THE DAILY BEE
SECOND DAILY (SUNDAYS EXCEPTED) OF
No. 73 Chartres street.
NEW ORLEANS:
THURSDAY MORNING FEB. 9, 1865

NEW FEATURES AT THE ACADEMY.—The vigilant management of the Academy of Music has much enhanced the interest of its programme by engagements with the celebrated equestrienne, Madame de Berg, from the Cirques Napoleon and Imperatrice, of Paris, and with Mr. James Cook, the celebrated histrionic rider, from Astley's and the Alhambra, London. These will appear in conjunction with the performances and exhibitions heretofore comprised in the combination of the Ocean Circus, the menagerie, and the Variety Stars. The new programme will be given every night this week and at the matinee on Saturday at noon.

LAST NIGHT OF THE SEVEN SISTERS.—This highly popular and successful piece is announced to be given at the St. Charles Theatre for the last time, excepting in a grand matinee on Saturday at noon.

Its performance to-night will be preceded by the drama of Lucretia Borgia.

VARIETIES THEATRE.—Mrs. Gladstane will appear to-night as Alice in the new drama of the Artist's Bride, and the performance will conclude with the one act farce of Good for Nothing.

The matinée of the Ethian Minstrels promises to become quite a popular pendant to regular theatrical season of the Varieties. The second entertainment of the sort, including favorite dances by the Misses Wood will take place on Saturday at noon.

THE ATLANTIC MONTHLY.—This well known and able magazine of literature, art and politics, published by Ticknor & Fields, Boston, is before us for the present month. This number is unusually opulent in variety as well as bulk of reading matter, comprising no less than 200 pages. One of the most noteworthy and attractive of its literary features is the first installment of a new story by Donald G. Mitchell, the author of "Reveries of a Bachelor," who in elegance and purity of English is one of the few American authors who may rank close to Irving.

GAZZAT'S PACIFIC MONTHLY.—We have received a large and handsomely printed periodical by this name, No. 2 of the first volume, for February, from the publishers, David M. Gazley & Co., No. 11 Liberty Street, New York. As the title indicates, the magazine, apart from its character as a literary drawing room companions, will be devoted to topics connected with the Pacific regions, their mining and agricultural resources, their commercial interests and facilities. Its contents are under twenty-five titles, and comic illustrations and fashion plates.

GEN. POLIGNAC.—We are informed that Prince Polignac, Major General C. S. A., was about a fortnight ago in Matamoros. He has obtained a leave of absence of several months, which he designs to improve by a visit to France.

News from Matamoros.

We have received through the Commercial Express a copy of *El Orden*, a journal published in Spanish at Matamoros, dated January 2, from which we take the following:

The Emperor Maximilian has created an order entitled "the Mexican Eagle," of which the Grand Marshal Don N. Almonte, has been appointed Grand Chancellor. The order comprises an unlimited number of Knights, officers, 100 commanders, 20 grand officers, 10 of the grand-cross, and 1 of the grand-cross with the collar.

By another decree Maximilian has awarded the grand-cross with the collar to the following sovereigns: the Emperor of France, Napoleon III, the Emperor of Austria, Francis Joseph, the Emperor of Russia, Alexander II, the Emperor of Brazil, Pedro II, the King of the Belgians, Leopold I, the King of Italy, Victor Emmanuel II, and the King of Sweden and Norway, Charles XV.

The Emperor has appointed Gen. Don Thomas Murphy Commander in Chief of the Imperial Army.

Gen. de Division Comte Saint Marcellin on the 5th January with a brigade, on a campaign against the Liberal chiefs Carvajal and Mendez.

Marshal Bazaine was to leave Mexico the 8th January for Oajaca, where he will take command of the forces operating in that department. Gen. Marquez was to return to Mexico, whence he would go abroad with an important mission.

MAXIMILIAN'S NEW COUNCIL OF STATE.

The *Franco Mexicain* gives the following decree, nominating the new Council of State:

MINISTRY OF STATE.

Maximilian, Emperor of Mex.

In view of the decree by us ordering the formation of a Council of State, and by virtue of our Council of Ministers, and considering the merits and qualifications of the following persons, we have decreed and we decree the following:

1. R. D. Jose Maria Lacunza is named President of the Council of State.

2. The following gentlemen are Councilors of State: D. n Hilario Elguero, Don Urbano Fonseca, Don Isidrio Larrea, Don Jesus Lopez Portillo, Don Jose Lopez Uraga, Don Vicente Ortigosa, Sr. Obispo Francisco Ramirez, Don Manuel Siliceo.

Our Minister of State is charged with the execution of the preceding decree, which will be placed in the archives of the empire and published in the official gazette in order that it may be known to all it may concerth.

Given at the Palace of Mexico.

MAXIMILIAN

* The (Imperial) word has no equivalent in English signifying the "one who is entitled to an allegiance to the new order of things."

CITY INTELLIGENCE.

First District Recorder's Court.—H. T. Vennard.—K F Hourton, No. 11 Carondelet street, was charged by T A H Houston, of No 39 Bienville street, with having violently assaulted and struck prosecutor felonously. Sent before the First District Court.

The case of Kate Shaw, charged with disorderly cutting N. Rosewell on Perdido street, was sent to the First District Court.

Elias Thompson and J. M. Robinson had a fight on Philippa street, and were fined $10 each.

Alphonse Amelin and Isaac Malsom were fined $5 for fighting on the Levee.

J. Guerin, drunk and rowdy, when on duty as a policeman, was recommended to be discharged from the police.

Dan Nelson, c., stole a pair of shoes, and was workhoused for thirty days.

First District Court—Judge Heistand.—George Landry, colored, charged with having stolen five bags of corn and one bag of molasses, was tried yesterday. The property was stolen from the Levee and was found in the houses of accused. The case was given to the jury—and accused acquitted.

Mich Daily, accused of having stolen a coat, was discharged, the prosecuting parties had taken themselves out of the draft by going to Matamoros, and that discharged accused.

David Grant was found guilty of an assault on Madam Guirlander in her house, on Dauphin street.

Hercules Hall, colored, was acquitted of having stolen certain clothing from Rachel Smith.

Recorder Woolfey's Police Court.—Alexander Phelps, having outraged the peace of Bienville street, was fined $5.

Mary Lambert, who broke the windows of Mary Durand on Bienville street, gave peace bonds for the next six months.

A misunderstanding between Nelly Johnston and Lavina Rives about a piece of cotton worth $12, was settled by a dismissal of the case, Lavina Rives receiving the property.

The Game and Cutting from a Bull.—A coffee saloon keeper with his wife and two young men went to a bull not long since and every thing went smoothly on at the bull ranch, returning home they stopped at the Poydras market for a cup of coffee and consumptate. Passing out a young man, Mr. Massey of Ulrica street, wanted to salute the married man, which early polite action in spite of the silent protestation of the wife. The assault became violent and the young man protested against the demonstrations which he attributed to an assault.

It thus happened that Massey and one of the young men tumbled to the gutter, and that he, Massey had the two young men, Winter and Krone, German bar-keepers arrested for an assault and battery.

The result of the examination before Recorder Vennard was that the prosecutor was compelled to pay a fine of $10 and to give peace bonds.

The Legislature.

WEDNESDAY, February 8, 1865.

Senate—The Senate met at the usual hour, Lieutenant-Governor Wells presiding.

Prayer was offered by the Rev. Mr. Gibon.

A memorial was presented by Mr. Hunter, on a committee of the House of Commerce, relative to the Portwarden's bill. The memorial was received by a vote of 16 yeas to 3 nays.

On motion of Mr. O'Donnell, it was ordered that it be spread on the minutes. Mr. Montamat moved a reconsideration of the vote. Adopted.

The motion to receive the memorial and have it read, was then duclared and declared tabled.

The motion to reconsider the vote refusing a committee of conference on the Police bill was tabled.

Mr. Montamat's bill giving complete jurisdiction to Recorders in petty criminal cases passed a first reding.

Mr. Montamat gave notice that he would offer a joint resolution requiring the State Treasurer to keep an account of warrants presented but not paid for the lack of funds, in order that warrants may ultimately be paid in the order of their presentation.

Adjourned.

HOUSE OF REPRESENTATIVES.

The Hon. S. Belden, Speaker, in the chair. The business of the House was presided by prayer offered by the Rev. Mr. Andrews.

The minutes were read and approved.

A resolution of Mr. Van Trump, that the effect that a rule No. 15 had been seemingly disregarded, therefore in future every member shall be entitled to a vote on any question he shall be entitled to a vote on any question before the House, was adopted after considerable discussion. Yeas, 36; nays, 28.

The Police bill as amended by the Senate then was taken up under a dispensation of the rules. The history of the bill was discussed by Mr. Mitchell called in the chair.

On reading the first section, on motion of Mr. Foley, the words "illot omore" were stricken out and "foot less" substituted, to make it obligatory on the city to employ not less than 200 policemen. In section 3 the words "by and with the advice and consent of the Senate," in relation to the appointment of the police commissioners, were stricken out. Two other sections were accepted, and the bill was finally adopted. A resolution, on permission, read by Mr. Christie, stating objections to the City Charter as improper for the present session, requiring two more representatives. It was signed by Messrs. Christie, Chamberlain, Todd and others. The protest was ridiculed by Mr. Prescott, and other some spicy discussion the House adjourned.

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OPINION OF JUDGE PEABODY

—OF—

THE PROVISIONAL COURT FOR LOUISIANA

Its Warrant in Law and Jurisdiction.

UNITED STATES ex. AUGUSTE REITER—UNITED STATES ex. JOHN LOUIS.

(Continued from last edition.)

This case, like each of the others cited, was decided by the Supreme Court of the United States—the court of the highest human authority on that subject—and as the decision was against the United States, and in favor of the authority of Great Britain, the enemy in war, and was made shortly after the occurrence of the war out of which it grew, and while no department of this Government was inclined to magnify the rights of Great Britain or disparage those of its own Government, there can be no suspicion of bias in the mind of the court in favor of the conclusion at which it arrived, and no doubt that the law seemed to the court to warrant and demand such a decision.

That case grew out of the war of 1812, between the United States and Great Britain. It appeared that in September, 1814, the British forces had taken the port of Castine, in the State of Maine, and held it in military occupation, and that while it was so held, foreign goods, by the laws of the United States subject to duty, had been introduced into that port without paying duties to the United States. At the close of the war the place was to be restored to the United States, and after that was done the Government of the United States sought to recover from the persons introducing goods there while in possession of the British, the duties to which, by the laws of the United States, they would have been liable. The claim of the United States was, that its laws were properly in force there, although the place was at the time held by the British forces in hostility to the United States, and the laws, therefore, could not at the time be enforced there, and that a court of the United States (the power of that Government then having since been restored) was bound to decide. But the illusion of the prosecuting officer there was dispelled by the court in the most summary manner. Mr. Justice Story, the great luminary of the American Bench, being the organ of the court in delivering its opinion, said: "The single question is whether goods imported into Castine during its occupation by the enemy are liable to the duties imposed by the revenue laws upon goods imported into the United States." "*Were all of opinion that the claim for duties cannot be sustained.*" "The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and only such, as it chose to recognize and impose. From the nature of the case no other laws could be obligatory upon them."

Castine was, therefore, during the period, so far as respected our revenue laws, to be deemed a foreign port, and goods imported into it by the inhabitants were subject to such duties as the British Government chose to require. Such goods were in no correct sense imported in the United States." The Court then proceed to say, that the case is the same as if the port of Castine had been foreign territory, ceded, by treaty to the United States, and the goods had been imported there previous to its cession. In this case they say "there would be no pretense to say that American duties could be demanded, and upon principles of public or municipal law, the cases are not distinguishable." Such is the concluding paragraph of the opinion. "The authorities cited in the bar would, if there were any doubt, be decisive of the question. *But we know of no law in the universe and from authority.*" Does this case leave room for a doubt whether a country held as she was in armed belligerent occupation is to be governed by him who holds it, and by his laws? Does it not so decide in terms as this case is cited? It is asserted by the Supreme Court of the United States, *with entire unanimity*, the great and venerated Marshall presiding, and the ensuing and accompanying Story delivering the opinion of the Court that "the laws and duties of war are adjudged in the case. Nay, more, it is even adjudged that no other laws could be obligatory, that such a country, so held, or for the purpose of the application of the law of its former government is to be deemed foreign territory, and that goods imported there (any by parity of reasoning other acts done there) are in no correct sense done within the territory of the former sovereign."

Do not the remarks of the Court in this case more fully warranted or proper than the last, to the effect that *the case is cited to require and from authority.*

The right, therefore, of a conqueror in a conquered country to enact a system of government for it, and among other things to create courts of justice, and maintain them in the discharge of their proper functions, is so well established and free from doubt when considered on authority, as it is in principle, and about as dull to cite any proposition which could find adding much an advocate to question it, could in the course of things be expected to be.

But it may be said that this country is not one as to the territory foreign to the United States, and as to which the rights and duties are simply and solely those of conqueror by force of arms; that Louisiana is a part of the territory of the United States, over which the powers and duties of the President and the other departments of the Government were already lawful, and are dependent on the constitution and laws of the United States, and limited to the powers and duties conferred by them; and that those laws do not give the President power to establish a court like this, and therefore that he was not that power.

It is quite certain that not only he would have such power, and, before, instead of looking for it to the constitution and laws of the United States, he would have looked where said to offer for it—that he merely occupying the place of President at the time I have invoked also the fact that he was by virtue of that place, as commander of the forces of the United States, holding in armed belligerent occupation the country in which the court was established, an authority which its powers and authority are now brought in question.

Is this country, I—the purpose of determining the powers and duties of the Commander-in-Chief of the army and navy of the United States, to be deemed domestic, or is it to be deemed foreign territory?

What are the relations of the forces of the United States, and of the commander, to these districts of country as they enter them, expelling the forces of the enemy?

Is he the Chief Executive of the country of which these districts are a part, and as he holding more, and are his powers and duties those of Chief Executive only?

Has he in these districts subjected to the same, and while in armed belligerent occupation of it with the forces under his command—has he by law the same powers and duties as he would have in Massachusetts or New York in time of profound peace, and has he no others?

Has war given him no powers in law in addition to those possessed by him in time of peace?

Having in war broken down the hostile power of it, and driven its forces out of it by the military force under his command, has he no new powers there by reason of that fact?

When his subordinate officer, Admiral Farragut, landed there from the deck of the Hartford, did he carry with him no right to power not commonly enjoyed by the Presidents in other territory of the United States?

Did his rights as conqueror cease the moment his power in that character was established? Having subdued Louisiana as Commander-in-Chief, at the head of his forces victorious, was he at once remitted to the position, powers, and duties of a peace President in times of profound and undisturbed peace?

Had he none of the powers or duties of a conqueror in a country subjected to his arms?

What was this country to do for a Government when the old hostile one had been reduced and expelled?

Was it to get along without one as best it could? Was it to do this until some new one could spring up to supply the want?

Were all the rights of persons and property, natural and acquired, the right to life, security, liberty, and property, to be at once suspended, and was the rule of physical force to over ride them all?

The right of conqueror to govern a country held by him by right of conquest is well established in authority. The cases which establish this right, however, relate to the conquest of a country foreign to the conqueror, and as to which he has no rights and is under no restraints, except those which come from the fact of conquest alone, and not to one which is of right a part of his own proper domain. In this case, the territory over which the Government of the United States had acquired, as we have supposed, some rights in the nature of rights of conquest, belonged of right to it as a part of its own domain, and it remains to be considered how such rights and duties may differ in respect to the right by the laws of war to govern a country conquered.

It may be said that the act of the United States in this case, had not the usual effect of a conquest of foreign territory—that instead of acquiring some the rights of a conqueror, the United States by this conquest, (as it for the sake of convenience have called it,) but had removed the obstacles to the enjoyment of its preexisting rights, and has not acquired any new ones of a conqueror.

As we have seen, the foundation of the right of a conqueror to govern conquered territory and for that purpose to establish provisionally civil institutions in it, is necessity, and that chiefly the security of the conquered country and its inhabitants. A government of some kind they must have, for no community can exist without it.

The power of the conqueror has overriden and subjected all other power, and this necessity can be supplied from no other source than him, for he holds the place of the same being all power. While this continues to be the case, what is there in the case in question of Louisiana, which should make it different from a foreign country?

The inhabitants of that country owed allegiance to, and were entitled to the protection of the Government of the United States, if it and familiarly, and this is quite true in the sense in which the remark is usually made. But did the United States ever at any time, or under any circumstance, give the people of this country any protection and government which would supply all, or any considerable part of their wants in the respect?

If the Government of the United States should afford to this country all the protection, and all that it could perform for it all the purposes of good which it by virtue of its sovereignty, laws of the land was ever bound to do, how far would this go towards supplying the wants of the country in that respect? not quite certainly looking into the subject of the relations, right of the Federal Government to the territory in question, and the duties of the government in fulfilling the duties of government to it, it will terminate necessarily whenever the power which formed it shall terminate, or become unable to support it. And secondly, whenever that power shall for any cause voluntarily withdraw its aid.

That the power of the Federal Government here has not been terminated, I need no argument to prove. Its sovereignty has not been pulled, and it cannot be certainly has not been withdrawn. It remains, we and last and resting the great, beneficent, paramount, and only power here, and is bound to protect and support, giving itself, and furnishing and supporting every governmental office and function here.

But on this point, as well as any other to which I have cited the case above referred to is one of those cases spoken as authorities. In two of those cases, at least, in which the power of the provisional government of the Provisional Courts was sustained by the Supreme Court of the United States, it was so upheld in territory belonging, not from military occupation, but of right to the domain of the United States, and over which that Government had powers of government, full and complete for all purposes, and as much sovereign as States has ordinarily within its internal limits, rights not limited to the extent United States alone, or chiefly, as are those of the United States in territory belonging to the State of the United States, but embracing powers for all the detail of local administration, legislative, executive and judicial.

And even there, where the United States had by the constitution, powers of Government ample for all purposes, the power of a Government under a provisional Government long after the military occupation had ceased, and when the rights of the United States there depended not at all on military power, or belligerency, but wholly on compact between the former sovereign and itself—even there, in territory confessedly belonging to the United States, and in times of peace, and in the absence of military power or military necessity, the Provisional Government and the Provisional Courts were upheld to the United States, and were adjudged to continue legally and practically in force as instruments of the Federal Government, until it should, by its constitutional action, through its Legislature, otherwise provide.

In the earlier of those cases, Cross vs. Harrison, 16 Howard's Report, 164, the Court reply: "Our conclusion on the whole, has been said in the civil government of California, organized by the United States, and in force when it was acquired, from a right of conquest, and it ceases or becomes void, upon the acceptance of the cession by the treaty or from its ratification. "We think it was continued over a ceded conquest, without any violation of the Constitution or laws of the United States, and that until Congress legislated for it, the laws upon foreign goods, not, were legally demanded and lawfully received by Mr. Harrison, the collector of the port, who received his appointment, etc., etc., from Governor Mason."

These cases, in deciding that a provisional government may be continued by the conqueror, in territory belonging of right to the United States, and not acquired any new ones of a conqueror.

The former intimate that the whole structure of the Court, in its origin, was without warrant in law.

That inasmuch as the constitution of the United States ordains no Court, no law, no, and that has not a compelling to establish it it no due and from water of courts, must and be in the Government.

While the learned counsel for the accused Louis contended that the President, as commander of the forces of the United States, had authority by the laws of war to establish it, and that it had originally all the powers by him adjudged to be conferred, but not that that power have ceased, by reason, as I understand the argument, of the organization of a civil government here, which superseded the military. I pass to consider the question presented by this argument.

If a conqueror in a conquered country have a right to setup a government in it, when does that right cease? Or, rather, it he have such a right, and exercise it, when does the power of the government so established cease?

I answer, first, it will terminate necessarily whenever the power which formed it shall terminate, or become unable to support it. And secondly, whenever that power shall for any cause voluntarily withdraw its aid and.

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