THE MEMPHIS DAILY APPEAL.

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CLOSING RATES

Yesterday of cotton: Liverpool cotton, 5 5-16d; Memphis cotton, 9 1-8c. New Orleans cotton, 9 1-8c. New York cotton, 9 3-4c.

WEATHER INDICATIONS.

WAR DEPARTMENT, OFFICE CH. SIG. OFFICER, WASHINGTON, March 7, 1 a.m.

For Tennessee and the Ohio valley, warmer easterly to southerly winds, falling barometer, and partly cloudy weather during the day.

WEATHER OBSERVATIONS.

WAR DEPT. SIGNAL SERVICE U. S. ARMY, THURSDAY, MARCH 6, 1879, 10:30 P.M.

Places of Observation.	Bar.	Ther.	Dir.	Wind. Force.	Weather.
Galveston	30.22	64	S E.	Fresh.	Clear.
Indianola	30.23	64	S.	Fresh.	Clear.
Louisville	30.17	58	W.	Gentle.	Lt.rain.
Memphis	30.19	64	W.	Fresh.	Clear.
Nashville	30.21	60	W.	Calm.	Clear.
New Orleans	30.28	60	S.E.	Gentle.	Hazy.
Shreveport	30.17	68	S.	Fresh.	Clear.
Vicksburg	30.26	62	S.	Fresh.	Clear.

GEO. H. ROHE, Sergeant, Signal Corps, U. S. A.

WE invite special attention to Judge Clapp's statesmanlike report on the State debt investigation, which we publish in full this morning. It shames the majority report, and shows how near, by that specious and one-sided document, the State is to repudiation and disgrace. Judge Clapp deserves the thanks of the people of the State.

A CARD.

In Wednesday's issue of the Nashville *Banner*, I find the following:

W. J. RAMAGE.

The deposition taken at Knoxville, February 18, 1879. Said witness being sworn, deposed as follows:

Question—Were you at any time connected with any newspaper in Tennessee? If so, how long, when, and with what paper?

Answer—I was the business-manager of the Knoxville *Press and Herald*, January, 1867 to 1876.

Ques.—During that time, was any proposition or negotiation made to you or through you to any paper by any railroad or railroad companies or other person or persons to engage your paper to adopt a particular line of policy in regard to the State debt, or any part thereof? If so, by whom were the proposition or negotiations conducted or made, and what consideration was offered?

Ans.—Well, the only proposition that I know anything about was made by Colonel J. M. Keating, of the Memphis APPEAL, can, and undertake to say what year it was, and his proposition was in substance this: He said by combining certain newspapers and "bearing" Tennessee bonds and depreciating State credit, a certain sum of ten thousand dollars, could be made, and we, the *Press and Herald*, should have one-fourth. His proposition was declined.

Ques.—For whom did you understand Colonel Keating to be operating?

Ans.—Colonel Keating did not say, but I understood inferentially that the Memphis and Charleston railroad had started the matter.

Mr. Ramage is mistaken. I never had a conversation with him in my life about the State debt, the State bonds, the State coupons or anything else nearly or remotely affecting the interests of Tennessee. I met him in Nashville twice in January of 1869, since which time I have neither seen nor spoken to him. I never wrote him a letter in my life, nor did I ever receive a letter from him. I was in Knoxville twice in my life, but only for a few hours each time—once in the winter of 1866, with a congressional excursion party, and once by reason of some railroad delay on a Sunday in 1872, when I was returning home from New York—on neither occasion did I see or have any conversation with Mr. Ramage. I hope that when this meets Mr. Ramage's eye he will make haste to do me the justice I am entitled to at his hands by a prompt correction. A statement which appeared in the testimony of Dorsey B. Thomas, on the say-so of Colonel L. J. DuPre, now of Austin, Texas, in which my name is mentioned, is wholly untrue. I was never a member of any ring in this or any other State, or any place else, and I never was employed by any ring, and every attempt to connect me personally with any so-called funding or other ring, or any ring, is an outrage which I denounce as wilfully malicious and without the faintest trace of truth, even the shadow of truth on which to rest it.

The legislature of the State, to which every citizen has a right to look for protection, has disgraced itself by permitting an *ex-parte* star-chamber proceeding, and by consenting to or conniving at an *ex-parte* publication of evidence by which good citizens have been traduced and made to appear as if criminal conspirators, without the opportunity for rebuttal which the courts afford even the meanest criminals. No pretended or assumed public good can excuse proceedings so discreditable to the State and which have only culminated in a mass of evidence, much of which, being purely hearsay, no court in the country would receive, but which is being spread all over the State as if it had the indorsement of the State and every word of it was true. A more cold-blooded, cruel, vindictive, malicious and wholly causeless proceeding, so far as I am individually concerned, was never perpetrated.

J. M. KEATING.

THE subject of the plague in the east has more interest for us in the United States than many persons appear to think, as is evident when we find it stated in the New Orleans *Picayune*, of Wednesday last, that a fleet of seventeen vessels taking cotton for Havel, in Russia, were lying there. Four vessels left for the same port on Saturday and Monday. There were seventy-one thousand eight hundred and sixty-seven bales of cotton on board for ports on the Baltic. The clearances of cotton for these ports in the next twenty days was expected to reach four million dollars. Two steamships from the Mediterranean were also at New Orleans, one of which had on board twelve thousand four hundred packages of fruits.

SOME weeks ago, during the cold weather, the remains of Dr. Slater, his wife and daughters, which were buried in the "Masons' Rest," at Elmwood, were exhumed, and interred in a lot at Elmwood purchased for the purpose. This reinterment was in accordance with the wishes of the surviving children, and took place under the direction of our good brother J. C. Mills, administrator, who, with other brethren, were present on the occasion. We hope to hear ere long that steps will be taken to place a monument over the remains of Dr. Slater. This fitting tribute to his memory, we suppose, will be given by those in whose service he yielded his life, as a faithful soldier of Christ.

We unite with our respected cotemporary, the *Western Methodist*, in the expression of a hope so worthy of it, and of the church of which it is the organ. If we might make a suggestion, in accordance with the zeal in his Master's work and the love of humanity which made a martyr of Dr. Slater, it would be that a memorial chapel to his memory would be more like what he himself would prefer. It would perpetuate both his memory and his work.

CLAPP AND SMITH'S

Minority Report from the Committee to Investigate the Validity of the State Debt a Crushing Blow to the Repudiationists who, through their Mouth-Piece, Declare that there are No Valid Bonds, and are Concocting a Scheme to Accomplish Their Purpose of Ruining the State—Can They do It?—Let Democrats Answer.

Special to the Appeal.]

NASHVILLE, March 6.—*Senate*—Mr. Clapp, from the committee to investigate the validity of the State bonded debt, submitted the following report from the minority of that committee, which he read from the clerk's desk. The members of the senate, generally, drew their chairs closer and gathered near the reader, and listened to the report with marked attention and interest.

CLAPP AND SMITH'S MINORITY REPORT.

MR. SPEAKER—It is a matter of unfeigned regret with me that upon a subject of such profound and I may say painful, concern to the public both within and outside of our State, the joint committee appointed by the two houses of the general assembly to investigate the alleged indebtedness of the State, could not be unanimous in their report, and I had hoped that I might be able to give at least a qualified assent to the conclusions reached by the majority of the committee. Upon examination, however, of the report, I find our views so divergent upon many material points, that at the risk of incurring the imputation of egotism or facetiousness, I feel constrained to submit a minority report, and it is due to the majority of the committee and to myself that, upon so grave a question, the grounds of my dissent should be fully and fairly stated. In addition to the report, that lies on the threshold, is a to the vague and indefinite manner in which the committee undertook to classify and characterize the different items of our indebtedness. "The State debt proper," as it is termed, consisted of bonds issued for the benefit of the State in aid of construction of railroads and banks, for the construction of the capitol, for the purchase of the Hermitage, and to the agricultural college. These bonds were issued under different acts, ranging in point of time from 1832 to 1860, and constitute an aggregate of $[illegible], amounting to $10,445,000, and of these there are now outstanding 2105 bonds, amounting to $2,105,000, as stated by the committee. Deducting this from the total outstanding indebtedness amounted to $12,110,000, leaves 18,093 bonds, amounting to $18,903,000, which were issued before and since the war, in aid of railroads under various acts ranging from January 30, 1850, to 1873. The report further states that of what are called railroad bonds there are now outstanding $11,521,000 issued before the war, and $2,638,000 since, and of that the item of $18,953,000 is made up as follows:

Total	$21,010,300
Ante-war railroad bonds	$8,623,000
Post-war railroad bonds	6,330,000
Funded under act of 1866	2,246,000
Funded under act of 1868	569,000
Funded under act of 1873	1,867,000
Leaving balance	$18,953,000
	$2,057,300

And of the above items the first two, amounting to $11,271,000, are railroad bonds issued under the internal improvement act of February 11, 1852, and its amendments which, as the committee say, "if a charge at all against the State, are so secondarily."

The committee then assume the position that the bonds subsequently issued to the war under the act of 1866 were illegally issued, under a mistake of law or criminal ignorance, and that the bonds issued under the act of 1868 and 1873, so far as they represent bonds not legally issued, interest compounded or interest on past-due bonds and coupons, were illegally issued and constituted no obligation upon the State. The committee admit that it is impossible to identify the exact bond or bonds outstanding of those issued under the funding acts of 1866 or 1873, into which interest on railroad bonds accruing during the war or since 1868 entered, from the fact that until the present comptroller came into office no account showing it was kept. From this testimony, some of them as high as twenty years standing of the report of the committee, we are compelled to believe that after deducting the $11,271,000 outstanding railroad bonds and the bonds issued under the funding acts of 1866, 1868 and 1873, there remain but $2,051,000 of the total outstanding liabilities of $21,010,300 that are not disputed; that for $11,271,000 the State is undoubtedly liable if liable at all, and for the remaining $7,688,300 no liability whatever is admitted. As all of these bonds are upon their face the most plausible evidence of debt, being sealed negotiable instruments, they must be regarded as constituting a *prima facie* liability on the part of the State, and the burden upon her to invalidate the bonds or make some other legal defense that will exempt her. The question of indebtedness is one of law and fact, to be judicially determined, and the well-recognized doctrine is that the same rules of evidence and principles of law are applicable when a State is a party to a contract between individuals, and while a citation of legal authority is not usual in a committee report, the nature of the matter under consideration and its importance is such as to render it proper that I shall refer to the authorities sustaining the positions I assume, and quote the language when more concisely, as this is not a professional paper intended for courts or lawyers, but for the public.

The State issues her bonds, says Vattel, a well-known writer on the law of nature, says (page 225 and 226): "A sovereign State is subject to the same rules as private individuals in matters of contract." So, also, the supreme court of the United States lays down the rule: "When the United States, by their authorized officers, become a party to negotiable paper, they have all the rights and incur the responsibility of individuals who are parties to such instruments (United States vs. Metcoll, 15 Peters, 377).

In the case of Mississippi vs. Johnson (25 Mississippi, 774), when the validity of bonds issued by the State of Mississippi was the question before the court, Chief-Justice Smith says, in delivering the unanimous opinion of the court: "The same principles which govern in matters of contract between private individuals apply to all contracts to which a State has become a party. This rule is founded upon the presumption that sovereign States who are supposed to be always ready to perform their undertakings and to discharge their just obligations could desire no better rules by which to ascertain their own obligations and rights and those according to which they dispense justice to their citizens." Assuming, then, that the liability of the State upon the bonds issued in her name is a question that rests upon the law and the facts of the case as in a controversy between private persons, I proceed to examine the grounds upon which the committee exonerates her. No question is made as to the power of the legislature to order the issuance of bonds in the name of the State. To deny this power is to deny the ability of the State to contract at all, since the only contract through the legislative department of the government and to deny her the power of making contracts is to reduce her to the status of an infant or a lunatic. Further, if the legislature has not an interest power of making contracts, it cannot communicate such power to others, corporations, private and public, that it creates. The defenses then, as I understand the report of the committee, may be limited as follows:

1. That as to the $11,271,000 of railroad bonds, as they are called, the State if liable at all, is only secondarily liable.

2. That the bonds issued in funding interest on the bonds of the State accruing during the war and pending contest between sections are void.

3. That the acts of the legislature authorizing the issuance of war bonds are void, as having been procured by fraudulent or other corrupt means, or as having been enacted when the mass of the people were denied their political rights and could have no voice in the legislature of the State.

4. That the provisions of the various laws under which the bonds were issued and which were auxiliary to their issuance, were not complied with, and they were therefore improperly and illegally issued.

5. That as the bonds referred upon their face to the several acts under which they were respectively issued; these recitals made it the duty of every purchaser to see that the requirements had been complied with, and excludes the plea of "innocent holders."

6. That the legislature of 1869-70 instituted inquiries into the circumstances under which the bonds, and especially those in aid of railroads, were issued, with a view to declare them illegal and void, and were deterred from so doing by apprehensions of reconstruction and menaces on the part of the Federal government, amounting to duress.

7. That the State is not estopped by any recognition or notification of these bonds by the legislature or by any officers or agents of the State from now denying the validity of the bonds, especially as to those that were referred to in the several funding and other acts, as "not legally issued."

8. Another ground assumed by the committee is not presented so much as a legal question affecting the validity of the bonds as a loose equity on behalf of the State resulting from a sacrifice of her interests by a forced sale of the defaulting railroads, which sale, it is intimated, if not charged, was brought about for fraudulent and speculative purposes.

Referring to these various positions assumed by the committee, in the order in which they are stated, I remark:

First—All the bonds issued, I believe, without exception, are the bonds of the State. The State is, in legal contemplation, so far as the bonds indicate, the primary and original party liable. As to the several railroads in aid of which the bonds were issued, the State no doubt occupies the position only of surety or guarantor, and took occasion in every instance to protect herself against ultimate liability by a stringent statutory mortgage, under which the road, with all its fixtures and appurtenances, was liable to be sold. Whether the holders of the bonds can avail themselves of the benefit of this mortgage and enforce the lien created by it in favor of the State, is a question now in process of judicial investigation, and I forbear to express any opinion on the subject, but I think it is a legal proposition, understand upon what ground the State expects to escape liability as the maker of a negotiable instrument.

Second—As to the invalidity of bonds issued for funding interest accruing during the war and interest coupons, I can only say that I know of no principle of international law that suspends interest on an interest-bearing debt due by one of the belligerents to the other, or by a belligerent to a third person. Public policy requires that during the war the citizens or subjects of one belligerent shall not contract with or pay money to a citizen or subject of the other belligerent; but this is a duty that each belligerent imposes upon its own citizens or subjects for its own protection, and as it thus becomes illegal to pay interest, it is regarded as suspended during the war. But this rule certainly has no application to the payment of interest by the belligerent itself. As to interest coupons, it is a question now too well settled to admit of argument that they draw interest after maturity the same as any other debt.

Third—The third ground of defense is that the acts of the legislature, immediately succeeding the war, authorizing the issuance of bonds are void for fraud practiced in their passage, and because the mass of the citizens then had no voice in the government or political affairs of the State. To this it may be replied—first, that supposing the frauds to be clearly established, upon what principal of law or equity can this affect the rights of an innocent third party? Conceding that the legislature is the legal representative of the State in matters of legislation, the rule applicable to its acts is well stated by the supreme court of the United States in the case of the United States vs. Arrand C. Peters, thus: The language of the court is: "It is a universal principle that when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter, and individuals will not be disturbed collaterally for anything done in the exercise of that discretion, within the power and authority conferred. The only question which can arise between individuals claiming a right under the acts done, and the public or any other person denying their validity, are *power in the officer and fraud in the party*. All other questions are settled by the decisions made or the act done by the tribunal or officer, judicial, legislative, or executive or special, unless an appeal is provided for."

But again, supposing the fraud to be proved—how and by what tribunal is the question to be determined? The legislature can *repeal* any act of a preceding legislature when vested rights are not involved; but to declare an act of legislature is an exercise of judicial power pertaining alone to the courts and one that they have been slow to call into requisition, when the validity of a statute is attacked upon the ground of fraud or other improper conduct on the part of the legislature, by which the act was adopted.

In the case of Fletcher vs. Peck, reported in C. Cranch's United States Rep. 87, the legislature of Georgia had declared void an act of the preceding legislature making a grant of land to one James Greenleaf upon the alleged ground of fraud on the part of Greenleaf in obtaining the grant, the land having in the meantime passed into the hands of Peck, an innocent purchaser. Chief-Justice Marshall, in deciding the case and declaring void the act of the legislature vacating the grant, says as to the plea of fraud practiced by Greenleaf:

"That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law or the formation of a legislative contract, are circumstances deeply to be deplored. How far a court of justice would in any case be competent to proceedings instituted for the State itself to vacate a contract thus formed, and to annul rights acquired under that contract by third persons having no notice of the improper means by which it was obtained, is a question that the court would approach with much circumspection. It may well be doubted how far the validity of a law depends upon the motives of its framers, and how far the particular inducements operating on the members of the supreme sovereign power of a state to the formation of a contract by that power are examinable in a court of justice."

The court then inquires as to what extent the corruption should be established to invalidate a contract made by the legislature of a State, and in declaring the act void. The language is: "Must it be direct corruption, or would interest or undue influence of any kind be sufficient? Should the will acting under operation of a majority, or on what number of the members? The legislature of Georgia was a party to this transaction, and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a severe act of self-condemnation. We find its vindication in a train of reasoning not often heard in courts of justice. But the real party, it is said, asks the aid of the tribunal against the unfaithful the acts of those agents cease to be obligatory. It is, however, to be recollected that the principals are not to be bound by these agents, and that while within the powers conferred on them their acts must be considered as the acts of the people, they are to be carried into effect by the chosen; and if their constituents be examinable, the common consent, as well as the common usage of mankind, point out a mode by which this examination may be made." The language of this great judge is so applicable and so instructive that I make no apology for quoting it at such length.

I have endeavored to show that even if fraud and corruption were proven on the part of members of the legislature, it would not invalidate an act passed by such a legislature under which an innocent party had acquired vested rights. But what, in point of fact, is the proof upon this question? The report of forty witnesses were examined by the committee on this and other points, and if they did not know of a fact it was not because they questions were not leading enough to bring it out; and while very important lobbying with the members of committees of "mining and stealing" were fully reported to by interested parties, and especially by those acting in the interest of railroads for the passage of legislation for the passage of certain acts intended for their benefit; and while there is strong presumptive evidence of bribery and corruption, yet, taken as a whole, we are compelled to say, we may charitably conclude that the legislatures that assembled during the "carnival of revelry and corruption," referred to in the report of the committee, were no worse than the eighteen upon whom the tower of Siloam fell, "sinners above all other men."

There is indeed no proof, as all will concede who read the testimony, that would be sufficient, in a court of equity, to overcome the presumption of every member of the legislature. Three witnesses—Joseph A. Cooper, V. E. Gossett, and B. F. Dougherty, testify to the fact that they had been present in a room in Nashville during the session of the legislature of 1869-70, when W. A. Shepherd, representative from Hawkins county, handed M. D. Bearden a five hundred-dollar bill, which from Shepherd's language, it appeared he had received at the instance of Belden, to be used in the interest of the legislature in consideration of his voting for a certain railroad bill, but the member had on the final passage of the bill voted against it, and Shepherd compelled him to refund the money. The other two witnesses relate what Bearden told them as to the transaction, some of them disclose the part of the member to whom the five hundred dollars had been paid.

An attempt is made to prove that some of the members of the legislature were bribed—A. S. Tate, of Granger county, and J. M. Clemenson, a member from the seventh senatorial district. Admitting the evidence of Tate to be true, and the proof faits to show anything criminal on the part of the accused.

An effort is also made to show bribery on the part of James A. Mabry, president of the Knoxville and Kentucky railroad, by his alleged agency in the legislature, and in clothing from the establishment of H. A. Buntington, in Nashville, but while there is no reasonable doubt that the Knoxville and Kentucky was furnished by Huntington at Mabry's expense, there is no member of the legislature upon whom the guilt is fastened.

These, I believe, are the only cases in which specific cases of bribery are attempted to be proved; but neither in these nor in any other cases is there any direct and positive testimony that money or other valuable thing was offered and received to influence the vote or action of the legislature or procure the passage of an act.

The five thousand dollars stated by Mabry to have been given by others to procure the passage of Brownlow, or to his wife, would not have been alluded to by me if it not been referred to in the report of the committee, for, however corrupt the intention, it was, it had nothing to do with the passage of any law or the issuance of any bond, and it is therefore, relevant to the matter being considered, and the same may be said of the transaction where a prominent newspaper was employed and paid by a railroad official to depress the State bonds, in order that the railroads might buy them at a low figure and use them at par in paying the indebtedness of the roads to the State.

As to the plea of exoneration made by the committee on behalf of the State from liability on the ground that the bonds were issued in the name of the State, I remark that all the conditions prescribed by the act of February 11, 1852, and amendments, for the issuance of bonds to railroads, that were to be performed after the bonds were issued by the governor, auditor and treasurer, were legally assumed, and were clearly conditions subsequent and could not affect the validity of the bonds after delivery and as the conditions precedent, the public officers and agents have not the same power in all respects to bind the government that private agents have to bind their principals, and by no one perhaps has this principle been more clearly and strongly stated than by that eminent jurist, Judge Story, and not only in his elementary work on agency, but especially in his reported decision in 5 Mason's reports, 44.

The authorities, however, heretofore cited, I think, show that in matters of contract on the part of a State, as it can only contract through its agents, it is bound by the same rules that are applicable to private persons in similar cases, and the question before us now is who, under the provisions of the act of February 11, 1852, was to determine that the conditions required to authorize the issuance of the bonds had been complied? Evidently the governor, and I presume it has been so understood and acted upon under similar circumstances from the foundation of the State government, and if so, how does the matter stand in the light of legal authority and especially of the principles recognized and applied by the supreme court of the United States? Judge Dillon gives the following summary of the decisions of that court: "The purchaser is bound to see that there exist legislative authority not in conflict with the State constitution for the issue of the bonds or commercial securities of the municipal, public or quasi corporation, and is bound to notice the contents and recitals contained in the instruments; but if such bonds are duly executed by the proper officers, and these officers are interested by the true construction of the legislative enactment in that regard, with the power to decide whether conditions precedent have been performed and the bonds contain a recital that such conditions have been complied with, or a recital which implies such compliances, whether the preliminary conditions consist of facts *inquo* or facts of a public character, of the bonds under such circumstances with such a recital is conclusive against the municipality as to the fact or facts recited or implied in the recital, and estops in action by an innocent holder for value before due, to show the contrary. In all the cases in the supreme court of the United States that tribunal has held that the municipal or local officers were constituted the judges to decide whether antecedent or preliminary steps or conditions had been complied with and that their decision, stated or implied, in the recital was conclusive against the corporate power, when the bonds have found their way into the hands of innocent holders."

But it is the requirement of justice, as well as a rule of law, that when a defense is sought to be charged upon sundry written evidences of debt, all bearing his signature, and valid upon their face, but some of which he alleges to have never executed, he must designate the precise instrument or paper, the validity of which he disputes, and make his defense under oath.

The committee not only fails to point out any specific bonds as which the conditions of the law providing for their issuance were neglected or violated, but makes the statement broadest that as to the bonds issued in aid of railroads, "no neglect of conditions the conditions of the law, either precedent or subsequent, were not observed."

Now, I find from official sources that under the act of February 11, 1852, and amendments, 13,682 bonds, amounting to $13,682,000, were issued by Governors Campbell, Johnson and Harris, and 15,201, amounting to $15,201,000, were issued by Governors Brownlow and Senter. Of the latter amount designated by the committee as post-war bonds, it is admitted that only 2638 are outstanding, amounting to $2,638,000, and whatever may be said as to irregularities or fraud under the two administrations, it will scarcely be asserted by anyone who knew the strict business habits and unquestionable integrity of Campbell, Johnson and Harris that they would permit the State to be defrauded or allow it to be charged by the issuance of a bond without seeing and knowing that all the requisites of the law had been complied with, and so far as the post-war bonds are concerned, I believe that all the railroad officials to whom the bonds were delivered, who were examined by the committee, swear that all necessary affidavits and other vouchers were filed before they received the bonds, and this testimony, whatever opinion may be entertained about it, must be accepted as true until shown to be false.

But when we consider the object and purpose for which these bonds were issued, is it probable that the legislature intended that *bona fide* purchasers should be required to assume, before they advanced their money upon them, whether the *eight* conditions referred to by the committee had been complied with?

The bonds were intended as a means of raising money for immediate use; they were made payable to bearer in order to protect the credit of the State they were required, by the act of 1854, to be sold at par; they were expected to be sold in a distant market, as there was not home capital to invest in them.

Now, can it be possible that under these circumstances the legislature intended to fetter them with restrictions and conditions that would necessarily have entirely destroyed their market value?

Could it be supposed that a purchaser in New York or London would have negotiated at par, or upon any terms, for paper encumbered with eight conditions, the performance of which were essential to their validity, the literal fulfillment of which he was bound, "at his peril," as the committee report, to inquire into at a distance of thousands of miles, and in the then imperfect and dilatory means of acquiring such information?

To suppose that the legislature passing the act of February 11, 1852, meant this is to stultify that body.

The conditions in reference to the issuance of the bonds were evidently intended as a security to the State against the railroads and not affect third persons who might become the innocent holders of the bonds; and in proof of this, section 13 of the act of February 11, 1852, provides that if the governor ascertained "that any railroad company shall have fraudulently obtained the issuance of the bonds of the State, or shall have obtained any of said bonds contrary to the provisions of the act, he shall notify the attorney general of this State, whose duty it shall be forthwith to institute in the name of the State a suit in the circuit or chancery court of the county of the place of business of the company setting forth the facts;" and if the fraud is established, the act goes on further to provide, *not that the bonds shall be adjudged void* by the court, but that the road, with all the assets and property of the company, shall be sold and the proceeds paid into the treasury, and the stockholders of the company are made individually liable for the payment of the bonds so obtained.

The sixth ground of defense urged by the committee against the validity of the bonds is that the legislature in 1869-70 instituted inquiries into the circumstances under which the bonds of the State were issued, with a view to eliminating and declaring invalid those that were tainted with fraud, and were deterred from doing so by apprehensions of reconstruction and menaces on the part of the Federal government amounting to duress.

The proof on this point shows that during the session of 1869-70 several investigating committees were appointed to examine and report upon various alleged frauds, and, among others, was a joint committee for investigating railroads, consisting of J. M. Clemenson, P. F. C. Nelson, John L. Hart, W. H. Hall, H. Townsend, Alba Thomas, John M. Fleming, James L. Rapon and A. L. Spears.

The report of this committee, with the accompanying testimony, fills a space of some one thousand pages in the appendix to the legislative journal of that session, and occupies a separate appendix, and shows that they investigated some twelve or more railroads and examined over one hundred witnesses, and I believe I speak for the record when I say that in regard to two only of them was any suggestion made as to the validity of the bonds being questioned by the Mineral Home, as to which judicial proceedings were instituted and the bonds recovered or provided for, and the Tennessee and Kentucky railroad, which latter company would have been instituted, as stated in the deposition of Alba Thomas, a member of the committee, if the bonds could be gotten through the legislature to direct such proceedings to be had, the bonds held by the company were paid in full and delivered to the company upon the validity of which they had been turned over for that purpose.

As to the alleged fact that this committee had been deterred from adopting any proceedings to the reputation or invalidation of the bonds by fear of reconstruction, it may be remarked that quite a number of witnesses were interrogated on this point, and, with all respect to the committee, very leading questions were propounded, as will be seen by reference to the testimony. The only witnesses whose depositions are of any particular significance are Dorsey B. Thomas, Clay Roberts, M. D. Bearden, and John T. Baber. The last three speak only of rumors and fears. Alba Thomas also states it generally, and says he thinks that the action agreed upon by the railroad investigating committee, of which, as stated, he was a member, was to direct the proper officers of the State not to recognize the bonds improperly issued, naming those issued to the two roads above mentioned, in any transaction with the State, and to the roads, by a proper action in the courts, by suit against the State, to establish their validity, if they could, and that this policy was adopted by the committee, the most prominent one being a fear of reconstruction, and the other that if a bill was introduced in record to the subject, it would be passed, and that the bonds would be paid to the State and the attempt to impeach their validity thwarted.

The legislature had, it appears, taken a recess from the seventh of March to the third of May, to enable the investigating committee to discharge the important duties with which they were charged. Clay Roberts first, then Mr. Burns, Mr. Johnson, the speaker of the senate, and Mr. Hall, then the speaker of the house, went to Washington to use their efforts to prevent reconstruction by the congress then in session. They succeeded in the object of their mission, it would seem, and returned early in March. The investigating committee appears to have spent the time to have been very industriously employed, and made their voluminous report to the legislature, it appears, about the twenty-third of May. That there was a general and well grounded fear of reconstruction about the time referred to does not admit of doubt; but the attempt made to deter the holders of the bonds of the State bonds with the movement wholly fails. It is more than probable that the rumors that the legislature would be visited by political grounds, attempt to repudiate the acts of Brownlow's administration, and especially the bonds issued in aid of railroads, and thus furnish an excuse of the threatened reconstruction, and was represented as evidence of what was known as "radical extravagance," if not fraud, induced the Federal government. But the proof taken by the committee shows nothing amounting to any direct menace or threat on the part of the Federal government that would show the plea of *duress*, and more than that, some nine years have elapsed, during which the State has been under different governments, and three successive sessions of the legislature, exclusive of the present, all representing the now majority, have not ventured to make any effort to test the validity of the bonds, such as suggested by Mr. Alba Thomas, or of any other kind, has been made.

But, in this connection, it is urged by the committee that the State is not estopped by any recognition or notification of these bonds by the legislature or by any officers or agents of the State, from now disputing their validity, and that special precautions in the funding acts of 1866 and 1873 were adopted by using the phraseology "legally issued" in the acts referring to the payment of the bonds.

Neither the doctrine of "estoppel," in its technical sense, applies to a sovereign State, is a question as to which authorities differ. The supreme court of North Carolina is very emphatic in the opinion that it does not, and for the strongest case that I have met with on this side of the question, I refer to 4th Hawk's Rep., 132.

But the question, so far as we are concerned, has, I think, been settled the other way by the supreme court of Tennessee, and to the decisions of that tribunal we must yield our assent. In the case of the State vs. Cumberland turnpike company, rep. in 2d Humphreys, 304, which was a suit instituted by the State under the act of 1838 for a Jefferson turnpike company, charging that the subscription of the State for one-half the stock of the road and the bonds issued to the State for nine thousand dollars, had been fraudulently obtained, and praying for a cancellation of the stock subscription and the refunding of the amount of the bonds, the court says: "The question first to be considered is whether the subscription for stock on the part of the State and the consequent issuance of the bonds were procured by misrepresentation on the part of the private stockholders and a mistake of the fact on the part of the governor?"

And we have no doubt they were.

These being the facts, there would be no doubt but the contract would be rescinded unless subsequent transactions have effected the rights of the parties. But the parties have proceeded to wind this work from July, 1838, until the bill was filed in May, 1841, a period of nearly three years, and very large expenditures made.

Besides the State was represented in this board of directors (of the turnpike company), and these facts were within their knowledge, and took place with their concurrence and sanction. "The question is *whether the State is not bound by its agents as a natural person, acting through agents is bound?*

The truth is, a government can only act through agents, and the executive, legislative, judicial and ministerial are merely agents. To assume, that it is not bound by the act of its agents is to deny the capacity to act through agents. But this will be contended for by no one. The transactions in reference to the payment of this money and the notification of the fact to the governor were the very things for which they were appointed, and which devolved upon them as a duty. The ratification of the contracts and the certificates in reference to the stock paid in were acts clearly within the scope of their agency.

This case is referred to, and its authority recognized in subsequent decisions of the supreme court.

The question is not as to the power of the governor to make bonds in the name of the State, but as to his authority to deliver them. His act in delivering them before the requirements of the statute were complied with, if such was the fact, would be void, and whether this rendered the bonds themselves void in the hands of innocent holders is a very different question, and I have shown that the question was understood by the legislature by the provisions of the thirteenth section of the act of February 11, 1852.

It is a well-settled principle that a void act cannot be made valid by subsequent notifications, but a voidable one may, and any more irregularities the execution of a power may be waived. These bonds, as has been shown, were issued through a period of forty-five years. Many consecutive sessions of the legislature and fourteen different governors have been charged with the protection of the interests of the State; the bonds have been passed from hand to hand, some of them constituting the investment made by guardians and others acting in a fiduciary character; some of them constituting the endowment fund of our own literary and charitable institutions, and yet, through all these years, not a voice of warning has been heard from those clothed with official authority as the recognized and sworn representatives of the interests of the State, except the investigations of 1869-70 above referred to; but, on the contrary, act after act of the legislature has been passed recognizing the validity and authenticity of the bonds, by funding and receiving them in payment of dues to the State, by appointing directors on the part of the State in railroad companies in which these bonds were issued, as was the case in the Jefferson turnpike above cited, and in every instance in which the State has acted in reference to them.

The clause to which so much importance is attached by the committee, in the insertion of the words "legally issued," into several of the acts since February 11, 1852, can have but little legal significance, since no one was designated whose duty it was to determine this question, and no step taken by the State to have it ascertained in the only legitimate way, that is by the decision of an impartial judicial tribunal.

The Arkansas case cited in support of the proposition that the State is not estopped by any recognition of these bonds by the legislature in 1869 and 1870 elucidated all the material parts bearing on the question; and though the present investigating committee have, speaking not as to myself, manifested marked diligence and zeal in the performance of their duties, an analysis of the proof they have taken will show that the testimony is almost entirely a repetition of that taken in 1869-70, many of the same witnesses being re-examined, or is at the most cumulative, no newly discussed evidence of any special significance having been brought to light.

I come now to the last point made by the committee on behalf of the State, and this is urged, not as affecting the validity of the bonds, for it is not pertinent to that issue but as illustrative of the injury suffered by the State in consequence of her connection with the internal improvement enterprises of the State, and especially in the forced sale of the railroads under a foreclosure of the statutory mortgage of the State.

As I understand the history of this transaction, viewed in the light thrown upon it by the legislation bearing upon the subject and the official records of the State, the sale of the defaulting railroads was clearly an unavoidable necessity. Receivers had been appointed by State authority and placed in charge of these roads, and under their management, as stated in the official report of Comptroller Pennybaker for 1873, the State, by attempting to run the roads, sustained a loss averaging $250 per day. As the agents appointed on behalf of the State to conduct the foreclosure of the mortgage and superintend the sales, I presume it will be conceded by every citizen of the State that three men more competent and of more irreproachable integrity of character could not be found in the State, or outside of it, than Robert J. M'Kinney, Francis B. Fogg and Archibald Wright, and to these were added the governor, the secretary of state and the comptroller. To these defaulting railroads the State had made an advance in her bonds amounting to $14,628,000, and upon the foreclosure of the mortgage, the gross proceeds of sale amounted to only $6,698,000 in the hands of the State, showing a loss of $7,930,000. But does this heavy loss necessarily imply fraud or mismanagement on the part of those representing the State? But these roads had not only shared in the general depreciation of property values throughout the State and country, but were in a comparatively dismantled and dilapidated condition, requiring large disbursements for repairs; and if it be alleged that the State should have bid them in at the sale and thus avoided sacrifice, the answer is that she had already tried the experiment of running railroads, and with what success has been shown; and as to one of the roads that was actually bid in by the State at the sale to break up a combination, it proved a burden on her hands that she was soon anxious to be relieved of. But if it be supposed that $6,698,000 was a wholly inadequate price for the roads, it may be well to bear in mind that the present assessed value of these same roads, with all the improvements and repairs since, made by sworn commissioners on behalf of the State, and among whom are two members of this body, the honorable senators from Obion and Giles, is as shown by the comptroller's books, $2,499,774.

In closing my remarks on this topic, one significant query may be made—If the bonds of the State, which these statutory mortgages were intended to secure, were illegally issued, or for any other reason void and and not obligatory on the State, upon what principle of law or equity could she undertake to force sales for payment of a debt in fact or substance, the mortgage the incident or shadow, and it is a solecism that the consequent should follow the principal, and the property covered by mortgage to pay a void debt; and in this very act of taking possession of the roads, putting the property into the hands of receivers, and finally selling them under the mortgage, has not the State permitted herself to a direct and unavoidable recognition of the validity of the bonds?

And now, having reviewed in detail the prominent grounds of defense made by the committee on behalf of the State, I submit that if these are the defenses as the people of Tennessee will be satisfied with, and yet they have a right to conclude, from the ability of the committee and the zeal they have displayed—those at least making a majority report—that all has been said that can be said on that side of the question, I feel that I, and those of the State has been wronged and defrauded by her creditors as the holders of her bonds, but by the incom petency and treachery of those who were sworn of her own sworn official representatives, running back through a long series of years, and exhibiting a degree of infatuation and folly that will be a lasting reproach upon our civilization and a reproach to republican institutions.

The report of the committee, the further fact that the defenses suggested in behalf of the State are almost wholly of a technical character, such as no one disputing a debt would voluntarily or as a matter of choice avail himself of, and that, to say the most for them, they are of doubtful efficacy or validity; that while the State has, it may be conceded, been of fraud and mismanagement in her affairs, her outstanding obligations are not entirely without consideration, as the magnificent structure in which the law are now assembled, and as some of our literary and charitable institutions, and that even the roads, whose delinquencies are alleged to be many and grievous, if they were to-day blotted suddenly out of existence, would be the infliction upon our citizens of a calamity that would overtop, so far as our social enjoyment and the industrial interests and development and progress of our State are concerned, all the accumulated losses and disasters of the war.

In closing this report, I think it may be allowed to say that while I concede to each and every member of the committee pure and patriotic motives in the discharge of the duties imposed, yet the opinions they have expressed in the report, I feel that I may rightfully claim no less for myself. I have endeavored to look at the question from the standpoint of a judge acting under the binding obligations of an oath, and while my opinions may be otherwise, and my conclusions w