THE MEMPHIS DAILY APPEAL.

ESTABLISHED 1840. MEMPHIS, TENN., TUESDAY, FEBRUARY 26, 1878. VOL XXXVII--NUMBER 51

CLOSING RATES

Yesterday of cotton and gold: Liverpool cotton, 6 1-8d. Memphis cotton, 10 3-8c. New Orleans cotton, 10 5-8c. New York cotton, 10 15-16c. New York gold, 102.

WEATHER INDICATIONS.

WAR DEPT., OFFICE CH. SIG. OFFICE, WASHINGTON, February 26, 1 a.m.

For Tennessee and the Ohio valley, rising barometer, northwesterly winds, colder and clear weather, followed in western portions by falling barometer, and warmer easterly winds.

OBSERVATIONS YESTERDAY.

WAR DEP'T, SIGNAL SERVICE U. S. ARMY, MONDAY, February 25, 1878, 10:08 p.m.

Place of Observation.	Bar.	Ther.	Wind. Dir.	Wind. Force.	Weather.
Galveston...	30.16	69	E.	Fresh.	Cloudy.
Indianola...	30.10	61	E.	High.	Fair.
Louisville...	30.35	39	N. W.	Gentle.	Clear.
Memphis...	30.38	48	N. E.	Gentle.	Clear.
Nashville...	30.40	40	N.	Light.	Clear.
New Orleans.	30.27	54	E.	Fresh.	Fair.
Shreveport...	30.25	57	E.	Gentle.	Clear.
Vicksburg...	30.31	58	E.	Fresh.	Clear.

W. M. M'ELROY, Sergeant.

MISSISSIPPI LEGISLATURE

The Moffett Register Bill Defeated by a Large Majority in the House—The Senate Pegging Away at the General School Bill.

Special to the Appeal.]

JACKSON, February 25.—The house tabled the senate Moffett bill by a large majority. Many minor bills were sent to that bourne whence no traveler returns. The house has had under consideration, in committee of the whole, the general revenue bill all the evening, and are still working, at this hour, upon it. They will not get through until to-morrow.

The senate has passed the bill compromising the claims of the State against the Mobile and Ohio railroad. It proposes to receive twenty-five thousand dollars thus far, and has been the remainder of the day engaged upon the general school bill.

ASSASSINATED.

A Case of Jealousy between two Enlisted Men in the Engineer Corps at West Point Results in One Assassinating the Other.

POUGHKEEPSIE, N. Y., February 25.—This morning while the engineer corps at West Point was getting ready for reveille one of the commanders, named Tobin, shot another named Albers, who died almost instantly. No further particulars received.

SECOND DISPATCH.

GARRISON, N. Y., February 25.—The victim in the West Point shooting affair was Peter Albers, and his murderer Michael Tobin. The murder is attributed to jealousy. Tobin believing that Albers had been intimate with a woman who he had formerly lived with. Tobin crept up to Albers in the barracks and shot him through the head. Both were enlisted men and privates in company E, corps of engineers. Tobin is in the guard-house.

MOLLIE MAGUIRES.

A Gang Unearthed who have been Operating Three Years in Disturbing Amicable Relations between the Miners and their Employers.

PITTSBURG, February 25.—Sheriff Guffey, of Westmoreland county, has succeeded in unearthing a gang of Mollie Maguires, who have been operating the past three years in the vicinity of Irwins station, on the Pennsylvania Central railroad. Up to the time these men began work, the relations between miners and employers was of the most amicable disposition, but shortly after their appearance the men became dissatisfied, and this feeling increased until it culminated in an open outbreak. The miners struck, and during the lockout many instances of open violence occurred. The town of Irwins has been fired several times, and once more than half it was laid in ruins. These fires were attributed to carelessness at the time. The sheriff obtained a clue last week, and succeeded in interviewing one of the suspected parties, who made a full confession. This man Parafelt says that the gang numbered twelve or fifteen men; that they were regularly organized, and held periodical meetings in a hotel near Irwins. They organized and conducted strikes, and during one of them the crowd of Mollies attacked a man named Fowler, who was working in the mine, but were driven off after an exchange of shots. On the same night they burned the tipple, checkhouses and wagons of the Bald Eagle mines. They have caused all the fires, and during the July riots in this city they burned the hay stacks, cut the telegraph wires and killed a young man named Carroll, whose body they placed on the railroad track, where it was discovered at daylight, mangled and torn. Parafelt also brought to the sheriff another of the gang, who, on being cornered up, corroborated Parafelt's story. The rest of the Mollies getting wind of the disclosure, fled precipitately and the detectives were at once started in pursuit, and were close on to them at last accounts. Great excitement exists in the village and surrounding country.

A British Ship, Loaded with Cotton, on Fire.

NEW ORLEANS, February 25.—The British ship Tornado, Captain Ellis, loading for Liverpool, caught fire this morning. The cause is unknown. She has on board five thousand bales of cotton, the greater portion of which will be badly damaged by water. The quantity burned is yet unknown. The cargo and vessel are valued at two hundred and fifty thousand dollars. The cargo is insured in the Atlantic mutual, British foreign, Swiss, Lloyd, Standard, Liverpool, and other foreign and home companies. The Tornado is owned in Liverpool. The total loss will probably be one hundred and twenty-five thousand dollars.

WIRE WAIFS.

Earl Bathurst died at London yesterday, aged eighty-seven years.

It is believed that Bismarck is still on the other side of the frontier.

Major Lewis Cass, only son of the late General Lewis Cass, died at Paris Sunday.

Captain Gilpin, of the ocean steamer Laplace, was killed during a gale recently.

Prince Charles threatens to abdicate if Russia persists in claiming Bessarabia.

The interior counties of Missouri are excited over an anti-railroad bond demonstration.

Sixteen leading striking shoemakers were arrested in Marlboro, Massachusetts, yesterday.

General Darlessis died in Paris, yesterday, from injuries received by falling from his horse.

Advices from Calcutta represent the results of the famine still distressingly felt in Madras and Mivore.

Seven hundred thousand dollars in gold arrived in New York from Liverpool by steamer yesterday.

Wadsworth killed M'Teague at Lead City, Dakota, yesterday, in a quarrel about the ownership of a lot.

The Socialistic Labor party met in New York Sunday, at which the red flag of the commune was displayed.

St. Petersburg army officials express their satisfaction at the movements of the British fleet in Turkish waters.

Jacob R. Freese, the savings-bank embezzler, of Trenton, New Jersey, was sentenced to five years in the State prison yesterday.

A Vienna correspondent states that the differences between Russia and Turkey appear to be nearly settled by Russia consenting to the reduction.

The silver bill was delivered to the President yesterday by Representative Kenna, of West Virginia, a member of the committee on enrolled bills.

The Cincinnati dealers in the genuine article have memorialized the legislature of Ohio to pass a law forbidding the branding of oleomargarine as butter.

The statement is premature that the Grand Duke Nicholas has withdrawn the claim to the Turkish iron-clads, but it is certain the question will not create difficulties.

At Washington, yesterday, R. W. Taylor, first comptroller of the treasury, was stricken with paralysis while at work at his desk, and died at his home two hours afterward.

A dispatch from Gallipoli says: "Intelligence has been received here that a large force of Russians has been withdrawn from Sharkoi for Podesta, and from Silivri toward Constantinople. The latter movement is probably on St. Stefanos."

CONGRESSIONAL.

A Number of New Bills for the Issuing of Silver Certificates—The Mexican Pension Bill Still on the Boards.

Vice-President Wheeler's Bad Health Compels Temporary Absence—J. Gordon Bennett's Petition for Government Aid in his Arctic Expedition.

The Silver Bill in the Hands of the President—Shelley's New Redemption Bill—Senator Thurman the Democratic Nominee for Temporary President of the Senate.

IN THE HOUSE.

WASHINGTON, February 25.—Mr. Shelley introduced a bill authorizing the issue of United States notes, and providing for the redemption of certain United States bonds.

A number of bills for the issuing of certificates for silver bullion deposited in United States mints were introduced and referred.

Mr. Metcalf stated that in the journal, on Thursday last, he was recorded as voting in favor of laying the silver bill on the table, while, on the contrary, he had voted in the negative on that matter.

On motion of Mr. Hewitt [Ala.], the house went into committee of the whole, Mr. Southard in the chair, and resumed the consideration of the bill granting pensions to the soldiers and sailors of the Mexican and Indian wars.

Mr. Joyce spoke against the bill as one which placed the Confederate soldiers who fought in those wars on a better footing than the Union soldiers who fought in the war of the rebellion, because the latter were entitled to pensions only in case of loss of limb or health in the service, while this bill gave pensions irrespective of the question of disability.

Mr. Goode expressed his surprise at the extraordinary speech made by Mr. Joyce, and at the opposition to the bill made by that gentleman on the ground that some of the beneficiaries under the bill belonged to the south and took sides with the south in the late unhappy civil war. He had not believed there was a member of the house who would undertake to visit punishment on Mexican veterans on any such grounds. Was not the late war over? More than thirteen years had elapsed since its termination. The fields that had been trampled by its red, fiery hoof had yielded many rich and abundant harvests. Year after year the flowers of spring had bloomed and faded over the graves of the dead. The Mexican veterans who belonged to the south paid their taxes, bore their due proportion of the burdens of the government, and performed all the duties of good citizens, and if the emergency should ever arise again they would respond to the call of their country with the same zeal and alacrity as they did in 1846. They would not be found behind the constituents of the gentlemen from Vermont, as they had not been found behind them at Palo Alto, Resaca de la Palma, Buena Vista, Monterey, Cerro Gordo, Churubusco, and all the battlefields of Mexico which American prowess and valor had illustrated and made famous. He hoped the gentleman [Joyce] stood alone in the position he occupied on this bill.

Mr. Joyce—And I would stand alone if I were the only man in the world.

Mr. Goode—And there I hope he will stand forever.

Mr. Crittenden—Where was the gentleman during the last war?

Mr. Townsend [N. Y.]—He was an honorable colonel serving his country [applause on the Republican side], and I wish you had been by his side.

Mr. Goode—I prefer to believe that the people's representatives here will be found imbued with a spirit of patriotism sufficiently broad and comprehensive to enable them to forget the bitter memories which the gentleman from Vermont has undertaken to evoke.

The committee rose without action on the bill.

Mr. Butler gave notice that he would seek the floor at three o'clock to-morrow to address the house on the financial question.

Adjourned.

IN THE SENATE.

Vice-President Wheeler, suffering recently from neuralgia, gave notice this morning of his intended absence for several days, and asked that a president *pro tem.* be designated. He will leave for Pittsburg to-morrow on a visit to his relations.

Senator Conkling presented a petition from James Gordon Bennett asking congress to aid him in seeking new discoveries at the north pole. He had purchased an arctic vessel, the Pandora, and intended to man and run her at his own expense. The petitioner desired that the vessel should carry the American flag. Referred to the committee on commerce.

Senator Wallace introduced a bill to provide for carrying the ocean mails in American steamships. Referred. This is the bill prepared by the export convention.

A message was received from the house announcing concurrence in the bill to authorize the coinage of the standard silver dollar, and to restore its legal-tender character. An engrossed copy of the bill, signed by Speaker Randall, was delivered to the senate for the signature of the Vice-President, which was later attached, the Vice-President, at the time, not being in the senate. The bill now goes to the President.

The house joint resolution to authorize the secretary of war to issue certain arms to the Washington light infantry, of Charleston, South Carolina, was taken up, and Senator Butler, in explanation thereof, said that it was to relieve the officers of the company from the bonds given by them as security for the arms loaned them when they visited the centennial. There has been an over-issue of arms to the State, and it further proposed to allow this company to retain these arms.

Mr. Morrill inquired what had become of the arms already issued to the State as its quota.

Senator Butler replied that he and others would like to know. In 1869, during the administration of Governor Scott, one hundred and twenty thousand stand of arms were drawn by him, and the State was charged with being overdrawn to the extent of eighty-four thousand dollars, but that amount had been reduced some by credit since that time, out of the annual appropriation due the State for militia purposes. The arms issued to Governor Scott could not be found in the State, though Governor Hampton was now trying to recover them, and had recovered some. He [Butler] believed that some of these arms never reached the State when they were issued; they were sold before they got there. He proposed, before the end of the session, to introduce a resolution providing for an inquiry into the whole matter.

After some further discussion the joint resolution passed.

When the bill to provide for a commission on the subject of the alcoholic liquor traffic was reached on the calendar, objection was made to its present consideration, and the senate adjourned.

SHELLEY'S NEW REDEMPTION BOND BILL.

The bill introduced by Mr. Shelley, authorizing the issue of United States notes and providing for the redemption of certain United States bonds, directs the secretary of the treasury to issue five hundred million dollars in treasury notes; not less than fifty million nor more than one hundred million dollars to be issued in any one year; the notes to be receivable in payment for all debts, public and private, of the United States except customs duties and United States bonds, and the notes to be payable in coin. The bill authorizes the secretary of the treasury to purchase coin with said notes, and with this coin redeem the outstanding United States bonds. When the premium on coin exceeds the market value of the government bonds in treasury notes, then the secretary shall be authorized to purchase bonds with said notes, and cancel the same; provided that not less than fifty million dollars of said bonds shall be redeemed in one year. The secretary of the treasury shall use the gold now on hand in the treasury for the purpose of redeeming the outstanding government bonds; provided that in redeeming the bonds under this act preference shall be given to the bonds having the largest rate of interest and having the shortest time to run.

SOUTHARD'S THREE-CORNERED AMENDMENT TO THE CONSTITUTION.

The bill introduced by Mr. Southard, proposing an amendment to the constitution, to be designated as article 16, provides that the executive power shall be vested, and hereafter administered by three Presidents, constituting a supreme executive council of three, to be elected by the qualified electors of each and all of the States, and each to be taken from one of the three prominent sections of the United States—one from the western States, one from the eastern and middle States, and one from the southern States, and no two of whom shall be citizens of the same section or district of country. The term of office shall be six years, and no President, having served a full term, shall be eligible for a second term; and at the first election under this article the President from the western district shall be elected for a fractional term of two years, and the one from the southern district for a fractional term of four years, and the one from the eastern and middle district for a full term of six years, and after the first election one President shall be elected from one of the three several districts every four years. Instead of the Vice-President as now, the senate shall, every four years, elect a president of the senate, who is not a member of that body, and who, as presiding officer, shall have and exercise all the authority heretofore conferred on the Vice-President. The bill further provides that each of the Presidents shall receive compensation not exceeding thirty thousand dollars per annum.

SENATOR THURMAN CHOSEN BY THE DEMOCRATIC SENATORS FOR PRESIDENT PRO TEM. OF THE SENATE.

The Democratic senators held a caucus this morning to select a candidate for the position of president *pro tem.* of the senate, and unanimously agreed to cast their ballots for Senator Thurman.

ANDERSON

Sentenced to Two Years Hard Labor in the Penitentiary and Costs of Suit, the Lowest Penalty, in Obedience to Recommendation to Mercy of the Court.

The Prisoner Thinks Himself Cruelly Persecuted—A Suspension Appeal Granted—A Motion Filed to Transfer the Cases of Wells and his Pals to the U. S. Courts.

NEW ORLEANS, February 25.—Thomas C. Anderson was called before the bar this forenoon. The motion for an arrest of judgment was overruled. When asked if he had anything to say before being sentenced, Anderson said he considered his case a cruel persecution under the forms of law, that he was in the power of the court, and ready to receive sentence. Judge Whittaker answered that the accused had had a fair trial before an impartial jury, and that the verdict was fully justified by the evidence. He then sentenced Anderson, in consequence of the recommendation of the jury to the mercy of the court, to the lowest term under the law, two years hard labor in the State penitentiary and costs of suit. A suspensive appeal was granted, returnable Wednesday.

A motion to transfer the case of Wells, Kenner and Casanave to the United States court was filed, and will be heard on Wednesday, March 6th. The petition for transfer sets forth the following reasons: "That the said superior criminal court for the parish of Orleans is a State court, and the prosecution upon said charge against your petitioners is still pending in said court, and has not been tried, and no final hearing having been had thereon; that a conspiracy has been formed, and now exists, for the purpose of instituting and carrying on this prosecution against your petitioners, and in furtherance of the conspiracy, the conspirators have conspired for the purpose of impeding, hindering and preventing the judicial tribunals where said prosecution is pending from enforcing equal protection of law to your petitioners; that said conspirators are impeding and hindering the due course of justice, and are hindering and preventing said judicial tribunals from enforcing equal protection of law to your petitioners; that they cannot enforce in the judicial tribunals where said prosecution is pending any rights secured to them by the constitution and the laws of the United States, providing for equal civil rights of the citizens of the United States, but the same are denied, and cannot be enforced in said tribunals, equal protection of the law. They pray that said case be remanded from the said superior criminal court for the parish of Orleans to the United States circuit court for the fifth circuit and district of Louisiana, as provided by law, for trial.

There is an affidavit annexed to the petition, setting forth the truthfulness and correctness of the above facts, sworn to before W. G. Lane, United States commissioner, February 23, 1878, by Wells, Kenner and Casanave.

PANAMA.

Another Story about the Piracy on Board an American Vessel—Additional Particulars of the Tidal Wave at Callao—Damage Incalculable.

PANAMA, February 16.—The *Star and Herald* says that Messrs. Contereras and Rodas, two of the party who took possession of the American schooner Sunbeam at Port Senior, state their action was not in any manner intended as an act of piracy. They were pursued by a superior force, and it was a matter of life and death under the circumstances. They offered the captain of the schooner money to take them away, which he refused, and they then took possession of the vessel by a show of force, but did no violence to person or property, and meant no insult to the United States.

Accounts from Callao of the effects of the tidal-wave say the alarm was indescribable and the damage incalculable. The oldest inhabitants state they have never seen anything to compare with the scenes of Sunday and Monday, January 27th and 28th. The sea was covered with the floating *debris*, and immense waves, thirty and forty feet high, would break over the moles and along the whole coast line, spreading havoc and destruction around them. Most of the wooden structures built for the Pacific steam navigation company, and for other purposes, have been swept away. Two thousand tons of coal for the English company has disappeared, and all merchandise on the dock has been completely ruined. The wheat mole, Chucinto mole and Meiggs mole are destroyed. The various timber yards, coal deposits and bathing establishments are greatly damaged. The railroad running from the dock to Chucinto has been completely undermined. Eight persons were drowned at Pisagua. The condenser was broken to pieces, and a considerable quantity of coal and saltpeter lost. In Iquique the earthquake shock was terrific, and threw the whole town into a state of consternation and alarm. It lasted one minute and thirty seconds. This main shock was followed during the night by forty minor shocks. Landslides are reported along the railroad. In Lahoria several houses fell, and the steamer Karnak is reported lost.

DON'T ruin your health, and, besides, make yourself disagreeable to other people by your continued coughing. A twenty-five cent bottle of Dr. Bull's cough syrup will cure you. At all druggists.

NICOLSON PAVEMENT TAXES.

The Supreme Court Decides Against Mr. Brown in Favor of Those who Have Paid the Front-Foot Assessments, also Exempting the Ninth and Tenth Wards.

Decisions Against the City as to Levying the Mandamus Tax, and in Another Branch of the Mandamus Case, Against the Merchants—Important Law Documents.

Special to the Appeal.]

WASHINGTON, February 25.—The two cases of T. E. Brown *vs.* City of Memphis, involving the liability (first) of the property-owners for the mandamus tax who paid the front assessments, and (second) of the property in the ninth and tenth wards, were to-day decided against Brown and in favor of the city and of the property-owners. In the other cases, a petition for rehearing on behalf of the merchants and city will be presented on the twenty-fifth of March, at the reassembling of the court, after the recess of one month, taken to day.

On Friday last the case of Rudolph Merian *et al vs.* R. T. Wilson, Adrian Iselin and W. Butler Duncan, trustees of the mortgage of the Mobile and Ohio railroad company, was heard on some preliminary motions. The court disposed of these motions to-day by setting the cause down for final hearing on the twenty-second of April, 1878. The motions were argued by Mr. Andrews and Mr. Bangs, of New York, and Mr. Humes, of Memphis. J. M. K.

Associated Press Dispatch.]

WASHINGTON, February 25.—The following case was decided in the supreme court to-day:

No. 778—Brown *vs.* City of Memphis.—Error to Circuit Court for the Western District of Tennessee.

In this case the court holds that the court below was right in refusing to include among the property to be taxed to pay the assessments for local improvements the property of certain wards which formed no part of the city at the date of contract under which the debt was contracted. Affirmed. Adjourned until Monday, March 25th.

Supreme Court of the United States.

No. 941—October term, 1877.—The City of Memphis et al., plaintiffs in error, vs. the United States, ex rel. Talmadge E. Brown.—In error to the Circuit Court of the United States for the Western District of Tennessee.

Mr. Justice Strong delivered the opinion of the court.

The important question in this case is whether the law of the State empowered the city of Memphis to levy the tax by the writ of mandamus it was commanded to levy. If it did not, the award of the writ cannot be sustained, for a mandamus will not be granted to compel the levy of a tax not authorized by law.

By an act of the legislature passed on the eighteenth of March, 1873, it was enacted as follows:

"That where an incorporated town or city has, by virtue of presumed authority to lay special assessments for specific purposes, levied and collected taxes, or special assessments, the right to make which levy and assessment was afterward declared void by the supreme court of the State, said town or city shall have the power to levy a tax, in addition to all other taxes allowed by law to be levied, sufficient to cover the entire cost of the improvement, with interest thereon, for which said special assessments were illegally made, and in the levying of such additional tax, authority is hereby given to such town or city, to allow as valid payments on said additional tax, any sum or sums, with interest, paid by persons in satisfaction, or in part satisfaction, of said special assessments, illegally levied and collected as aforesaid."

This statute, it is true, was not in existence when the plaintiff's contract with the city was made, but it is confessedly available for him unless it was repealed before he acquired any rights under it. Plainly it was enacted to meet his case, and had there been no repeal the question now raised would not be before us. It is claimed, however, that it was repealed before the circuit court awarded the mandamus, and what was the effect of that legislative action upon the power of the court in this case becomes therefore a very important question. It is an acknowledged principle a creditor by contract has a vested right to the remedies for the recovery of the debt, which existed at law when the contract was made, and the legislature of a State cannot take them away without impairing the obligation of the contract, though it may modify them, and even substitute others, if a sufficient remedy be left, or another sufficient one be provided. The law is in effect a part of the contract. But it is not so clear that when a new remedy is authorized after a contract has been made, that remedy may not be wholly taken away by the legislature, before any vested rights have been acquired under it. In such a case the parties did not contract with reference to it, and it did not enter into their agreement. It had nothing to do with the obligations they assumed. It is, however, no less true that vested rights may be acquired by the creditor under it and by virtue of it, and when such rights have been acquired they are beyond the reach of the legislature, and the repeal of the law will not affect them. As to them the law continues in force, notwithstanding its repeal.

In this case the relator recovered his judgment against the city the sixteenth of March, 1875. Into that judgment his contract was merged, and it no longer had any legal existence. If, as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement, existing at the time when it was recovered, could not be taken away either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislative invasion.

After the judgment was obtained an execution was issued to collect the amount of it, and on the twenty-second of March, 1875, the alternative mandamus was issued to compel the levy of the tax of which the city now complains. It was not until after all this that the act of March 18, 1873, was repealed. The act repealing it was approved by the governor on the twenty-third of March, 1875, and it became a law only from the time of his approval. Such is the generally received doctrine. (See cases cited in 4 Abbott's National Digest, 223.) It is said, however, the rule in Tennessee is different, and it is contended that as the act passed the two houses on the twentieth of March, though not approved by the governor until the twenty-third, it took effect, by relation, on the day of its passage through the two houses, and we are referred to Dyer vs. State, Meigs's Reps., 236-255, and to Turner vs. Osburn, 2 Caldwell, 460. Those decisions were under the constitution of 1834, which did not require the approval of the governor, or a passage of the bill over his objection, to make a binding statute, as the constitution of 1870 does. It is true the earlier constitution required the signature of an act by the respective speakers of the house. That was for the purpose of attestation only, and the act was then said to take effect on the day of its passage. The later constitution demands the same signatures, and it demands more, namely, the approval of the governor. It also ordains that no bill shall become a law until it shall have received his approval, or shall have been otherwise passed under the provisions of the constitution; that is, as we understand it, over his refusal to approve. The executive is thus made a necessary constituent of the law-making power. If with this be considered the declaration of the constitution that no retrospective law, or law impairing the obligation of contracts, shall be made, the conclusion is inevitable that the repealing act had no effect upon anything that was done before March 23, 1875. But before that day we think the relator had acquired a vested right by his judgment and his alternative writ of mandamus to have a tax levied sufficient to pay the debt due to him from the city, a right of which he could be deprived by no subsequent action of the legislature.

We do not deny that it is competent for a legislature to repeal an act which, when it was passed, was a mere gratuity, if while it was in existence no vested rights have been acquired under it, or in virtue of it. But such, we think, is not the case. Indeed there are very strong reasons for holding that the act of March 18, 1873, never was a gratuity. By the act of 1866, the legislature invited contracts with the city for grading and paving, offering to the contractors the security of assessments upon the owners of property abutting on the improved streets. No doubt it supposed it had the power to give such security, or such a remedy to the contractor. No doubt both the city and the contractor thought such a power existed. It turned out that they were all mistaken. The contractor, by this mutual mistake, was led into the expenditure of much labor and money, and the city enjoyed the benefit of the expenditure. The security promised for reimbursement to him having failed, the legislature and the city having held forth unfounded expectations to him, by which he was induced to enter into the contract, there was the highest moral obligation resting alike upon the state and upon the city to provide a substitute for the remedy which had proved to be of no value. This substitute was provided by the act of 1873. It was merely adding a legal to a moral obligation. It should not be considered a mere gratuity. It took the place of a resort to abutting lot owners, and if the contracter could not have been deprived of that, had it been authorized by the constitution, the thing substituted for it should, in justice and common honesty, be regarded as equally secure for his indemnity. But if we are in error in this, it is still enough that by his judgment and his writ of mandamus he acquired a vested right to have the tax collected which the writ ordered.

The code of Tennessee, section 49, declaratory of the law of the State respecting the effect of repealing statutes, is as follows: "The repeal of a statute does not affect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of the statute repealed." Thus has been established a rule for the construction of repealing statutes. If now the rule be applied to the act of March 23, 1875, it is manifest that the act did not affect any right that had before its passage accrued to Brown, the relator, under or by virtue of it, or any proceeding commenced under it. But certainly, under his judgment recovered in 1875, he had a right to have a tax levied sufficient to pay it, so long as the act of 1873 remained in force, and he had the right in virtue of that act. So when the alternative mandamus was issued, March 22, 1875, a proceeding was commenced under or by virtue of the statute. And if the repealing act affected that proceeding, or took away the right the relator had, in force of his judgment, it was retrospective in its operation, and it was, therefore prohibited by the constitution. In Fisher's negroes vs. Dabbs, 6 Yerger, 138, it was said by the court that "a distinction between the right and the remedy is made and exists. But where the remedy has attached itself to the right, and is being prosecuted by the course of law, to separate between them and take away the remedy is to do violence to the right, and comes within the reason of that provision of our constitution which prohibits retrospective, or, in other words, retroactive, laws from being passed, or laws impairing the obligation of contracts."—(Vide Richardson vs. the State, 3d Coldwell, 122.)

For these reasons we think that, so far as relates to the case of Brown, the relator, the act of March 18, 1873, remains in force, and that the city of Memphis has power under that act to levy and collect the tax which was directed by the mandamus.

The remaining questions in the case are of minor importance. It is said that there was error in adjudging that the tax to be levied should be payable only in lawful money of the United States. We do not perceive in this any error. The judgment of the relator could be paid only with such money, and the tax ordered was to be sufficient in amount, after making due allowances for all delinquencies, insolvencies and defaults, etc., to realize $125,000 each year for the years, 1875, 1876, respectively, and as much of said sum for the remaining year (1877) as may be required to pay and satisfy the balance of the decree in favor of the relator, with interest and costs, not satisfied by former taxes collected and paid. The meaning of the writ is that sufficient money shall be collected. If the city elect to credit in payment of the levy what the lot owners have paid, the mandamus does not forbid it, but a sufficient levy must be made and collected to raise in money the sums ordered to be paid in satisfaction of the decree in favor of the relator. This was plainly right.

The only other assignment worthy of notice is that there was error in holding that a new and further tax be laid, sufficient to pay the entire decree for $292,133 47, the return to the alternative writ disclosing that under a former mandate of the court the city of Memphis had made a special levy of $302,742 69, for the purpose of paying the relator's decree; that of said levy $132,742 69 had been collected and paid to the relator, and that the remainder, $170,000, was being collected and paid over as fast as possible.

This assignment is manifestly evasive. The former mandate was not for the satisfaction of the decree of March, 1875. But if it was it would make no difference. It is the most the city can ask that it be assumed the former mandate had been obeyed, and that all had been collected that could be collected under the levy. What has not been, therefore, cannot aid in satisfying the decree, and it is not averred that any part of the $170,000 can be. Notwithstanding the mandamus, it is in the power of the city to relieve herself from its binding force by paying the debt due the relator. If she can collect anything by virtue of past levies, to the extent of the collection she will be relieved from levying additional taxes, but the debt *must be paid.*

The judgment of the circuit court is affirmed.

D. W. MIDDLETON,
C. S. C. United States.

No. 599.—October term, 1877.—The city of Memphis, appellant and plaintiff in error, vs. T. E. Brown. In error to and appeal from the Circuit Court of the United States for the Western District of Tennessee.

Mr. Justice Strong delivered the opinion of the court.

In case No. 941 of this term we decided that the mandamus to compel the levy and collection of a tax beyond the rate mentioned in the act of February 13, 1854, and sufficient to pay the judgment recovered by the relator, was authorized by the laws of the State, and was properly awarded. That decision covers the first assignment of error in this case, and leaves it without any foundation.

The other assignments are of minor importance. Some of them deny the power of the circuit court to define the extent of its own writ of execution. They assert that the court could not rightfully decide that its order to levy a tax upon all the property of the city meant to include the capital of merchants, taxable under the law of the State for other purposes. There is nothing in these objections. A mandamus to collect a tax for the payment of a judgment, or a mandamus to pay a judgment, is process in execution, and nobody heretofore has ever questioned the power of a court to control its own financial process.

The only other question which requires attention is whether, in exercising that control, the court erred by ordering that the taxable capital of merchants for the year 1875, as theretofore returned and assessed by the city for other purposes, be included within the property ordered to be taxed for the payment of the judgment. The allegation is not that merchants' capital is not liable to taxation at a uniform rate with other taxable property of the city, but that the statute of the State under which the assessment was made was unjust, oppressive, and in violation of the State constitution. We are not convinced that this is a question we can consider in this case. The merchants do not appear to have made any complaint when taxes for general purposes were imposed. Is is only when the special tax for the payment of the relator's judgment is ordered that they object. If the mode prescribed by the statute was in conflict with the State constitution, they had a sufficient remedy in the State courts. To those courts they resorted—Merchants *vs.* the city of Memphis, and Schafer, tax-collector, a manuscript case decided by the supreme court at September term, 1876—and we understand that court to have held in substance that the assessments were not illegal. Besides, we are not convinced that, if the question were an open one for our consideration, the mode prescribed by the statute for making the assessment was necessarily in conflict with the constitution. The objection of the appellants is therefore overruled.

We have considered the case without reference to the question whether the appellants were in a situation to intervene in the action at law between Brown and the city in the manner attempted by them. It may be doubted whether, on their petition, the court could be asked to correct its judgment in that case. But waiving this, we are of opinion that no error in the action of the court is shown.

The order of the circuit court is therefore affirmed.

D. W. MIDDLETON,
C. S. C. United States.

ADDITIONAL RIVER NEWS.

SHREVEPORT, February 25.—River fell 2 inches. Weather clear and warm.

CINCINNATI, February 25—Night.—River 22 feet 6 inches, and rising. Weather cloudy and cool.

ST. LOUIS, February 25.—River rising, and is now 19 feet 3 inches above the low-water mark. Weather clear. Departed: City of Chester, Memphis; Alice, New Orleans.

LOUISVILLE, February 25.—Weather clear and cool. River falling, with 9 feet 11 inches in the canal. Departed: Golden City, Cincinnati.

EVANSVILLE, February 25.—Weather chiefly clear. Thermometer 37 to 46 deg. River stationary, with 20 4-10 feet on the Up: J. B. Williams and tow, 11:30 a.m.; Charles Morgan, 11:30 a.m.; J. S. M'Donald, 3 p.m.

London, February 24: It is reported that the pope has dismissed General Kanzler, the pontificial minister of war.

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TO LOT-OWNERS.

OFFICE OF ELMWOOD CEMETERY, 36 Union street, February 20, 1878.

AN election will be held at the office of Secretary of said Company, 36 Union street, on first Monday in March (4th), 1878, from 10 a.m. to 3 p.m., for Three Trustees, to serve six years. Any owner of lot containing not less than three hundred square feet of ground is eligible for the office, and is a qualified voter. There are nine Trustees in said company, divided into three classes, each class serving six years, and elections are to be held biennially, viz: On first Monday in March, 1878, 1880, 1882, and so on. Lot owners are requested to read pages 20, 21 and 22 Elmwood Book, for fuller information on the subject. JNO. H. LENOW, Secretary.

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Hay, Corn, Oats, Bran, Lime, Meal, and General Produce.

Orders respectfully solicited.

THE members of St. Elmo Commandery, No. 15, K. T., are hereby ordered to attend at their asylum, in fatigue dress, this (TUESDAY) evening, for the purpose of receiving the Grand Commander and conferring the Order of Red Cross. Tents will be pitched at 7½ o'clock. By order A. J. WHEELER, E. C.
JOHN D. HUHN, Recorder.

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OFFICE OF MERCHANTS INSURANCE COMPANY removed to Planters Insurance Company, 41 Madison street. Old office, No. 20 Madison street, for rent. Apply to
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FOR the accommodation of those desiring to attend the Carnival at New Orleans, March 4th and 5th, Excursion Tickets will be sold on the 1st, 2d and 3d March, good to return until and on the 10th March, 1878, at $20 for the Round Trip. For further information inquire of James Speed, Ticket Agent, 287 Main street, and at the Depot.
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Barrel	$9 00
Half-Barrel	4 75
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12-pound packages	65
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A special discount made to merchants buying in lots.

The very best NEW YORK STATE FLOUR is used in making the

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which is far superior to the plain buckwheat, being always ready, always good, and never fails to make GOOD LIGHT CAKES on **only five minutes notice.** Put up in 6 and 12-pound packages, and sold by all **Retail Grocers.** Try a package. But ALWAYS get that put up in packages with printed directions on each package.

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