# INHERITANCE TAX IS NOW CONSTITUTIONAL:

## Supreme Court So Decides in the Stanford Estate Case.

Its Former Exposition of the Law Entirely Reversed--The State School Fund Will Be Enriched by Many Hundred Thousands of Dollars.

in the matter of the estate of Leland Stanford, deceased, the Supreme Stanford, deceased, the Supreme Court has held as constitutional the act of March 23, 1893, as amended four years after, in the matter of taxing collateral inheritances. This opinion, which was written by Justice Van Dyke and concurred in by Chief Justice Beatty and Justices Temple and Garoutte, reverses the decision in the same case with the same case.

rison.

In yesterday's decision Justice Harrison dissented. The law as laid down yesterday applies to every estate in California over \$500 in value and puts immediately into the school fund nearly \$300,000. When Senator Stanford died he left a will in which, among other bequests, he gave \$2,500,000 to trustees for the benefit of the university he had established, and \$2,200,000 to certain of his nephews and nieces residing in this State and in the

The District Attorney of this county, on behalf of the Treasurer, brought an action against Mrs. Stanford, as administratrix, for \$235,750 taxes on the collat-eral inheritances mentioned. In the lower court judgment went in favor of the law court judgment went in have of the Supreme and an appeal was taken to the Supreme Court by Mrs. Stanford. Justice Harrison's decision reversed the judgment of the lower court. His position was that the legislative amendment of 1897, exempting the configuration of the court of t al heirs' and taxing foreign heirs nheritances was a discrimination and nence the act and amendment were un-

ethe act and amendment were unditutional. This decision was regards a great victory, as it was a hard to the inheritance tax act.

F. Fitzgerald, then Attorney Genmade application to the Supremet for a rehearing of the case, bashs petition on the ground that the was a party in the case, and as its representative he had never been dwith a notice of appeal. The is interest lay in the loss or gain to chool fund. The motion was granted Mr. Fitzgerald, retiring from office, uccessor, Tirey L. Ford, pursued the to yesterday's victory for the State, the decision the constitutionality of the tunder consideration is upheld on ground that the tax in question is upon the property but upon the right cession, and the right of the Legiseright to select the subjects upon the amount now due, about \$300,000, greater than the amount sued for, 50, is on account of the penalties at all of the penalties at the matter of the estate of Legister the subjects upon the following decision:

IN BANK.

IN BANK.

"Section 1. After the passage of this act all property which shall pass by will or by the intestate laws of this State from any person who may die selzed or possessed of the same while a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainer, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of California, and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations and institutions now exempted by law from taxation by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy to any such property, or to the income thereof, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the Treasurer of the proper county, as hereinafter directed; provided, that an estate which may be valued at a less sum than five hundred dollars shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed; provided, that if said tax is paid within six months after the accruing thereof a discount of 5 per centum per annum shall be charged and collected from the time said tax accrued; provided that if litigation becomes necessary, or if for other unavoidable cause

fund.

After the appeal herein was perfected this court, in re Wilmerding, had occasion to consider the nature and character of this collateral inheritance tax, and therein, also held the act in question to be constitutional. (IIT Cal., 281.) In the opinion in that case it is said: "Similar statutes have been enacted in other States, and, with the exception of New Hampshire, have been sustained by the courts in

imposed."

In Estate of Smith, 137 N. Y., 83, cited appellants, that court, in speaking this question, says: "The precise inition of the nature of this tax is essential, if it is susceptible of cct definition. Thus far in this court have not thought it necessary in have not thought it necessary in

not essential, if it is susceptible of exact definition. Thus far in this court we have not thought it necessary in the cases coming before us to determine whether the object of taxation is the property which passes or not; though in some expressions may be found which seem to regard the tax in that light." (Referring to a number of cases in that State.) "The idea of this succession tax, as we may conveniently term it, is more or less compound; the principal idea being the subjection of property, ownership of which has ceased by reason of the death of the owner, to a diminution, by the state reserving to itself a portion of its amount, if in money, or its amount, if in money, or

tion of its amount, if in money, or of its appraised value if in other forms of property."

The decision in the Wilmerding case

The decision in the Wilmerding case would have disposed of this appeal were it not that the act in question was amended by the Legislature of 18%. The act of 18% is entitled, "An act to amend an act entitled "An act to establish a tax on collateral inheritances, bequests and devises, to provide for its collection and to direct the disposition of the proceeds," approved March 23, 18%3." It amends section 1 of the act of 1883 by including among those who are exempt from the tax the nice or nephew when a resident of this State, along with certain classes of corporations, of which the above named university is one.

Such amendatory act contains an independent section, numbered 2, reading as follows: "The exemptions contained in this act shall apply to all property which has passed, by will, succession or transfer, since the approval of the act of which this act is amendatory, except in those cases where the tax has been paid to the Treasurer of the proper county." It is claimed on the part of the appellants that the appeal herein must be determined in accordance with the act of such contention, to Bank vs. Henderson, 191 Cal., 397, and other cases in the same line. Such decisions are to the effect that in certain cases where, subsequent to the appeal matters arise affecting the same, upon proper suggestion and proof of such matters they will be considered by the appellate court; specially is this so when the action is of a penal characther, as it will be considered by the appellate court; specially is this so when the action is of a penal characther, as it will be considered by the appellate court; specially is this so when the action is of a penal characther, as it will be considered by the appellations contained in certain cases where, subsequent to the appeal, matters arise affecting the same dupon to the foregoing provision of the constitution and proof of the resource of the same due to the foregoing provision of the constitution it is deciared. The Legislations of the constitution in making any grant or dona

section shall prevent the Legislature granting aid pursuant to section 22 of this article."

In answer to the contention on the part of the respondent that by the amendatory act of 1897 it is attempted to give or donate public money or thing of value, appellant's counsel says: "That the State never had possession of any part of the 'accumulations or acquisitions' of Leland Stanford, deceased; • • and he (respondent) has not shown how the State could give away what it never had." In other words, it is claimed that one not in the possession of property is not the owner of it. The law of 1893 repeatedly declares that the portion coming to the State 'shall be due and payable at the death of the decedent." And it is further provided that from that time until paid over in the course of administration the sum so due the State shall hear interest, and interest shall be paid on the sum so due the State.

It would be absurd to exact interest for the detention or use of money or property not belonging to the party who demands it. It is elementary law that the right of inheritance, including the designation of helrs, and the portions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the Legislature. It is only by virtue of the statute that an helr is entitled to receive any of his ancestor's estate; and the Legislature can provide that the whole or only



TIME COULD NOT QUENCH

THE LOVE OF THEIR YOUTH

TALE of love, marriage, separation and finally Cupid's triumph after a struggle lasting for twenty-seven years, lies concealed behind the simple announcement of the engagment of Mrs. Minnie R. Mills, the pianist, of 316 Scott street and Chauncey S. Watson. The wedding will take place this month on the day that marks the twenty-seventh anniversary of the couple's first marriage. The same ring with which they plighted their troth while love reigned supreme, and before the little god's spell was broken by unhappy and unfortunate cirburchistics.

Gavin McNab, holding that he is responsible for the many flings against them. It is indeed humiliating to an Iroquois warrior to be called an "old squaw." The braves assert that McNab, the big medicine man of the rival tribe, two lodge is pitched in the Mills building, is bent on provoking a spirit of hostility in the Democratic convention toward members of the Iroquois Club.

The Iroquois Draves are for peace and patronage, although they do not admit that the organization to which they belong is a peace club, or a spoils hunting aggregation of warriors. The braves in a convention to the many flings against them. It is indeed humiliating to an Iroquois warrior to be called an "old squaw." The braves assert that McNab, the big medicine man of the rival tribe, warrior to be called an "old squaw." The braves assert that McNab, the big medicine man of the rival tribe, warrior to be called an "old squaw." The braves assert that McNab, the big medicine man of the rival tribe, warrior to be called an "old squaw." The braves assert that McNab, the big medicine man of the rival tribe, warrior to be called an "old squaw." The braves assert that McNab, the bra

wedding will take place this month on the day that marks the twenty-seventh anniversary of the couple's first marriage. The same ring with which they plighted their troth while love reigned supreme, and before the little god's spell was broken by unhappy and unfortunate circumstances, will do service again, and the bride will wear the same wedding gown that she has carefully cherished during all the long years of separation.

Mrs. Mills and Mr. Watson were married in September, 1871. They were too young to appreciate life's responsibilities, neither having passed 20, and although endowed with wealth and all else that should bring happiness, in three and a half years their dream of love was o'er, and the courts severed the nuptial ties that the young couple thought were irk-some. Mrs. Watson, with her two children, returned to her parents, and the husband drifted to other sections of the country.

They passed completely out of each other's lives, and for years the old love spark burned so feebly that neither appreciated that it existed. Mrs. Watson married again and became Mrs. Mills. Mr. Watson also found a new love, took unto himself a second wife and reared a family of four children.

The years ago, after almost forgetting that his effective the members of the forgation of the couple that in the courts severed the nuptial ties that the watson was made complete by a large of which will be the second wife and reared a family of four children.

They passed completely out of each church was prepared to the country.

They passed completely out of each church was prepared to the country.

They passed completely out of each church was prepared to the proposed and provided the provided

### BRAVES OF THE IROQUOIS IN A SULLEN MOOD

Resent Such Flings as "Old Squaw."

WANT WESLEY REED'S SCALP

THE TOMAHAWK IS NO MATCH FOR . McNAB'S TONGUE.

The Republican Dark Horse for Mayor May Be Trotted Out at This Morning's Session.

mood. They have a grievance against Gavin McNab, holding that he is respon-

what one woman said:

a woman of culture, tastel and refinement, just from new fall suits

working for the reputation of Hale's good goods; our millinery is a reputation-builder.

new jackets and furs elegant new fall styles in la

cresco corsets

a corset designed for stout people; a corset designed for sout people, separated at the waist line in a new way, that absolutely prevents breaking; elastic lacing over the hips; long, short and medium lengths.

18 to 30 inches..\$1.00 each
31 to 36 inches..\$1.25 each

WAR DECLARED.

Democrats Resolved to Knife

All Aspirants for Local Offices

Who Opposed Bryan.

amendment. Here is the declaration:

Whereas—The supporters of the Chicago platform and of the Democratic Presidential ticket of 1896 in many instances made sacrifice of profit for principle, and those who abandoned the party at that time and opposed its Presidential ticket sacrificed principle for profit. Therefore, be if.

Resolved—That the nomination by the Democratic municipal convention of San Francisco of any one who did not remain loyal to the party and its Presidential ticket at that crucial period of history will tend to the destruction of party organization and endanger the future success of the party, locally and generally.

National party lines are to be drawn

New York, said yesterday:

"I am surprised at your display of millinery. I would not expect to find such styles outside New York. Your prices equally surprise me; you must be working for reputation!"

so we are!

working for the reputation of Hale's are in the find suits, made from imported black and brown broadcloths; silk-lined throughout; new habit back, with flare effect; fly front jackets, either inlaid velvet or white satin collars; applique, embroidered and braided trimmings...

\*\*T5.00\*\*

medium brown and gray homespun suits double-breasted, tightfiting jackets; silk-lined; coat sleeves; skirt with scalloped tunic effect; well made and lined.\$16.50\*

working for the reputation of Hale's good goods; our millinery is a reputation-builder.

waists and wrappers

they are summer goods, that must get out of the way of fall good goods, but must be sold.

15 dozen percale waists, that sold for \$1.00, \$1.25 and \$1.50, cut to close the lot out quickly to .... 50c each 18 dozen percale waists, that sold for \$1.75, \$2.00, \$2.50 and \$3.00, cut to close the lot out quickly to .... 50c each 15 dozen heavy percale wrappers, finely trimmed; wide, full skirts; fitted linings; were sold for \$2.50; cut to close the lot out quickly to .... \$1.48 each 12 dozen fine percale wrappers, full width skirts, fitted linings; were sold for \$2.50; cut to close the lot out quickly to .... \$1.48 each 12 dozen fine percale wrappers, full width skirts, fitted linings; were sold at \$1.25 to \$2.00; cut to close the lot out quickly to .... \$1.48 each 12 dozen fine percale wrappers, full width skirts, fitted linings; were sold at \$1.25 to \$2.00; cut to close the lot out quickly to .... \$1.40 each 12 dozen fine percale wrappers, full width skirts, fitted linings; were sold at \$1.25 to \$2.00; cut to close the lot quickly to .... \$1.18 pair | 100 dozen children's seamless fast black cotton hose, narrow ribbed and very elastic; double knees, heels and toes; sizes 6 to 9½; an exceptional value at .... 10c pair children's iron frame stocking, extra heavy hard twisted maco yarn, narrow ribbed and elastic; double knees, heels and toes; sizes 6 to 9½; an exceptional value at .... 10c pair children's ron frame stocking, extra heavy hard twisted maco yarn, narrow ribbed and classic; double knees, heels and toes; sizes 6 to 9½; an exceptional value at .... 10c pair children's ron frame stocking, extra heavy hard twisted maco yarn, narrow ribbed and classic; double knees, heels and toes; sizes 6 to 9½; an exceptional value at .... 10c pair children's ron frame stocking, extra heavy hard twisted maco yarn, narrow ribbed and classic; double knees, soles and toes; sizes 6 to 9½; an exceptional value at .... 10c



Market Street.



PETALUMA RANCH EGGS....250 Every Egg guaranteed. Regular 30c doz.

EASTERN Sugar-cured HAMS . . 1320 The very best. Regular 15c lb.

FRENCH BALL BLUING, 4 boxes 25c Genuine imported. Regular 10

SINGAPORE PINEAPPLE.....20c New arrival; 3½-lb can. Regular 25c, in heavy syrup.

National party lines are to be drawn in the contest for municipal power. Last night the Democrats took the initiative through the formidable party organization known as the Iroquois Club. One hundred braves assembled at the wigwam in Pythian Castle and resolved with a warwhoop to fight to the death every aspirant for office who did not support Bryan for President in 1896.

The proclamation declaring war on the Gold Democrats created prolonged and earnest discussion. The resolution was prepared by a committee consisting of Major Lewis, Max Popper, J. H. Dignan and Fred A. Baldwin. It was introduced by Major Miles and adopted without amendment. Here is the declaration:

Whereas—The supporters of the Chicago plately NEW CEREAL COFFEE, 4 pkgs 25c Introduction sale; 1-lb pkg. Regular 10

1348-1354 Market Street. Opp. 7th. 'Phone S. 292. No Branch Stores

Don't Purchase a Ready-Made Suit

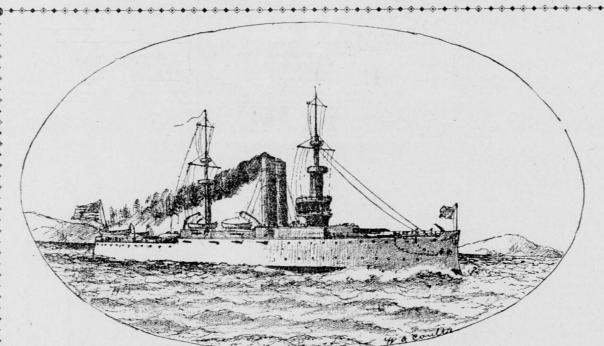
Which is made and finished by machinery with hundreds of others the same style and pattern.
Have some individuality about your at-Our ALL-WOOL BUSINESS SUITS for \$15.50 re equal to any \$25 uit made by other All wool Pants, \$4.50

Joe Poheim The Tailor

Everybody Wants Good Tea

Great American Importing Tea Co. Big Presents Free.

BATTLESHIP WISCONSIN NEARLY READY FOR HER BUILDERS' TEST



Engines to Be Turned Over Monday and in Two Weeks She Will Be Tried.

THE battleship Wisconsin will be ready for her builder's trial trip in two weeks. On Monday her engines will be turned over for the first time and then as soon as her steering gear is ready she will make a run on the bay. Should the Government permit the use of weights instead of her turrets she will be ready for her official test in the Santa Barbara channel the first week in October.

the Santa Barbara channel the first week in October.

Had it not been for the delay in supplying the armor the Wisconsin would have been ready to go into commission last July. The Union Iron Works had its part of the ship ready with the exception of the steering gear and that could not be put in because the conning tower had not arrived from the East All the gear for steering the fighting machine goes through the tower and until it arrived all work on the Wisconsin had to cease. The conning tower arrived a couple of days ago and is now being put in place. By Monday the work will be far enough advanced to allow of the engines being turned over and about October 1 the battleship will be seen in the bay for the

The under her own steam.

No one seems to know just when her turrets will get here. But weights sufficient to represent them could be placed fore and aft and the vessel in that way brought to load water line called for by the contract. The Iowa was so loaded down when she had her trial in the Santa Barbara channel and if the Union Iron Works makes the request there is no doubt that the Government will allow the Wisconsin to be tested under similar conditions. The battleship Wisconsin was launched on November 26, 1898. Her dimensions are 368 feet, breadth 72 feet 2½ inches, draft 23 feet 6 inches and displacement 11,500 tons. Her battery will consist of four 13-inch rifled guns, four-teen 6-inch rapid-fire guns, sixteen 6-pounder rapid-fire guns and one machine gun. Besides making allowance for her turrets she would have to carry a sufficient weight to represent all these guns, so there will be considerable pigiron her decks in case the Government gives permission for her trial trip.

a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and the Legislature in this case having determined that \$5\$ per cent of the decedent's estate may go to his heirs and beneficiaries, and that 5 per cent be retained to the State, it is too clear for argument that this 5 per cent vested in the State at the same time that the \$5\$ per cent vested in the heirs or other beneficiaries. "An estate is vested when there is an immediate right of present enjoyment, or a present fixed right of future enjoyment." (Fourth Kent's Com., 202.) The State, here, from the death of the decedent, had a present fixed right of future enjoyment to the 5 per cent of his estate. This is property or a thing of value belonging to the State.

or per cent of his estate. This is property or a thing of value belonging to the State.

The following from the Civil Code is merely reciting the common law: "The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called property." (Sec. 654.) "There may be ownership of all inanimate things which are chpable of appropriation or of manual delivery, of all domestic animals, of all obligations; of such products of labor or skill, as the composition of an author, good will of a business, trademarks and signs, and of rights created or granted by statute." (Sec. 655.) It is, therefore, not the possession alone, but the right to possess, that constitutes the ownership: and ownership may be "of rights created or granted by statute." as the case here. It would be altogether a new definition in the law to hold that one who had not obtained possession of a thing or had parted with its possession could not be the owner of such thing. This would be contrary to the teachings of elementary law, which recognizes a right in action as well as a right in possession. This rule contended for would make ownership depend altogether upon strength and agility in obtaining and holding possession of things.

The purpose of the act of 1897, as appears by its title, was merely to amend the act of 1893. Section 1 of the latter act amends section 1 of the act of 1893 by re-enacting said section at length, as required by the constitution. Thereafter is added to the act of 1897 the independent section 2, which attempts to

release the payment of the taxes imposed by the act of 1893, except such as have already been paid over to the Treasurer of the proper county.

Passing consideration of the question whether this section is not invalid because not embraced in the title of the act, and for the further reason that it, in effect, amends other sections of the act of 1893 without reenacting them, it would strike the ordinary mind as a strange piece of legislation. The one who has been prompt in complying with the law and paid into the county treasury what belongs to the State is punished for his good conduct by retaining the money so paid, whereas he who has refused to obey the law is rewarded by giving or releasing to him that which belongs to the State and which he unjustly withheld.

The object of this unjust discrimination is apparent. To take public funds from the treasury and give them away would be a more baid and palpable violation of the constitution than to arrest such funds in transit and return them or give them away. The latter, however, is only an indirect mode of accomplishing the same result; but in law that which cannot be done directly may not be done indirectly. The funds in question here were never in the possession of the appellants, but in the possession of the appellants, but in the possession of the administratrix of the corner thereof the

estate, as an agent under the law to hand them over to the State as the owner thereof.

hand them over to the State as the owner thereof.

It is said, however, on behalf of appellants that the Legislature may not only amend, but repeal the law altogether, in which case there would be no means of obtaining possession of the sums due the State not already turned over. The Legislature might, perhaps, abolish or repeal all laws for the collection of debts; this, however, would not have the effect of paying or discharging the debts, or in the least impair the obligation to pay them. Property rights and obligations would remain as before. These, by fundamental law, are placed beyond the reach of legislative interference.

In substance, if not in form, to turn over the fund in question belonging to the State to the appellants would be to make a gift or donation of the same, and the law regards substance rather than form.

We are therefore of the opinion that

to give retroactive effect to the act of 1897 would conflict with the provisions of the constitution prohibiting the Legislature from making any gift or donation of any public money or thing of value.

The amendatory act of 1899 (Stats. 1899, p. 101), passed after the rehearing was granted herein, has no application in this case. By its terms it applies only to such property as has passed since the first amendatory act.

We quite agree with appellants' counsel that "an heir or legatee must take his estate on such conditions as at the time the State may have imposed," and that subsequent legislation could not affect such vested right. And this rule, as already held, applies equally to the State, whose right to the fund in question accrued under the act of 1893.

Order affirmed.

VAN DYKE, J.

brilliant number. The cartoon upon the Dreyfus verdict, illustrating the nausea which it has caused in Europe and lished in San Francisco. Cynical, satirical and humorous tales, storiettes and poems; biting and analytical musical and dramatic criticisms, and exhaustive comment upon the doings of the business world, complete an issue that certainly sustains the reputation of the Wasp as being the leading weekly of the Pacific Coast.

We concur:

TEMPLE, J.,
HENSHAW, J.,
GAROUTTE, J.,
BEATTY, C. J.

I dissent, for the reasons stated in
my opinion reported in 54 Pac. Rep.,
259.
HARRISON, J.

VAN DYKE, J.

This Week's Wasp. This week's Wasp is an especially

illustrations of the scenes attendant upon the return of the Minnesota and Dakota volunteers excel in beauty and artistic finish anything of the kind pub.

The Adventures Of the Sultan of Sulu and his harem are laughably told in to-day's News Letter;

the desperate experiences of Mr. Arnold in subterranean Manila are recounted; the story of a "Woman's Way" and what came of it; doings of prominent men about America, is particularly striking and appropriate. Senator Mulrooney's letter concerning the political situation in San Francisco would upset the gravity of a Sphinx. The half-tone portraits of the First South Dakota officers and the Ulustrations of the scenes attendent. TRUEWORTHY CONVICTED.

Must Pay the Penalty for Murdering John Landsman.

George F. Trueworthy, who, on June 11 last, stabbed and killed John Landsman last, standed and killed John Landsman during a quarrel at Laguna and Union streets, was convicted of murder in the second degree by a jury in Judge Cook's court yesterday afternoon. When the ver-dict was rendered the convict's mother broke down and a sad scene was enacted in court. The prisoner remained stoical

of party organization and endanger the future success of the party, locally and generally. The Iroquois braves have a following of seventy members in the Democratic local convention. It is believed that the braves will stand by the declaration of the council and tomahawk every office-seeker that deserted the Democratic party in 1896. The cry was raised last night that Bryan would have been elected President had it not been for the treachery of Gold Democrats.

After the council of war last night the aggressive Iroquois asserted that Gavin McNab's friend, Wesley Reed, would be their first victim. Word went out that L. F. Byington had openly proclaimed himself as a candidate for District Attorney. It was predicted that Gavin McNab would be compelled to loosen the reins on the Democratic convention.

Mayor Phelan's friends are alarmed at the attitude of the Iroquois. The Mayor noped to keep the national issues out of the local fight and thereby lure a few thousand Republicans into the Democratic camp. The Democrats having decided to open the national campaign in the local election, the Republicans will accept the challenge. 201-203 Montgomery
St., San Francisco.
1110-1112 Market
St., San Francisco.
1011 Washington St.,
Oakland.
143 South Spring St.,
Los Angeles.

STORES EVERYWHERE.
100 STORES.