MINORITY REPORT OF THE JUDICIARY COMMITTEE

ON THE

CITIZENS' BANK BILL.

FEBRUARY 11th, 1852.

The undersigned being unable to concur in opinion with the majority of the Committee to whom was referred the act entitled "An act for the relief of the Stockholders of the Citizens' Bank" begs leave to present his views in the form of a minority report.

The question submitted for the consideration of the Committee, involves the power of the Legislature to restore the Citizens' Bank of Louisiana to its rights, possessed previous to the decree forfeiting its Charter, and particularly its right to issue Bank notes for circulation.

The power of the Legislature to restore the Bank to its original rights, depends upon the legal effect of the decree pronounced by the Judge of the Fifth District Court on the 18th of October, 1842, declaring the forfeiture of the charter. The proper construction of the Legislative acts upon which that decree was based.

The 1st section of the act of 14th March, 1842, provides, "That, whenever any bank of this State, located in the city of New Orleans, by any act, or omission in violation of law, shall have incurred the forfeiture of its charter, the Attorney General or the District Attorney shall present a petition in the name of the State, to a Court of competent jurisdiction, setting forth such transgressions or violations, and praying that the Charter of said bank be declared null and void, and the corporation dissolved. The Court shall try such complaint, and, without the intervention of a jury; and if, on the trial thereof, it shall appear to the Court, that the said bank has incurred a forfeiture of its charter, it shall declare the same null and void, and the corporation dissolved."

Section 28 of the same act provides, "That the forgoing provisions relative to the liquidation of banks shall not apply to those banks in which the State is a stockholder, or for which it has issued bonds, or for the debts or obligations of which the State is in any manner responsible: That said banks shall be permitted voluntarily to go into liquidation under the provisions of this act, and if a decree of forfeiture of its charter be rendered against any of such banks, the corporation shall not be decreed to be dissolved, but shall retain its corporate powers and privileges, with the exceptions hereinafter mentioned, that is to say, if such bank, by a vote of the stockholders thereof duly convened for that purpose, consent and agree within 90 days after the decree shall have been rendered,

1st. To renounce the right of issuing notes or obligations in any form for circulation. 2d. That all that portion of its assets which in an old-bank act to revive the charters of the several banks located in the New Orleans, and for other purposes, approved February 5th, 1842, is called the "specie reserve" or it such assets should not, in the opinion of the Board of Currency, be deemed sufficient, then other assets to a sufficient amount shall immediately be converted into a sinking fund, applicable exclusively to the payment or purchase of the bonds of the State, issued to or for account of said bank, the whole to remain in possession of the banks, but under the direction and superintendence of the Board of Currency until the final extinguishment of said bonds in principal and interest, and of all liabilities of the State, or debts due to it by such banks, *the bank so consenting and agreeing shall retain all its other corporate powers and privileges*, and shall moreover have the right to charge interest at the rate of eight per cent per annum on all loans having more than ninety days to run; provided, however, that if at any time the sinking fund established by this section should be deemed insufficient to secure the State, the Governor, on the recommendation of the Board of Currency, may require that the same be increased to a sufficient amount, and in default of such increase being made by the bank, the said bank shall go into liquidation in the manner provided for in the 29th section of this act. The Legislature may enact that the affairs of such bank shall be liquidated in a manner different from that above provided."

By the 29th section of the same act, it is provided that, in case any one of the banks mentioned in the preceding section, against which a decree of forfeiture shall have been rendered, as aforesaid, shall not enter into the foregoing compromise, then, and in that case, it shall be liquidated as follows, to wit: "As soon as the Governor shall have ascertained that such decree has been rendered, it shall be his duty, by and with the advice and consent of the Senate, to appoint six bank managers."

"The said managers shall be, and are hereby, and until otherwise provided by Legislature, invested with the same powers and duties, and subject to the liabilities, penalties and restrictions provided by the respective charters of said banks, so far as not inconsistent with this act and the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," and the act amending the same: *Provided*, that at any time after said decree, the stockholders of said bank shall cause to be convened and given up to the State all the bonds issued by the State, in aid of or on account of said bank, *then, and in that case*, the Governor, after checking the bonds, shall, by proclamation, announce and declare, if requested by the stockholders, or a majority of them, in number and amount, that they are invested with all their rights in said bank as they exist at the time, and liquidation of said bank shall thereafter be conducted in the same manner provided for in other cases."

Section 30 of the aforesaid act declares that, "if any president and director, or officer of any bank referred to in the foregoing (29th) section, shall refuse to deliver up the assets of such bank, to the managers appointed to liquidate the affairs thereof; or if they, or any other person whatever, should offer any hindrance or obstruction to the taking possession thereof by said managers, the court which rendered the *decree of forfeiture* may, on due proof of such facts, and on motion of the Attorney General, order a writ of sequestration to issue against all assets of such bank, until said decree shall have been complied with.

On the 27th of September, 1842, the Attorney General, in conformity to the act of 14th March of that year, instituted suit in the First District Court, against the Citizens' Bank of Louisiana, setting forth that said bank had ceased to comply with the conditions and obligations imposed upon it by the terms of its charter, and praying judgment against said bank, decreeing the charter of said corporation forfeited.

The bank appeared in court by counsel, and denied, all and singular, the facts and allegations set forth in the petition, presented by the Attorney General.

Whereupon, after hearing the testimony and arguments of counsel, the Court rendered a judgment declaring the charter of said bank forfeited, and ordered that the judgment be forthwith communicated to the Governor of the State, which was immediately done, and a board of managers appointed for the corporation, in conformity with the 29th section of the act of 14th March, 1842.

The idea that the corporate powers of the bank were not lost by the forfeiture is evidently of recent origin. The counsel for the bank, at the time the decree was rendered, appears to have entertained no doubt as to the absolute extinguishment of its corporate powers and privileges, as the immediate consequence of the judgment. This is evident, from the remarks of Judge Buchanan, before whom the case was tried. In his written opinion he states, "It is conceded on the part of the defendants [the bank,] that this court should, in decreeing the forfeiture of the charter, order a meeting of the stockholders to be convened within ninety days, under the 28th section above stated; for, say they, the directors of the bank now in office will have become *functi officio* by the decree of forfeiture, and cannot perform any duty (such as convening the stockholders) appertaining to the directors under the charter.

"It appears to me, (says the court,) that this construction of the law is unsound. The immediate consequence of a decree of forfeiture, upon its confirmation by the Governor, will be the appointment of six managers, who are proposed at once to take into their hands the administration of the affairs of the institution, but the half-time only becomes final and irrevocable by the lapse of ninety days; during that period, it will have a quasi-existence, for the purpose of double trial upon the propriety of accepting the terms offered it in the 29th section, and should it decide that question in the affirmative, at a meeting of its stockholders duly convened, that is to say, convened according to the provisions of the charter of the bank, and should it further bring itself within the conditions of the 28th section, the corporate powers of the defendants will definitely revive, and the managers appointed under the 29th section must retire from the administration of the affairs of the bank. This construction is not, and will not give effect to both sections of the law."

The 28th section of the above recited act is contradictory in its terms, and leaves its meaning, therefore, the real interest of the law makers only to be ascertained by examining the context, with which the ambiguous phrases in question must be compared, in order to ascertain their real intent and true meaning. By this section it is declared that the provisions of the act, applicable to Citizens' Banks generally, shall not apply to those for the bonds of which the State is liable. It is provided, that such banks shall not voluntarily go into liquidation, nor shall a decree of forfeiture deprive them of their corporate powers, except they, within ninety days after such decree, renounce the right to issue notes for circulation, and also create a sinking fund for the purpose of extinguishing the State bonds. "But, if such renunciation be made, and such fund established, the bank shall retain all *its other corporate powers* and privileges."

It is evident that inasmuch as the Citizens' Bank did not renounce the right to issue notes for circulation, and because it failed to provide a fund by which the bonds could be extinguished, that therefore the corporate powers of the bank were not lost or terminated by the decree. If this construction is correct, it follows, that the remuneration been made, and the fund provided, *corporate powers* would have survived the decree; hence, it follows that the bank complied with the conditions above stated, she would have had the right to exercise that privilege, that of issuing notes for circulation; but by not so doing, it retained *all* its corporate rights and privileges, as a reward for its fidelity to comply with the terms and conditions imposed upon it, if it had not complied, a part of these powers only would have been retained. Such construction is manifestly contrary to the reason and spirit of the law, and the obvious intent of its framers.

The Legislature was, no doubt, induced on account of the great interest of the State in the banks, for whose bonds she was liable, to offer such terms as would induce them to secure the State from liability. It therefore provided, that if the charters of any one of these banks should be declared forfeited by a judicial decree, it might still retain all its other corporate rights, powers and privileges upon complying with the conditions before stated, which was the condition, and although, the absolute forfeiture of the corporate existence of the bank is not in express terms declared, as the penalty, yet such was evidently the legal effect and consequence of such omission. This conclusion is strengthened by the fact, that on failure to comply with the aforesaid conditions, as contained in the 29th section of the act, that the same powers, duties, liabilities, penalties and restrictions shall be vested in the bank managers, that are possessed by the banks, by virtue of their charters, which are not inconsistent with this act, and with the act to revive the charters of the several banks in the city of New Orleans, and for other purposes, and the act amending the same.

Then, all the powers, duties, liabilities, penalties and restrictions, which the bank possessed at the date of the decree of forfeiture, were *vested in the managers* appointed for the State, the corporation must of necessity have been *invested of these powers and rights*; hence it follows, that to revive these corporate powers, and *convest* them in the stockholders of the Citizens' Bank, would be *renewing* those powers in such stockholders, and a direct violation of the constitution. This deduction is further strengthened by the proviso contained in the 29th section, which declares, that if at any time after said decree, the stockholders of said bank shall cause all the bonds issued by the State, in aid of or on account of said bank, then, and in that case, the Governor, after checking the bonds, shall, by proclamation, announce and declare, if requested by the stockholders, or a majority of them in number and amount, that they are invested with all their rights in said bank as they exist at the time, and liquidation of said bank shall thereafter be conducted in the same manner provided for in other cases."

This construction is also in conformity with the opinion of the Legislature, as expressed in the 28th Section of the act of 1847, entitled "An act to protect the State against loss on account of its liabilities for bonds, issued for the use of the property Banks, in which it is provided, that nothing in this act shall be so construed as to *revive the charters*, or permit any banking or discounting privileges forfeited by the Citizens' Bank and Consolidated Association." If after a final judgment of court, decreeing the forfeiture of the charter of the bank, and the subsequent Legislative act recognizing the legal effect and validity of the decree, its corporate existence still survives, it follows that no judicial decree or Legislative act can destroy it.

The Constitution, art. 122, declares that no corporate body shall be hereafter "created, renewed or extended with banking or discounting privileges." If then the charter of the Citizens' Bank of Louisiana was lost, it cannot be renewed; if terminated, it cannot be extended without a direct and manifest violation of the *letter and spirit* of the Constitution.

The act, upon the constitutionality of which the Judiciary Committee are instructed to report, is in the following terms: "Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: That the Citizens' Bank be, and is hereby authorised, from and after the passage of this act, to resume all the powers and privileges which it possessed before the judgment of forfeiture rendered against it on the 18th day of Oct. 1842, in the Fifth District Court of New Orleans. Provided, such privileges and powers, in whole or in part, be not contrary to the Constitution of the State, and to what rights may have been acquired by third parties since the aforesaid judgment rendered in the suit of the State *vs.* the Citizens' Bank, and provided also that said bank shall forfeit the aforesaid privileges on the day when any of the State Bonds given for aid in behalf of said institution shall be allowed to be protested; and provided, furthermore, that said bank shall remain subject to all the restrictions contained in the act approved February 5th 1842, entitled an act to revive the charters of the several banks located in the city of New Orleans and for other purposes, and all acts amendatory thereof and relative to the Board of Currency."

This act is not only subject to all the Constitutional objections that have been urged, but to the further objection arising from an apparent evasion of the question, as to the Constitutional right of the Legislature to renew the corporate powers of the bank by shifting the responsibility of deciding that question upon the Judiciary. Although at first view, such seems to be the intention of the act, yet upon a more close examination it is evident such is not its real design. The real intent of the act is, to revive and renew the powers and privileges of the Bank which have been lost and forfeited; the proviso assumes that the powers and privileges of banking may be unconstitutional; the terms of the act are, "Provided such privileges and powers, in whole or in part, be not contrary to the Constitution of the State." It is evident there exists no constitutional objection against the *exercise* of the *privileges* and *powers* of banking; the constitutional prohibition is directed against the *creation, renewal, and extension* of *these powers* and not against the *rights, and powers themselves*; it is therefore evident that the proviso has no other effect than to conceal the object designed by the act.

OREN MAYO,
Of the Judiciary Committee.

LOUISIANA LEGISLATURE.

First Session—Fourth Legislature.

WEDNESDAY, Jan. 23, 1852.

The Senate met pursuant to adjournment.

Present—Hon. J. B. Plauche, Lieutenant Governor and President of the Senate, in the Chair.

Twenty-six members present.

Mr. J. E. Layet, Chief Clerk of the House, informed the Senate that the House has concurred, with amendment, in the Joint Resolutions tendering thanks to General Persifor F. Smith, and asked the concurrence of the Senate to the following bills and resolution.

An act entitled, An act to prevent the Municipalities of New Orleans from levying taxes on capital.

An Act for the relief of W. E. Florence, tax collector 1st Representative District of the city of New Orleans.

An act for the relief of Zelie Gerard, widow De Marans.

An act to change the time of holding the sessions of the District Court of the 7th Judicial District.

Joint resolution instructing our Senators and Members to obtain a donation of land to establish a seminary in the parish of Sabine.

An Act to appropriate a certain sum of school moneys for the purpose of paying the parishes of the State and city of New Orleans, the amount unpaid and accruing to them as collected during the last year.

On motion of Mr. Martin, the rules were suspended, and the Senate took up the first and third Bill, which underwent its several readings, and passed.

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Mr Marin, on behalf of the committee of Unfinished business, reported back to the Senate Bill No 26 with a substitute.

And also reported favorably on Bill No. 35, entitled,

An Act for the relief James E. Tinon of the parish of Rapides.

On motion, the rules were suspended, and Bill underwent its several readings, and passed.

Mr. Cole on behalf of the same committee, reported unfavorably on the petition of W. Mc Fee, praying for relief.

Mr. Benjamin from the Committee on the Judiciary, reported favorably on Bill No. 52, entitled,

An Act relative to sales of succession property.

On motion, the rules were suspended, said Bill underwent its several readings, and passed.

On motion of Mr. Kenner, the Senate took up the report and accompanying documents from the Superintendent of Public Education, and moved to have a thousand copies of said report and documents printed for the use of the Senate.

The President laid before the Senate a communication from J. Y. Axtell, inviting the General Assembly, to hear an address to be delivered by John in the hall of the House of Representatives.

On motion, said invitation was accepted.

The Governor's private Secretary delivered the following message from the Governor with the accompanying letter from Mr George Watterston, Secretary of the National Monument Association in relation to the block, furnished by the State.

EXECUTIVE OFFICE,
BATON ROUGE, Jan. 26, 1852.

To the Senate and House of Representatives:

I have received a letter from our Senator, the Hon. S. W. Downs, enclosing a communication to him from George Watterston, Esq., Secretary of the Washington National Monument Society, a copy of which I herewith transmit.

JOSEPH WALKER.

WASHINGTON, Jan. 9th, 1852.

The Hon. S. W. Downs, Dear Sir—I regret to inform you that the action of the Legislature of Louisiana, to be placed in the great industrial now erecting in this city in honor of the illustrious Washington, is exceedingly defective. It was placed in the corner with a conspicuous position, with stones from other States, but I am assured that from the texture of the material or compositions of which it consists, it began already to crumble, falling in short time so as to render it impossible to indicate it was there, and from whence it came. I am sure that it was the desire of your State to have some enduring memorial of the patriotism and veneration for the memory of Washington placed and preserved in this magnificent testimonial of a nation's gratitude. The crumbling stone will have to be removed and its place fired by another of a more durable character, and of course, no memorial of the State's veneration and respect will then exist.

It is doubtful whether there be in Louisiana any material sufficiently durable and suited for the purpose. I fear Sir, I should suggest, similarly situated have obviated the difficulty, by ordering a marble block to be prepared here of such dimensions and with such embellishments as may be required; and that can be effected at a much less expense and in as good a style as in the State from which it is to come.

I have the honor to be, very respectfully, your obedient servant.

(Signed) GEO. WATTERSTON,
Secretary W. N. M. S.

Mr. Griffin presented to the Senate a petition from W. L. Cason and Frances Cason, asking that an act should be passed to legitimatize their children.

Which, on motion, was referred to the Committee on the Judiciary.

Mr. Benjamin laid before the Senate the following memorials and petitions.

Two petitions of John A. Ragan, a resident of the parish of Natchitoches.

Memorial in relation to the overflows of the Mississippi river and its tributaries.

Memorial in relation to the discovery of the mode, ways and means of making the Lakes of the United States as productive, useful and profitable as sugar estates of the same area would be.

On motion, said memorials were referred to the Committee on Levees and Levees.

Petition from Henry Parrish and John Moore Norman, commission merchants in the city of New Orleans, asking for reimbursement of money paid to the tax collector through error, in 1848.

Said petition was read, and, on motion, was referred to the Committee on Claims.

And also a memorial of Sister Frances Regis, praying for relief.

Which, on motion, was referred to the Committee on Charitable Institutions.

Mr. Clark presented a memorial from Samuel W. Dorsey and John Rouin, tenantenancy cocreditors of Wm. Adams, asking for the emancipation of slave Fanny.

Which, on motion, was referred to the Committee on the Judiciary.

On motion of Mr. Kenner, two members were added to the Committee on Public Lands and Levees, and

Messrs. Duplantier and Griffin were appointed on said committee.

Mr. Cole obtained leave to introduce the following resolution, which was read and adopted.

Resolved, granting the use of the rotunda to the ladies managing the Orphan Asylum at Baton Rouge.

Be it resolved by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened. That the ladies of the Orphan Asylum at Baton Rouge, be and are hereby permitted to use the rotunda in the basement of the capitol, on the 4th of February next, for a ball for the benefit of the orphans of the asylum.

Mr. Richardson, of Ouachita, without previous notice, introduced the following bill, which, on motion, the rules being suspended, was read a first and second time by its title and referred to the Committee on Parochial Affairs

An act entitled an act in relation to strays.

Mr. Watterson, without previous notice, obtained leave to introduce,

An act to secure the speedy administration of succession.

Which, on motion, the rules being suspended, was read a first and second time, and referred to the Committee on the Judiciary.

Mr. Mayo, without previous notice, obtained leave to introduce,

An act, authorizing the clerks of the District Courts to homologate tableaux of distribution and approve accounts in certain cases.

On motion, the rules were suspended, said bill was read a first and second time, and referred to the Committee on the Judiciary.

Mr. Sandidge, without previous notice, obtained leave to introduce the following bill, which underwent its several readings, the rules being suspended, and, on motion was passed.

An act to amend an act approved, 14th, entitled, an act to incorporate the town of Shreveport, and change the name of the seat of justice in the parish of Caddo, the town of Grand Lake, and to authorize the parish of Caddo, to appoint a commissioner to record acts for the town of Shreveport, approved March sixteenth, eighteen hundred and forty-eight.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened*. That the third section of "an act to incorporate the town of Shreveport, and change the name of the seat of justice in the parish of Caddo, the town of Grand Lake, and to authorize the parish of Caddo, to appoint a commissioner to record acts for the town of Shreveport, approved March sixteenth, eighteen hundred and forty-eight, be so amended and re-enacted to read as follows:

That it shall and may be lawful for the police jury of the parish of Bossier, to elect and require of the Mayor and trustees of the town of Shreveport, that all bonds or other obligations entered into by any person or persons for the lease or rent of any ferry across Red River near said town, shall be, in amount, equally divided between said parish, with such security as is required, made payable to the corporation of the police jury of said parish of Bossier, and his successors in office, for the use of said parish, the same to be the Mayor of said town of Shreveport for its use and benefit.

Sec. 2. *Be it further enacted &c.* That the fourth section of the above recited act shall be amended and re-enacted as to read as follows:

That for the purpose of enforcing the demand, and should the lessee or lessees of any ferry across Red River, near Shreveport, fail or refuse to pay the respective parties entitled thereto, the amount of money due as the rent of such ferry, then and in that case, the said President of the police jury of the parish of Bossier, and the Mayor of the said town of Shreveport, shall be and are hereby authorized to sue for and recover the sums thus due to the parties they respectively represent, and that no mere informer or dissatisfaction may ensue as to the solvency and ability of the person or persons who may rent said ferry for terms, to pay the monies for which the same may be leased, the president of the police jury of the parish of Bossier, or some person to be appointed by him, shall be present on the day when said ferry or ferries may be leased as the obligation of the lessee or lessees shall be to secure the information the same shall be executed and secured. And should the parish of Bossier not be there represented, then the Mayor of the town of Shreveport, shall be and he is hereby authorized to sue for and recover the sums due to the parties they represent, and that no mere informer or dissatisfaction may ensue as to the solvency and ability of the person or persons who may rent said ferry for terms, to pay the monies for which the same may be leased, the president of the police jury of the parish of Bossier, or some person to be appointed by him, shall be present on the day when said ferry or ferries may be leased as the obligation of the lessee or lessees shall be to secure the information the same shall be executed and secured. And should the parish of Bossier not be there represented, then the Mayor of the town of Shreveport, shall be and he is hereby authorized to sue for and recover the sum