THE DAILY RECORD-UNION.

THURSDAY.....FEBRUARY 14, 1884

THIS MORNING'S NEWS.

In New York yesterday Government bonds were quoted at 123⅜ for 4s of 1907, 114⅜ for 4½s; sterling, $4 86½@4 90; 101 for 3s, 100 for 5s; silver bars, 111⅞.

Silver in London, 50¼d; consols, 101 11 16d; 5 per cent. United States bonds, extended, 105; 4s, 126⅞; 4½s, 116⅞.

In San Francisco Mexican dollars are quoted at 88 cents.

Mining stocks were again weak in San Francisco yesterday. Bodie was active, but at lower prices, opening at $7, and rising at $7 25, with 4,000 shares sold. A lot of 100 shares, seller 30, was let go at $6 62½. Ophir sold at $1 25, after selling down to $1 20 Tuesday evening. Gould & Curry dropped to $1 45, the lowest in some time. Eureka Consolidated sold at $1 for an odd lot of 5½ shares, but regular lots were quoted at $1 25. The Tuscarora stocks were not so firm.

The gymnasium at Berkeley was destroyed by fire Tuesday night.

A motion has been made for a new trial at Tombstone, A. T., in the case of the Bisbee murderers, and argument thereon will be heard next Monday.

British troops in Egypt have been ordered to relieve Tokar.

At Dundee, Scotland, Tuesday, seven persons were drowned by the capsizing of a pleasure boat.

A commercial convention between Spain and the United States will shortly be signed at Madrid.

A dispatch states that the commander of the French forces in Tonquin intended to attack Bacninh Tuesday.

Bradlaugh proposes to stand in Northampton for re-election to the House of Commons.

It is stated that the Atlantic and Pacific Railroad will be extended to San Francisco, independent of the Southern and Central Pacific.

Dr. George H. Marshall, tried at Pittsburg for attempting to blackmail Mary Anderson, has been acquitted.

The Queen of Tahiti left New York yesterday for France.

Mexico will be represented at the World's Exhibition in New Orleans, the Government having appropriated $2,000 for that purpose.

Fire at McMinnville, Or.; loss, $4,000.

The report of the safe arrival of General Gordon at Berber is confirmed. He left there yesterday for Khartoum.

After the rebels entered Sinkat they put everyone to the sword.

Unprecedented weather is reported from Texas, consisting of cyclones, rain and sleet.

A young merchant of Augusta, Ga., has received sixteen challenges to fight duels from as many different young men, and has accepted them all.

A violent earthquake occurred at Bittles, Asiatic Turkey, which destroyed many buildings.

Cox has been elected Chairman of the Democratic National Committee, in place of Rosecrans.

Heavy fogs are causing much inconvenience in New York city.

Mervine Thompson challenges John L. Sullivan to a hard-glove fight for $1,000 or $5,000.

The Walla Walla (W. T.) Board of Trade protest against the forfeiture of the Northern Pacific land grant.

The Tucson (A. T.) opera-house, burned Tuesday night, cost $21,000 about a year ago, and was well insured.

The gross receipts of a matinee in Chicago yesterday for the benefit of the flood sufferers were $5,000.

Fire at Sprague, W. T.; loss, $50,000.

The National Trotting Association is in session at New York.

Trouble is imminent with the striking miners at Shaners, Pa.

The National Educational Association began its annual session in Washington yesterday.

A glove fight in New York last night was stopped by the police in the third round.

The death of Aaron Brinstein, the German publicist, is announced.

William Huefner, a pioneer of 1847, died in San Francisco yesterday.

THE RAILROAD COUPON CASES.

Whoever has read the decision of the Superior Court of this county in the railroad bond coupon cases must, if dispassionate and just, conclude that the law is correctly interpreted therein. The fact, however, does not prevent the rabid press from assailing the Court that rendered the judgment. It is another manifestation of the mania which afflicts a portion of the press. When the action was brought, the anti-railroad maniacs at once assumed that the coupon holders must be defeated. It was not deemed necessary to examine into the facts—it was sufficient to know that indirectly the railroad was related to the issue for the howlers to conclude that judgment, right or wrong, must accord with their vicious ideas of justice.

Now, there could be but one outcome to the action—it goes to the Supreme Court at once, and we venture the prophecy that that tribunal will be unanimous in affirming the judgment. But it is not probable that the Court below will thereby be righted by the hyenas which have assailed it, notwithstanding that the Judge who sat in the case passed upon it as a cold matter of law, and has not given ground for the assault made upon him. Subserviency on his part to the assumed popular clamor which demagogues "whoop up" so diligently would have made him a most wise Judge, in their estimation, but the law would have remained just the same. It was a very simple case. The State guaranteed the payment of interest on bonds issued by a railroad company in 1864. For that consideration the company contracted with the State to do it certain service forever—that is to say, during its existence. The contract provided that if the corporation failed in any respect to comply with its agreement, the State should sue and recover back from it all the interest paid out. Obviously, by this very provision the payment of interest was independent of and not dependent upon performance on the part of the corporation. The purpose was to give value to the bonds, but it will be apparent to the dullest intelligence that no such credit value would have been conferred whatever if, it depended upon the continuing conditions. That is to say, no man would have put money into such bonds if he knew that the security given by the State's indorsement as to interest could be rendered of no value. This we pointed out a year ago when the matter first came up, and when an action was brought against the company to recover back to the State the interest paid, on an allegation of violation of the contract. Yet on the heels of this complaint—and which has just been defeated on demurrer in a San Francisco Court—the State refused to pay interest coupons held by third parties. Whenever, if ever, the State brings the first action to trial, it will probably develop that the compact has not been violated, for the corporation people would be more than fools to render themselves liable for a large sum of money by refusing to carry out the provisions of the contract, which requires State messengers to be transported free, and certain granite quarries to be deeded to the State whenever the General Government gives the company a patent thereto. These suits have not had the indorsement or countenance of lawyers familiar with the facts, and jealous of their reputation for legal acumen, and it is safe to assume that the Attorney-General did not appear in the coupon case because he knew that the law and justice would not justify the Court in upholding the refusal to pay the interest. It is just possible that even a case to which a railroad company may have a remote relation, may, according to the dictates of justice, go against the anti-railroad maniacs; but in their estimation there can be no such an honest outcome. If it happens that there is a complete defense to some of their claims, they cover their defeat by assailing the tribunals where they invoke justice and receive it.

THE OUTLOOK FOR CONGRESSIONAL AID.

It is said that Congress never reaches for action more than eight per cent. of the business brought before it. Out of some 10,000 bills, resolutions and petitions what chance have we, the people of a remote section—a mere drop in the great ocean of struggling interests—of securing a hearing on the important question of the preservation of the river? Not much, it must be confessed. But for that very reason we should be the louder in our cry. To wait until the next Congress will not better the matter a particle. We should make up and forward our preamble of facts and petition for relief at once. It is probable that our delegation may be able to receive from the proper department such attention as will justify a recommendation of inquiry at least, and that can probably be got through the present Congress, even if no direct appropriation can be had. The animosity already manifest to river improvement bills in Congress may be taken as an indication of the improbability of securing an appropriation at this time to straighten the river, confine its current or restore its capacity. This opposition to river improvement is so pronounced that worthy measures must suffer with the bad ones. It arises out of the fact that claims for such a multitude of insignificant streams are put forward as riders to worthy bills offered, that the whole lot goes down in disgrace. This is precisely what befell the river and harbor bills in the last Congress, and is the probable fate of any measure for California that may now be pressed. Mr. Budd's bill for the improvement of the river should pass; it has been assailed in some quarters because of fears that it would prove a shield for hydraulic mining, but since then Mr. Budd has distinctly disclaimed any such intention on his part, and can so modify the bill that this bare suspicion cannot even attach to it. But we have, as already said, very little faith that the measure will become law. There is, therefore, all the more reason for energetic and immediate efforts being made in the way of general petitions, memorials and representation of the facts to our Senators and Representatives on the part of county and city officials, Boards of Trade, Supervisors, citizens' associations, taxpayers' unions and commercial organizations, supplemented by such other legitimate influences as can be brought to bear upon Congress.

THE FLOODS.

Deplorable as are the floods now prevailing at the East, vast as is the damage done by the merciless waters, and great as are the sufferings of the people, there is some compensation to flow from the great disasters. They will direct attention to the reckless manner in which we have been and are denuding wooded slopes where the rivers and their tributaries rise, and along which they are fed. Unquestionably the cutting off of timber, and the extent of the tile underdraining practiced along the Ohio and its tributaries, are the chief causes of the present disaster. The earth can no longer retain the waters as they fall; they quickly fill, instead of slowly feeding the streams, and floods result. The lesson which the calamities of the East teaches us is unmistakable.

NATIONAL TEXT-BOOKS.

The proposition put forward in Congress to have the Government issue a series of national school books is not likely to be translated into a law, but it should none the less receive the condemnation of the press. The extreme reformers, if given rein, will so patch up and cut away our school system that its integrity will be destroyed. The system of common-school education should be left with the States, and will be. Any interference by the General Government in this respect will lessen the sense of responsibility each State should feel. Self-reliance will be destroyed and vigorous pride in the free schools will be displaced by the indifference that always preceeds the decay of public institutions.

NO APPEAL TO BE TAKEN.

It is announced from San Francisco that in the Woodruff hydraulic mining case the appeal to the United States Supreme Court has been vacated. This, if the information proves authentic, means that the hydraulic miners will not further contest—at least so far as that case is concerned—and indicates their acquiescence in the decision of Judges Sawyer and Deady. Assuming the statement made to be correct, it amounts to a practical settlement of the hydraulic mining question, and the final determination of the law concerning that important issue. It is a matter for congratulation that the end has been reached in the Woodruff case so speedily.

SECRETARY FOLGER will now unquestionably be the woman's ideal of right represented in manhood. The Solicitor of the Treasury, with a relentless cruelty thinly veiled behind a polite but threadbare compliment to "the majesty of woman" (and which the merciless telegraph worded "the necessity of woman"), decided that Mrs. Miller could not take a pilot's license for the Mississippi river. But the Secretary has swept aside the decision with a nonchalant movement of his official arm that makes him a woman's rights hero. He has ordered that Mrs. Miller be admitted to the examining class of pilots, and that if she is found to be competent, a certificate must be issued to her. Right, Mr. Secretary; whatever woman proves her capability for, that let her do.

MR. BERCHER at the late meeting of the Church Temperance Society in Brooklyn, took the position that the high license movement is not antagonistic to either the prohibition or the total abstinence movements. The former is purely a business and regulative scheme, the latter deals wholly with the moral and physiological aspects of the habit of drinking. The question of regulating the doing of business is one of administrative policy, and no sentimental element is concerned. The man who pays a high license to conduct a business, will see to it that Tom, Dick and Harry do not come into it to depreciate it, and thus his influence is gained in the interests of regulation.

IT begins to look very much as if the telephone monopoly is about to be broken up by the triumph of Drawbaugh's claim, that he operated a telephone in all essentials like that now in use as early as the spring of 1875, whereas Bell's patent was not applied for or issued until 1876. The case is now before the Courts.

ONE thing that must disturb the equanimity of the President-makers and speculators, is the evident fact that the people as a mass are not evincing very much interest in the matter. Singular as it may seem, it is nevertheless true that the country is not much agitated over the question who shall be chosen next President.

IT is believed the Senate committee to investigate the Mississippi political outrages will accomplish little, because witnesses will not dare to testify against the bulldozers. This is not an unfair inference. It was what happened in former efforts of this kind. It is a part of the suppressing policy.

IF the Electoral College system is to be adhered to, then it will be wise to make it a permanent body for the term of each administration. It will be safer in case of Presidential vacancy to intrust a new choice to the same machinery that chose the original incumbent.

THE policy of the American Government, if the advice of the sugar planters of the South is followed, will be to stop up all our ports for fear some little foreign trade will creep in.

THE TAX CASES.

Correspondence Between the Governor, Attorney-General and Others upon the Subject.

A printed copy of the official correspondence concerning the proposed compromise of the railroad tax cases was issued yesterday from the office of the State Printer. The principal letters are as follows:

OFFICE OF ATTORNEY-GENERAL OF CALIFORNIA, SAN FRANCISCO, January 29, 1884.

To his Excellency George Stoneman: The Central Pacific Railroad Company and the Southern Pacific Railroad Company are delinquent on the taxes for the years 1880-81-82. Offers were made by the delinquent companies to your Excellency to pay the taxes of the three years above written on the basis of the assessment of 1882, which was much less than the assessment for 1880-81. Those offers were rejected, on the ground that no authority to scale a tax existed. Another offer has been made by those companies to pay the taxes for 1880-81-82 in full, except as to those cases in which appeals have been taken to the United States Supreme Court, and to pay in full in those cases, whether the judgment of that Court is for or against the roads, when the judgment is rendered. The object being to test certain principles in dispute between the companies and the State. This offer, however, does not include five per cent. penalty for delinquency, nor two per cent per month interest, nor ten per cent. attorney fee, which are demanded in the suits. This offer, to my mind, presents a different question from the other, and is not within the principle upon which the other was rejected. The power to tax is a sovereign, imperial power. The issue with the companies, as raised in the first proposition, is an issue of supremacy. The companies refused to pay because the tax was excessive, and offered to pay only if the tax was reduced. To have accepted their proposition would have been to surrender the principle of sovereignty in the State—to admit the right of the citizen to resist the payment of taxes, not on the ground of their illegality, but of their amount. This no officer and no Court has power to do. A Court having jurisdiction may declare a tax illegal, but cannot declare it excessive or reduce the amount.

The offer now made does not seem to me liable to this objection. It concedes the right of the State to levy and collect a tax which the companies aver is excessive, thus yielding the supremacy, and submitting to the sovereignty of the State. The sums demanded in the suits against the company as penalty, interest and attorney fee, do not appear to me to involve the vital doctrine of your Excellency's refusal of their first offer, nor any vital doctrine. It is a question of costs—of procedure—not of revenue or principle. It is a matter of administrative determination. Without implying any doubt as to whether those sums should be collected—the question whether the suit for them should be pressed to judgment or not, after the principal sum, the real tax, is paid or tendered, after the *revenue* enacted to be paid *is paid* in full, is, I think, legitimate matter for your active consideration, and in this case in the power of this office to settle as a question of law. If a judgment for the face of the assessment for the years 1880-81-82 is entered on my motion, or with my consent, it is, in my opinion, final.

Under this view of the situation, taking to this office the responsibility so far as a question of law is involved, and assuming distinctly the power lawfully to accept the payment offered, there remains manifestly a question of policy, and the responsibility rests with the administration. This question I shall state as clearly and as briefly as I can. And that the question may be fully understood it is necessary to bear in mind the following facts:

The general fund has been for many months exhausted, and has borrowed from all available sources whatever could be safely transferred. The taxes which have been paid in will not replace the borrowed money and meet the demands on the general fund by many hundred thousand dollars. In short, the finances of the State, whose honor and credit remains unimpaired, could hardly be in a worse condition. The large majority of the counties, with the same reservation of honor and credit, are as unfortunate as the State. Now, without embarrassing the statement with a multitude of figures, it is safe to say that the payment of the companies' taxes, now offered, will relieve both State and counties almost entirely from the present pressure. Suits have been issued against the companies for taxes of the years given above, and hopes were entertained that collections could be made to meet the exigencies of the State and counties. If such hope remained this communication would not be written, nor the present question even considered by this office.

A very few words will demonstrate that such collection in such time is not possible. The county of San Mateo instituted suit against the companies for State and county taxes. This suit was tried in the Circuit Court in the summer of 1883, and judgment given against the plaintiff. Appeal was taken to the United States Supreme Court. The case was advanced on the calendar, argued and submitted in the fall of 1882. It was not decided, but the Supreme Court ordered that several cases, which by stipulation were to abide the decision in the San Mateo case, should be tried in the Circuit Court. In July, 1883, six cases were selected and tried, and decided as before in the San Mateo case—against the State. An appeal was perfected in one of the six cases, and it was taken up to the Supreme Court, and a motion made to advance it on the calendar. This motion was overruled, on the ground that the single case of Santa Clara did not present all the questions involved, and that the other cases must be sent up before the Court would consider any case. In the meantime the San Mateo case was restored to its place on the calendar, practically out of reach forever. All possible diligence has been used, but the appeal in the remaining cases has just been perfected, and they cannot be placed on the Supreme Court calendar before October, 1884. That means that they will not be decided this year. In justice to this office I will state that I directed appeals to be taken in all of the six cases. I understood the Circuit Court to require that course, and I particularly directed it to be done. Counsel in the case, to whom the duty of perfecting the appeal was assigned, without consultation with or authority from this office, determined otherwise. It is now, therefore, clearly impossible to obtain a decision in the Supreme Court in the present year.

This being the status of the litigation with the companies, and the finances being in the condition above described, and the issue with the companies narrowed to a question, not of revenue and sovereignty, but of costs and procedures, by the offer on their part to pay the tax in full, what should be done? There are but two lines open—to accept the payment of the tax or to convene the Legislature. I have above indicated that in my opinion the first line of action is legal, and not in conflict with the principles enunciated by your Excellency in rejecting the first offer of the companies to scale the tax, and I now say that my mind is fully made up to adopt it, unless the responsibility is removed from this office by referring the whole subject to the Legislature.

Article V., Section 9, Constitution, provides that the Governor shall have power to convene the Legislature "on extraordinary occasions." That this is an "extraordinary occasion" is made, I think, sufficiently evident by the unquestionable statements given in the narrative above. There is no restriction as to the number of subjects which a called session may consider, except the specifications of the proclamation. Whether or not "extraordinary occasions" beyond matter of revenue exist, I am not now called upon to express an opinion. I need not, perhaps, go any further in the consideration of this question, after it is settled as a proposition of law: First, that the authority to convene the Legislature is given; and second, that an "extraordinary occasion" has arisen. But it has been asked, and often doubted, if the Legislature has power under the Constitution to anticipate the delay of the Courts, compel the prompt payment of taxes, and supply the necessary revenue? I call your attention to Article XIII, Section 1, Constitution: "Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time, or repealed."

It is noticeable that the provisions of this section were in the old Constitution in nearly the same words. Some discussion has arisen as to the effect of this section, but I think it is universally admitted that it gives the power to forfeit the charter and terminate the existence of any corporation. I have no doubt it authorizes a law to forfeit the charter of any corporation which may become, or remain for any specified time, delinquent on the assessment roll. If, however, any construction should be given to this section modifying the tremendous agency it seems to be, there remains to be considered Article XIII., Section 11, which provides: "Income taxes may be assessed to and collected from persons, corporations, joint stock associations, or companies resident or doing business in this State, or anyone or more of them, in such cases and amounts and in such manner as shall be prescribed by law." This sect on, so far as I know, has not been emasculated by any construction, but is the law of the State in the sense in which any intelligent layman would understand it. I do not suggest any scheme of legislation under it, but it is perfectly obvious that there is no possibility of escape from, nor much delay in the payment of taxes authorized by this section and levied under a well-considered, earnest and practical statute.

To the end that I may act promptly as circumstances absolutely require, and that the harmony and efficiency of the administration may be maintained, I submit the question to your Excellency. If this office rejects the offer of the companies, thus leaving the general fund wholly unprovided for an indefinite period, will the Governor convene the Legislature? As my own official action depends entirely upon the answer to this question—as I shall reject the offer of payment, if that rejection results in a call of the Legislature, or accept it if the reference is not made to the people through their representatives—your Excellency will perceive that this communication is not an impertinent intrusion into the business of your department, but a necessary and most respectful inquiry, the answer to which will adjust the responsibility for a most important decision. Praying as early reply as possible, I am, very respectfully,

E. C. MARSHALL,
Attorney-General.

STATE OF CALIFORNIA, EXECUTIVE DEPARTMENT, SACRAMENTO, Cal., February 12, 1884.

Hon. E. C. Marshall, Attorney-General—Dear Sir: Your communication, bearing date January 29, 1884, and handed me by yourself on the 6th day of February, 1884, relating to certain proposed action by yourself, as Attorney-General, on the delinquent railroad tax cases, has been duly considered. In your letter you state, among other things, that "another offer has been made by those companies to pay the taxes for 1880-1-2 in full, except as to those cases in which appeals have been taken to the United States Supreme Court, and to pay in full in those cases, whether the judgment of that Court is for or against the roads, when the judgment is rendered." * * * "This offer, however, does not include the five per cent. penalty for delinquency, nor the two per cent. per month interest, nor ten per cent. attorney's fee, which are demanded in the suits." You also say that "this offer, to my mind, presents a different question from the other (i. e., the proposition made by Creed Haymond, counsel for the Central Pacific and Southern Pacific Railroad Companies, on the 20th day of October, 1883); and is not within the principle on which the other was rejected." You also state that this "offer is legitimate matter for Executive consideration, and in this case in the power of this (the Attorney-General's) office to settle as a question of law," and intimate that you will accept the offer of the defendants unless action is taken by the Executive on a certain other proposition, which you propose and discuss. I was very much surprised at the statement coming from your office that you "had the power to settle this matter as a question of law," and that "if a judgment for the face of the assessment for the years 1880-1-2 is entered on my motion, or with my consent, it is, in my opinion, final." This statement conflicts so much with my own ideas of the power of an officer whose measure of authority is the law governing his office, and is also so much at variance with opinions, both verbal and written, given to this office by yourself, previous to this communication, on these cases, that I am unable to understand your present position.

On the 8th day of November last, in response to a request from this office as to the power of any State officer to accept the proposition made by Creed Haymond on behalf of the Central Pacific and Southern Pacific Railroad Companies, you stated "that the power to make the compromise suggested, or to accept any sum less than that demanded in the suits now pending on appeal in the Supreme Court of the United States, does not exist in any or all of the departments of the Government," and "if the Courts themselves can give judgment for less than the lawful demand of the Government, our form of government is a failure." Now, what is the "sum demanded in the suits," and what is the "lawful demand" of the Government?

In reading the complaint in the case of the County of Santa Clara vs. the Southern Pacific Railroad Company (which is in the form prescribed by the Act approved April 23, 1880, and has, I presume, been followed in all cases for the recovery of delinquent taxes), I find it alleges, in substance, "that defendant is indebted to plaintiff in the sum of $8,065 11 county taxes and $5,301 42 for State taxes, with 5 per cent. penalty added thereto for the non-payment thereof, and interest thereon at the rate of 2 per cent. per month from the 27th day of December, 1882, and 50 cents cost for advertising." The prayer of the complaint, which contains the amount demanded, is as follows: "Wherefore said plaintiff prays judgment against said defendant for said several sums with interest and penalty as aforesaid, with costs of suit; with 10 per cent. on the amount of all said sums as attorney's fees." There appearing to my mind such a difference between the opinion given this department by yourself on the 8th day of November last and the one contained in your letter of January 29th as to your power in the premises, and not having sufficient confidence in my own judgment on questions of law, I took occasion on the 6th instant to request the written opinion of Judge A. L. Rhodes and D. M. Delmas, Esq.—who are also attorneys in these cases—as to the power of your office to allow judgment to be taken in these cases in favor of the State, which did not provide for the payment of penalties, interest, costs, and attorney's fees, and they answer that "neither the Attorney-General nor any of the attorneys acting for and on behalf of the State, has any such power, authority, or right as is mentioned in question four of your letter." (See Exhibits A and B, hereto attached and made a part of this letter).

In looking over the authorities, I am more than ever convinced of the entire absence of power in yourself, or in any other person, to allow judgment to be taken in favor of the State in the manner you indicate, or in any other manner or form which does not include the *whole demand* of the Government, viz: the tax, penalty, interest and costs. A case of this nature is reported from the State of Nevada (9th Nevada, page 79 et seq.), where the Central Pacific Railroad Company was defendant. The Board of County Commissioners (which corresponds to our Boards of Supervisors) had compromised the taxes due from defendant to the State of Nevada for three years by allowing defendant to pay the tax, penalty, interest, and costs for one year, and giving it (defendant) a receipt in full for three years. The Court in that case decided that "the Board of County Commissioners have no power to compromise and settle suits instituted by the State for the collection of delinquent taxes."

Another case, bearing more directly on this, is reported from the same State (15th Nevada, page 24 et seq.), entitled State of Nevada vs. California Mining Company. It appears that under the laws of that State a penalty of twenty-five per cent. is added to the amount of the delinquent tax. The tax and penalty were sued for. Afterward the District Attorney, with the advice of the Attorney-General and State officers, consented that a judgment might be entered in favor of the State for the amount of the tax without including the penalty. The Supreme Court of that State held that "neither the District Attorney, other counsel for the State, *nor any of the State officers* are clothed with any authority to give consent to a judgment for delinquent taxes without including the penalties," and further held that "it was the *duty of the Court* to include the amount of the penalties in the judgment."

In Texas (State vs. Allen et al., 32 Texas, page 273) the Supreme Court decides that a District Attorney has certain duties and powers which are prescribed by the Legislature. He is an agent or attorney of special or limited, and not of general powers; and where an account of the indebtedness of the Assessor and Collector to the State has been delivered to him with directions to bring suit therefor, he has no power to compromise with the debtor, either before or after suit is brought, during its pendency, or after judgment.

In the Georgia Supreme Court, in June, 1883 (Vol. 16 of the Reporter, dated June 16, 1883), it was held that "the Attorney-General could not compromise a tax due the State at less than the amount due, or release the railroad company from any portion of the ad valorem tax imposed upon its property; that there was no law which conferred upon him such authority." In our own State, I would refer you to the case of Preston et al. vs. Hill et al. (50 California, page 43), and County of Sacramento vs. Central Pacific Railroad Company (61 California, page 250). The last case cited is a late one, and has a direct bearing on the cases which you now threaten to attempt to compromise.

I shall not weary you by further citations of the authorities on this point. I find none to the contrary. The reasons for these decisions, as set forth in the opinions, is that where an officer is charged with the enforcement of the collection of revenue his authority is limited by the law which confers upon him his authority to act. To presume that the Attorney-General has a special authority to compromise a claim for delinquent taxes, or to say that the penalties, interest, and costs shall not be collected, would be to presume a fact which is legally impossible.

If he had the authority to remit the penalty, he would have the like power to remit the tax; and, if he could remit the penalty or tax in one instance, he could in all. Consequently the question, whether any money should be paid into the State Treasury from the taxpayer would depend entirely upon the will of the Attorney-General. The Legislature itself, the most sovereign department of our Government, has no power to do that which you claim to have authority to do. It has no power to "release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State," or to "remit a fine, penalty, or forfeiture" in any given case. (Constitution, Article IV., Section 24, subdivisions 16 and 26.)

But, aside from the foregoing aspects of the question, why should these penalties, interest and costs be remitted in these particular cases? Why should not these defendants submit to the same rule that other taxpayers are compelled to submit to? Where is the equity in the course you threaten to pursue? Justice does not demand it; reason does not sanction it; the law will not uphold it. You seem to place your contemplated action on the ground of necessity. You say the general fund is nearly exhausted, and to replenish that you seek to justify your course. It is true, as you state, that the general fund will be exhausted in less than three months; but is that a reason why the State should abandon her rights? This State has not yet been reduced to a condition of beggary; she has not reached that condition where she is dependent upon the will of her creatures for the means to sustain her life. She does not ask the defendant to pay what it owes as a *favor*, but she demands it as a *right*. Money, alone, does not constitute a State. Honor, with the determination to preserve it; Justice, with the courage to enforce it; these are far more precious and necessary to a State than any financial consideration. In the inaugural address, delivered by myself on taking the office of Governor, in speaking of the attitude of those corporations which had failed and refused to pay their taxes, I used the following language: "The whole power of the State, within lawful limits, should be exercised to compel them to clear their just proportion of the burdens of government. Powers created by the State cannot, and shall not, with my consent, be permitted to become independent of or greater than the State." From these sentiments I have never deviated, and to them I propose to adhere.

According to the able and exhaustive report of the Controller, which is hereto attached, and of which I invite your attentive perusal, I find that those counties in which alleged compromises were made would lose, on the *face of the tax*, the sum of $163,077 84, and with penalties, interest, costs and attorney fees added, the sum of $422,483 16. The loss to the counties in which no "compromises" have been made, according to your proposition, would be $397,868 51, and the total loss to the State and various counties would be the enormous sum of $1,073,474 47. Are you, as the chief law officer of the State, conceding that you have the authority to do so, prepared to take the responsibility of allowing judgment to be taken in favor of the State in these cases, whereby the State and the various counties would lose that sum? Ought you not rather seek to open and set aside those judgments and agreements on which those so-called compromises were made in the various counties, so that the State may recover the balance of the tax, as well as the penalties, interest and costs, which are lawfully hers?

This office protests, and will continue to protest, against the acceptance of the offer of defendants, and against the acceptance of any offer which acknowledges and includes less than the whole demand of the State against the defendants.

In the latter portion of your communication you refer to the policy of convening the Legislature in extraordinary session, and discuss the propriety of action by that body on certain subjects. In answer thereto, I may say that for many months past I have had that subject under consideration; and that more particularly since the failure to take appeals to the Supreme Court of the United States from the decisions of the United States Circuit Court, in all cases tried therein, belonging to this class, and the consequent further failure to procure the advancement on the calendar for an early hearing of the case of Santa Clara county, I have had under most serious consideration the policy of convening the Legislature to act upon some of the subjects mentioned in your letter, as well as upon others which are not mentioned by you. I am, sir, very truly yours,

GEORGE STONEMAN, Governor.

Following the above is a letter from the Governor under date of February 6, 1884, to attorneys Rhodes & Delmas, asking for opinion as to whether the State and counties can recover from the defendants the five per cent. delinquency, the two per cent. per month interest upon delinquencies, the ten per cent. or any less amount for attorneys' fees, as mentioned in sections of the Code; and whether the Attorney-General or other attorneys for State or counties have the right to remit by compromise anything of taxes, penalties, etc., in the cases referred to.

The said attorneys, in a letter dated February 7, 1884, reply in the affirmative to the first three of these inquiries, and in the negative to the last.

A letter of the Controller, dated February 12, 1884, addressed to the Governor, is also given, in which the former reiterates his previously expressed opinion upon the same subject.

SUPERIOR COURT.

DEPARTMENT ONE—ARMSTRONG, Judge.

WEDNESDAY, February 13, 1884.

Estate of Lavina Hobbs, deceased—Continued indefinitely.

People vs. Charles Weaver, grand larceny—Indefinitely postponed.

People vs. James Hart, assault to murder—Placed at head of calendar for 10 a. m. to-morrow.

Ex parte Albert Weber, a miner, on habeas corpus—Ordered that if George or Frank Estabrook will care for the child in controversy the Court will give the child to them. Further ordered that Mrs. Sarah Agnes Stargel have the care and custody of the child until further orders of this Court. Order of contempt as against Albert Weber, Sr., continued until further order of Court. Order to show cause why Mrs. Sarah A. Stargel should not be punished for contempt, dismissed.

People vs. James McLain, alias Price, alias Maynard, grand larceny—Prisoner pleads guilty, waives time, and is sentenced to two years imprisonment in the State Prison at Folsom.

People vs. Espey Earley, grand larceny—Prisoner pleads guilty, waives time and is sentenced to four years imprisonment at Folsom.

DEPARTMENT TWO—MCFARLAND, Judge.

WEDNESDAY, February 13, 1884.

C. L. White vs. H. G. Smith—On trial.

S. S. Southworth vs. Elizabeth Bryte—Elizabeth Bryte appointed guardian ad litem for minor heirs.

George H. Hunt and wife, of Sacramento, passed Mojave yesterday, coming west.

BIG SWAMP LAND SUIT.

An order was made yesterday by the State Surveyor General referring to the Superior Court of Tulare county the case of the conflicting claims of John Mullan vs. J. M. Johnson, W. G. Phelps, R. C. Ogden, J. C. Hays, Jr., A. McM. Hays, J. N. Wren, Charles D. Smith, Mary A. Johnson, L. A. Johnson, Mattie A. Johnson, Gardner Young, G. N. Furnish, W. D. Kelley, William G. Hanshaw, S. Castro, Joseph Collier, S. Latido, Frank Griffith, John T. Walker, Jos. H. Thomas, Jr., C. W. Barrett, O. A. Beaver, John P. Smith and others. This is a suit involving nearly 10,000 acres of swamp and overflowed land, situated in the Creighton survey on the shores of Tulare lake. The Surveyor-General at first refused to accede to Mullan's demand for an order of reference, holding that the surveys under which the latter made application have become invalidated by reason of their calling for more than 640 acres, and upon the further ground that the suit was sought to be instituted for blackmailing purposes. The attorneys for Mullan thereupon sued out a writ of mandate before Superior Judge Finn, of San Francisco, returnable February 21st, to compel the Surveyor-General to issue the order of reference. In the mean time Deputy Twitchell advised with the settlers on the subject, and as they were willing that the order should be made, the action in question was taken. The defendants are nearly all actual settlers on the land in contest, and in many cases poor and unable to stand the expense of litigation. It was mainly for this reason that the State official withheld his signature from the document. It is a well-known fact that Mullan has assigned all his rights under the surveys to certain capitalists of San Francisco, and the conclusions of the Surveyor-General relative to the motive for commencing the suit appear to be well founded.

SOCIAL AND PERSONAL.

Dr. O. Harvey, of Galt, was in town yesterday.

H. C. Ross and Robert Mahone, of the Cosumnes, are in the city.

General John F. Sheehan left by last evening's train for the East, to be gone five weeks.

Fred. Grimshaw, F. R. Girard and T. F. Higgin, of San Francisco, came to the city yesterday.

D. J. Simmons and daughter Clara, and Senator Fred. Cox came up from the Bay last evening.

J. J. Frizzell and wife, of Kingsbury, and Archie Mull, of the Cosumnes, are at the Eldred House.

William M. Cutter, of Marysville, is visiting Sacramento on business, and will remain several days.

J. H. Burston, F. W. Groth and J. E. Thompson graduated last Tuesday from the Sacramento College.

Hon. T. G. Phelps came up from San Francisco yesterday, bound for Marysville and the country above.

Sidney Dillon, President of the Union Pacific, went East with his party last night in his special car 010.

A. M. Kinney, G. Kirkwood, James Harwood and Casper Miser, of Jackson, Amador county, are in the city.

James Devotie, J. A. Richmond and R. B. Johnson, of Clarksville, El Dorado county, came to the city yesterday.

Railroad Commissioner Carpenter, who has been in Sacramento for a day or two, went down to the Bay yesterday.

R. G. Breckenridge and family removed yesterday from Sacramento to a ranch near Auburn, where they will hereafter reside.

Hon. C. L. Morehouse, of the State Board of Equalization, returned yesterday to his home in Alameda from this city.

Colonel J. J. Ayers, Superintendent of State Printing, returned yesterday from a visit to the State Prison at Folsom.

Judge Blanchard came up from San Francisco Tuesday night, and continued on his way to Placerville yesterday morning.

W. E. Terry and wife, R. J. Merkley, N. Greene Curtis and James Ferrier left for San Francisco by yesterday afternoon's train.

George W. Chesley and wife came back yesterday from Chico, where they had been to see James Trimble, who is seriously ill.

Joseph Goddard leaves this morning for San Francisco. He has associated himself with the law firm of Buhlert & Babb, who have in charge the testing of the constitutionality of the License Act.

Frank W. Robertson, a former resident of Sacramento, but at present employed in the main freight office of the Central Pacific Railroad Company at San Francisco, is spending a few days here.

R. S. Carey returned yesterday from a visit to his ranch in Butte county. He speaks of a ride he took on Tuesday as the coldest of his life. His whiskers turned almost white with the frost, and have not recovered from it yet.

Arrivals at the Golden Eagle Hotel yesterday: M. Meyer, J. D. Hanna, L. A. Strobel, William H. Brown, J. H. Blood, San Francisco; E. A. Mix, New York; C. J. Metcalf, Bennington, Vt.; T. H. Richards, Boston; W. M. Grigsby, San Jose; J. G. Barker, New York.

A number of the friends of Miss Stein, daughter of S. Stein, gave her a genuine surprise party at her home, 714 P street, Tuesday evening. Music, dancing, games, fine supper and lots of fun was the order of the evening. Miss Stein was the recipient of many handsome birthday presents, the occasion being her eighteenth anniversary.

GOOD NEWS.—It is now entirely unnecessary to purchase any imported perfumes, as the very best are Peck's Premium Perfumes and Elite Bouquet, of home manufacture.

NEW ADVERTISEMENTS.

W. C. T. U.—The regular meeting of the W. C. T. U. will be held THIS (Thursday) AFTERNOON, at the rooms of the Y. M. C. A., at 2 o'clock. fe14-1t*

Washington, F. and A. M.—At Masonic Temple, THIS (Thursday) EVENING, at 7 o'clock. (First) Brethren invited.
J. N. YOUNG, W. M.
L. C. JORDAN, Secretary. fe14-1t*

The regular meeting of Court Sacramento, No. 6,861, A. O. F., will be held at their Hall, in Odd Fellows' Building, THIS (Thursday) EVENING. B. M. DEAN, C. R.
J. W. HUGHES, Recording Secretary. fe14-1t*

Prof. J. H. Rosecrans, State Sunday School Evangelist of the Christian Church, will conduct a School Institute at the Christian Chapel, commencing THIS (Thursday) EVENING, at 7:30 o'clock. All Sunday School workers cordially invited to attend. fe14-1t*

Ticket No. 59 won the Carpenter's Chest of Tools which was raffled at Meharry's Saloon, Fifth and K streets, February 9th. The holder will present ticket and receive tools. fe14-1t*

LOST—FEBRUARY 13TH, FROM PHAETON, between Front, Tenth and L streets, a Sealskin Muff. Finder will be rewarded by leaving same at 1128 Tenth street. fe14-1t

CARD TO THE PUBLIC.

IT IS WITH PAIN AND REGRET THAT I EFfer to or make mention of a subject, recollection of which I had hoped might ere this have passed into oblivion; but false statements and reports in connection therewith, now being made and circulated by Mr. S. W. Butler and others, which, if left unrefuted, are calculated to place me in a false and unenviable position before the public, compel me, however unpleasant the task, to publicly correct said reports.

I am informed on good authority that a statement is being industriously circulated, in effect, that I am desirous to meekly return to Mr. Butler, and with him to pass the remain der of my days; that I am willing and desirous to retract all charges and accusations upon which suit for divorce was based, and admit that they were made while in anger and under undue excitement, and were without any foundation in fact. It has been reported that I suborned the principal witness in the adultery case to swear fal