threw the chisel away on Tchoupitoulas street. They went west to the French Market, where they found a coffee-house open. They had a drink there and played euchre. They got a candle from the bar-keeper, went to the privy, counted the money and divided it. They went to the river and, upon the suggestion of Garvey, witness threw the bag and the pocket-book into the river. They then took another drink and separated.

Witness did not know Mrs. Zollinger was dead until after he was arrested. Garvey did not seem to know she was dead either, and on witness did not believe Garvey knew she was dead. Doubt know whether he killed her or not. She was a good woman to his mother. Garvey did at her bed, but thought he threw the pillow over her face so that she would not see witness. Witness says he had his share of the money in a pile of cigars, on the levee. When the police went there yesterday the pile had been removed, and there was no trace of the money.

Application of Colored Persons to be Admitted to the Practice of Law.—Attorney General yesterday applied to the Supreme Court to admit two young colored lawyers, from the District of Columbia, to the practice of law in the courts of this State. Their admission was refused, on the ground that their certificate had been issued by the court in the District of Columbia, and that the law of this State gives applicants the from abroad to be licensed to practice in the State, upon certificates issued by the Supreme court of a State, not the certificate of the court of a territory or the District of Columbia.

The Everett-Switzer Homicide.—The examination of this case was concluded yesterday before Recorder Steiner. Much of the evidence has been adduced more than was given at the Coroner's inquest, except the following letter, which, being addressed to Mrs. Switzer, her deceased husband and her brother, Mr. Steinharte, calling upon the prisoner, which was identified as the handwriting of the prisoner. It was also proved that the Postoffice box mentioned in the letter was his box:

NEW ORLEANS, La., Jan. 24, 1871.

Miss Tillie Steinharte:

Dear Miss—I saw some one at the Academy of Music last night which so much reminded me of you as to induce me to inquire the fact that I had in my possession a book which belongs to you, at least your name is inscribed on the paper. My remarks about your Spanish eyes and foot, which would go to prove that you were the owner. But not knowing positively you live, nor having any information with regard to one you know, I have been at a loss to send it on, as I thought I would speak to you through the Postoffice and ask you if that means I shall transmit the book to you, or should you permit me to be the Ganymede. Ever yours, respectfully,

EVERETT.

My address is 1171 Postoffice box, 163 Bienville street, New Orleans, La.

The letter was superscribed: "Miss Tillie Steinharte, Postoffice Drawer, New Orleans, La.," Steinharte being Mrs. Switzer's maiden name.

The examination closed, Recorder Steiner committed the prisoner to be tried before the First District Court for murder.

Sheriff Sauvinet vs. the "Bank" Saloon.—This case was decided by Judge Dibble, Eighth District Court, yesterday. Plaintiff sought to obtain a drink of liquor, in the "Bank" saloon, corner of Royal street, near Canal. He was refused, the cause he was colored. For that he sued John Garvey came to my house. He and my wife were sitting in my house. Garvey was talking to me as usual. He made use of a nasty expression. My wife got up and said she was going to see Mrs. Burket and for me to look out for the child. Garvey and I remained in the house while my wife was away. Garvey remarked that old Zollinger had plenty of money, that he saw his (Zollinger's) wife counting gold before the war. He knew that he must have two or three thousand dollars. I answered that I did not think the man could have so much money, as he was very particular about his rent. For the second month I was there, I could not pay the rent, until the next Sunday. Zollinger said that was a long time to wait.

Garvey then asked me if I knew where there was a good gofer. I said I did not know what is a gofer was, unless it was something that dug in the ground. He said that was not the kind of a gofer he wanted, that what he wanted was like the gofer that was cracked at the corner of Canal and Camp streets, (a jewelry store) that the man was in his house who did it. But he was now gone up the river, if he was here then they would have gone for Zollinger's money long ago. He then asked if I would go in with him and do it. I said I would not, and also respectfully refused to have anything to do with it. He said he would take my left hand for something—that he was not such a coward as I was, and asked me to go with him. I refused. He said, "Never mind; I will come for you at 9 o'clock." He went to his own house and brought the chisel and a revolver. I walked across the street.

We started for Seventh street. I asked: "What will we do if the officers of the beat see us this time of night?" He said never mind, I will blow his brains out before I will let him take us. Then went out Seventh street to the vacant lot between Laurel and Annunciation streets. I asked him what he was going to do there? He said: "Never mind, I have surveyed this place before. Follow me."

Witness here described how they got into the yard of Zollinger's house, and continued: My dog and the little dog were barking. I said, he had better get out. He said: "No, by God, as we have come so far we shall see the way the bed lays, and I'll go for her." I told him that I was in the fireside of the room. We went to the second door—it was open. He asked me if the other door was open? I told him I did not know. He said, in a loud voice, "follow me now." We went into the room. There was no noise but the barking of the little dog after we got in. He whispered to me to light a match. Then there was a stir in the bed. He stood by the bed. It was dark. I did not then have the match lit. I heard a kind of a shaking noise at the bed (witness imitated it as a single cough.) He stood by the bed and I lit the candle. Garvey bought the candle, about two weeks before, at the corner of Sixth and Tchoupitoulas streets, and kept it himself until that night.

I then went and opened the armoir—Garvey still at the bed. I pulled a trunk from under the bed. I examined the drawers of the armoir—also the trunk or box, and did not find any thing. Garvey came over from the bed and said the old woman had fainted or something—that she was quiet then. I took the candle and looked at a box behind the door and found it was locked. I told Garvey there was a key in one of the drawers of the armoir. He went and got the key and unlocked the chest. I examined the chest but found nothing. Garvey then got by me opened a little till in the chest, took a pocket-book out of it and handed it to me, and some papers fell out of it. We examined the book and took all the money out. I put it in my coat pocket. He said: "By God there is more money than that here—there is hard stuff somewhere." Garvey searched again and found a bag with a pocket-book in it. He said: "That's all."

Witness then described how they got out, pretty much as they got in through the back way, and the yard of the colored people's house, and down the road to St. Mary's Market. He threw the chisel away on Tchoupitoulas street. They went west to the French Market, where they found a coffee-house open. They had a drink there and played euchre. They got a candle from the bar-keeper, went to the privy, counted the money and divided it. They went to the river and, upon the suggestion of Garvey, witness threw the bag and the pocket-book into the river. They then took another drink and separated.

Witness did not know Mrs. Zollinger was dead until after he was arrested. Garvey did not seem to know she was dead either, and on witness did not believe Garvey knew she was dead. Doubt know whether he killed her or not. She was a good woman to his mother. Garvey did at her bed, but thought he threw the pillow over her face so that she would not see witness. Witness says he had his share of the money in a pile of cigars, on the levee. When the police went there yesterday the pile had been removed, and there was no trace of the money.

Application of Colored Persons to be Admitted to the Practice of Law.—Attorney General yesterday applied to the Supreme Court to admit two young colored lawyers, from the District of Columbia, to the practice of law in the courts of this State. Their admission was refused, on the ground that their certificate had been issued by the court in the District of Columbia, and that the law of this State gives applicants