UNITED STATES SUPREME COURT.

IMPORTANT DECISIONS.

Shall the United States Defray a Part of the Expenses of the Rebellion?

The Texas Indemnity Bonds Declared Not Legally Issued by the Rebel State Government.

THE McCARDLE CASE DISMISSED.

The Texas Indemnity Bonds—Important Decision of Chief Justice Chase.

WASHINGTON, April 12, 1869.

Chief Justice Chase to-day delivered the following decision:—

No. 6.—The State of Texas vs. George White, John Childs, John A. Hardenburgh and Others—This is an original suit in this court, in which the State of Texas, claiming certain bonds of the United States as her property, asks an injunction to restrain the defendants from receiving payment from the national government, and to compel the surrender of the bonds to the State. It appears from the bill, answers and proofs, that the United States, by act of September 9, 1850, offered to the State of Texas, in compensation for her claims, connected with the settlement of her boundary, $10,000,000 in five per cent bonds, each for the sum of $1,000, and this offer was accepted by Texas. One-half of these bonds were retained, for certain purposes, in the National Treasury, and the other half were delivered to the State. The bonds thus delivered were dated January 1, 1851, and were all made payable to the State of Texas, or bearer, and redeemable after the 31st day of December, 1864. They were received in behalf of the State, by the Comptroller of Public Accounts, under authority of an act of the Legislature, which, besides giving that authority, provided that no bond should be available in the hands of any holder until after endorsement by the Governor of the State. After the breaking out of the rebellion, the insurgent Legislature of Texas, on the 11th of January, 1862, repealed the act requiring the endorsement of the Governor (Acts of Texas, 1862), and, on the same day, provided for the organization of a military board, composed of the Governor, Comptroller and Treasurer, and authorized a majority of that board to provide for the defence of the State by means of any bonds in the Treasury upon any account to the extent of $1,000,000. (Texas Laws of 1862, p. 55.) The defence contemplated by the act was to be made against the United States by war.

Under this authority the military board entered into an agreement with George W. White and John Childs, two of the defendants, for the sale to them of 135 of these bonds, then in the Treasury of the State, and seventy-six more, then deposited with Droege & Co., in England, in payment for which they engaged to deliver to the board a large quantity of cotton cards and medicines. This agreement was made on the 12th of January, 1865. On the 12th of March, 1865, White and Childs received from the military board 135 of these bonds, none of which were endorsed by any Governor of Texas. Afterward, in the course of the years of 1865 and 1866, some of the same bonds came into the possession of others of the defendants by purchase or as security for advances of money. Such is a brief outline of the case. It will be necessary hereafter to refer more in detail to some particular circumstances of it.

The first inquiries to which our attention was directed by counsel arose upon the allegation of the answer of Childs—first, that no sufficient authority is shown for the prosecution of the suit in the name and on behalf of the State of Texas, and, secondly, that the State, having severed her relations with a majority of the States of the Union, and having by her ordinance of secession attempted to throw off her allegiance to the constitution and government of the United States, has so far changed her status as to be disabled from prosecuting suits in the national courts. The first of these allegations is disproved by the evidence. A letter of authority, the authenticity of which is not disputed, has been produced, in which J. W. Throckmorton, elected Governor under the constitution in 1866, and proceeding under an act of the State Legislature relating to these bonds, expressly ratifies and confirms the action of the solicitors who filed the bill and empowers them to prosecute this suit, and it is further proved by the affidavit of Mr. Paschal, counsel for the complainant, that he was duly appointed by Andrew J. Hamilton, while Provisional Governor of Texas, to represent the State of Texas in reference to the bonds in controversy, and that his appointment has been renewed by E. M. Pease, the actual Governor. If Texas was a State of the Union at the time of these acts, and these persons or either of them competent to represent the State, this proof leaves no doubt upon the question of authority.

The other allegation presents a question of jurisdiction. It is not to be questioned that this court has original jurisdiction of suits by States against citizens of other States, or that the States entitled to invoke this jurisdiction must be States of the Union. But it is equally clear that no such jurisdiction has been conferred upon this court of suits by any other political communities than such States. If, therefore, it is true that the State of Texas was not at the time of filing this bill, or is not now one of the United States, we have no jurisdiction of this suit and it is our duty to dismiss it.

We are very sensible of the magnitude and importance of the question, of the interest it excites and of the difficulty, not to say impossibility of so disposing of it as to satisfy the conflicting judgments of men equally enlightened, equally upright and equally patriotic; but we meet it in the case and we must determine it in the exercise of our best judgment, under the guidance of the constitution alone. Some not unimportant aid, however, in ascertaining the true sense of the constitution may be derived from considering what is the correct idea of a State, apart from any union or confederation with other States. The poverty of language often compels the employment of terms in quite different significations, and of this hardly any example more signal is to be found than in the use of the word we are now considering. It would serve no useful purpose to attempt an enumeration of all the various senses in which it is used. A few only need be noticed. It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting, temporarily or permanently, the same country; often it denotes only the country or territorial region inhabited by such a community; not unfrequently it is applied to the government under which the people live: at other times it represents the combined idea of people, territory and government.

It is not difficult to see that in all these senses the primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government or united by looser or less definite relations, constitute the State. This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established. It was stated very clearly by an eminent judge (Mr. Justice Patterson, in Penhallow vs. Downey, Adm. 3, Dall. 93) in one of the earliest cases adjudicated by this court, and we are not aware of anything in any subsequent decision of a different tenor.

In the constitution the term State most frequently expresses the combined idea just noticed, of people, territory and government. A State, in the ordinary sense of the constitution, is a political community of free citizens, occupying a territory of defined boundaries and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed. It is the union of such States, under a common constitution, which forms the distinct and greater political unit, which that constitution designates as the United States, and makes of the people and States which compose it one people and one country. The use of the word in this sense hardly requires further remark. In the clauses which impose prohibitions upon the States in respect to the making of treaties, emitting of bills of credit, laying duties of tonnage and guaranteeing to the States representation in the House of Representatives and in the Senate, are found some instances of this use in the constitution. Others will occur to every mind. But it is also used in its geographical sense, as in the clauses which require that a representative in Congress shall be an inhabitant of the State in which he shall be chosen, and that the trial of crimes shall be held within the State where committed. And there are instances in which the principal sense of the word seems to be that primary one, to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of government and shall protect each of them against invasion. In this clause a plain distinction was made between a State and the government of a State. Having thus ascertained the senses in which the word State is employed in the constitution we will proceed to consider the proper application of what has been said.

The republic of Texas was admitted into the Union as a State on the 27th of December, 1845. By this act the new State and the people of the new State were invested with all the rights, and became subject to all the responsibilities and duties, of the original States under the constitution. From the date of admission until 1861 the State was represented in the Congress of the United States by her Senators and Representatives, and her relation as a member of the Union remained unimpaired. In that year, acting upon the theory that the rights of a State under the constitution might be renounced and her obligations thrown off at pleasure, Texas undertook to sever the bond thus formed and to break up her constitutional relations with the United States. On the 1st of February (Paschal's Digest, Laws of Texas, 78) a convention, called without authority, but subsequently sanctioned by the Legislature regularly elected, adopted an ordinance to dissolve the union between the State of Texas and the other States under the constitution of the United States, whereby Texas was declared to be a "separate and sovereign State," and "her people and citizens" to be "absolved from all allegiance to the United States or the government thereof." It was ordered by a vote of the convention, and by an act of the Legislature—(Laws of Texas, 1859-61, p. 11)—that this ordinance should be submitted to the people for approval or disapproval on the 23d of February, 1861. Without awaiting, however, the decision thus invoked, the convention, on the 4th of February, adopted a resolution designating seven delegates to represent the State in the convention of seceding States at Montgomery, "in order, as the resolution declared, "that the wishes and interests of the people of Texas may be consulted in reference to the constitution and provisional government that may be established by said convention." Before the passage of this resolution the convention had appointed a Committee of Public Safety, and adopted an ordinance giving authority to the committee to take measures for obtaining possession of the property of the United States in Texas, and for removing the national troops from her limits.

The members of the committee and all officers and agents appointed, or employed by it, were sworn to secrecy and to allegiance to the State. Paschal's Digest, 80. Commissioners were at once appointed, with instructions to repair to the headquarters of General Twiggs, then representing the United States in command of the Department, and to make the demand necessary for the accomplishment of the purposes of the committee. A military force was organized, in support of these demands, and an arrangement was effected with the commanding general by which the United States troops were engaged to leave the State, and the forts and all the public property, not necessary to the removal of the troops, were surrendered to the commissioners. (Texan Reports of the Committee. Library of Congress, page 45.) These transactions took place between the 2d and the 18th of February, and it was under these circumstances that the vote upon the ratification, or rejection, of the ordinance of secession was taken on the 23d of February. It was ratified by a majority of the votes of the State.

The Convention, which had adjourned before the vote was taken, reassembled on the 2d of March, and instructed the delegates, already sent to the Congress of the seceding States, to apply for admission into the confederation, and to give the adhesion of Texas to its provisional constitution. It proceeded also to make the changes in the State constitution, which this adhesion made necessary. The words "United States" were stricken out wherever they occurred and the words "Confederate States" substituted; and the members of the Legislature and all officers of the State were required, by the new constitution, to take an oath of fidelity to the constitution and laws of the new confederacy. Before, indeed, these changes in the constitution had been completed, the officers of the State had been required to appear before the committee and take an oath of allegiance to the Confederate States. The Governor and Secretary of State, refusing to apply, were summarily ejected from office. The members of the Legislature, which had also adjourned and reassembled on the 18th of March, were more compliant. They took the oath and proceeded on the 8th of April to provide by law for the choice of electors of President and Vice President of the Confederate States. The representatives of the State in the Congress of the United States were withdrawn, and, as soon as the seceded States became organized under a constitution, Texas sent Senators Representatives to the Confederate Congress. In all respects and so far as the object could be accomplished by ordinances of the Convention, by acts of the Legislature and by votes of the citizens, the relations of Texas to the Union were broken up and new relations to a new government were substituted for them. The position thus assumed could only be maintained by arms, and Texas accordingly took part with the other Confederate States in the war of the rebellion, which these events made inevitable. During the whole of the war there was no Governor or judge or any other State officer in Texas who recognized the national authority. Nor was any officer of the United States permitted to exercise any authority whatever under the national government within the limits of the State, except under the immediate protection of the national military forces.

Did Texas in consequence of these acts cease to be a State? or if not, did the State cease to be a member of the Union? It is needless to discuss at length the question whether the right of a State to withdraw from the Union for any cause regarded by herself as sufficient is consistent with the constitution of the United States. The union of the States never was a purely artificial and arbitrary relation. It began among the colonies and grew out of common origin, mutual sympathies, kindred principles, similar interests and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the articles of confederation. By these the Union was solemnly declared to "be perpetual," and when these articles were found to be inadequate to the exigencies of the country the constitution was ordained "to form a more perfect union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual union made more perfect is not?

But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence or of the right of self-government by the States. Under the articles of confederation each State retained its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States. Under the constitution, though the power of the States were much restricted, still all powers not delegated to the United States nor prohibited to the States are reserved to the States respectively or to the people. And we have already had occasion to remark at this term that "the people of each State compose a State, having its own government and endowed with all the functions essential to separate and independent existence," and that without the States in union there could be no such political body as the United States. (Nevada.) Not only, therefore, can there be no loss of separate and independent autonomy to the States through their union under the constitution, but it may be not unreasonably said that the preservation of the States and the maintenance of their governments are as much within the design and care of the constitution as the preservation of the Union and the maintenance of the national government. The constitution in all its provisions looks to an indestructible Union, composed of indestructible States.

When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union and all the guaranties of the republican government in the Union attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body, and it was final. The union between Texas and the other States was as complete, as perpetual and as indissoluble as the union between the original States. There was no place for reconsideration or revocation, except through revolution or through consent of the States. Considered, therefore, as transactions under the constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her Legislature, intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The obligations of the State, as a member of the Union, and of every citizen of the State, as a citizen of the United States, remained perfect and unimpaired. It necessarily follows that the State did not cease to be a State, nor her citizens to be citizens, of the Union. If this were otherwise the State must have become foreign and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion and must have become a war for conquest and subjugation.

Our conclusion, therefore, is that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred. And this conclusion, in our judgment, is not in conflict with any act or declaration of any department of the national government, but entirely in accordance with the whole series of such acts and declarations since the first outbreak of the rebellion. But, in order to the exercise by a State of the right to sue in this court, there needs to be a State government competent to represent the State in its relations with the national government, so far, at least, as the institution and prosecution of a suit is concerned. And it is by no means a logical conclusion, from the premises, which we have endeavored to establish, that the governmental relations of Texas to the Union remained unaltered. Obligations often remain unimpaired, while relations are greatly changed. The obligations of allegiance to the State and of obedience to her laws, subject to the constitution of the United States, are binding upon all citizens, whether faithful or unfaithful to them; but the relations which subsist, while the obligations are performed, are essentially different from those which arise when they are disregarded and set at nought. And the same must necessarily be true of the obligations and relations of States and citizens to the Union. No one has been bold enough to contend that, while Texas was controlled by a government hostile to the United States and in affiliation with a hostile confederation waging war upon the United States, Senators chosen by her Legislature, or Representatives elected by her citizens, were entitled to seats in Congress, or that any suit instituted in her name could be entertained in this court. All admit that during this condition of civil war the rights of the State, as a member, and of her people, as citizens of the Union, were suspended. The government and the citizens of the State, refusing to recognize their constitutional obligations, assumed the character of enemies and incurred the consequence of rebellion. These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the State with the Union. The first of these duties having been performed, the next necessarily engaged the attention of the national government. The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second authority was derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. The latter, indeed, in the case of a rebellion, which involves the government of a State, and for the time excludes the national authority from its limits, seems to be a necessary complement to the other. Of this the State of Texas furnishes a striking illustration. When the war closed there was no government in the State, except that which had been organized for the purpose of waging war against the United States. That government immediately disappeared. The chief functionaries left the State. Many of the subordinate officials followed their example. Legal responsibilities were annulled or greatly impaired. It was inevitable that great confusion should prevail. If order was maintained it was where the good sense and virtue of the citizens gave support to local acting magistrates or supplied more directly the needful restraints. A great social change increased the difficulty of the situation. Slavery had been declared abolished by the proclamation of emancipation; and whether questions might be made as to the effect of that act, under the constitution, it was clear from the beginning that its practical operation must be complete enfranchisement. Wherever the national forces obtained control the slaves became freemen. Support to the acts of Congress and the proclamation of the President concerning slaves was made a condition of amnesty—(13 U. S. St., 737)—by President Lincoln, in December, 1863, and by President Johnson in May, 1865—(13 U. S. St., 758)—and emancipation was confirmed, rather than ordained, by the amendment to the constitution prohibiting slavery throughout the Union, which was proposed by Congress in February, 1865, and ratified before the close of the following autumn by the requisite three-fourths of the States. (13 U. S. St., 774-5.) The new freemen necessarily became a part of the people, and the people still constituted the State, for States, like individuals, retain their identity, though changed, to some extent, in their constituent elements, and it was the State, thus constituted, which was now entitled to the benefit of the constitutional guaranty.

There being, then, no government in Texas in constitutional relations with the Union, it became the duty of the United States to provide for the restoration of such a government; but the restoration of the government which existed before the rebellion, without a new election of officers was obviously impossible; and before any such election could be properly held it was necessary that the old constitution should receive such amendments as would conform its provisions to the new conditions created by emancipation, and afford adequate security to the people of the State. In the exercise of the power conferred by the guaranty clause, as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed. It is essential only that the means must be necessary and proper for carrying into execution the power conferred through the restoration of the State to its constitutional relations, under a republican form of government, and that no acts be done and no authority exerted which is either prohibited or unsanctioned by the constitution.

It is not important to review at length the measures which have been taken under this power by the executive and legislative departments of the national government. It is proper, however, to observe that almost immediately after the cessation of organized hostilities, and while the war yet smouldered in Texas, the President of the United States issued his proclamation appointing a provisional governor for the State and providing for the assembling of a convention, with a view to the re-establishment of a republican government under an amended constitution, and to the restoration of the State to her proper constitutional relations. A convention was accordingly assembled, the constitution amended, elections held and a State government acknowledging its obligations to the Union established. Whether the action then taken was in all respects warranted by the constitution it is not now necessary to determine. The power exercised by the President was supposed, doubtless, to be derived from his constitutional functions as Commander-in-Chief; and so long as the war continued it cannot be denied that he might institute temporary government within insurgent districts occupied by national forces, or take measures in any State for the restoration of State governments faithful to the Union, employing, however, in such efforts only such means and agents as were authorized by constitutional laws. But the power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress. "Under the fourth article of the constitution it rests with Congress to decide what government is the established one in a State, for as the United States guarantees to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not." This is the language of the late Chief Justice, speaking for this court in a case from Rhode Island—(Luther vs. Borden, 7 How. 42)—arising from the organization of opposing governments in that State, and we think that the principle sanctioned by it may be applied with even more propriety to the case of a State deprived of all rightful government by revolutionary violence, though necessarily limited to cases where the rightful government is thus overthrown or in imminent danger of being overthrown by an opposing government set up by force within the State.

The action of the President must, therefore, be considered as provisional, and in that light it seems to have been regarded by Congress. It was taken after the term of the Thirty-eighth Congress had expired. The Thirty-ninth Congress, which assembled in December, 1865, followed by the Fortieth Congress, which met in March, 1867, proceeded, after long deliberation, to adopt various measures for reorganization and restoration. These measures were embodied in proposed amendments to the constitution, and in the acts known as the reconstruction acts, which have been so far carried into effect that a majority of the States, which were engaged in the rebellion have been restored to their constitutional relations, under forms of government adjudged to be republican by Congress through the admission of their Senators and Representatives into the councils of the Union. Nothing in the case before us requires the court to pronounce judgment upon the constitutionality of any particular provision of these acts. But it is important to observe that those acts themselves show that the governments which had been established and had been in actual operation, under Executive direction, were recognized by Congress as provisional, as existing and as capable of continuance. By the act of March 2, 1867 (United States Statutes, 428), the first of the series, these governments were, indeed, pronounced illegal, and were subjected to military control, and were declared to be provisional only, and by the supplementary act of July 19, 1867, the third of the series, it was further declared that it was the true intent and meaning of the act of March 2 that the governments then existing were not legal State governments, and if continued were to be continued subject to the military commanders of the respective districts and to the paramount authority of Congress. We do not inquire here into the constitutionality of this legislation, so far as it relates to military authority or to the paramount authority of Congress. It suffices to say that the terms of the acts necessarily imply recognition of actually existing governments, and that, in point of fact, the governments thus recognized, in some important respects, still exist.

What has thus been said generally describes with sufficient accuracy the situation of Texas. A provisional governor of the State was appointed by the President in 1865; in 1866 a governor was elected by the people under the constitution of that year; at a subsequent date a governor was appointed by the commander of the district. Each of the three exercised executive functions and actually represented the State in the Executive Department. In the case before us each has given his sanction to the prosecution of the suit, and we find no difficulty without investigating the legal title of either to the executive office in holding that the sanction thus given sufficiently warranted the action of the solicitor and counsel in behalf of the State. The necessary conclusion is that the suit was instituted and is prosecuted by competent authority. The question of jurisdiction being thus disposed of we proceed to the consideration of the merits, as presented by the pleadings and the evidence, and the first question to be answered is whether or not the title of the State to the bonds in controversy was divested by the contract of the military board with White and Childs. That the bonds were the property of the State of Texas on the 11th of January, 1862, when the act prohibiting alienation without the endorsement of the Governor was repealed, admits of no question and is not denied. They came into her possession and ownership through public acts of the general government and of the State, which gave notice to all the world of the transaction consummated by them, and we think it clear that if a State by a public act of her Legislature imposes restrictions upon all alienation of her property, that every person who takes a transfer of such property must be held affected by notice of them. Alienation in disregard of such restrictions can convey no title. In this case, however, it is said that the restriction imposed by the act of 1851 was repealed by the act of 1862, and this is true if the act of 1862 can be regarded as valid. But, was it valid? The Legislature of Texas, at the time of the repeal, constituted one of the departments of a State government established in hostility to the constitution of the United States. It cannot be regarded, therefore, in the courts of the United States as a lawful Legislature, or its acts as lawful acts. And yet it is a historical fact that the government of Texas, then in full control of the State, was its only actual government; and certainly, if Texas had been a separate State and not one of the United States, the new government, having displaced the regular authority and having established itself in the customary seats of power and in the exercises of the ordinary functions of administration, would have constituted, in the strictest sense of the words, a *de facto* government, and its acts during the period of its existence as such would be effectual and almost in all respects valid, and to some extent this is true of the actual government of Texas, though unlawful and revolutionary as to the United States.

It is not necessary to attempt any exact definitions within which the act of such a State government must be treated as valid or invalid. It may be said, perhaps with sufficient accuracy, that acts necessary to peace and good order among citizens—such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government—must be regarded in general as valid, when proceeding from an actual, though unlawful government; and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must, in general, be regarded as invalid and void. What, then, tried by these general tests, was the character of the contract of the military board with White & Childs? That board, as we have seen, was organized not for the defence of the States against a foreign invasion, or for its protection against domestic violence, within the meaning, of these words as used in the national constitution but for the purpose, under the name of defence, of levying war against the United States. This purpose was undoubtedly unlawful, for the acts which it contemplated are, within the express definition of the constitution, treasonable. It is true that the military board was subsequently reorganized. It consisted thereafter of the Governor and two other members, appointed and removable by him, and was, therefore, entirely subordinate to executive control. Its general object remained without change, but its powers were "extended to the control of all public works and supplies, and to the aid of producing within the State by the importation of articles necessary and proper for such aid." And it was insisted, in argument on behalf of some of the defendants, that the contract with White & Chiles being for the purchase of cotton cards and medicines, was not a contract in aid of the rebellion, but for obtaining goods capable of a use entirely legitimate and innocent, and, therefore, that payment for those goods by the transfer of any property of the State was not unlawful. We cannot adopt this view. Without entering at this time upon the inquiry whether any contract made by such a board can be sustained, we are obliged to say that the enlarged powers of the board appear to us to have been conferred in furtherance of its main purpose, of war against the United States, and that the contract under consideration, even if made in the execution of these enlarged powers, was still a contract in aid of the rebellion and therefore void. And we cannot shut our eyes to the evidence which proves that the act of repeal was intended to aid rebellion by facilitating the transfer of these bonds. It was supposed, doubtless, that the negotiation of them would be less difficult if they bore upon their face no direct evidence of having come from the possession of any insurgent State government. We can give no effect, therefore, to this repealing act. It follows that the title of the State was not divested by the act of the insurgent government in entering into this contract. But it was insisted further in behalf of those defendants, who claim certain of these bonds by purchase or as collateral security, that, however unlawful may have been the means by which White & Childs obtained possession of the bonds, they are innocent holders, without notice, and entitled to protection as such under the rules which apply to securities which pass by delivery. These rules were fully discussed in Murray vs. Lardner (2 Wall., 118). We held in that case that the purchase of coupon bonds before due, without notice and in good faith, is unaffected by want of title in the seller, and that the burden of proof in respect to notice and want of good faith is on the claimant of the bonds as against the purchaser. We are entirely satisfied with this doctrine. Does the State then show affirmative notice to these defendants of want of title to the bonds in White & Childs? It would be difficult to give a negative answer to this question, if there were no other proofs than the legislative acts of Texas.

But there is much other evidence of notice. The rules to which we have adverted have never been applied to matured obligations. Purchases of notes, or bonds past due, take nothing but the actual right and title of the venders. (Brown vs. Davis, 37, R. 80; Goodman vs. Symonds, 20, How., 363.) The bonds in question were dated January 1, 1851, and were redeemable after the 31st of December, 1864. In strictness, it is true, they were not payable on the day when they became redeemable; but the known usage of the United States, to pay all bonds as soon as the right of payment accrues, except where a distinction between redeemability and payability is made by law and shown on the face of the bonds, requires the application of the rule respecting over due obligations to bonds of the United States, which have become redeemable and in respect to which no such distinction has been made.

Now all the bonds in controversy had become redeemable before the date of the contract with White & Chiles, and all bonds of the same issue which have the endorsement of a Governor of Texas made before the date of the secession ordinance, and there were no others endorsed by any governor, had been paid in coin on presentation at the Treasury Department; while on the contrary, all applications for the payment of bonds without the required endorsement, and of coupons detached from such bonds, made to that department had been denied. As a necessary consequence, the negotiation of these bonds became difficult. They sold much below the rates they would have commanded had the title to them been unquestioned. They were bought in fact, and, under the circumstances, could only have been bought, upon speculation. The purchasers took the risk of a bad title hoping, doubtless, that through the action of the national government or the government of Texas it might be converted into a good one. And it is true that the first provisional Governor of Texas encouraged the expectation that these bonds would be ultimately paid to the holders. But he was not authorized to make any engagement in behalf of the State, and, in fact, made none. It is true, also, that the Treasury Department, influenced, perhaps, by these representations, departed to some extent from its original rule, and paid bonds held by some of the defendants without the requisite endorsement. But it is clear that this change in the action of the department could not affect the rights of Texas as a State of the Union, having a government acknowledging her obligations to the national constitution.

It is impossible, upon this evidence, to hold the defendants, protected by absence of notice of the want of title in White & Childs. As these persons acquired no right to payment of these bonds as against the State, purchasers could acquire none, through them. On the whole case, therefore, our conclusion is that the State of Texas is entitled to the relief sought by her bill, and a decree must be made accordingly.

Associate Justice Grier dissented as to the jurisdiction and merits of the cause, holding that Texas is not a State in the Union in point of fact, and therefore could not bring a suit in this court any more than could the District of Columbia. Associate Justices Swayne and Miller dissented as to the question of jurisdiction only.

The McCardle Case—The Appeal Dismissed for Want of Jurisdiction—General Fremont's Contracts in the Department of Missouri—The Case of the Steamboat Belfast—Cotton Speculations in Louisiana During the Rebellion—The Case of Rosenberg Dismissed.

WASHINGTON, April 12, 1869.

The Supreme Court of the United States to-day disposed of the case of William H. McCardle, the Mississippi editor who, it will be recollected, was arrested, tried and sentenced to imprisonment by the military authorities several years ago on the charge of writing and publishing seditious articles in his newspaper. He had appealed from the Circuit Court of the United States for the Southern district of Mississippi, which had denied the writ of habeas corpus. Chief Justice Chase delivered the opinion of the court dismissing the appeal for want of jurisdiction.

The cases of the United States, appellants, vs. Albert L. Mowry, Samuel J. Morgan, Jonathan P. Burton, Oliver H. Geffroy and Benjamin Higdon, were appeals from the Court of Claims. The facts are briefly these:—In 1861 the parties abovenamed severally supplied the Department of the Missouri with mortar and tug boats, railroad cars, horses, &c. General Fremont was at that time in command of the department and McKinstry was acting as quartermaster. The charge of fraud having been raised the Secretary of War suspended the contracts, and a board, under resolution of Congress, was appointed to investigate the claims. The parties submitted their claims to the board, which awarded certain amounts, for which they receipted under protest. They afterwards severally brought suit in the Court of Claims, which allowed them the remainder of the money claimed under the contracts. The Supreme Court hold that these parties having voluntarily come before the board and receipted the sums allowed were stopped from further claims. It was not designed by the government that the proceedings should be commenced in one tribunal and ended in another. For these and other reasons the court (Justice Nelson delivering the opinion) reversed the decree of the Court of Claims, and remanded the causes, with directions to enter a decree dismissing the petitions.

In the case of the steamboat Belfast, B. C. Nelson et al., claimants in error, vs. Boon & Company et al., in error to the Supreme Court of the State of Alabama, Justice Clifford delivered the opinion of the court, reversing the decree of the court below with costs, and remanding the cause with directions to dismiss the libel. The case involved claims for cotton lost in transportation, and which had been insured by the owners. The Court held, as against the court below, that the federal jurisdiction in marine and admiralty cases extends from the sea as far up rivers as they are navigable, irrespective of tide waters.

In the case of Jesse Riddlesbarger, plaintiff in error, vs. The Hartford Fire Insurance Company, in error to the Circuit Court of the United States for the District of Missouri, Justice Field delivered the opinion of the court, affirming the judgment of said Circuit Court, with costs.

In the case of R. F. Hall et al., plaintiffs in error, vs. George Cappell, in error to the Circuit Court of the United States for the Eastern district of Louisiana, Justice Swayne delivered the opinion of the court reversing the judgment of that court with costs, and remanding the cause for further proceedings in conformity to the opinion of this court. Certain cotton transactions were involved in this case in which the British Consul at New Orleans bore a part. The occurrences were in 1863. The cotton was within the rebel lines. It is held that the Consul could not protect it by his official character, and that a consul engaged in trade has no more rights in business during war than a citizen of the United States. The President issued his proclamation making exceptions as to parts of Louisiana, and Congress passed a law relative to rebel property, and the Secretary of the Treasury issued instructions pursuant to the statute. The military authorities could make no regulations nor grant any permits contrary to them. The contracts involved in the case before the court were therefore void.

The United States, plaintiffs, vs. Benjamin Rosenberg, certificate of division of opinion between the Judges of the Circuit Court of the United States for the Southern district of New York. Mr. Chief Justice Chase delivered the opinion of the court dismissing this case for want of jurisdiction. The court then adjourned until Thursday.

FIFTY-THREE NOMINATIONS for various offices not having been confirmed by the Senate previous to adjournment, new names must be sent for the offices or those previously sent in be renominated. All of the New York city and Brooklyn internal revenue nominations, and those of C. W. Babcock, to be Surveyor General for Kansas, and A. R. Calhoun, to be Pension Agent at Philadelphia, not having been confirmed, expired with the adjournment.—*Washington Intelligencer, April 12.*

EUROPE.

ENGLAND.

British Treatment of Fenian Prisoners.

LONDON, March 27, 1869.

A man need not be very old, nor need he be blessed with a very retentive memory, to recollect the civil war in America and how we English used to criticise all that the federals did respecting their prisoners of war. For four years our newspapers, fed by the extraordinary (and nine times out of ten false) stories of their special correspondents in the States, kept up a never-ending, ever-beginning source of irritation to an honorable and sensitive people by attempting to teach the Northerners what they ought and what they ought not to do with their Confederate prisoners. And when the war was at an end they made matters still worse. "Why don't you liberate all those Southerners you have in captivity—why don't you let them go back at once to their homes?" was the continual cry of the English press, always excepting the *Daily News*, the *Star* and a few other journals. Well, the federals did liberate the great mass of the rank and file, but kept for a time a few of the leaders in an honorable, easy captivity. One by one even these were, and very speedily, too, after the war was over, set free, until Jeff Davis alone remained a prisoner—but a prisoner who was as well treated in his place of detention as he could have been in his own house, and his imprisonment, as we all know, was purely nominal. But this was not enough for a people and a press like ours, who seem to think that their "mission" in this world is to teach mankind in general, and America in particular, how to do their duty in life. And so a continual cry was sent up in England that it was a sin, and a shame and a national disgrace for America to keep the ex-President of the Confederate rebellion any longer in captivity. And even now, that Jeff Davis himself is no longer even nominally "behind the bars," not a week—hardly a day—passes without some one or other, even of the better class—ah, and of the "liberal" in politics—of newspapers grumbling and thundering about what the Americans ought to have done with their prisoners, what they did not do, and so forth.

Now, if ever there was a rebellion that was utterly unjustifiable; if ever there was one that had for its chief object the maintenance of a devilish institution which had been left as a legacy by Britain to the States; if ever there was a revolution that was dangerous and which would have justified even the utmost severity, by way of caution for the future, towards those who had taken part in it, it was the late civil war in America. Compare it for a moment with the Fenian movement in Ireland. If ever men were justified in taking arms in their hands; if ever those who rebelled against a government showed courage, singleness of purpose and devotion to their cause; if ever men cast their lives upon the hazard of a die, and, like the martyrs of old, determined to preach their faith by their deaths, in order that others might see and believe and follow in their political footsteps, it was the Irish Fenian leaders. And I will say more. If ever there was a government that could afford and that ought to let bygones be bygones, to forgive and forget the past and conciliate by mercy and amnesty what remains of the anti-English feeling in Ireland, it is the British government of the present day. I am not an Irishman, nor had I any sympathy with the Fenian movement as such. But I can feel how Irishmen that were not Orangemen must have felt when there was a hope—a chance, however small—of compelling England to do justice to the sister isle. More than this, my loyalty towards the English government does not prevent me remembering with bitter shame how the Fenian prisoners have been treated since they were captured.

For, when all is said and done, what were, what are these Fenians but political prisoners? Even their enemies never accused them of plunder, of any wanton outrage, or of causing blood to flow to one-half the extent that every band of revolutionists on the Continent of Europe has done. Compared with those who have overset, or tried to overset, governments in France, Italy, Germany and other countries, the Fenian Irish were as innocent children. But they have been herded with the very scum of society, and made to work in gangs with murderers, housebreakers and the very worst of our very bad habitual criminals. Many, I may say most, of the Fenian prisoners are educated men. Some held responsible commands in your army during the war. But they have endured for three long years a punishment far worse than death itself, living and moving with companions such as the devil alone could have provided. To do Mr. Gladstone, Mr. Bright and others, but not all now in the Ministry, justice, they determined in their own minds that the Fenians had suffered long enough, and that the best way to make Ireland forget the past was to liberate a portion of these prisoners, and, should they not abuse the favors granted them, to release at some subsequent period the others. You will hardly believe that the press has set up a howl of indignation against this measure, and that even the mercy extended to the thirty or forty Fenians who have come forth from penal servitude has been greatly and very loudly blamed. Of course on reading this you will at once imagine that the Tory, or the Irish Orange papers, have taken up this cry. I wish for the honor of English journalism that no other journals had done so, but it is not so. The liberal *Times* and the liberal *Pall Mall Gazette*, both organs of the higher classes, are foremost in this cry. They blame the government most severely, even for the small modicum of mercy it has shown, and declaim in no measured terms against any more steps in the same direction. Their reason—if reason it can be called—is because among the thirty or forty Fenians that have been liberated two or three of the more hot-headed ones have since their liberation uttered speeches which were full of "tall talk" respecting the future of Ireland, and certainly not complimentary towards the British government. But can we wonder at this? Is it surprising that men—gentlemen many of them by birth and education—who know how much the English press and the English people sympathize with rebellion all over the world should feel aggrieved at having passed two years among the worst outcasts of the world of crime? Did Louis Napoleon, did King Bomba, did the Pope, did the Emperor of Austria ever subject their political prisoners to penal servitude and couple them with murderers, garroters, housebreakers and the like? The *Pall Mall Gazette*, in an article upon this subject which appeared the night before last (and which is calculated to do an immense deal of harm by setting many of the unthinking upper classes in England—a very numerous class, I am sorry to say—against Ireland, and the Irish against the English governing classes), says:—

> The Irish peasantry are by no means as yet in such a state of mind that it is safe to give them to understand that rebellion is a fine-spirited proceeding which the government is half ashamed and half afraid to treat as a serious crime. If we were well on the other side of a serious rebellion, if we had fought battles and won victories which had thoroughly broken the neck of disaffection at home and destroyed the hopes of the Irish in America, it would be very different; but as matters stand the enemy who has been defeated is so very small, the defeat which he has received is so trifling, and so little impression has been made upon the causes from which proceeded the hostility of which he was the representative, that the pretence of treating with contempt the cause which he represents is a hollow one, and is a mere mask for our fear of dangers which it would be more manly to confront with an open avowal that they are serious and must be met in a serious spirit.

Now, if the above extract means anything it means that England has wronged Ireland; that Ireland has yet the power in her own hands to avenge these wrongs, and that as we fear her, so we will be, and are justified in being, unjust towards her. I may be wrong, but coming from the quarter this kind of manifest does, and sprung as it has from more than one so-called liberal source, at one and the same time, I look upon this doctrine as more fatal to Irish tranquillity than all the vaporings of the Orange party. The writer of such an article must in his heart be a well-wisher to Irish discontent.

SPAIN.

The Conscription Troubles—Attempted Disturbance by Bourbon Agents.

MADRID, March 30, 1869.

The Cortes has been engaged on a bill calling out 25,000 men as this year's quota for the standing army, and it has been discovered that the principles involved in the act have a deep interest to all Spain. In the urgent need of the government for men it has been compelled to adopt the speediest course to obtain them, and that is by the odious mode of conscription. If there is any system thoroughly detested by the masses it is that of drawing soldiers by lot. Any impost but this one of blood is endurable, and it was supposed to be one of the great results obtained by the revolution that it was forever abolished. Spain must have an army, and men must be found one way or another to fill its ranks, and it makes but little difference how they are obtained. The people protest against the odious system of conscription, so unequal and unfair; but the government says it must be enforced this time; that next year something better will be devised to lighten the burden. It is the most dangerous policy that the government could adopt, and if it is carried out without very general disturbances and outbreaks it will be strange enough. The people are bitterly opposed to it, as is natural, and there are not wanting politicians of all parties to incite them to an armed resistance to the detested outrage on their personal rights. The republicans have been exceedingly active in promoting public meetings in all the towns of Spain to protest against the "blood tax," and by this means the people are thoroughly awakened to the danger that threatens them, and have done all in their power by means of petitions to the Cortes against the act to promote its execution. The powerful opposition organized by the republicans to resist by peaceful and legal means the passage of the bill in the Cortes will be seized and used by the reactionists in many places, it is feared, in a hostile manner. Already the meetings are addressed by agents of the Bourbons, who advocate resistance to the enforcement of the conscription. All they want is to get up a series of insurrections in various parts of Spain and then trust to the future for something better to turn up in their behalf; and therein is the danger to the government if it attempts to carry out the unpopular act. I saw myself the other day exactly how the Neos work. Fortunately, the turbulent rascals that followed the cunning and bold leaders had not the nerve to carry out their plans in the face of a small band of policemen, else we might have seen the Cortes kicked out of its Palacio.

A public meeting of women had been organized by the republicans to protest against the conscription bill. There were several hundred women, of the lower order, well dressed and well behaved, who assembled at the monument of Dos de Mayo—a favorite rendezvous for liberty-loving people—and listened to a few speeches of young students, who did not weigh their words when they spoke against the odious conscription. Yet no excitement of a serious character was occasioned by the young, hot-headed orators who talked resistance, revolution and I know not what all. The women formed in a procession after the speeches were over, and, with banners bearing the inscription of *abajo los quintas*, marched up the principal streets of the city and found their way to the Palacio de los Cortes, where the sovereign representatives of the nation assembled. Of course the singular spectacle of a body of women, marching along with banners and music, did not fail to attract general attention, and many people out of pure curiosity joined the procession or accompanied it to see what was to be done by the matrons of Madrid. So it happened that about the front of the Cortes there had gathered a large number of people, where the procession had drawn up and prepared to conclude its mission. With a directness of intention that rather bothered the President of the Cortes, the women sent word into the Cortes that they had arrived in front of the Cortes and desired to enter, in order to present petitions against the act of conscription in person. Not doubting that the request would be granted the head of the procession, with a profuse supply of banners, ascended the grand steps of the capitol and halted in front of the huge bronze doors that are never opened except on great State occasions. A deputation had been sent in to the President to notify him and the Cortes of their presence and to request permission to enter *en masse*. Señor Rivero, with little tact and with a great deal of feeling, said that was not the way to petition the Cortes; that they could not enter, and that all had better go home. The sovereign matrons did not fancy this kind of talk, and they returned to their friends, feeling that they had been unnecessarily aggrieved and slighted. Having tried soft words on the sovereign Cortes, the matrons with their noisy male assistants adopted another course, and began to knock upon the grand old bronze doors, until they sounded like huge drums. The doors were not opened, notwithstanding the thundering knocks they, the matrons, showered upon them. Then the people began to say, "We are sovereign; why can't we enter the Cortes? what kind of equality is this?" &c. There was an increasing feeling against the Cortes for the slight, as they judged it, which it had put upon them. At this time the Neos slipped in and began to advise the crowd to force their way into the Cortes, and if it did not promise to abolish the *quintas*, to turn out the whole lot of deputies, head over heels. The excitement was growing more general and the numbers of men who appeared on the scene for other motives than that of curiosity became suspiciously large. Meanwhile, the authorities were not idle. A small detachment of volunteers marched down to the Calle de Florida Blanca and took position near the principal entrance for Deputies. The police were soon on hand in pretty good force, but they did not seem to possess any organization or have any leaders. The Governor of the province, the alcaldes and other officers of civil authority were present, wildly flourishing their gold-headed canes, emblems of authority, and urging the people to disperse and not create a disturbance.

General Prim ordered all the regular troops to be kept in their barracks, ready for any emergency. There was a great excitement in the Cortes, and many feared that a popular movement would upset the whole institution. Finally, in this gloomy state of affairs, three or four republican orators sallied out of the Cortes and addressed the immense crowd from the steps, assuring the people that every means would be adopted to prevent a conscription, that their presence was a menace to the Cortes, which could not be endured, and that they ought to quietly disperse and go home before the peace was broken. The great majority of the crowd was well disposed and began to move off, but there were a couple of knots of men, not more than thirty in each, led by well-dressed men, who were exceedingly demonstrative, raising the cry of "Let us force our way into the Cortes." The people did not exhibit any inclination to follow; but the two bands uniting made a vigorous effort to push their way to the ordinary entrance. They were met by the police and all the magistrates, and a tremendous crowding and pushing contest began. No blows were struck, but a great deal of very strong language was used. For ten or fifteen minutes this contest went on. No arrests were made for some time; but finally the ringleaders were singled out and arrested and several carried off. Fortunately the great mass of the crowd gave no assistance to these turbulent and evil-minded gangs, but remained in the Calle St. Geronimo and in front of the Cortes, quiet and well behaved. So the game was defeated and resulted in nothing. Had the great mass of the people followed behind these agitators the sheer weight of the crowd would have broken down all opposition, and perhaps the Cortes would have been invaded and something serious done. Fortunately, this did not occur, and the event passed off without damage to any one. It produced a sensation, at all events, both inside and outside the Cortes. It was rather curious to see all the parties of the Cortes armed with muskets, but the time was exceptional. At nightfall the crowd had dispersed, though it was feared that some outbreak might occur. All the National Guards were ordered under arms, the regular troops were held in readiness, and the streets were patrolled by cavalry and guardia civil.

The ringleaders in the disturbance are known to be friends of the Bourbon cause, and they will be proceeded against for breach of the peace. The affair clearly shows that some of these days a well intentioned crowd may be induced by designing leaders to do something which will occasion regret. For this reason these popular demonstrations, particularly in Madrid, where the Congress of the nation is in session, are highly dangerous and will probably be stopped in the future. The Cortes cannot act freely if the members are in fear of popular violence. Such a state of things would not be allowed anywhere, much less in Spain, in these hot revolutionary times.

AUSTRIA.

The Hungarian Elections—The Discontent in Roumania and the Press—The Emperor's Trip and Reception—Press Prosecutions to Be Tried by Jury—Important War Measures.

VIENNA, March 21, 1869.

During the present month the Hungarian elections have been taking place. Up to yesterday about four-sevenths of the whole number of 409 deputies had been elected. The result gives 137 to the Deak party, seventy to the moderate left and thirty-eight to the extreme left. The moderate left has won six seats on a balance of account, and the extreme left, which was only represented by twenty-three members in the last Diet, has already won twelve seats. On the one hand, therefore, the Deak party remain masters of the field, but they have altogether lost that two-thirds majority in which they formerly rejoiced. The additional strength gained by the revolutionary party in the Diet, the party, namely, which would break up the Austro-Hungarian empire entirely, is a fact which the friends of the settlement of 1867 cannot deny. Moreover, the Deak party loses many of its ornaments. Although most of the Ministers have already been re-elected, the ministerial party has already lost the following leaders:—Kerkapolyi, Paul Somssich, Anton Zichy, George Bartal and Csengery, all doughty champions of the ministerial party who have succumbed in the electoral strife. Deak himself is sure of his election in Pesth, and the able Minister of Education carried the day easily in Ofen, but Finance Minister Longay had a hard fight for his seat at Presburg and only beat his opponent by some fifty votes. Daniel Iranyi, the friend and *protégé* of Kossuth, has been returned for the town of Fünfkirchen (*i. e.*, Five Churches), and it has been observed that in the cathedral towns or those towns which are the seats of a bishop's or archbishop's see, the revolutionary party have won their greatest triumphs. The Roumans of Transylvania and the southeastern portion of Hungary have refused to take any part in the electoral contest, on grounds explained by me in a former letter.

The Roumans are *par excellence* the discontented nationality of Hungary, as the Bohemians are of West Austria; and as the political organs of the latter are prosecuted out of existence by the West Austrian government so it appears are to be those of the former by the Hungarian government. The editor of the *Federatiunea*, one Alexander Roman by name, who published in Pesth a political sheet in the Rouman tongue, has been sentenced by a Pesth court of justice to one year's imprisonment and 500 florins fine for publishing a certain *pronunciamiento* of a caucus of Rouman politicians, called the Blasendorf platform. In Hungary press offences are tried by jury, but a Rouman editor has about as much chance before a Pesth jury as an Irish nationalist editor would have before a London one.

Francis Joseph returned to Vienna yesterday from his Croatian and Istrian tour. He visited Fiume, Pola and Trieste, and complimented the Austrian navy and the Austrian shipbuilders. He also, at Pola, witnessed experiments in gunnery on board a floating battery and exercises in torpedo exploding generally. In Fiume he spoke Hungarian speeches and in the other two ports mentioned above Italian ones. At Fiume Osman Pacha, the Governor of Bosnia, came to pay his respects to Francis Joseph and to greet him in the name of the Sultan to Trieste. General della Rocca came to do a similar errand in the name of the King of Italy.

On the 19th the bill passed last year by the West Austrian House of Deputies, and passed this year by the upper house, for introducing trials by jury in cases of press prosecutions received the royal sanction. The class of persons whom it will most direct-