

IN THE HONORABLE THE  
**Supreme Court of the United States.**  
December Term, 1871.

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WM. FAGAN, ET AL.,  
*vs.*  
STATE OF LOUISIANA, EX REL. } No. —.

BUTCHERS' BENEVOLENT ASSOCIATION  
OF NEW ORLEANS  
*vs.*  
THE CRESCENT CITY LIVE-STOCK LAND-  
ING AND SLAUGHTER-HOUSE COM-  
PANY. } No. —.

BUTCHERS' BENEVOLENT ASSOCIATION  
OF NEW ORLEANS  
*vs.*  
THE CRESCENT CITY LIVE-STOCK LAND-  
ING AND SLAUGHTER-HOUSE COM-  
PANY. } No. —.

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*Brief of Counsel of Defendants in Error on Motion to  
Dismiss.*

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On the 14th of December, 1871, the counsel of defend-  
ants in error suggested to the court that in these cases all  
the matters in controversy between the parties had been  
settled and moved that in pursuance of agreement to that  
effect the writs of error should be dismissed.

See paper book entitled, "Motion to dismiss," p. 3.

This motion was supported by documents and affidavits.  
See P. B., "Motion to dismiss," pp. 4 to 41 inclusive.

Counter-affidavits were filed by certain parties claiming interest.

See P. B., "Motion to dismiss," pp. 42 to 47.

The documents and affidavits formerly were only in manuscript, and have been transformed by the aid of the printer to a more readable shape to enable the court more readily to follow this argument in support of the motion to dismiss.

There had been instituted a very large number of suits in the courts of the first instance in New Orleans for and against the Crescent City Live-Stock Landing and Slaughter-house Company, and an agreement was entered into by the parties plaintiff and defendant that, of the whole number, six should be tried and taken up on appeal to the supreme court of Louisiana.

See P. B., "Motion to dismiss," p. 7, paragraph *second*.

It was stipulated that proceedings in all other suits should be stayed until the six cases should be decided in the supreme court of Louisiana.

Here is the agreement itself, extracted from page 18 of the transcript of record in the case of Hortaire Imbau and others *vs.* The Crescent City Live-Stock Landing and Slaughter-house Company, No. 475, on the docket of December term, 1870 :

*Agreement K, filed December 9, 1869.*

IMBAU, AYCOCK & Co.	}	No. 1,537.
<i>vs.</i>		
CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.		

It is hereby agreed that the following cases, involving the rights of the Crescent City Live-Stock Landing and Slaughter-house Company, namely, The Butchers' Benevolent As-

sociation *vs.* The Crescent City Live-Stock Landing and Slaughter-House Company, No. —, 6th district court; Imban, Aycock & Co. *vs.* The Same *et al.*, No. 1,537, 7th district court; The Live-Stock Dealers and Butchers' Association *vs.* The Same *et al.*, No. 1,883, 7th district court; The Crescent City Live-Stock Landing and Slaughter-House Company *vs.* The Butchers' Benevolent Association, No. 585, 5th district court; The Same *vs.* The Steamer *B. L. Hodge* No. 2, captain and owners, No. —, 5th district court; and The State of Louisiana *vs.* Wm. Fagan *et al.*, No. 809, 5th district court, shall be taken up, tried, and submitted at the same time upon the pleadings and admissions on file and the evidence to be taken upon the question of the compliance of the Slaughter-House Company on the 1st of June, 1869, with the provisions of the 4th section of act No. 118 of acts of 1869, the evidence to be taken in the case No. 1,883, 7th district court, and the testimony taken in that case to be used in all the other cases above designated; that the court in these several cases are to maintain the exceptions or reject the testimony, as the case may be, as to the bribery, corruption, &c., of the legislature on the objections of the attorneys of the Crescent City Live-Stock Landing and Slaughter-House Company, the other side, in each case, taking bills of exceptions *in each case* to such ruling of the court, the cases to be decided *pro forma*, and signed as soon as possible, and appeals to be taken by each party; *cost*, on motion, and on giving bonds for costs, without citation or other notice, returnable to the Supreme Court as soon as possible, and to be filed together. In the meantime proceedings in all other cases to which the Crescent City Live-Stock Landing and Slaughter-House Company are engaged or interested, as against any of the other parties, either as plaintiffs or defendants, in these six suits, are stayed until the final decision of these suits by the supreme court of the State of Louisiana, and to abide the result, so far as applicable, of the final decision in any or all of the six cases therein named; that these cases shall be, if allowable, submitted to the supreme court on brief or argued orally together, if possible, as soon as the same shall be allowed by the supreme court, either party to use or refer to any part of any of the six records in either of the six cases.

This agreement to be filed in No. 1,883, of the 7th district court.

New Orleans, 9th December, 1869.

JOSEPH P. HORNOR,  
*For Defendants.*  
FELLOWS & HILLS,  
*For Plaintiffs.*

The counsel who signed the above agreement for plaintiffs and defendants, respectively, were of counsel in all the cases which existed.

See P. B., "Motion to dismiss," p. 7, paragraph *first*, and all the transcripts of record filed in these cases.

The six cases having been tried and decided in the courts of first instance in New Orleans, went on appeal to the supreme court of Louisiana, as has been stated. In the latter court the following agreement was entered into by the counsel of the respective parties, as may be seen on pages 27 and 28 of the transcript of record in the case of Paul Esteben and others, plaintiffs in error, *vs.* The State of Louisiana, *ex rel.* S. Belden, Attorney-General, No. 9 of the docket of this court of this term :

SUPREME COURT OF THE STATE OF LOUISIANA.

*Agreement of Counsel—Filed January 3, 1870.*

SUPREME COURT.

IMBAU, AYCOCK & Co.	}	No. 2,504.
<i>vs.</i>		
C. C. L. S. L. AND S. H. Co.	}	No. 2,505.
BUTCHERS' BENEVOLENT ASSOCIATION		
<i>vs.</i>	}	No. 2,506.
SAME.		
L. S. D. AND BUT. ASS'N	}	No. 2,507.
<i>vs.</i>		
SAME <i>et al.</i>	}	No. 2,507.
C. C. L. S. L. AND S. H. Co.		
<i>vs.</i>	}	No. 2,507.
ST. B. T. B. L. HODGE No. 2 AND OWNERS.		

STATE, <i>ex rel.</i> S. BELDEN, ATT'Y-GEN'L,	}	No. 2,508.
<i>vs.</i> WM. FAGAN <i>et al.</i>		
C. C. L. S. L. AND S. H. Co.	}	No. 2,509.
<i>vs.</i> BUTCHERS' BENEV. ASS'N.		

It is agreed that the above six entitled and numbered suits are to be submitted to the court for adjudication upon the briefs filed and arguments made in the case of *The State ex rel. Simeon Belden, Attorney-General, vs. Wm. Fagan et al.*, No. 2,508 of the docket of this court, and at the same time of the submission of said case.

N. O., *January*, 1870.

JOSEPH P. HORNOR,  
*of Counsel for C. C. L. S. L. and S. H. Co.*  
FELLOWS & MILLS,  
*Attorneys for Imbau, Aycock & Co. and others in above suit.*

The six cases thus simultaneously submitted to the supreme Court of Louisiana were decided in November, 1870.

See 22 Louisiana Annual Reports, p. 545, *et seq.*

In the opinion of the supreme court of Louisiana, (see p. 547 :) "The constitutionality of the act of 8th March, 1869, No. 118,"—the act entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, and to incorporate the Crescent City Live-Stock Landing and Slaughter-house Company," (session acts, p. 170)—"is involved in the cases numbered 2,504, 2,505, 2,506, 2,507, 2,508, 2,509,"—the same numbers contained in the above agreement—"submitted to us; and as they, collectively, present for decision all the objections urged against the validity of the act, IN UPWARDS OF TWO HUNDRED CASES NOW PENDING in the district courts of the parish of Orleans, and as there is a written consent to that effect, we will proceed to pass upon the questions presented in the several records as if they were in one case."

The supreme court of Louisiana having rendered judgment in favor of the appellees in that court, the defendants in error here, writs of error were sued out to this court, returnable to December term, 1870, and the plaintiffs in error sought here to procure such an order of *supersedeas* as would dissolve the injunctions originally imposed against them in the courts of the first instance in New Orleans.

This attempt was unsuccessful.

See the decision of this court in Slaughter-house cases, 10 Wallace, p. 273, rendered at the December term, 1870.

The cases brought to this court, being the same as those mentioned in the agreement in the supreme court of Louisiana, set forth above, were docketed here as follows, from No. 475 to 480 :

1. William Fagan *et al. vs.* State of Louisiana. This case stands on the docket of this court as Paul Esteben, L. Ruch, J. P. Ronede, W. Maylie, S. Firmberg, H. Beanbay, *William Fagan*, and others, plaintiffs in error, *vs.* The State of Louisiana *ex rel.* S. Belden, attorney-general, and is No. 9 on the docket of this term.

2. Imbau, Aycock & Co. *vs.* Crescent City Live-Stock Landing and Slaughter-House Company.

3. Butchers' Benevolent Association of New Orleans *vs.* same defendant.

4. Same *vs.* same.

5. Live-Stock Dealers and Butchers' Association *vs.* same defendant.

6. Steamer *B. L. Hodge No. 2 vs.* same defendant.

Subsequently to the judgment of this court refusing their motion for a *supersedeas*, the plaintiffs in error dismissed the writs in three of the above cases, viz :

No. 2. Imbau, Aycock & Co. *vs.* Crescent City Live-Stock Landing and Slaughter-House Company.

No. 5. Live-Stock Dealers and Butchers' Association *vs.*  
The same defendant.

No. 6. Steamer *B. L. Hodge No. 2 vs.* same defendants.

Consequently, Imbau, Aycock & Co. have no further complaint to make here, nor have the Live-Stock Dealers and Butchers' Association, nor the steamer *B. L. Hodge*. We have to deal apparently at the present time with William Fagan and others, plaintiffs in error in the first case, and with the Butchers' Benevolent Association of New Orleans, plaintiffs in error in the third and fourth cases. On examining the record in the first case, the court will find that there were two parties petitioners in the courts below, and two parties plaintiffs in error here in the case. It was a suit brought by the attorney-general of the State of Louisiana against, 1st, Charles Cavaroc, 2d, Paul Esteben, and the other parties named, who form a corporation under the style of "The Live-Stock Dealers and Butchers' Association of New Orleans."

See Record, Paul Esteben *et al.*, plaintiffs in error, *vs.*  
State of Louisiana, No. 9 of this term, petition, pp.  
1 and 2.

See admission of fact and act of incorporation, same  
record, pp. 19 *et seq.*

See judgment of the fifth district court of New Orleans,  
same record, p. 24.

See petition for writ of error, same record, pp. 44  
and 45; Bond for do., pp. 46 and 47.

Hereupon look first to the plaintiff in error in said case, Charles Cavaroc. He has declared that there has been compromise agreed upon by which all the matters in issue in the cause have been compromised and settled, and that he wishes his writ of error dismissed.

See P. B., "Motion to Dismiss," p. 4.

Then with regard to the other plaintiff in error in this case, No. 9 of present docket, "The Live-Stock Dealers and Butchers' Association of New Orleans." What are the facts? The said company brought suit in the seventh district court of New Orleans against the defendants in error here, which was one of the six suits named in the agreement set forth in full above, and found at page 18 of the transcript of record of the case of *Imbau, Aycock & Co. vs. The Crescent City Live-Stock Landing and Slaughter-House Company*, No. 475 of the docket of December term, 1870, and is the same which came here on writ of error to the supreme court of Louisiana, was No. 477 on the docket of December term, 1871, under title of *Live-Stock Dealers and Butchers' Association vs. Crescent City Live-Stock Landing and Slaughter-House Company*, and was dismissed on its own motion. The case thus dismissed involved the same questions as the one now before the court, for which we have the assertion of the parties themselves on p. 17 of the record of this case, No. 9 of the docket, where they say the case dismissed and this case present the same identical cause of action.

Now, why was the other case dismissed? For the causes set out in the P. B., "motion to dismiss:" "that since said date," 14th March, 1871, "the corporation known as the Live-Stock Dealers and Butchers' Association of New Orleans has been dissolved and its affairs finally wound up, and the said association was a party to the compromise which was to put an end to the litigation and to these proceedings in error."

See same, page 4.

See also the exhibit B, by which the said Live-Stock Dealers and Butchers' Association, by an agreement signed



by the president of the association, expressly stipulates this and all other suits.

See P. B., "Motion to dismiss," p. 5.

See same, p. 8, paragraph *third*.

See the sale of property of the said Live-Stock Dealers and Butchers' Association, P. B., p. 11.

This feature of the case is entirely uncontradicted. None of the counter-affidavits filed in the case have any reference to the "Live-Stock Dealers and Butchers' Association."

See P. B., "Motion to dismiss," pp. 42 to 47, where all the counter-affidavits are printed.

Upon this showing, it is submitted that the case No. 9 of the present docket, Paul Esteben and others, plaintiffs in error, *vs.* The State of Louisiana, should be dismissed on the motion heretofore made.

Two other cases remain upon your docket—Nos. 8 and 10 of this term—in both of which "the Butchers' Benevolent Association of New Orleans" is the plaintiff in error.

In No. 8 it appears the plaintiffs in error here brought suit in the sixth district court of New Orleans, claiming damages to a large amount, and praying for an injunction against the Crescent City Live-Stock Landing and Slaughter-house Company, to prevent them from exercising the powers conferred upon them in the charter granted by the legislature of Louisiana. The sixth district court refused the injunction, and gave judgment against the plaintiffs in error, who took the case to the supreme court of Louisiana, whence, the judgment having been affirmed, the case has been brought here on writ of error.

In No. 10 the Crescent City Live Stock and Slaughter-house Company brought suit in the fifth district court of New Orleans to restrain the plaintiffs in error from interfering with the exclusive privileges granted by the former's

charter. There was judgment against plaintiff in error, who took the case to the supreme court of Louisiana, to which, the judgment of the district court having been affirmed, a writ of error was sued out from this court.

The Butchers' Benevolent Association of New Orleans has existed for a long time in New Orleans, (see transcript in No. 8, p. 1,) and as appears from the language of the petition were very much vexed at the defendants in error here; but, as will now be shown, came to the conclusion that it was better to compromise than contend.

Attention is first called to the extract from the minutes of the meetings of the Butchers' Benevolent Association to be found in P. B., "Motion to dismiss," pp. 28 to 39. Paul Esteben was president of this association.

See Rec. No. 8, page 7, top.

At the meeting of February 23, 1871, P. Esteben and J. Gritzinger were appointed a committee to confer with Mr. Cavaroc relative to a proposed compromise, the object of which was to bring about a final settlement of all the litigation between the two companies.

See P. B., "Motion to dismiss," pp. 28 and 29.

Who was Mr. Cavaroc?

At the commencement of this litigation, in July, 1869, Mr. Cavaroc was the owner of the parcel of land below the city of New Orleans and on the same side of the Mississippi, which the corporation styled "The Live-Stock Dealers and Butchers' Association" were about to lease and purchase from Mr. Cavaroc for the purpose of erecting thereon buildings for landing and stabling cattle, &c., and which design was prevented by a writ of injunction from the fifth district court of Louisiana, forbidding C. Cavaroc to lease or sell and the Live-Stock Dealers and Butchers' Association to purchase for such purposes.

See the record in No. 9, pp. 1 to 4 and p. 24.

The said Live-Stock Dealers and Butchers' Association had been formed on the 21st day of the same month of July, 1869.

See the act of incorporation, record No. 9, pp. 19 to 22.

This company was merely an off-shoot and member of the Butchers' Benevolent Association, composed of the same members, and the same man, Paul Esteben was president of both.

See the record No. 10, pp. 14, 15, 16.

The judgment of the fifth district court prohibiting the continuance of this company was rendered on the 10th December, 1869, (see Rec. No. 10, pp. 21 and 22,) and confirmed in the supreme court of Louisiana on 11th April, 1870.

Same record, p. 25.

At that time Franklin J. Pratt was the president of the Crescent City Live-stock Landing and Slaughter-house Company.

See Rec. No. 8, pp. 11 and 12.

But after the decision of the supreme court of Louisiana, adverse to the plaintiffs in error, and after the failure of the attempt to obtain a *supersedeas* in this court, a new movement was set on foot, and the same Charles Cavaroc, who had been contending in court with the defendants in error here, became the president of their association.

See his affidavit at the foot of page 4 of P. B., "Motion to dismiss." and top of page 5.

The interest of the two corporations, the plaintiffs and defendants in error, have thus ceased to be divergent, and hence the resolution of the plaintiffs in error, quoted above, appointing a committee to compromise; and the subsequent proceedings show that the compromise was effected, and the act between the parties passed in pursuance of it, which is

to be found at pp. 11 to 28 of the P. B., "Motion to dismiss."

These proceedings, it will be remarked, are all carried on in the name of the Live-Stock Dealers and Butchers' Association of New Orleans," but, as has already been shown, this corporation was the same thing, or only an arm of the Butchers' Benevolent Association, and the only matters in dispute between the latter, who are the plaintiffs in error here, and the Crescent City Live-Stock Landing and Slaughter-House Company, the defendants in error, is the very matter which is compromised and settled between the parties in the movements above described, as will be seen on reference to the pleadings in these cases in the courts where they were instituted in New Orleans, as found in the records 8, 9, and 10.

In addition to this, you have the contemporaneous certificate of Paul Esteben, as president of the Butchers' Benevolent Association on P. B., "Motion to dismiss," p. 5; the letter of Mr. Hornor on same, pp. 6 to 10; the certificate of Pratt on same, pp. 10 and 11; and the affidavits of Lafontaine, Stevenet, and Castaing on same, pp. 39, 40, and 41. All the proceedings, acts, certificates, and affidavits show, by positive averment, that the suits now pending in this court were compromised and settled between the parties.

What have you on the other side? Merely unofficial and passive denials, averring that the fact of compromise does not appear upon the minutes, and that individually they knew nothing about it, all of which may possibly be true, and, for the sake of argument, may be admitted; but it can have no effect against the official, circumstantial, and positive declarations that the compromise was, nevertheless, actually submitted.

Respectfully submitted.

THOMAS J. DURANT,  
*For Defendants in Error.*