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WILMINGTON, N. C., WEDNESDAY MORNING, OCTOBER 6, 1869.

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THE DAILY JOURNAL

WILMINGTON, N. C.

WEDNESDAY, OCTOBER 6, 1869.

From the Norfolk Journal. An Important Decision.

The following opinion was given in th Hustings Court of Portsmouth, on Tuesay last, by Judge Oldfield : Gilbert Elliott & Co., vs. the Wilming ton and Weldon railroad company, et. al

on and western rainted on the control of the contro

tantially that on or about September 13, 864, a contract was made by and between the plaintiffs and the Wilmington and Weldon railroad company, by the terms of which it was agreed that the plaintiffs should deliver to said company one hun-dred tons of good serviceable railroad iron at Kinston, N. C. In consideration of hich the said railroad company agreed to sliver to plaintiffs two hundred tons of ld worn out railroad iron at Goldsboro' old worn out railroad iron at Goldsboro' or Wilmington at the option of the railroad company; that although the plaintiffs delivered, according to contract the one hundred tons of iron, yet, although often requested, the Wilmington and Weldon railroad company has refused and neglected to deliver the two hundred tons of old iron, or any part of the same. Damages laid at \$8,000 and interest.

Answer—The answer of the Wilmington and Weldon Railroad Company admits the making of the contract as set forth in the bill, and also the delivery of one hundred tons of iron by the plaintiffs to them, but set forth the following defences:

1. That they delivered all, or nearly all, of said two hundred tons of iron to plaintiffs, in full satisfaction of the contract.

5. That at the time the said contract was made, plaintiffs were acting as agents for the Confederate States, and all that plaintiffs did in and about the premises, was done as such agents; also that the

was done as such agents; also that the funds used by plaintiffs for the purchase of one hundred tons of good iron from the

of one hundred tons of good iron from the
Atlantic and North Carolina railroad company, exchange with the Wilmington and
Weldon railroad company for the two
hundred tons of iron, were the funds of
the Confederate States Government.

3. That the State of North Carolina
and others had a lien by mortgage on the
one hundred tons of good fron purchased
by plaintiffs from the Atlantic and North
Carolina railroad company; and, therefore,
neither the plaintiffs nor the Confederate
States government had title to said one hundred tons of good iron, and could transfer none to the Wilmington and Weldon
railroad company, except such title as was
subject to the lien created by said mortgage.

gage.

4. That the said contract was "illegal, null and void, and in violation of the Constitution and laws of the United States

remembered, declining to receive it), surely it cannot be that this was a delivery. I do not understand that the authorities quoted by counsel for defence sustain any such proposition as this,

do not understand that the authorities quoted by counsel for defence sustain any such proposition as this.

Lord Ellenborough, in Hanson vs. Meyers, 6 Easts R. 614, says, in delivering the opinion of the court, "If anything remains to be done on the part of the seller, as between him and the buyer, before the commodity purchased is to be delivered, a complete present right of property has not attached in the Euger." In my opinion all the authorities quoted by counsel coincide with this learned opinion, and I have no doubt it is the law in Virginia. In addition to this, it is, I think, a proper and reasonable presumption, from the evidence, taking into consideration the bulky nature of the old iron, that the iron so claimed to be delivered to plaintiffs, remained on the wharf where it was put until the restoration of the railroad company by the Federals; which pile was subsequently sold by the Wilmington and Weldon railroad company by the Federals; which pile was subsequently sold by the Wilmington and Weldon railroad company to the plaintiffs of the conclusion that there was no delivery to the plaintiffs of the 200 tons of old iron, or any part of the same in satisfaction or part satisfaction of the confederate States Government.

I do not consider it necessary, after the

saction the agents of the Confederate States Government.

I do not consider it necessary, after the critical analysis given to the testimony on this point by the counsel, to discuss at length the merits of this question. The only direct and positive testimony in the case shows conclusively to my mind that the plaintiffs at the time were contractors with the Confederate States Government to build certain iron-clad gunboats, batteries, etc., and in no legal sense of the term were they agents.

Capt. Cook, who (under orders of his government—Confederate States) contracted for the building of the Albemarie and the "battery not named," says so in almost as many words. He is the Wilmington and Weldon railroad company's witness, and so far as appears from the record, an honest witness, and not to be suspected of a perversion of the facts of the case. My conclusion is, that the plaintiffs in this transaction were not the agents of the Confederate States Government, and although Col. Fremont, Mr. Whitehead and others testify from their impressions and conclusions that the plaintiffs (or their agent, Mr. Robertson, for them) were acting as such agents, yet it cannot be that ing as such agents, yet it cannot be that testimony of such an unsatisfactory char-acter shall be permitted to contradict and outweigh the positive evidence adduced by and understandingly by the transaction, Messrs. Robertson and Cook, who are credible, disinterested witnesses, and whose business it was to know about the matters failed to bring that preponderance of

Dustness It was to know about the matters about which they were testifying.

Third—As to the lien by mortgage on the one hundred tons of good iron, purchased by plaintiffs from the Atlantic and North Carolina Railroad Company and exchanged for two hundred tons of old iron in dispute.

exchanged for two hundred tons of old iron in dispute.

This point was substantially abandoned, or not insisted on, in the oral argument by Messra. Holliday and Gayle, and I consequently only remark that, in my opinion, no competent ovidence was introduced to sustain it. Olearly the deed should have been introduced or its absence explained, before oral testimony could have been received of its contents. Consequently the defence have failed to establish this point.

before oral testimony could have been received of its contents. Consequently the defence have failed to establish this point. Fourth—Was the contract entered into between the Wilmington and Weldon Railroad Company and the plaintiffs illegal, null and void, because it was the intention of the plaintiffs to apply it in the construction of 1the iron-clads to be used in the naval service of the Confederate States?

Clearly in the light of the decisions upon this point, there can be no doubt that it was "illegal, null and void," if such were the purposes of the plaintiffs. The anthorities quoted by defence fully sustain this point, and I find a remarkable coincidence in the authorities quoted by both parties. The law, then, being settled, there is nothing remaining to be done, except an examination of the testimony. I would remark, however, before proceeding to the examination of the evidence, that the recent decision of Chief Justice Chase (cited by defendant's counsel) in Evans and Evans vs. the city of Richmond, uses this language: "Any contract, the object of which is to give aid and support to rebellion against the United Stares, is void."

The rule that "the presumption of law is in favor of the legality of a contract "(Chitty on Contracts, 9th ed., 673) is, however, quite as well settled, and "the objection that a contract is immoral and illegal, as between plaintiff and defendant sounds at all times very ill in the mouth of defendant "(Ibid.) I am brought to this conclusion, then, that the evidence to prove that a contract is in contravention of the laws of the country must be clear and conclusive—so clear and conclusive as to leave no rational doubt in the mind.

laws of the country must be clear and conclusive—so clear and conclusive as to leave
no rational doubt in the mind.

The counsel for the Wilmington and
Weldon railroad company insist that the
plaintiffs made the exchange of good railfoad iron for the old worn out railroad
iron, intending to apply it to the construction of iron-clads for the Confederate
States Navy, and say: "Elliott & Co., in
their letter, declare it; Gov. Vance shows
it could have been obtained for no other
purpose; the guard furnished by the military commander at Kinston, the transportation by Government train to Wilmington, the weighing by a Confederate officer,
and the placing upon the wharf to be rolled in plates—indeed, every witness shows
the purpose to which it was to be applied."

have been under the necessity of conceal-ing what they were doing, as violators of the law commonly are, good reasons would exist why inferences, impressions, and suspicious circumstances should be taken as proof; but in this case I can see no reason why the proof should not be as clear as the noon-day sun—they had no reason to hide their tracks.

reason to hide their tracks.

Captain Cook who, as officer of the Confederate States Government, made the contract for the building of the ironelads with plaintiffs, and who, it is natural to presume, knew more about the contract thany any other witness, says that the plaintiffs were not to furnish the iron to sheathe the vessels; the terms of the contract were that the Confederate States Government were to do this. Why then Government were to do this. Why then the exchange by plaintiffs of this iron?—Robertson says "they had not made up their minds what to do with it." At different times they stated different objects for which they intended it. Was the intent they to apply the they in the control of the contro tent then to apply it to the purpose of sheathing the ironclade fully formed in their minds? If not then, when was it so formed? Did they ever stipulate with the Wilmington and Weldon railroad compa-

ny, or any one clae to use it?

The inference that they intended so to use it can be drawn from their letter to Wallace; but it is only an inference. As to self-commondation, an extra inducement for a liberal bid from the Wilmington and

Weldon railroad company, a protestation of zeal and carnestness in the aervice of their State and the Confederate States.

The money paid to plaintiffe by the Confederate States Government to enable them to purchase iron from the Atlantic and North Carolina railroad was so paid because the Government owed it to them. because the Government owed it to them.
Captain Cook says so, and also asserts that
they had a right to do as they pleased with
it—that the Confederate Government had
nothing whatever to do with this contract
with the Atlantic and North Carolina rail-

Col. Fremont states some facts that go very far to show that the two hundred tons of old from were to be used in the service of the Confederate States Government; but he destroys the value of his evi-dence when he states that "it was very Robertson and Capt. Cook. These two centlemen were in such position that they knew, and knowing, testified clearly

In conclusion, I would say, that I have considered all the points raised by the defendants, the Wilmington and Weldon railroad company, including the one raised by the supplemental and amended answer. Without ruling upon that point, (as the conclusions to which I have arrived upon the merits of the case render it unnecessarily t the merits of the case render it nanecessary) I would say that I think the weight I should have of authority is against the admissibility of the pleading.

There being no dispute as to the amount sequently the of damages and interest, there must be a

G. S. OLDFIELD.

FURTHER FROM CUBA.

The Traitors in the Army of Cespedes. AMERICANS MADE TO BEAR THE BRUNT OF BATTLE

THEY RECRIVE NO QUARTER PROM THE SPANIARDS.

THEIR CONDITION MOST DEPLORABLE. 40, 40, 4c.

Special Dispatch to the Baltimore Gazette.

Washington, D. C., Oct. 3, 1869.
Letters from prominent gentlemen now in Ouba, in the army and sojourning there, to friends in this city, received yesterday, give additional news of an interesting and important character.

Gen. Cospedes is untiring in his endeavors to unite his army by conciliating the various elements of which it is composed. His efforts have not been successful. The removal of Gen. Jordan from command of the most important division of the army, and placing him on the staff of the General commanding, as Adjutant General, instead of having the effect intended, has developed the formidable power of the organized conspiracy and treachery in the army. Officers as high as Major Generals are identified with it and demand the entire exclusion of foreigners from positions of command.

from positions of command.

There are now over twenty-two hundred Americans in the Cuban army, in the different divisions. These men have been,

That the said contract was "illegal, and it wicklassion of the Constitution and laws of the United States and State of North Carolina," that the contraction of iron-clade for the Confidence of the Confidence of

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W is Will PAY AGENTS A SALARY of \$30 per week and expenses, or allow a large commission, to sell our new & wonderful invention. Address M. Waonza & Oo., Marshall,

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\$25 A DAY. S3 new articles for Agents.
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REVERNINGES:—We select the following from many who have lately drawn Yainable Prizes and indly permitted us to publish them; Andrew J Buros, Chicago, \$10,000; Miss Glara 8. Walker Baltimore, Piano, \$200; John Z. Andrews, Eavannah 5,000; Miss Agnes Simmons Charleston, Piano, 600. We publish no names without permission Opinions or the Pages; "The firm's reliable, and deserve their success." Weekly Tribuse, and deserve their success." Weekly Tribuse, and deserve their success."

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that the DRAW of the Mearce Bing Bridge will
be habitually open when a White Highal by day
and a White Light by night will be shown up and
down the river from a point 16 (sixteen) feet
above the centre of the Draw.

When the DRAW is closed, to allow the passage of trains a Red Signal by day and Red Light
by night will be shown up and down the river.

The Red Signal is shown upon the track when
the Draw is open and the White Signal when it is
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sept 8 Star and Post copy 1 month, OFFICE W., C. & R. R. R. M. OO. WHERTON, N. U., Sept. 6, 1869.

HE REGULAR ANNUAL MERCING OF Stockholders of this Company will be the city of Charlotte, on Wednesday, the Cotober next.

By order.

OALVIN J. COWLES,

Becretary of the Board,

Wilmington Star and Post, M. C. Argus, Charlotte Democrat, Butherford Star and Vindicator,
and Raisigh Standard copy above once a week till
day of mosting.

201-lawim

BOARD IAN be obtained by the month or day, by aplying to Mrs. W. H. LIPPIPT, on Second St

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CORN MEAL, and will sell in quantities to suit at the lows market price. Orders respectfully solicited, as prompt attention will be given to them. JMS. M. WILLIAMS. oct 2 5-1w

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1869, Attachment and Attachment

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O TIERCES PRIME LARD.

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