REASSESSMENTS.

A Careful Consideration of the Subject.

WOULD IT BE CONSTITUTIONAL?

A Review of the Railroad Reassessment Question Which Makes Clear the Entire Subject Now Before the Legislature.

The following communication was addressed to, and published in, the San Francisco *Examiner* in its issue of February 16th:

To the Editor of the Examiner—SIR: When the Langford and Ostrom bills were introduced relative to the reassessment of taxes, your paper was disposed to favor them, resting your support upon the ground that those bills had been the result of deliberation and faithfulness, and emanated from men who had made a study of and had mastered the subject.

In this it now appears that you and the supporters of the measures, who took them upon the reputation of their authors, were entirely mistaken.

No one now maintains that either of these bills should pass, and they are entirely without support. This is proof positive that the great subjects involved have not received the consideration which their importance demands, and that the legislation which has been attempted is on a par with all the attempted legislation since the controversy began.

The relations of the Southern Pacific Railroad to the Government and the question of the constitutionality of any status in relation to railroad taxation, are subjects which demand more consideration than seems to have been given to them by the people of this State.

The taxing power has its limitations, and these limitations inhere in the very definition itself. There must be equality and uniformity. There may be classification, but if classification is attempted it must be a classification of things, and upon all things within a given class the burden must fall equally. The Constitution of California provides that, as to all kinds and classes of real property owned by natural persons, or by corporations not quasi public, that a mortgage shall be deemed and treated as an interest in the property, and that the value of the mortgage shall be assessed to the mortgagee and deducted from the valuation of the property; that the taxes upon the mortgage shall be a lien upon the property, and if paid by the mortgagor, he shall be entitled to deduct it. The Constitution then makes an exception which covers all classes of property, and is based upon ownership alone. It says in effect that railroad or other quasi public corporations which own lands, tenements, roads, and may own all other kinds of real property, shall not be allowed this deduction and, in effect, that they shall pay the taxes upon the mortgage, and not be entitled to recover it from the mortgagee or bondholder.

NEITHER POLITIC NOR CONSTITUTIONAL.

These provisions are neither politic nor constitutional. Had they been reversed they might have been politic. Railroads collect the money which they pay as taxes from their customers, and the tax is simply a burden upon transportation. If the persons who hold the bonds of the Central Pacific Railroad purchased them at an average of 60 per cent. on the dollar, and these bonds are now worth 30 per cent. premium, the owners have made large sums of money, and are well able to pay some taxes toward the support of the State government. Holders of these bonds live in foreign countries, but their property is protected by the laws of this State. Under the present provisions they pay no taxes, but the people of the State, if the law could be enforced, would be virtually paying taxes equitably due to the State from the foreign money-lender.

The Central Pacific Railroad has depreciated in value owing to the construction of rival roads, and other causes. If the exception in the Constitution were stricken out, it would read, as applied to a railroad company, that the bondholders should be taxed for the value of their securities, and the company taxed for the value of the excess, if any. The tax upon the bondholders would be a lien upon the property, and would be paid by the company, but the company would be entitled, as other property owners are, to deduct that payment from the interest due on the bonds. This exception violates the fourteenth amendment to the National Constitution in this, that it imposes a greater tax upon land owned by railroads and other quasi public corporations, than it does upon lands owned by private corporations or natural persons.

This has been virtually decided in the case of Miller vs. Heilbron, in our own Supreme Court, and that State officials so consider it is evidenced by the fact that for nearly two years there has been a case pending in the Supreme Court of this State in which that question could be determined, but they have successfully resisted all attempts of the railroad to advance it on the calendar.

GOVERNMENT INSTRUMENTALITIES.

The Central Pacific and Southern Pacific Railroads have been decided to be Government instrumentalities.

It is held by the United States Supreme Court, and our own Court, that no State can pass any law which can hinder, impede or delay their operations or business, or the Acts of Congress under which they were constructed. In the Southern Pacific Railroad the Government has reserved a beneficial interest. As to the Central Pacific Railroad, it is not entirely clear that the Government does not hold the legal title. The Act under which it was constructed provides that the company is to build a road and maintain it, and, for all time to come, to hold it subject to the order of the United States for the transportation of troops, mails, munitions of war and military stores; and to the end that this object might be attained the United States exacted all kinds of securities. The obligations assumed by the company were to keep it in repair, to pay five per cent. of the net proceeds and to allow the Government to retain the cost of its own transportation, and at the end of thirty years, if any balance was due, to pay that or surrender the road. Such was the understanding when the Act was passed. Senator McDougall voiced the intent of Congress, when in debate, he said:

"It is proposed that the Government shall advance $60,000,000, or rather their bonds at thirty years, as the road is completed, in the course of a series of years, so that the interest at no time can be equal to the service to be rendered by the road as it progresses, and that the Government really requires no service except a compliance on the part of the company with the contract made. It was not intended that there should be a judgment of foreclosure and a sale of this road on a failure to pay. We wish it to be distinctly understood that the bill is not framed with the intention to have a foreclosure. In case they failed to perform their contract, that is another thing. This is a stipulation; that is a forfeiture, in terms of law—a very different thing from a foreclosure for the non-payment of bonds."

PAY OR SURRENDER THE ROAD.

The contract was substantially that at the end of thirty years the company might exercise its option to pay the balance and take the road or surrender it. Congress authorized a first mortgage to be made on the road, but especially provided that its foreclosure should not affect the rights and interests of the United States. So, as the contract now stands, upon the failure to pay the moneys loaned by the United States, the roads revert to the United States, subject to the first mortgage, and Congress has already provided a fund for the payment of that mortgage in case the road reverts. All of these things present interesting questions—questions which demand care and caution, and the best legal advice when dealing with the subject of taxation. The validity of the California constitutional provision was assailed by the railroad companies upon another ground, based upon another section of the State Constitution. The point taken was that the Constitution which authorized the State Board of Equalization to assess did not provide for notice or give an opportunity to be heard. This point was carefully considered by Justice Field and Judge Sawyer in the San Mateo and Santa Clara cases, and they held that this defect in the Constitution could be remedied by legislation; that if the Legislature fixed the dates between which the State Board of Equalization should act, or provided that notice should be given to the companies, it would be competent legislation, and that an assessment made within a period named, the company having a right to appear and be heard, would be a process of law.

This was a wise piece of legislation, and followed in the wake of judicial decisions of the highest order. No taxing system can be valid that does not seek honest ends. No law which leads to injustice, whatever it may purport on its face to do, can ever be a valid taxing law. Attempts at discrimination, whether covered by general laws or incorporated in special Acts, can never convert an illegal system into a legal one. Courts have repeatedly said that they would look beyond the form of a statute at its intent and purpose, and at the thing which it seeks to accomplish, and, after having arrived at that intent and purpose, will construe it accordingly. Courts have frequently in this and other States declared statutes which were general in form to be special legislation because the end aimed at by the statute was special and discriminating, although in form it was general and free from apparent discrimination. One of the greatest of American statesmen, a matchless lawyer of pure and spotless character, one who never shrank from asserting the truth or following the lead of principle, one who never obeyed party behests if they were not in the line of his own conscience, one whose preserved arguments rank with those of Webster, of Wirt or Pickney as authority, has dealt with this subject, and dealt with it in the presence of the most august judicial tribunal ever established by man, with a frankness which was part of his nature. His reputation and learning and the subsequent adjudication of the Court support his arguments. They have never been answered, and they never can be answered. He has passed to his grave, leaving behind, as a legacy to his countrymen, his recorded opinions on many great questions, not the least of which are his opinions on the questions now under consideration.

SCOPE OF THE FOURTEENTH AMENDMENT.

It was asserted in the beginning of this legislation that the Fourteenth Amendment to the Constitution was made for black men alone; that the word "person," in the Fourteenth Amendment, did not apply to corporations, and did not protect men who had exercised the natural right of association. He answered these questions successfully and set them at rest. After discussing the question elaborately, he said:

"Suppose colored men in Louisiana should as a co-partnership or joint stock company, acquire a theatre or baseball ground, and upon confiscation of their property, should receive the protection of the national Courts acting under the Fourteenth Amendment, and afterwards should incorporate themselves for the management of the same property for the same purpose—if a second and like confiscation should occur, can it be that the same Courts would say that the right of protection was lost by the act of incorporation, and might be revived again by resuming a co-partnership name?

"I have put the case of the colored men. Let me transpose the illustration. In several States colored men outnumber white men. Suppose in one of these States laws should be contrived by the colored majority, or a constitution set up, under which the property of white men should be confiscated, surely the Court would not say the constitution is dumb, but would speak, if only the parties of the record were reversed.

"I have sought to convince your honors that the men who framed, the Congress which proposed, and the people who through their Legislatures ratified the Fourteenth Amendment, must have known the meaning and force of the term 'persons.'

THE REAL QUESTION.

"Let me now turn your attention away from this surmise to the real question to be answered. Let me remind you that the scope and effect of a general provision is never to be ascertained by seeking for the particular cases which the author had in thought at the time the provision was drawn or adopted. The Court cannot acquit itself as interpreter and expounder by visiting, if the Court could visit, the minds and thoughts and hopes and fears and doubts and expectations and anticipations of those who took part in devising the Constitution. The true question, in exploring the meaning of the Fourteenth Amendment, is not, in a given case, whether the framers foresaw that particular case and acted in reference to it; the inquiry is, does the case fall within the expressed intention of the amendment? All cases compassed by the letter of the language must be included, unless obviously repugnant or foreign to its spirit and purpose.

"I ask the Court to listen to the rule of construction as laid down in the Dartmouth College case by a great and rugged magistrate. The words are the words of Chief Justice Marshall, speaking for the Court:

"'It is more than possible that the preservation of rights of this description was not particularly in the view of the framers of the Constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the State Legislatures.

"'But although a particular and rare case may not of itself be of sufficient magnitude to induce a rule, yet it must be governed by the rule when established, unless some plain and strong reason for excluding it can be given. It is not enough to say that this particular case was not in the mind of the Convention when the article was framed, nor of the American people when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule must be within its operation likewise, unless there be something in the literal construction so obviously absurd or mischievous or repugnant to the general spirit of the instrument as to justify those who expound the Constitution in making it an exception.' [4 Wheaton, 644-5.]

"Could words—even prophetic words—more closely fit the position I maintain?

WITHOUT DUE PROCESS OF LAW.

"Who would be so rude as to suggest that committee, Congress, or people, when engrafting the Fourteenth Amendment upon the Constitution, omitted, only because they forgot it, to say that citizens might be stripped of their possessions without due process of law; provided only the spoliation should be under pretense of taxation and the victims robbed in a corporate name?

"If any man dare affirm such a belief, it must be one ignorant of the fact that Congress, when the amendment had been adopted, declared, in effect, that the shield of 'equal protection of the laws' extended to taxes, licenses and the like. This legislative construction was declared in the Civil Rights Act adopted as a substitute of an Act passed before the ratification of the Fourteenth Amendment. The first Act had not assumed to forbid unequal taxation; but, in the second Act, under the warrant of the new amendment, Congress added discriminating taxation, in or by a State, to the list of offenses against the laws of the United States.

"Judge Story, who also sat in the Dartmouth College case, and delivered an opinion, reiterates all that I have read from Marshall in his 'Commentaries on the Constitution,' Section 1395.

"Who has ever gainsaid the canon of construction and interpretation thus plainly spoken from this bench?

"With such a key to the import of a provision, how minor and needless become conjectures about what the actors in a past scene knew or thought or expected or believed, as to incidents or events in the future which might invoke the aid of a principle of law.

"Man being human, and his vision finite, it is well that saving ordinances need not be shrunken in their uses or duration to the measure of what the framers foresaw.

"Truths and principles do not die with occasions; nor do they apply only to events which have cast their shadows before.

NO HOROSCOPE FOR STATESMEN.

"The statesman has no horoscope which maps the measureless spaces of a nation's life, and lays down in advance all the bearings of its career.

'Futurities are naked before the all-seeing eye.'

"All that wisdom and science in legislation can do, is to establish just principles and laws; this done, every case which afterward falls within them, is a case for which they were established.

"A tree, a fountain, a lamp, set in the public way—a beacon on a cliff—a buoy on the sea, for whosoever sake first thought of or provided, becomes the benefaction and common property of wayfarers, whoever they may be.

"To the Mongolian and the Caucasian, as well as to the African, the Constitution says: '*Humani nihil a me alienum puto.*'

'The hand that rounded Peter's dome,
And groined the aisles of Christian Rome,
Wrought in a sad sincerity.
He builded better than he knew!'

"Those who devised the Fourteenth Amendment wrought in grave sincerity. They may have builded better than they knew.

"They vitalized and energized a principle as old and everlasting as human rights. To some of them the sunset of life may have given mystical lore.

"They builded not for a day, but for all time; not for a few or a race, but for man. They planted in the Constitution a monumental truth, to stand four square whatever wind might blow. The truth is but the golden rule, so entrenched as to curb the many who would do to the few as they would not have the few do to them.

"If it be true that new needs have come; if it be true that wrongs have arisen or shall arise which the framers in their forebodings never saw—wrongs which shall be righted by the words they established, then all the more will those words be sanctified and consecrated to humanity and progress."

THE RESULT OF VENGEANCE.

He dealt with the subject of classification and showed that no attempt at classification was made. He sustained with all the power which truth gave him, the opinion of Justice Field and Judge Sawyer upon that subject. In the presence of the Supreme Court of the United States, he read the discriminating provisions of our Constitution and said:

"Can your Honors listen to these recitals and doubt that vengeance brooded over the conception and the birth of such a Constitution?

"Can your Honors deal more humanely with such acts, even when done by an American State, than to rank them among 'the brutalities of progress?'

"They were done by a Court. A convention which frames an organic law is a Court,—a high Court of justice; and Justice is depicted as a stony statue, with blinded eyes, with an arm unmoved by a throb of feeling, holding unshaken the even scales.

"And these vengeful edicts were made in the name of anti-monopoly, equality and right.

"It has been often so. Vice in the name of virtue—rascality in the name of reform—demagogism in the name of patriotism—persecution in the name of justice—cruelty in the name of humanity—chaos in the name of order.

"It was in the name of humanity that a seeming majority flooded France with blood; and in the name of religion, that they would have dethroned the monarch of the skies.

"Somewhere in one of these briefs it is written that the author has searched from the time of King John for so flagrant an instance of discrimination and arbitrary taxation within the pale of the common law, and that the example before us leads all the rest.

RUDE, CUNNING SEVERITY.

"Be this as it may, for enterprise and ingenuity, for rude yet cunning severity, for irreverence for law, for disdain of obstacles, appearance, and traditions, and for contempt of vested rights, it seems safe to say, that carried away by excitement, California has in form sanctioned provisions without parallel in the Constitutions of North American States, made by white men for white men, in our time."

He then took up the question of the taxation of the Federal franchise and said:

"Inherent, inwrought and indivisable in this single and general assessment—blended indistinguishably with all the other values which enter into it—is not only the franchise originally acquired from the State, but also every faculty, attribute and franchise derived from the United States. The defendant, if not a creature of the General Government, long ago became by adoption one of its permanent agencies and instrumentalities. As such agency and instrument, it had imposed upon it by Acts of Congress various perpetual conditions and obligations adapted to securing and preserving its existence and efficiency forever, not only as part of one uniform, continuous transcontinental line of railway, but a postal and military road.

"The road, in fact, built was constructed by direction of Congress, and with the aid and under the auspices of the United States. The laws of California gave no right to construct such a road, and the Acts of Congress were the sole authority. The time within which the road should be completed was prescribed by Congress, and it was provided that should the defendant fail of the completion within the time, the United States should proceed, through other agencies, to complete it.

RULES PRESCRIBED BY CONGRESS.

"Rules and regulations for the construction and use of the road were prescribed by Congress, and these regulations included not only the location, gauge and character of the road, but the subject of fares, charges and tolls, for carrying passengers and freight.

"As part of its action to stimulate and insure the construction and maintenance of a national highway, Congress endowed the defendant with various benefits, advantages, faculties, franchises and valuable rights; and received to itself—not to California or to any of the other States and Territories soon to be States, through which the road runs—power, having regard to the rights of such company, to add to, alter, amend or repeal the Act which conferred the right to build and maintain the road. The purpose of all this was, and was declared to be, to promote the public interest and welfare, and to secure to the United States at all times, but particularly in time of war, the use of such highway for postal, military, naval and other purposes. In the Acts of Congress, under which the road of the defendant was built, under which it exists, and is hereafter to exist, are penalties and forfeitures for default in the trust and agency this created.

"To this legislation, to this history, to this great and enduring transaction between the General Government and the defendant, the State of California, by a solemn act of her Legislature, assented at the same time, in like manner, consenting in advance to any other terms, conditions or relations which might grow up between the defendant and the United States; and 'confirming to and investing in the said company, its successors or assigns, all the authority conferred upon, granted to, or vested in said company by the said Act of Congress, and any Act of Congress which may be hereafter enacted.' (Statutes of California, 1869, p. 883.) Whether this assent of California makes the case stronger than it would be without it, need not be argued now.

THE TERMS ACCEPTED.

"The defendant accepted all these terms, conditions, obligations and trusts; entered upon them, executed them; and in the consenting presence of the State of California, by great outlay of labor, energy, risk and money, acquired vested rights; and became amenable to the National Sovereignty, as its agency, its instrumentality, if not its creature.

"Whether in virtue of all these events of law and of fact, the defendant became technically a national corporation; or whether it became endowed with a dual existence—an existence by the laws of California, and also an existence by the laws of the United States (as this Court said (1 Black, 286) in the case of a corporation existing by the laws of Indiana, and also by the laws of Ohio, might occur) is a question rather curious than substantial, as regards the dominion which the Constitution of California attempts to assert.

"Be the defendant the offspring, or only the adopted child of the National Government, practically and legally the same conditions deny the right of a State to step in and seize, appropriate or control the estate or endowment derived from the United States.

"The power to tax is the power to seize, appropriate and control; therefore, it is a power which may be used to destroy.

"An Act of Congress, speaking of one of these postal and military railroads brought into being for national purposes, declares: 'No act of the company, nor any law of any State or Territory, shall impede, delay or prevent the said company from performing its obligations to the United States.' (16 Statutes U. S., 573.)

THE STATE'S POWER LIMITED.

"But before this Act, without this Act, without any Act of Congress, by virtue of the Constitution of the United States *ex proprio vigore*, it was and is not within the power of a State to tax the organs or agencies or instrumentalities or enginery of the General Government, whether created or selected. The reported cases which establish this position are too famous and familiar to need reference except to the pages at which they are found. (McCullough vs. Maryland, 4 Wheaton, 316. Osborn vs. Bank of U. S., 9 Wheaton, 738. Weston vs. Charleston, 2 Peters, 449. Dobbins case, 16 Peters, 135. Western Union Telegraph Company vs. Texas, 105 U. S., 460.)

"The counsel, in opening for the plaintiff, referred generally to these authorities, as instances in which the Court has said that State taxation is unlawful if it destroys or impedes the operation of Government agencies. I think I repeat him correctly; and, if so, his exposition of the principle affirmed is radically erroneous. The Court never confined its denial of the right of the State to lay taxes on national agencies to instances of taxes which destroyed or impeded. On the contrary, said the Court through Marshal', Chief Justice, the power to tax involves the power to destroy; the power to destroy may defeat and render useless the power to create. Once concede the power to the State, and it may be used to impede, or even destroy; and therefore the idea is repugnant to the Constitution that the supremacy of the General Government, and its faculties, are subject to the action of the States, or beholden to their forbearance. That is the argument and doctrine of the cases cited.

"Does it not apply exactly to this case?

"Could any form or application of the taxing power more certainly or vitally visit this national instrumentality?

"Would any species of taxation, carried to a given extent, more certainly tend to impede its operations and destroy its efficiency and existence?

"Would any kind or form of taxation be so pointed and inimical as this, unless, perhaps, that species of tax forbidden by the commercial or 'vagrant' clause of the Constitution?

A DIRECT TAX IMPOSSIBLE.

"A tax on passengers or freight destined to points beyond the State, or coming from points beyond the State, irrespective of the relations of the road as a Government agent, would, as your Honors have held, be void as a tax upon foreign or interstate commerce. A direct tax on traffic being thus impossible, can the Court suggest any form of taxation which would reach the vitals of a defendant more surely than that here attempted?

"Would a license tax, such as Ohio undertook to impose on the Bank of the United States, in the case of Osborne, be more destructive?

"Would a tax by way of a stamp required to be put on bills of lading or shipping bills, such as Maryland attempted to require of the Bank of the United States, in the case of McCullough, be more vital?

"How can the facilities of a railway company, its right to be, and to act, and do business, be taxed, unless they are taxed by the assessment of its franchise? We shall not hear this question answered.

"The case of Captain Dobbin, above cited, is doubly instructive. The learned counsel seems to doubt whether anyone or anything can really and effectually become a goverment instrumentality by adoption. He seems to incline to think that the only thorough, authentic, untaxable Government agency is one specially, originally and exclusively created by the United States. This distinction certainly deserves attention.

"Captain Dobbin, at the Erie station on Lake Erie, commanded a revenue cutter, and

"'Moved the monarch of her peopled deck.'

"He was an officer of the revenue marine; he was employed and paid by the United States. His business was to make his cutter walk the waters of Lake Erie and see that nobody with a rowboat or a sloop should bring a keg of brandy or a barrel of whisky or beer into 'the States' without coming by way of a custom-house and having the duties laid upon it.

THE CAPTAIN DECLINED TO PAY.

"Pennsylvania had a statute taxing 'all offices and posts of profit,' and this statute looked wistfully at Captain Dobbin because he had a 'post.' Pennsylvania asked the Captain for a tax on his salary and he declined to pay it. The report says he contested the tax on the ground that he was an officer of the United States The State Court said that he must pay, and he came and asked this Court whether he must pay. What did this Court say? Why it went with Captain Dobbin and authorized him to say, much as the Connecticut Constable said when threatened with arrest: 'Take care; stand off; don't touch me. If you touch me the whole commonwealth will shake!'

"Now, Captain Dobbin was not created by Congress. He was not a corporation sole. As to him, there was no reserved power in Congress to repeal, amend, etc. Before he became an officeholder he seems to have belonged wholly to the State of Pennsylvania. The original purpose of his creation seems to have been that he might support the Constitution of Pennsylvania, and support himself. In fact, it was probably for the latter purpose that he entered the service of the United States, and lent a helping hand to collecting the revenue. At all events, the Government took him as it found him, and adopted him as one of its instrumentalities to execute one of the powers of the Constitution.

"Now, at the time Captain Dobbin had his day in Court, our learned adversaries were not here to say that the immunity invoked had nothing to do with the case, because the Captain, not having been created by Congress, could not be invested with the exceptions and attributes of governmental agencies; and, furthermore, to say that because the tax was a mere trifle, and did not destroy him or his salary, or stop his cutter, no fault could be found with it. There seems to have been a hot struggle, however, and the Court, with the lights then before it, overthrew all the reasons assigned in justification of the tax.

THE SUPREME LAW.

"It drew around this single agent the inviolable circle of the 'supreme law of the land.' Here is the language of the Court: 'Taxation is a sacred right, essential to the existence of government and the incident of sovereignty. The right of legislation is co-extensive with the incident attached to it upon the persons and property within the jurisdiction of a State, but in our system there are limitations upon that right. There is a concurrent right of legislation in the State and the United States, except as both are restrained by the Constitution of the United States. Both are restrained upon this subject by express prohibitions in the Constitution, and the States by such as are necessarily implied when the exercise of a right by a State conflicts with the perfect execution of another sovereign power delegated to the United States. That occurs when taxation by a State acts upon the instruments, emoluments and persons which the United States may use and employ as necessary and proper means to execute their sovereign power. * * * In our view, it presents a case of as strong interference as was presented by the tax imposed by Maryland, in the case of McCulloch (4 Wheaton, 316), and the tax of the City Council of Charleston in Weston's case (2 Peters, 449), in both of which it was decided by this Court that a State cannot lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers.' (429.)

"As the Government found and took Captain Dobbin, so it found and took the defendant, and made it 'constitutional means' to 'execute the constitutional powers.'

JUDGE STORY'S ILLUSTRATIONS.

"As Judge Story so variously illustrated (Commentaries, Sections 1137, 1138, 1139), instead of building a ship, or a post coach, the Government buys or hires one; instead of building a post road, it adopts a road already built; instead of erecting a postoffice, or mint, or custom-house, it rents one.

"In all of these cases, there is less of creation, as distinguished from adoption, than in the case at bar.

"Upon what theory did Congress proceed in enacting Mr. Webster's Crimes Act in 1825? It inflicts exceptional and enormous punishments for assaults upon the most subordinate agents employed to carry and handle the mails, and for interferences with them.

"The only excuse for such punishments which modern jurisprudence could accept, is that they are safeguards thrown around the instrumentalities of the Government. The driver of a stage, the boy riding a mule with his saddle bags carrying letters, the clerk in a rented postoffice—all are surrounded with special protection, as so many representatives of the sovereignty of the nation.

"Contrast with these petty examples the multiplied and enduring relations and trusts deposited by the Government with the defendant and the complex consequences and interests involved.

"Yet the learned counsel argues that California is the ultimate sovereign arbitrator in the case. He declares that when twenty-nine years more shall have elapsed—because twenty-one of the fifty years named in the articles of incorporation filed in California by the germ of the present corporation have gone already—that when twenty-nine years shall have rolled away the hour will strike when this national organization will expire and dissolve. Then, of course, according to the argument, my friend here, the Attorney-General of California, with half the zeal of to-day, will proceed by quo warranto to take away the remains of animation, and if need be will have a Receiver appointed to distribute belongings which came, as far as they came from public grant, chiefly from the United States, to be forever used in its service and behalf.

SHRIVEL LIKE A PARCHED SCROLL.

"In twenty-nine years, at all events, by this theory, these most powerful external agencies of the Government must shrivel like a parched scroll. But whether so much grace shall be permitted depends on the omnipotent majority in California—a majority of those who come out to vote, and are supposed to speak not only for themselves, but for those, no matter how many, who stay at home. Should the majority make up its mind, or its will, that such length of life is not good for 'railroads operated in more than one county,' and repeal the General Railroad Act of 1861—the Act under which the defendant first organized—then the counsel is compelled to argue that on any day the Legislature of the State may take away the franchise and existence of the defendant.

"Thus, a continuous line of road, of uniform gauge, traversing several States and Territories, instituted and established by the United States as a national highway, and postroad and telegraph line, and a military and naval road in time of war, subject always as to rules of fare and freight to the United States, indebted, as the Central Pacific—a like organization in all substantial respects—is, to the United States in vast sums of money payable out of long future earnings and services, and chartered by the United States to continue perpetually, has, we are told now, only a precarious existence dependent on the will and pleasure of the Legislature of one distant State, among the most meager in population of all the States.

"Can your Honors accept such a conclusion? You must accept it as the inevitable logic on which this assessment stands.

ABSOLUTE VISITORIAL POWERS.

"The Constitution of California does not flinch from the argument. One of its articles ordains that the Legislature may create a commission armed with rigorous, nay, absolute visitorial powers, authorized to cut down *ad libitum* the fares and freights of these national roads and fix them when and as they please. The Legislature has proceeded under this license.

"There is the expression of twin power. This claim of control, together with the claim of the right to tax, makes up the dual pretension of the absolute State sovereignty.

"Put the two powers together and you have the united power to despoil and starve; the power to forbid earnings and to strip the corporation of property already acquired.

"Does such power endanger the occupation and business of these beings? Can it be used to destroy, 'impede, delay or prevent the said company from performing its obligation to the United States?"

"Is this the lame and impotent conclusion of a great passage in the legislative, political and material history of the country—a passage which recounts the masterful achievement of constructing ironways for vast trains carrying armies, munitions of war, peoples and merchandise, traversing trackless deserts and measureless mountains to a distant sea?

"Is this the ignominious destiny of an achievement which summoned to its aid the highest statesmanship and enterprise of our time?"

ROSCOE CONKLING'S ARGUMENT.

This was the argument of Roscoe Conkling, who was not permitted to see it woven into the judicial history of the country. The case in which the argument was made (the San Mateo case) was attacked as a fraudulent one. Through newspapers and by State officers Judge Rhodes, a man of unimpeachable honor, has been accused of throwing away the rights of a sovereign State. The Supreme Court of the United States set aside the order of submission, and that case was never decided, but in later cases the judgment which followed close after the death of the distinguished statesman, his arguments, unanswered and unanswerable, received the sanction of a judicial decree, as they had before received the sanction of an enlightened public judgment.

As has been well said, the clause of the Fourteenth Amendment—"nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law"—does not, in terms, apply to the exercise of any one power of a State Government. It applies to all. It subordinates the exercise of every power to the great fundamental truths—that the right to life, liberty and property and the equality of all before the laws are natural rights, to secure which just governments are instituted. It reaches the wrong and protects persons and property, when unlawfully assailed, without regard to the source from which the assault comes and without regard to the pretense under which the blow is delivered.

VINDEX.

The man who hums softly to himself while he is at work may show that he has a cheerful disposition, but he is not a comfort to his neighbors.—*Somerville Journal.*

A sore throat is soon relieved by Dr. Jayne's Expectorant, an old remedy for bronchial and pulmonary disorders.

The successful miner is a hole-sold fellow.—*Puck.*

GENERAL NOTICES.

I suffered from a very severe cold in my head for months, without relief. Was advised to use Ely's Cream Balm. It has worked like magic in its cure, after using it one week. I feel grateful for what it has done for me.—Samuel J. Harris (Wholesale Grocer), 119 Front St., New York. MWF

I was troubled with catarrh to an annoying extent for three years. After using one bottle of Ely's Cream Balm I was completely cured.—W. J. Cline, Victor, N. Y. MWF

Advice to Mothers.—Mrs. Winslow's SOOTHING SYRUP should always be used when children are cutting teeth. It relieves the little sufferer at once; it produces natural, quiet sleep by relieving the child from pain, and the little cherub awakes as "bright as a button." It is very pleasant to taste. It soothes the child, softens the gums, allays all pain, relieves wind, regulates the bowels, and is the best-known remedy for diarrhea, whether arising from teething or other causes. Twenty-five cents a bottle. MWFly

John Eitel, Assayer and Chemist, has returned to 317 J street. Gold bought.

Just Arrived! A large shipment of genuine German Braunsschweiger and Eastern Mettworst, fine Italian Salomi. Also, a large variety of different kinds of Cheese, at 723 J street. F. BAUMLE. Give us a call. d20-1m

L. H. Taylor, Civil and Hydraulic Engineering. Also Land Surveying. 214 J st. tf

For a first-class Carriage or Buggy go to HARRY BERNARD'S, Sixth and L sts. tf

The best place in California to have your printing done: A. J. Johnston & Co's, 410 J St., Sacramento, Cal.

AUCTIONS.

W. H. SHERBURN,
General Auctioneer,
—AND—
Agent for the America Insurance Company, of New York.
OFFICE AND SALESROOM, NO. 323 K ST

AUCTION SALE
Every Evening,
—OF—
GOLD AND SILVER WATCHES
Jewelry,
PLATED WARE, CUTLERY,
Cigars, Tobacco, Notions, Etc.
Something New Nearly Every Evening.
Furniture Bought and Sold.
W. H. SHERBURN, Auctio

RUSSIA SALVE

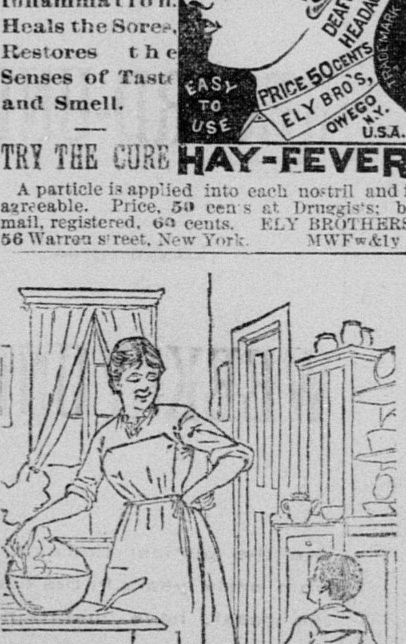
FOR BURNS, SCALDS
CUTS COLD-SORES.

Small in Size. Large in Results.

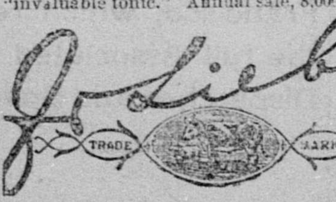
For the LIVER and STOMACH. Hobb's Little Vegetable Pills are sugar-coated, very small, easy to take. only one pill a dose. Compounded from vegetables indigenous to California and Mexico. Try them; 45 doses for 25 cents. All druggists. Hobb's Medicine Co., Proprietors, San Francisco. Cal. d12-WSeowlyw

ELY'S Cream Balm
Cleanses the Nasal Passages, Allays Pain and Inflammation. Heals the Sores, Restores the Senses of Taste and Smell.
TRY THE CURE
CATARRH

HAY-FEVER
A particle is applied into each nostril and is agreeable. Price, 50 cents at Druggists; by mail, registered, 60 cents. ELY BROTHERS, 56 Warren street, New York. MWFw&ly


TOO EASY.
Katy—Cleanliness prevents disease. Johnnie, what is the best medicine for dirt?
Johnnie (indignantly)—Humph! Sapolio! Give me a hard one.
"A disease known is half cured." If your house is dirty buy a cake of
SAPOLIO.
It is a solid cake of Scouring Soap used for all cleaning purposes except the laundry. No. 5.

LIEBIG COMPANY'S
EXTRACT OF MEAT!
Finest and Cheapest Meat Flavoring Stock for Soups, Made Dishes and Sauces. As Beef Tea an "invaluable tonic." Annual sale, 8,000,000 jars.
Genuine only with fac-simile of Justus von Liebig's signature in BLUE across label. Sold by Storekeepers, Grocers and Druggists. LIEBIG'S EXTRACT OF MEAT CO., L'td, London. Sold by LANGLEY & MICHAELS, SHERWOOD & SHERWOOD, and N. LEVI & CO., San Francisco. 04-6mWS

CHICHESTER'S ENGLISH
PENNYROYAL PILLS
RED CROSS DIAMOND BRAND.

The original, only genuine and most reliable pill for sale. Safe, speedy and effectual. Ladies! Ask for Chichester's English Diamond Brand, in red metallic boxes, sealed with blue ribbon, and accept no other. At Druggists. All pills in pasteboard boxes with pink wrappers are a dangerous counterfeit. Send 4c. (stamps) for particulars and "Relief for Ladies," in letter, by return mail. 10,000 testimonials from LADIES who have used them with Success. NAME PAPER. Chichester Chemical Co., Madison Sq., Phila., Pa.
mWS&weow

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are perfectly Safe and always Effectual. Never fail to afford speedy and certain relief. More than 10,000 American women use them regularly. Guaranteed superior to all others or cash refunded. If your druggist don't keep "Wilcox's Compound Tansy Pills" accept no worthless nostrum said to be "just as good," but send 4 cts. for "Woman's Safe Guard" and receive the only absolutely reliable remedy by mail. WILCOX SPECIFIC CO., Phila., Pa.

MISCELLANEOUS.

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—IMPORTERS AND JOBBERS OF—
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IRON, STEEL, COAL, POWDER,
Agricultural Implements & Machines, Barbed Wire,
Cordage, Belting, etc.

Sacramento Lumber Company.
DEALERS IN LUMBER, DOORS, WINDOWS AND BLINDS.
MAIN OFFICE: SECOND STREET, L and M........ } Sacramento. 4ptf
YARD: FRONT AND R STREETS........ }

DR. Salfield's
REJUVENATOR
This Great Strengthening Remedy and Nerve Tonic
Cures with unfailing certainty Nervous and Physical Debility, Seminal Weakness, Spermatorrhœa, Impotency, Prostatorrhœa, Herperæsthesia, (over-sensitiveness of the parts) Kidney and Bladder Complaints, Impurities of the Blood and Diseases of the Skin.
It permanently stops all unnatural weakening drains upon the system, however they occur, preventing involuntary seminal losses, debilitating dreams, seminal losses with the urine, or while at stool, etc., so destructive to mind and body, and cures all the evil effects of youthful follies and excesses, restoring exhausted Vitality, Sexual Decline and Loss of Manhood, however complicated the case may be.
A thorough as well as a permanent cure and complete restoration to perfect health Strength and Vigor of Manhood is absolutely guaranteed by this justly celebrated and reliable Great Remedy. Price, $2 50 per bottle, or five bottles for $10. Sent upon receipt of price, or C. O. D., to any address, secure from observation and strictly private, by
Dr. C. D. SALFIELD, 216 Kearny Street, San Francisco, Cal.
Trial Bottle Free! Sufficient to show its merit will be sent to any one applying by letter stating his symptoms and age.
Consultations strictly confidential, by letter or at office FREE.
d&wly

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SACRAMENTO BANK.
THE OLDEST SAVINGS BANK IN THE city, corner of J and Fifth streets, Sacramento. Guaranteed capital, $500,000; paid up capital, gold coin, $300,000; loans on real estate February 1, 1889, $2,747,373; term and ordinary deposits, February 1, 1889, $2,545,899. Term and ordinary deposits received, and dividends paid in January and July. Money loaned upon real estate only. The Bank does exclusively a savings bank business. Information furnished upon application to W. P. COLEMAN, President.
ED. R. HAMILTON, Cashier. 4p-tf

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—OF—
D. O. MILLS & CO.,
Sacramento, Cal.---Founded, 1850.
DIRECTORS AND SHAREHOLDERS.

D. O. MILLS	1,538 Shares
EDGAR MILLS, President	1,538 Shares
S. PRENTISS SMITH, Vice-Pres	250 Shares
FRANK MILLER, Cashier	351 Shares
CHAS. F. DILLMAN, Asst. Cashier	125 Shares
Other persons own	1,198 Shares
Capital, $500,000, in	5,000 Shares

CALIFORNIA STATE BANK.
Does a General Banking Business.
Draws Exchange on all the principal cities of the world.
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Vice-President........FREDERICK COX
Cashier........A. ABBOTT
DIRECTORS:
C. W. CLARK, GEO. C. PERKINS,
JOSEPH STEFFENS, J. R. WATSON,
N. D. RIDEOUT, FREDERICK COX,
A. ABBOTT. tf

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Office—No. 400 J street, Sacramento.
Capital Stock Paid Up.....$225,500 00
Term and ordinary deposits received
Dividends Paid Semi-Annually.
Money Loaned on Real Estate Only.
WM. BECKMAN, President.
WM. F. HUNTOON, Secretary. 6m

THE CROCKER-WOOLWORTH
National Bank of San Francisco,
322 PINE STREET.
PAID-UP CAPITAL........$1,000,000
(Successor to Crocker, Woolworth & Co.)
DIRECTORS:
CHARLES CROCKER........E. H. MILLER, JR.
R. C. WOOLWORTH........President
W. E. BROWN........Vice-President
W. H. CROCKER........[4ptf]........Cashier

RAILROAD TIME TABLE.

SOUTHERN PACIFIC COMPANY.
PACIFIC SYSTEM.
February 9, 1889.
Trains LEAVE and are due to ARRIVE at SACRAMENTO

LEAVE.	TRAINS RUN DAILY.	ARRIVE.
7:00 A.	Calistoga and Napa	11:40 A.
3:15 P.	Calistoga and Napa	6:55 P.
11:00 P.	Ashland and Portland	3:40 A.
6:00 P.	Deming, El Paso and East	6:50 P.
‡11:40 P.	Golden Gate Special, Council Bluffs and East	¶4:00 P.
7:35 P.	Knight's Landing	7:55 A.
9:25 A.	Los Angeles and Mojave	9:55 A.
7:30 P.	Ogden and East	3:05 A.
3:00 P.	Red Bluff via Marysville	9:50 A.
10:40 A.	Redding via Willows	4:15 P.
4:00 A.	San Francisco via Benicia	10:35 P.
7:00 A.	San Francisco via Benicia	8:30 P.
3:25 A.	San Francisco via Benicia	6:55 P.
*10:00 A.	San Francisco via steamer	§6:00 A.
11:20 A.	San Francisco via Livermore	2:45 P.
3:15 P.	San Francisco via Benicia	11:40 A.
11:20 A.	San Jose	2:45 P.
9:25 A.	Santa Barbara	9:55 A.
6:00 P.	Santa Barbara	6:50 P.
7:00 A.	Santa Rosa	11:40 A.
3:15 P.	Santa Rosa	6:55 P.
9:25 A.	Stockton and Galt	6:50 P.
6:00 P.	Stockton and Galt	9:55 A.
7:30 P.	Truckee and Reno	3:05 A.
8:30 A.	Colfax	3:00 P.
7:00 A.	Vallejo	11:40 A.
3:15 P.	Vallejo	†8:55 P.
*12:30 P.	Folsom & Placerv'le (mixed)	*10:20 A.
*7:30 A.	Folsom and Placerville	*2:40 P.
*5:20 P.	Folsom	*6:50 A.

*Sunday excepted. †Sunday only. ‡Saturday only. §Monday excepted. ¶Friday only. A.—For morning. P.—For afternoon.
A. N. TOWNE, General Manager.
T. H. GOODMAN, General Passenger and Ticket Agent. tf

—THE—
Golden * Gate * Special,
Commencing December 8, 1888,
2 P. M. { WILL LEAVE SAN FRANCISCO Every Saturday, } 2 P. M.
—CONNECTING AT—
COUNCIL BLUFFS AND CHICAGO
WITH SPECIAL TRAINS
FOR ALL EASTERN CITIES.
SOLID VESTIBULE TRAINS!
—COMPRISING—
Pullman Drawing-room Sleepers,
DINING CAR,
SMOKER, BATH AND BARBER SHOP.
Sleeping-Car Reservation can be secured in advance at
613 { Market Street, SAN FRANCISCO. } 613
n26-3mMWF

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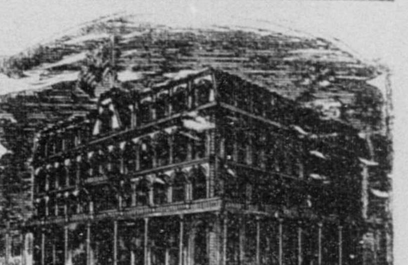
Lumber Company.
Main yard and Office......1310 Second street.
Branch yard....Corner Twelfth and J streets

Waterhouse & Lester,
—DEALERS IN—
IRON, STEEL, CUMBERLAND COAL,
Wagon Lumber and Carriage Hardware,
709, 711, 713 and 715 J street, Sacramento, Cal

J. A. A. LINIMENT.
WARRANTED TO CURE THE MOST DIFficult cases of Rheumatism. Also, Wounds, Bruises, Cuts, Burns, Toothache, Earache, etc. For sale by MRS. JULIA ACHARD, LODI, Cal. Send for free trial bottle. 1m

HOTELS AND RESTAURANTS.


GOLDEN EAGLE HOTEL,
Corner Seventh and K streets.
STRICTLY FIRST-CLASS.
Free 'Bus to and from the Cars.
tf W. O. BOWERS, Proprietor.

CAPITAL HOTEL,
SACRAMENTO,
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First-Class House.
BLESSING & GUTHRIE, Proprietors.
Free Omnibus to and from the Cars.

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FIRST-CLASS HOUSE IN EVERY RESPECT. Ladies' Dining-room separate. Open day and night. BUCKMANN & CARRAGHER, Proprietors, 1019 Second street, between J and K, Sacramento. tf

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HOTEL, 319-325 SANSOME ST. (ONE DOOR from Bank of California), San Francisco, Cal. Board and Room, $1, $1 25 and $1 50 per day. Free Coach to and from the Hotel.
Montgomery Bros.....[o23-tf].....Proprietors.

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715 Howard st., near Third, San Francisco.
A FIRST-CLASS LODGING HOTEL, CONtaining 200 rooms; water and gas in each room; no better beds in the world; no guest allowed to use the linen once used by another; a large reading room; hot and cold water baths free. Price of rooms: Per night, 50 and 75 cents; per week, from $2 upwards. Open all night.
R. HUGHES, Proprietor.
At Market-street Ferry take Omnibus Line of street cars for Third and Howard. TTStf

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REEVES & LONG,
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609 J st., bet. Sixth and Seventh (north side).
WE KEEP ON HAND A COMPLETE Stock of Coffins and Caskets; also Shrouds of every description. Orders from city or country will receive prompt attention, day or night. EMBALMING done in the best manner, at reasonable rates.

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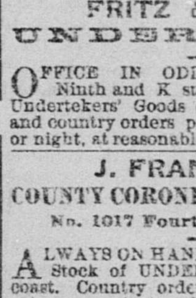

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MICROBE KILLER
Factory No. 10,
Is now established in San Francisco and will supply the Pacific Coast. All our patients and agents will now receive their supply from here, and not from Austin, Texas, as heretofore. This will save you 100 per cent. express charges. Our Office and Sales Depot is 1332 Market Street, (Opposite Odd Fellows' Building,) where you can obtain full particulars free, and all further information about this most wonderful medicine. Any sick person, whatever their ailment, should read our circular. It will open the eyes of the most intelligent person—it will make you think—and you will soon comprehend that Microbes are the cause of all diseases, and "Microbe Killer" cures and prevents disease. Hundreds of testimonials show what it cures. Consumptives especially ought to investigate. Testimony received during one infringement suit held in District Court, Travis Co., Texas, is unimpeachable. Call or address,
Radam's Microbe Killer Co.,
1332 Market Street, San Francisco, Cal.
fel2 tf

M. L. WISE,
MANUFACTURER AND DEALER IN WAGONS of all kinds. Plow Work and all Agricultural Implements a specialty. MR. WISE has enlarged his business by the addition of extensive and commodious PAINT SHOPS, where all kinds of Wagon, Carriage and Ornamental Painting will be done first-class. In each department skilled workmen only are employed. All work warranted to give satisfaction.
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4ptf

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