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DAILY DISPATCH.

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Richmond Dispatch.

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FRIDAY.....................APRIL 5, 1878.

WEATHER REPORT.

INDICATIONS FOR TO-DAY.—For the Middle Atlantic States, cloudy and rainy followed by clearing weather, northeast backing to northwest winds, stationary or higher temperature, followed by rising barometer.

For the South Atlantic and East Gulf States, Tennessee, and the Ohio Valley, clear or partly cloudy weather, northwesterly winds, stationary or higher temperature, and rising barometer.

Cautionary signals continue at Capes Lookout and Hatteras, Kitty Hawk, Cape Henry, Baltimore, Lewes, Cape May, Atlantic City, Barnegat, New York, Sandy Hook, Newport, New London, Wood's Hole, Boston, &c.

THE WEATHER YESTERDAY was rainy and disagreeable. At night it was cloudy.

THERMOMETER YESTERDAY: 6 A. M., 48; 9 A. M., 50; noon, 51; 3 P. M., 52; 6 P. M., 50; midnight, 47.

LOCAL MATTERS.

THE FREDERICKSBURG RAILROAD MEETING—A COMPROMISE EFFECTED FOR THE PRESENT AT LEAST.—The stockholders of the Richmond, Fredericksburg and Potomac Railroad Company met again at 12 o'clock yesterday, according to the order of adjournment—Mr. E. Y. Cannon in the chair. Dr. L. B. Anderson, of Hanover county, offered the following proposition as a compromise measure, and expressed his hope that it would be adopted:

Resolved, That in the opinion of the stockholders of this company, one of the lines for mail and passengers from Washington to Richmond by way of Fredericksburg should be in the day, and connect with the line leaving New York at or about 9 P. M.

Resolved, That in the opinion of the stockholders of this company the president and directors should before the 21st of May next carefully consider whether there shall not be an arrangement with the Potomac Steamboat Company to run by steamboat to and from the wharf at Quantico that part of a day line between Washington and Richmond upon the terms that the receipts derived from passengers, the mail, and freights by said day line from Washington to Richmond, and *vice versa*, are to be divided between this company and such steamboat company in the ratio in which such receipts have been divided between this company and the Alexandria and Fredericksburg Railroad Company; and upon the further terms that as soon as practicable the service shall be performed by an iron boat, or boats, guaranteed by the builder to have an average rate of speed of eighteen miles per hour, and built to run through ice three inches thick; and that the steamboat company shall have from this company no greater or other compensation than is provided by this resolution.

Resolved, That this meeting do now adjourn to the 21st of May proximo at 12 o'clock, and that the president and directors shall report to such meeting.

Colonel Hilary Jones, by request of Dr. Anderson, withdrew his motion to refer the subject to a committee.

Mr. Biddle, of Philadelphia (who, with Mr. Conway Robinson, represented the interests of Mr. Moncure Robinson and great English and northern stockholders), while recognizing the right of majorities to rule, conceded that they ought, as far as possible, to do so with tender consideration for minorities and local influences. He had been represented as coming down here with the determination to run rough-shod over local influences. That was not true. His only purpose was, without selfishness or prejudice, to promote the best interests of the company and to serve the stockholders, his personal interest as one such being very large. Mr. Biddle spoke in kindly terms of those who, on Wednesday, had been opposed to him, and said that he knew Mr. Moncure Robinson would endorse what he here said.

Mr. Conway Robinson expressed substantially the same sentiments.

The resolutions as first offered proposed to give the president and Board of Directors thirty days to make the inquiry and report.

Colonel Jones asked that sixty be substituted for thirty days.

Mr. Biddle remembered that this time next month he and President Robinson would be attending the Seaboard railroad meeting. At his suggestion the time was extended to date above mentioned, and the resolutions were then adopted unanimously, and the meeting adjourned.

COMMISSIONERS TO THE PARIS EXPOSITION. The Governor has appointed the following gentlemen, under act of Assembly, as commissioners to the Paris Exposition. They are not entitled to any pay or compensation, but have the same status as the honorary commissioners: Marshall Hanger, of Augusta; Henry Edmunds, of Halifax; M. T. Cook, Norfolk; James B. Ficklen, Buckingham; Alexander McDonald, Lynchburg; C. R. Boyd, Wytheville; J. A. H. St. Andrew, Farmville.

As this list was originally made up as far back as last January, it was headed by the name of General Joseph E. Johnston, but that gentleman, on account of business engagements, could not serve.

The Governor has nominated Professor H. H. Harris, of the Richmond College, as honorary commissioner to fill the vacancy caused by the death of Major Robert P. Archer. This appointment is made by the President.

BRIEF LOCAL ITEMS.—At Shockoe warehouse yesterday 18,300 pounds of loose tobacco were sold. Highest price obtained, $7. The season for the sale of "loose" is drawing to a close, and that offered is of an inferior quality.

The amount of United States internal revenue collected yesterday was $5,431.26.

The highest price paid for tobacco on 'Change yesterday was $25.50, by James B. Pace, Esq.

The force in the custom-house at this time consists of Dr. Charles S. Mills, collector; Arthur A. Spitzer, deputy collector; and Charles Spencer and James Morrisey, inspectors.

Meetings were held last night by Marshall and Virginia Lodges, K. P.; Richmond Royal Arch Chapter; and Neilson Encampment, I. O. O. F.

The funeral of the late Colonel W. D. Blair took place at 4 o'clock yesterday evening from the Grace-Street Presbyterian church, and was largely attended.

Some half-dozen decrees in chancery, only of importance to those interested, were granted in the Chancery Court yesterday.

The special agent of the Treasury Department reported the condition of the office of Collector Mills as excellent on his recent investigation.

The brig Solaris, McLeod master, entered yesterday to load flour for Rio Janeiro.

A good supply of Early York cabbage were received yesterday by the hucksters.

By the rains of yesterday the streets received a needed washing.

The oyster fleet in the dock is small, but fresh fish are coming in plentifully.

With favorable weather Mayo's bridge will certainly be opened for travel to-day. The old toll-house looks as bright as a new pin.

David Farr was received at the penitentiary yesterday from Staunton for eight years for stealing cattle.

A GREAT POINT SETTLED.

The Supreme Court Declares that Coupons Shall be Received for Fines.

IMPORTANT DECISION IN THE CLARKE HABEAS-CORPUS CASE—THE SERGEANT OF RICHMOND MUST TAKE CLARKE'S COUPONS AND DISCHARGE HIM FROM IMPRISONMENT—THE ANTONI OPINION ENDORSED BY THREE OF THE FOUR JUDGES SITTING—A CONCLUSION THAT WOULD HAVE SWEPT THE BARBOUR-BILL OUT OF EXISTENCE HAD IT BEEN APPROVED BY THE GOVERNOR.

In the case of Clarke against Tyler, Sergeant of the city of Richmond, the Supreme Court of Appeals yesterday decided that the case of Antoni against Wright (22d Grattan) settled it that the funding bill created an irrepealable contract between the State and the holders of consol bonds; that there was nothing in the pretension that because fines are dedicated to public schools they could not be paid in coupons; that fines could be paid in coupons; and that the coupons must be taken at their face-value.

Judge Christian delivered the opinion of the Court, concurred in by Judges Anderson and Burks.

Judge Moncure, owning some State bonds, did not sit in the trial of the case.

Judge Staples dissented.

Mr. W. L. Royall was counsel for Clarke.

The Attorney-General appeared nominally for Tyler, but really for the State.

Opinion of the Court.

This case is before us upon a petition filed by James Clarke invoking the original jurisdiction of this Court for a writ of *habeas corpus*. The petition and the record therewith filed show that the petitioner (Clarke) is confined in jail under an execution (*capias pro fine*) issued upon a judgment of the Hustings Court of the city of Richmond for the sum of $30, the fine assessed by said court, and $22.05, the costs of prosecution on behalf of the Commonwealth.

It is further shown that the petitioner tendered to James M. Tyler, Sergeant of the city of Richmond, "a *coupon* which was due and past maturity for $30, which said coupon was cut from a bond of the State of Virginia issued under the provisions of the act of Assembly, passed March 30, 1871, commonly known as the funding bill," and the sum of $22.05 in money, that being the amount of costs.

THE CITY SERGEANT

refused to receive the *coupons* tendered in payment of the fine imposed by the court; and thereupon Clarke applied to this court for a writ of *habeas corpus*, and insists upon his right to pay the fine assessed against him by the Hustings Court in a *coupon* of a bond of the State; and that upon such payment, with the costs of prosecution, he is entitled to his discharge from further imprisonment.

This record, therefore, presents for our consideration the single question, whether a fine imposed for a violation of law can be discharged in *coupons*, or whether it can only be demanded and paid *in money?*

This is the same question which was elaborately argued at the January term of this Court, in the case of "Tyler, Sergeant, *vs.* Taylor, Auditor." That case was argued upon a petition for a writ of *mandamus* to this Court to compel the Auditor of Public Accounts to receive from the Sergeant of the city of Richmond certain *coupons* which had been received by him in payment of a fine imposed on one Mayo for a criminal offence.

In that case this Court unanimously held that

THE WRIT OF MANDAMUS

could not be issued against the Auditor of Public Accounts, because *he* was not the public officer whose duty it was, under the law, to receive fines collected by the City Sergeant, and declaring that this Court could only exercise its extraordinary jurisdiction by way of *mandamus* to compel a public officer to discharge a duty which the law imposed *on him*, and not on another. And inasmuch as the *City Treasurer*, and not the Auditor of Public Accounts, was the public officer whose duty it was to receive all fines collected by the City Sergeant, the rule was discharged and the case dismissed without deciding the question on its merits.

In that case it was said, and is here repeated: "This Court is always ready and willing to decide, to the best of its ability, all questions, however important or difficult, or however they may affect public or private interests, which are properly brought before it, no matter how great or far-reaching may be the responsibilities it must assume in such decision. But the Court is not willing, nor is it any part of its judicial functions, to decide

QUESTIONS OUTSIDE OF THE CASE

before it, and thus constitute itself a *moot court*, to determine abstract questions."

The question argued in the case of "Tyler, Sergeant, *vs.* Taylor, Auditor," did not arise upon the pleadings in the cause, and the Court did not (for the reasons stated in its opinion) feel called upon to decide an abstract question. But the same question now does arise properly upon the records in this case, and the Court is now prepared to meet the question and assume all the responsibilities which may attach to its decision, however it may affect individual or public rights, private or political questions.

But the question we have to determine (however it is sought to be connected with questions which are the subject, unhappily, of political agitation) is purely a LEGAL QUESTION, to be determined upon well-defined legal principles, and the rules of construction universally recognized as applicable to the *statute law*. It all depends upon the true construction to be given to the 2d section of the act approved March 30, 1871, entitled "An act to provide for the funding and payment of the public debt."

THIS SECTION,

after declaring that the owners of any of the bonds, stocks, or interest-certificates heretofore issued by this State * * * may fund two thirds of the amount of the same * * * in six-percentum coupons or registered bonds of this State, &c., &c., contains the following provision: "The bonds shall be made payable to order or bearer and the coupons to bearer at the Treasury of the State, and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually and receivable at and after maturity for *all taxes, debts, dues, and demands, due the State* which shall be so expressed on their face." The only question, then, we have to determine is whether *fines* imposed for a violation of law are included within the terms of the statute? I say this is the only question we have to determine, because the question of the constitutionality of the act above referred to, known as the funding act, has already been determined by this Court. The case of Antoni *vs.* Wright (22 Grattan) settles this question. The same arguments against its constitutionality made in this case were urged in that. I refer to that case, and adopt its principles and reasoning as a clear and conclusive exposition of the law, and am of opinion that this decision of the Court declaring the

CONSTITUTIONALITY OF THE ACT OF MARCH 30, 1871,

and declaring that any act of the Legislature in conflict with the provisions of that act, so far as it may "forbid the collecting officers of the State to receive in payment of taxes and other demands of the State anything else than gold or silver coin, United States Treasury notes, or notes of the national banks of the United States," must be held to be an act "impairing the obligation of a contract," and therefore unconstitutional and void. This decision of Antoni *vs.* Wright was recognized and reaffirmed in Wise Brothers *vs.* Rogers, Auditor, and Maury & Co. *vs.* same (24th Grattan), and must now be held to be the settled law of this State. It is not necessary, therefore, and indeed it would be a vain and useless task, to attempt to go over again the reasons which governed this Court in coming to the conclusions then reached and firmly adhered to ever since. I can only say for myself that after a careful consideration of all the views which have been presented on this question the opinion of Judge Bouldin in Antoni *vs.* Wright is a lucid, able, and

CONCLUSIVE EXPOSITION

of the law, is one based upon judicial logic and fortified by judicial authority, which makes it impregnable against every assault which may be made upon it.

Adopting, therefore, the principles and reasoning in the case of Antoni *vs.* Wright, we are left in this case to a single and very narrow inquiry; and that is, Are *fines* imposed for a violation of law included in the purview of the statute? One of the principal and universally adopted rules of construction of statutes is that in the enactment of statutes the rule of interpretation is, in respect to the intention of the Legislature, that where the language is explicit the courts are bound to seek for the intention, in the words of the act itself, and they are not at liberty to suppose or to hold that the Legislature intended anything different from what their language imparts.—Pot. Dwaris on Statutes, p. 146. Words in a statute are never to be considered as unmeaning and surplusage if a construction can be legitimately found which will give force to and preserve all the words in the act.

THE BEST RULE

by which to arrive at the meaning and intention of a law is to abide by the words which the law-maker has used.—Dwaris, p. 199; note. Especially is this the case where the words used have no double or doubtful meaning, but are plain and explicit in their signification, for it is a rule of universal application that effect *must* be given to the words used by the Legislature where there is no uncertainty or ambiguity in their meaning.

Now, the words used in the act we are called upon to construe are as broad, explicit, and comprehensive as any terms which could possibly be used. The act declares that "coupons shall be receivable at and after maturity for ALL TAXES, DEBTS, DUES, AND DEMANDS DUE THE STATE." Is there any uncertainty or ambiguity in these terms? They all have a certain definite, explicit, and technical meaning. We cannot discard any one of them as unmeaning and surplusage, but must, according to the rules of construction which bind the courts, *give effect to all*. We must suppose the Legislature knew the ordinary meaning and

LEGAL FORCE OF THE WORDS

which they used. If the provision of the act had been that these coupons should be receivable "for *all taxes and debts due the State*" there might be some room for doubt whether *fines* were embraced, for although fines are recoverable by action of *debt*, and in a certain sense a fine is a debt due the State, yet it might be said with much force, if not conclusively, that the word *debt* refers to matters of contract, and that therefore a fine is not embraced in the meaning of the statute in this word *debt*. But the words DUES AND DEMANDS are added. Shall we give *no effect* to these words of explicit meaning? Can we take the liberty of striking these words out of the statute? If we can, then the courts may override the powers of the Legislature and construe away any act it may pass. These words *dues and demands* are not uncertain and ambiguous, but have a certain definite and explicit meaning. The word "due" is

DEFINED BY WEBSTER

to be "that which is owed," "that which custom, station, or law requires to be paid"; and by Worcester, "that which any one has a right to demand, claim, or possess," "that which can justly be required." The word *demand* is a word of still larger significance and more comprehensive meaning. Indeed, Lord Coke says the word demand is the largest word in law except claim. In 2d Coke upon Littleton, 291 b., he says: "*Demandum* is a word of act, and in the understanding of the common law is of so large an extent as no other word in the law is unless it be *claimum* whereof Littleton maketh mention."—Section 445. Webster defines "demanded" "the asking or seeking what is due or claimed to be due;" and Worcester, "a calling for a thing due or claimed to be due." No words of more explicit or broader signification could have been used than these two words "*dues and demands.*" We cannot discard them, but must give them effect. Do they embrace fines? I am bound by every rule of construction to say they do. A fine is something "which the law requires to be paid," and that is the meaning of the word "dues."

A FINE IS A THING "DUE

or claimed to be due" to the State—a liability which the State has a right to enforce and demand—and that is the meaning of the word "demand." I am therefore of opinion that *fines* are clearly embraced within the meaning and the very words of the statute. The Legislature has used words which by their explicit, comprehensive, and unmistakable meaning, *embrace fines* as well as taxes and debts. If after using the words "dues and demands" they had intended to *exclude fines*, how easy it would have been to have added the words "except fines" after the words "dues and demands." But having used these broad and comprehensive terms, which by their common and explicit meaning embrace fines, and having used no words of exception, it follows upon every rule of construction that fines are embraced in the terms "dues and demands."

This construction, which would seem to be free from all doubt, if it rests upon the language of the act, is objected to upon

TWO GROUNDS.

First. It is insisted that fines are imposed as one of the potent means of punishing offences against the law, and that the offender does not satisfy the judgment of the court if he pays an amount *less than the fine assessed* against him, which he does if he may pay in coupons instead of money (the coupons being at a discount). In answer to this view it is sufficient to remark that the State has a right to say, and has said, in the act of her Legislature under consideration, how her "demands" against her citizens shall be satisfied, how the liabilities "due" to her shall be discharged. It might with the same propriety and with equal force be argued that *debts and taxes* due the Commonwealth are not fully discharged by payment in coupons, and yet this is done every day under the statute law, sustained and enforced by a judgment of this Court. But in point of fact the judgment for a fine is discharged *to its full extent, so far as the State is concerned*, because the coupon represents the obligation of the State for the face-value of the coupon.

Second. It is objected that *fines* are dedicated by the Constitution, and by statute enacted in pursuance thereof, to the literary fund for school purposes, and if the act under consideration embraces fines, to that extent it is unconstitutional.

Now, it is to be observed that neither the Constitution nor any act passed in pursuance thereof requires the collectors of the public revenues, nor the Auditor, *to keep separate and distinct each particular fine assessed against offenders* and pay it over, as collected, to the literary fund, but the requirement is, upon fair construction, to turn over to

THE LITERARY FUND

whatever amount may come into the Treasury from the *source of fines*, and dedicate *that amount* to the purpose indicated. This same argument was pressed most vigorously in the case of Antoni *vs.* Wright (*supra*), and was answered, I think, successfully and conclusively by the lamented Judge Bouldin; and I prefer to adopt his views, so clearly and ably put, rather than mar and weaken them by words or views of my own. He says: "But it is argued that the contract in this case is void because it is repugnant to the 8th section of the 8th article and 3d section of the 10th article of the State Constitution, dedicating certain portions of the State revenue to the support of free schools. We think there is no such conflict in the case. * * * It only requires that the obligations of succeeding Legislatures shall be firmly met; that there should be what the creation of every new debt imperatively demands—to wit, an increase of taxation if the existing rate be insufficient.

THE ARGUMENT

is based on the assumption that subsequent Legislatures will fail in their duty and pursue such a course as may result in malappropriation of the funds referred to; that they will decline to meet faithfully the high obligation resting on them, and then rely on the irregular consequences of their own default as an argument against the validity of the debt for which they will have failed to provide. The malappropriation which would follow would not be the legitimate result of the funding act, but in effect would be the act of the Legislature failing to discharge its duty. The obligation to provide for the interest due by these *coupons* is as high as the duty of applying the capitation tax and other funds to the schools. Both duties are alike obligatory, and both may be discharged, as there is no conflict between them. It is only by a failure to discharge the one that the performance of the other can be put in jeopardy, and it rests with the Legislature, by faithfully and fearlessly meeting both obligations, to preserve the

PLIGHTED FAITH OF THE STATE

and protect her Constitution from violation."

After this opinion of the Court, delivered by Judge Bouldin, was announced, there was a motion for a rehearing submitted by the Attorney-General, and the Court held the case under advisement for several weeks, anxious to correct its decision if it should appear in any respect to be erroneous, and to give to the case that calm and careful reconsideration which the gravity and the importance of the questions involved required. After a candid and anxious review of the case, the Court could find no reason to change its opinion, but was confirmed in the justice and reasons of its conclusions. In delivering the judgment upon the motion for a rehearing, Judge Anderson, in an able and exhaustive opinion, discusses the whole question, reaffirming and enforcing the views of Judge Bouldin; and in these views the same judges concurred as in the original decision. I mention this to show with what

DELIBERATION AND CARE

the questions involved in the case of Antoni *vs.* Wright were considered, and the futility of again considering these questions, except to reaffirm and adopt the principles of that case so far as they apply to the case before us.

With respect to the argument made in that case, as it was pressed in this case, that *fines* and other revenues were dedicated to the school fund, and therefore cannot be paid in coupons, Judge Anderson, in his opinion [22 Grattan, page 874], says: * * * "It is said that those provisions of the Constitution which set apart certain funds and a certain proportion of the tax for the public schools would be defeated by this legislation. It would seem to be a sufficient reply to say that if it were impracticable to raise a sufficient amount of revenue for both purposes, the latter did not impose an obligation on the Legislature paramount to the obligation to provide for the payment of the interest on the public debt. That was an obligation antecedent and paramount to the Constitution itself, and could not be

REPUDIATED BY THE CONSTITUTION

if it had so provided. But it is not repudiated nor ignored; but the obligation is clearly recognized by sections 7, 8, 19, and 20 of article 10—at least to pay Virginia's proportion. And, furthermore, this being an obligation of *debt*, and not *eleemosynary* in its character, as are the other provisions referred to, and however desirable and important it may be that they should be carried out, I hesitate not to say this is of *higher* obligation. But there need be no clashing of duties here. It is only required that the Legislature should levy a tax sufficient for both objects—a duty imposed on it by the Constitution. It has not been the practice to set apart in the public treasury the identical money received for the public schools, nor is it required by the Constitution nor the acts of Assembly. And the Legislature has discharged its constitutional obligation when it has set apart the required *amount* for that purpose."

These views, expressed both upon the first hearing and the rehearing of the case of

"ANTONI VS. WRIGHT,"

are applicable to the case before us, and must govern our decision in this case.

Much has been said in the case before us about the sacredness of the school fund and the paramount obligation of the State to educate the people. This is a great and high obligation, and no doubt will be faithfully and firmly met by the Legislature. But, however great and high this obligation, it cannot and ought not to be met at the sacrifice of other obligations equally sacred, and other duties equally high and binding. A State, like an individual, must be just before it is generous. No honest man can or will abstract from his creditors what is justly due them in order to give it to his children. No State, in order to educate its citizens, ought to withhold from its just creditors that which has been pledged, by its honor and plighted faith, to the payment of its just debts. Both obligations must and will be met.

THE PEOPLE MUST BE EDUCATED,

but they must not be educated at the price of REPUDIATION AND DISHONOR. Better would be ignorance than enlightenment purchased at such a fearful price.

In conclusion I will repeat here the utterance of the unanimous voice of this Court in the homestead cases (22 Grattan, 301), when it declared that "no State and no people can have any real and enduring prosperity except where public faith and private faith are guarded by laws wisely administered and faithfully executed. The inviolability of contracts, public and private, is the foundation of all social progress, and the corner-stone of all the forms of civilized society where an enlightened system of jurisprudence prevails. Under our system of government it has been wisely placed under the protection of the Constitution of the United States, and there it rests secure against all invasion."

It only remains for me to say that the petitioner has the right under the law to discharge the fine imposed upon him by the Hustings Court with a *coupon* of a bond of the State, which the State has agreed to receive in payment of "*all taxes, debts, dues, and demands due the State,*" and that he be discharged from further custody.

The Dissenting Opinion.

Judge Staples said:

The opinion just delivered by Judge Christian is an affirmance of the doctrine laid down in Antoni *vs.* Wright. It will be remembered by those who were then present, or who have taken any interest in the subject, that it was my fortune to differ with the majority of the Court in the decision then rendered, and in the reasoning by which it was sustained.

Since that time the whole question has received a full and exhaustive discussion by the public press, upon the hustings, and in the legislative department. That discussion and my own more deliberate reflections have but strengthened my convictions of the soundness and justice of my opinion then entertained. I do not see, however, that any good can be attained by a further discussion of the question in this Court. Every one here present—every intelligent mind in the State—has perhaps reached some definite, fixed conclusion upon the subject, and nothing that can be said here by myself or others would alter or modify that conclusion. I will not, therefore, now undertake to enter into any argument of these points, with respect to which it was my misfortune to differ with my brethren. I may hereafter do so if time and opportunity are favorable, and now reserve to myself that privilege. This much I may say in justice to myself, if it is now to be regarded as settled law, that every demand, debt, and claim due the Commonwealth, of whatever character or classification, to the amount of one million and two hundred thousand dollars, may be paid in these coupons. If the Legislature under no circumstances has the power for the next thirty years to diminish the rate of taxation, whatever may be the necessities or condition of the people; if it has surrendered all control over the public revenues to such an extent and for such a period, whatever may be the public exigency; if the Legislature may thus pledge the revenues of the State beyond recall, then indeed has Government abdicated its functions and the State stripped itself of one of its

ATTRIBUTES OF SOVEREIGNTY.

To this but one answer has ever been given that deserves the name of answer, and that is that it is the duty of the Legislature to lay a sufficient tax to pay the creditor and carry on the government. To this I answer: That however strong the obligation the public debt may impose there are periods in the history of every State when no part of it can or ought to be paid; when the State creditor and the individual creditor must consent to wait at least for a season, and of such times as they arise the Legislature must be the judge. The amount of taxation the people can bear, the mode of imposing and collecting it, is a political question to be determined not by the courts, but by the representatives of the people from time to time, as the public exigencies may require. This is the essential principle of the government under which we live, State and Federal. In the language of the Supreme Court of the United States, a "a legislative body cannot part with its powers by any proceedings so as not to be able to continue the exercise of them. It cannot abridge its own legislative power by making permanent and indissoluble contracts in reference to matters of public interest."

With this brief discussion I am content to leave this branch of the subject, though perhaps I have said more than was necessary. I desire further add that

THE PRECISE QUESTION

now before us was not before us in the case of Antoni *vs.* Wright. It is true that it was discussed by both Judge Bouldin and Judge Anderson, and, while it is perhaps fully covered by the reasoning of the Court, it was not necessarily decided. I agree that the funding act is broad enough to include fines imposed for the violation of the laws, and for that very reason I thought, and still think, that it is violative of the seventh section of the eighth article of the Constitution of Virginia. That section declares the General Assembly shall set apart, as a permanent and perpetual literary fund, the present literary funds of the State, the proceeds of all public lands donated by Congress for public-school purposes, of all escheated property, of all waste and unappropriated lands, of all fines accruing to the State by forfeiture, of all fines collected for offences committed against the State, and such other levies as the General Assembly may apply thereto. No intelligent man will maintain that it is competent for the Legislature, by any contract, to divert this fund from its specific object as prescribed by the Constitution. Take, for example, the proceeds of the public lands dedicated by Congress to school purposes. If the lands, when sold by the State, may be paid for in coupons, are the proceeds set apart for the objects designated in the Constitution? Take the fine in this case. If the petitioner may pay it in coupons, any other person upon whom a fine is imposed may do likewise. Are not such fines in effect for all practical purposes appropriated to the payment of the public debt? I can see no difference between a law which applies them directly to the payment of the interest on the public debt and a law which authorizes them to be paid in coupons. The answer again is that

THE LEGISLATURE MUST INCREASE THE TAXES

and supply the deficiency from other sources. But the question still arises, Can a Legislature divert a fund from the purposes of the trust under the Constitution, and justify its action by relying upon another Legislature to raise another fund from another source to meet the objects of the trust?

The main design of the provision of the Constitution was to create a fund beyond the reach of the Legislature, and in nowise dependent upon its neglect and failure of duty. It is very true that the fines have heretofore been paid into the Treasury in common with other public dues, and so long as the whole was paid in money no inconvenience or injustice could arise; but now the question assumes an entirely different aspect, for if the Legislature shall pass an act directing that the fines shall be paid in money, and the money thus paid shall be set apart for school purposes, under the ruling of the Court, the act would be constitutional, because the funding bill declares that all public dues may be paid in coupons. The result is that one Legislature may, by an agreement with the creditor, appropriate to his claim a fund set apart by the Constitution irrevocably for another purpose, and if succeeding legislatures fail to supply other means to meet the deficiency there is no remedy for a palpable violation of that instrument.

I can never give my assent to this doctrine. It is the duty of the Legislature by taxation to

PAY THE PUBLIC DEBT.

If it fails to do so it cannot justify its action by giving to the creditor a fund not under its control. Upon this point I thought the argument of the Attorney-General unanswerable.

However potential may be the obligations of good faith, they cannot justify the Legislature in surrendering one of the essential attributes of State sovereignty, or in putting upon its statute-books, under the form of a contract, a law which violates the plain letter of the Constitution.

Believing that the funding bill is justly obnoxious to these objections, I can never give it my sanction as a judge of this Court. I must, therefore, dissent from the opinion just delivered.

I regret that this opinion has been necessarily so hastily prepared; but it was not until last night that I determined to reduce my views to writing.

The Prisoner Discharged.

The petitioner, who was convicted of violation of liquor law, through counsel yesterday paid his fine in coupons and was discharged from custody. The formal orders in that matter will be prepared and entered to-day or to-morrow.

THE SEVENTEENTH-STREET IMPROVEMENT. The brick-work of Mr. Lichtenstein's handsome structure, corner Seventeenth and Franklin streets, is being done, as we have already stated, by Messrs. Powers & Crump, one of Richmond's most worthy and enterprising firms, and the bricks are made at their yards in this city.

POLICE ARRESTS.—In the year 1875 the police of this city made 5,520 arrests; in 1876 they made 5,811 arrests; and in 1877, 4,715.

UNITED STATES CIRCUIT COURT—*Judge Robert W. Hughes presiding.*—Charles B. Vaden, late deputy collector of customs under Dr. Mills, charged with embezzlement, withdrew his plea of not guilty and entered a plea of guilty. The Court took time to consider as to the sentence. In another case of the same sort against Mr. Vaden, the District Attorney, by consent of the Court, entered a *nolle prosequi*.

George Carbena, charged with violation of internal-revenue laws, withdrew a former plea of not guilty and pleaded guilty. Judgment reserved. Two other cases against him were dismissed.

In the matter of a $50 fine paid by B. L. Morton, and $100 paid by Emma Davenport, the Court ordered that the money be deposited at the Planters National Bank to the credit of the Treasurer of the United States on account of the Post-Office Department, and the proper document to enable the Department to draw the same be forwarded to Washington.

SUPREME COURT OF APPEALS, THURSDAY.—John W. Turner *vs.* The Commonwealth. Writ of error refused.

Redd *vs.* Jones and *als.* From the Circuit Court of Nottoway county. Affirmed, Judge Moncure delivering the opinion of the Court.

McDaniel & Irby *vs.* Tate. From the Circuit Court of Campbell county. Reversed, Judge Anderson delivering the opinion of the Court.

Compton *vs.* Major. From the Circuit Court of Culpeper. Reversed, Judge Burks delivering the opinion of the Court.

Coleman's administratrix *vs.* Piedmont and Arlington Life-Insurance Company. From the Circuit Court of Richmond. Affirmed, Judge Christian delivering the opinion of the Court, Judge Anderson dissenting.

Gale *vs.* Wilson and *als.* From the Circuit Court of Norfolk county. Affirmed, Judge Staples delivering the opinion of the Court.

HUSTINGS COURT.—In the Hustings Court yesterday—Judge George L. Christian presiding—there was only one criminal case tried—that of John Johnson (colored), charged with stealing twenty-five cents' worth of provisions from a boat belonging to Captain William F. Fitchett. He was found guilty and committed to jail for thirty days with hard labor in the chain-gang. The balance of the day was consumed in the trial of civil causes. Hereafter the civil docket will be called regularly each day at 11 o'clock.

POLICE COURT.—Emma Brown (colored) was sent to jail one hour and punished with five stripes for the larceny of a pair of ear-rings.

John Fick, surrendered by his surety, A. B. Duesberry, was required to find new bail and committed in default.

John Jennings, charged with vagrancy, was ordered to leave the city immediately.

James T. Fry (colored) was acquitted of the charge of having in his possession a lot of cigars, the property of A. H. Nott & Co.

The following were also discharged:

Thomas Kain, charged with assault on Henry Curtis.

James Williamson, charged with the larceny of currency from E. P. Lee.

Solomon Mitchell, charged with stealing sewing-machine from Sallie Wooldridge, in Manchester.

Louisa Holmes, charged with stealing $200 from her husband, William Holmes.

John Thomas, charged with disorderly conduct.

The following were fined for violation of city ordinances:

William Duke, for hiring an unlicensed buggy, $2.

Ellen King, Ann Swann, and Joseph Eck, for having unlicensed dogs, $2 each.

Henderson Parrish and Edmund Poindexter, for having unlicensed dogs, $1 each.

Some dozen other parties charged with the same offence were discharged.

PERSONAL.—Dr. William H. Ruffner, Superintendent of Public Instruction, returned to Richmond yesterday morning from a visit to various Southside counties.

Among the visitors to the Tobacco Exchange yesterday were Isaac Jackson, P. S. Coles, Sr., Albemarle; W. C. McDonald, Montreal; J. T. Keen, Danville; J. A. Houchens, Goochland; D. H. Brown, Powhatan; J. A. Wingfield, Hanover; R. W. Lawson, J. J. Lawson, Halifax; Dr. Buckner, Louisa; D. M. McCloud, Glasgow; J. H. Ing, Robert Turner, Baltimore; and A. L. Mills, Louisa.

THE MOZART.—It is rather unfortunate that we should have rain so frequently on the nights of the Mozart *musicales*. Old Probabilities does not seem to smile so benignly upon the Association as he did last year, for then it was rather the exception to have an inclement night. Perhaps the unusual favor was at first shown for the purpose of encouraging a new enterprise.

The audience was rather small last evening, but those who ventured out were rewarded for their temerity by the unusually fine and well-rendered programme that was presented.

Signor Felix Jardella, of Professor Peters's orchestra, made his first appearance before the Association as a clarionet soloist. His execution of an arrangement from "Il Trovatore," by Ernest, was highly artistic, and elicited most decided marks of appreciation from the audience. He is a fine performer, and evinces that perfection in method, the result of careful training, which, when coupled with a soft, delicate tone, constitute the requisites for the master of a difficult instrument.

Dr. Bartkowski also came in for his share in the honors of the evening. He is undoubtedly a great favorite, and surpassed himself in the finished rendition of two violin solos. His interpretation of the exquisite arrangement from "La Favorita," by Osborne and De Beriot, in which he was ably assisted by Professor Reinhardt, was masterly, and could not fail to satisfy the exactions of the most severe critic.

"Jack O' Lantern," gracefully performed by the quintette(?), is rater a misnomer for a piece so tantalizingly short. The name of the first number by the orchestra, "Agonies of Tantalus," would have been far more appropriate.

The three selections by the orchestra were admirably-well given, and Signor Jardella's sweet clarionet added no little to the spirited and successful rendition of Suppe's overture, "Agonies of Tantalus." There was a slight want of accord between the wind instruments in some of the soft passages of the old German song "Loreley," but it was in other respects a creditable performance.

Acting upon the frequent but modest suggestions of the *Dispatch*, the Board of Governors have had the chairs rearranged so as to give more room in seating the audience. It is a great improvement, and one for which they will receive the lasting gratitude of the community. The effect was at once visible by the general smile of contentment that beamed from the countenances of all. Another wise move of the honorable Board is a resolution they have adopted for the reception of the audience, and especially for the preservation of silence during the performances. It provides that a committee of five be selected—one governor and four members—who shall attend to the same. For the coming month the president has appointed the following committee: E. Courtney Jenkins, F. A. Davenport, Frank Nalle, Joe Lane Stern, and A. Sallie Watkins. The example of a few acting in the capacity of moderators, and judiciously chosen, will work wonders.

READINGS AT ASSOCIATION HALL LAST NIGHT AND TO-NIGHT.—Professor Henry Scharf, of Staunton, gave an entertainment of humorous and dramatic readings at Association Hall last night under the auspices of the ladies of Centenary Methodist church. Owing to the bad weather the audience was small in numbers—entirely unworthy of the accomplished reader and the ladies' enterprise. For to-night the Professor has arranged a programme which will prove highly attractive to all who improve the opportunity by attending.

IMPROVEMENTS IN THE FIRE DEPARTMENT AND FIRE-ALARM TELEGRAPH.—The Chief Engineer of the Fire Department, in his annual report, recommends the establishment of a hose company near the Exchange Hotel; a new house for Company "D" (Brook-Avenue steamer); remodelling and enlarging the house of Company "B" (Third-Street steamer); removing one of the steamers of the department to, or purchasing of an additional one for, the southwestern part of the city. The chief also says: There is another matter of great importance that should be attended to. Early last year, soon after the burning of the Brooklyn Theatre, by which so many lives were lost, a resolution was offered in the Board of Aldermen to ascertain and report as to the safety of the places of amusement in case of a fire or panic. That committee visited all the places of amusement in the city, and made a report suggesting many improvements, such as the strengthening of floors, and increasing the number and enlarging the outlets in nearly every case. This report by some means has been overlooked, and, I fear, a very important public duty is being neglected. We should be warned by these distressing horrors that are occurring around us, and do everything in our power to avert them from our midst.

In the matter of rescuing persons from lofty burning buildings we are very poorly prepared, having only one hook-and-ladder truck company in this city, which attends all fires except those on Church Hill and Rocketts. If it should be desirable to ascend to a window in the third story of any building it would be necessary to use the extension ladder, which is so heavy and difficult to raise that very little good could be accomplished with it. We should have an additional company with such improved apparatus as is now so successfully used in other cities.

The Superintendent of the Fire-Alarm and Police Telegraph, Mr. R. M. J. Paynter, in his annual report, in referring to the number of relays on the circuit (forty-two), says: This is entirely too many for one circuit, and would have been changed last year could we have gotten an additional room to our present battery-room to put up a set of repeaters. Our battery-room is barely large enough to hold the battery necessary to work the lines, yet it is the only room I have for storing material and supplies belonging to the department. The consequence is that only a very limited supply of material can be kept on hand, very much to the detriment of the department. It is hoped an additional room will be given us this year, which will enable us to put up repeaters, and at the same time give us ample room for storing material and supplies. The cramped condition of the present battery-room is not only a great inconvenience, but may cause serious trouble if not remedied.

BE SURE TO GO TO THE LADIES' FAIR which is now being held in the lecture-room of the Second Baptist church. Their display of fancy articles is very fine; also, a large lot of refreshments of all kinds.

BROWN FLOUR GEMS.—One cup of brown (Graham) flour, one teaspoon DOOLEY'S YEAST POWDER, one cup of sweet milk, one egg, white and yolk beaten separately. Have your gem pans hot, grease well, and bake in a quick oven.

SUITS TO ORDER, $18, at A. SAKS & CO.'S, 1013 Main street.

FOR ULCERATED MOUTH, the healing properties of MEADE & BAKER'S CARBOLIC MOUTH-WASH are unexcelled. Fifty cents a bottle.

DON'T GO WHERE YOUR LOVE LIES DREAMING, but go to any cigar store or restaurant and ask for WHITLOCK MODEL CIGARS, and dream the happy hours away by yourself. It will pay better in the long run.

LEVY BROTHERS
CONTINUE TO ADD BARGAINS
to their stock.
THEY RECEIVE SUPPLIES BY EVERY STEAMER FROM NEW YORK AND BY EXPRESS.
They now show a large assortment of
DRY GOODS,
FANCY GOODS, and
NOTIONS,
adapted to the present and approaching seasons, all of which will be sold at
VERY CLOSE PRICES.
They call particular attention to their stock of
BLACK, COLORED, PLAID, AND STRIPED SILKS,
which are by far the cheapest ever offered in this city.
They also offer some
SPECIAL INDUCEMENTS IN WHITE GOODS.
Read their advertisements, and be sure to call and purchase some of the many
TEMPTING BARGAINS MENTIONED THEREIN.

PANTS TO ORDER, $5, at A. SAKS & CO.'S, 1013 Main street.

DUFF GORDON SHERRY, imported directly by us. Prices very low.
GLENWOOD WHISKEY, first premium at the Virginia State Fair.
CIGARS of all grades, manufactured by us.
TEAS of all qualities. W. D. BLAIR & CO.,
903 Main street, Richmond, Va.

The cause of my trouble and discontent
Is where to get a good CIGAR for 5 cent.
Take this advice, you will find it best:
Hereafter smoke WHITLOCK'S Key West.
And if for one you'll pay 10 cent,
To get something good and be content,
Be sure you get WHITLOCK'S Model Cigar;
They are for sale most everywhere.

FOR OFFENSIVE BREATH from decayed teeth and diseased gums, use MEADE & BAKER'S CARBOLIC MOUTH-WASH. Fifty cents a bottle.

AS A FRAGRANT AND PLEASANT WASH for the mouth, there is nothing so good as MEADE & BAKER'S CARBOLIC MOUTH-WASH. Fifty cents a bottle.

FOR BLEEDING GUMS, use MEADE & BAKER'S CARBOLIC MOUTH-WASH. Fifty cents a bottle.

DISCOLORED TEETH rendered beautifully white by the use of MEADE & BAKER'S SAPONINE DENTIFRICE. Fifty cents a box.

FOR ALL DISEASES OF THE TEETH AND GUMS use MEADE & BAKER'S CARBOLIC MOUTH-WASH. Fifty cents a bottle.

INCIPIENT TARTAR AND SCURF removed by MEADE & BAKER'S SAPONINE DENTIFRICE. Fifty cents a box.

AUCTION SALES THIS DAY.

ISAAC H. CARRINGTON, trustee, 4:30 P. M., central private residence and building lots.
H. T. DOUGLAS, superintendent of the Richmond, York River and Chesapeake Railroad Company, will sell at 12 M. a large lot of valuable unclaimed packages.
JOHN POE, JR., Chief of Police, at Lipscomb's stable, at 10 A. M., one hog.
JAS. MACDOUGALL, at his warerooms, at 10½ A. M., furniture, wooden-ware, &c.

FAIR.

LADIES' FAIR
IN THE
SECOND BAPTIST CHURCH LECTURE-ROOM,
CORNER MAIN AND SIXTH STREETS.
OPEN EVERY NIGHT THIS WEEK,
commencing MONDAY, APRIL 1ST.
A large stock of USEFUL and FANCY GOODS. CREAMS and CONFECTIONS of all kinds.
The RESTAURANT will be supplied with all the delicacies of the season. DINNER from 1 to 5 P. M. SUPPER from 7 to 10 P. M. Meals only 50 cents. ap 1

EXCURSION.

RICHMOND AND PETERSBURG RAILROAD.
Commencing SUNDAY, April 7, 1878, EXCURSION TRAINS on this road will leave Richmond at 9 A. M. and 4:30 P. M. and Petersburg at 8:30 A. M. and 4:30 P. M. EVERY SUNDAY.
ap 5-3t A. SHAW, Superintendent.