

THE DAILY APPEAL. Published every Wednesday morning, it will be sent to subscribers at \$2 50 a year; to clubs of more, \$2 00 a year.

MEMPHIS APPEAL. F. A. TYLER, EDITOR. TUESDAY MORNING, JAN. 11, 1870.

AN invention of a French chemist is reported, by means of which it is possible to give another promissory note for any number of dollars, and in a month afterwards the note will have crumpled to dust.

OUR local columns of the proceedings of the new General Council yesterday evening, two most excellent men have been selected to preside over the two branches of our municipal legislature.

THE DONOVAN injunction, having been renewed, prevented Mr. Johnson from qualifying yesterday. He has filed his answer, denying the allegations of the bill, and it follows of course that the bill will be dismissed as soon as a hearing can be taken.

SENATOR WM. G. BROWNLOW has our thanks for a copy of a work of 375 pages, entitled, "A Letter of the Secretary of State," transmitting a report on the commercial relations of the United States with foreign nations for the year ending Sept. 30, 1868.

WE understand that our old friend and townsman, Col. J. H. BOWEN, has connected himself with the insurance agency of H. T. TOMLINSON & Co., No. 17 Madison street.

WHEN Congress forces the XXVth Amendment on Mississippi, Virginia, Texas and Georgia, does it not also force the same thing on New York, Ohio, California and Tennessee?

SENATOR DRAKE—HIS BILL AND SPEECH. On the 10th December, 1869, Senator DRAKE, of Missouri, introduced into the Senate of the United States a bill inhibiting the inferior courts, and the appellate or Supreme Court of the United States from declaring acts or joint resolutions of Congress invalid or unconstitutional.

THE object of that bill, in part, was explained in the speech made by the Senator on the 10th of December, in which he quotes the following abstract of decisions made by the Supreme Court of the United States in the case mentioned, to-wit: "It is unconstitutional to give to any other department of the judicial department to say what the law is."

"If there, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not such an ordinary act, must govern the case in which they are to apply."

"This is in every way a higher power than that of Congress. If it exists, it must be derived from the Constitution. If not found there its exercise can be regarded only as a usurpation."

adverse opinion as an inferior court is bound to obey the mandates of its superior."

In another part of his speech, after quoting the clauses of the Constitution establishing the judicial power, he says: "There are no words expressly authorizing the Supreme Court, or any other, to declare an act of Congress void for unconstitutionality. One might expect an extract of a dinary power to be expressed and defined, but it is not."

"Can it be that Congress has such power? It is possible that the great men—jurists and statesmen—who framed and adopted the Constitution; that the wise men and learned lawyers who have pondered over it, from the foundation of the Government to this day; have been laboring under a profound mistake and delusion in supposing that Congress was confined to high and mighty powers beyond that of the courts were authorized to construe laws; and that it has fallen to the lot of the Senator to discover these errors; to understand and develop the true theory of the Constitution?"

"If this be so, the fame of the greatest discoverers, inventors, warriors, statesmen, of CADMUS, of NEWTON, of GALILEO, of FRANKLIN, of EYRE, of MARSHALL, and of WEBSTER, must pale before the rising glory of the Senator from Missouri."

"How is this mighty question to be settled? If they have such powers they are not to be found there do not exist. We call upon our members to read and ponder over every line and syllable in the Constitution, especially the clauses creating and specifying legislative power. They may do so again and again for the thousandth time; they may keep refinement upon refinement, subtilty upon subtilty, and try to stretch of human ingenuity until they or Senator DRAKE and one word or letter even which will justify the interpretation that Congress was authorized to construe or expound laws. In the XXth amendment of the Constitution they will find these words: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'"

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The power of Congress to judge must necessarily be expressly delegated or fairly deducible from delegated powers. The Senator alleges that as each Congressman is compelled to take an oath to support the Constitution he has a right to judge. He says every member of the Legislature, every executive officer, every district attorney, and all other officers holding office under the Government. Do all these officers acquire power to construe laws because of taking an oath? The proposition is simply ridiculous. If Senator DRAKE cannot find any such power delegated to Congress, is it not clear that he has no right to do so? He is having promulgated with a brazen face an important assumption for which there is no warrant whatever?

There must be in every civilized government a power somewhere to judge and construe laws. Such a power is absolutely necessary for the safety, security and happiness of the people. Without such a power such a government would be driven to the necessity of vindicating its rights by force, by war, or by revolution and blood, as the Senator suggests. There is such a power, amply, clearly and accurately defined. We propose to assist the Senator in finding it. It is to be found in precise words just where he says it does not exist.

In article III of the Constitution, we find these words: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish."

"The judicial power shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under its authority, etc., etc."

"By these clauses of the Constitution, the judicial power is created, just as objectively as the legislative power, or the executive power. The judicial power shall extend to what? 'All cases in law and equity arising under the Constitution.' What are the laws of the United States? Can there be any other answer than this, laws passed by the Congress of the United States? By Article VI, the Constitution is made the supreme law of the land. The laws of the United States which shall be made in pursuance thereof, are likewise the supreme law of the land.

think exists or not? The Senator thinks Congress—the makers of the Constitution—'the inferior courts first, the appellate court finally. Can anything be more explicit, or more certain, than that this was the object of the framers of the Constitution, and the only fair and just construction of the words 'judicial power,' as the common law was in force in the several States when the Constitution was adopted, extended only to cases arising under the common law. Acts of Congress are not common law, but statute laws. If that was the object, why did they use the words 'laws of the United States?' If the inferior courts were to be the laws of the United States, what did it extend to? If this power was not extended they might take charge of and decide such cases, what was it created for? This judicial power was created for some purpose—what was it?"

The term "judicial power" is very expressive—embraces the whole system as fully as the words "legislative power" or "executive power." What would be thought of a construction which contended, that as the common law was in force when the legislative power and executive power were created; that Congress or the executive were restrained to questions arising under the common law? One is as justifiable as the other both absurd.

It is possible that the great men—jurists and statesmen—who framed and adopted the Constitution; that the wise men and learned lawyers who have pondered over it, from the foundation of the Government to this day; have been laboring under a profound mistake and delusion in supposing that Congress was confined to high and mighty powers beyond that of the courts were authorized to construe laws; and that it has fallen to the lot of the Senator to discover these errors; to understand and develop the true theory of the Constitution?"

"If this be so, the fame of the greatest discoverers, inventors, warriors, statesmen, of CADMUS, of NEWTON, of GALILEO, of FRANKLIN, of EYRE, of MARSHALL, and of WEBSTER, must pale before the rising glory of the Senator from Missouri."

"How is this mighty question to be settled? If they have such powers they are not to be found there do not exist. We call upon our members to read and ponder over every line and syllable in the Constitution, especially the clauses creating and specifying legislative power. They may do so again and again for the thousandth time; they may keep refinement upon refinement, subtilty upon subtilty, and try to stretch of human ingenuity until they or Senator DRAKE and one word or letter even which will justify the interpretation that Congress was authorized to construe or expound laws. In the XXth amendment of the Constitution they will find these words: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'"

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The power of Congress to judge must necessarily be expressly delegated or fairly deducible from delegated powers. The Senator alleges that as each Congressman is compelled to take an oath to support the Constitution he has a right to judge. He says every member of the Legislature, every executive officer, every district attorney, and all other officers holding office under the Government. Do all these officers acquire power to construe laws because of taking an oath? The proposition is simply ridiculous. If Senator DRAKE cannot find any such power delegated to Congress, is it not clear that he has no right to do so? He is having promulgated with a brazen face an important assumption for which there is no warrant whatever?

There must be in every civilized government a power somewhere to judge and construe laws. Such a power is absolutely necessary for the safety, security and happiness of the people. Without such a power such a government would be driven to the necessity of vindicating its rights by force, by war, or by revolution and blood, as the Senator suggests. There is such a power, amply, clearly and accurately defined. We propose to assist the Senator in finding it. It is to be found in precise words just where he says it does not exist.

In article III of the Constitution, we find these words: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish."

"The judicial power shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under its authority, etc., etc."

"By these clauses of the Constitution, the judicial power is created, just as objectively as the legislative power, or the executive power. The judicial power shall extend to what? 'All cases in law and equity arising under the Constitution.' What are the laws of the United States? Can there be any other answer than this, laws passed by the Congress of the United States? By Article VI, the Constitution is made the supreme law of the land. The laws of the United States which shall be made in pursuance thereof, are likewise the supreme law of the land.

enough. Laws may be unjust, unwise, dangerous, destructive, and yet may be so unconstitutional as to justify the judges in refusing to give them effect."

"Experience in all the States has evinced a powerful tendency in the Legislature to absorb all power. This was the real source of danger to the American Constitution, and suggested the necessity of giving every definitive authority to the other departments that was consistent with republican principles."

"It is contended in thinking the public liberty in greater danger from legislative usurpation than from any other source."

"And as to the constitutionality of laws that point will come before the judges in their ordinary course. In this character they have a negative on the laws."

"Notwithstanding the precautions taken in the constitution of the Legislature, it would still be found necessary for the individual States, that it must be expected to pass unjust and pernicious laws."

"It is his business, as a judge, to be joined in this check on the laws, they would have a double negative, 'legislative usurpation than from any other source.' In this capacity they could impede in one case only the operation of laws. They could declare an unconstitutional law void."

"A law violating a Constitution established by the people themselves would be considered by the judges as null and void."

"I am making the expositors of the laws of the Legislature, which ought never to be done."

"Thought with Mr. Gerry, that the power of making ought to be kept distinct from that of expounding the laws."

"The Judges ought never to give their opinion on a law which is under consideration by the Convention, so far from entrusting Congress with the power to construe laws, were exceedingly apprehensive about entrusting them with making laws—so much so, that in the final adoption of the plan they carried their apprehensions into effect by making it necessary for every bill and joint resolution of the two Houses to be laid before the executive for his approval, before it could become a law. He could sign, or not. If he refused, it required the concurrence of two-thirds of both branches of Congress to pass it into a law. By this power, the executive has more authority in legislation than any number of both branches of Congress less than two-thirds. This fact alone would seem to take the wind out of the Senator's inflated conceit. In the debates it also appears manifest to every man capable of understanding—except the Senator from Missouri—the judicial power was made independent, holding their offices for life, that they might not exhibit undue complaisance, and that they were expressly charged with the duty of constraining laws—and when, in their opinion, such laws violated the Constitution, they were to refuse to execute them, and their duty, exclusively, to say so, and they have always done. That these were the views of all sections of the country, will be made manifest, by recurring to the debates in the Conventions of States, called for the purpose of adopting the Constitution. In the State Conventions this 'judicial power' underwent the severest scrutiny. In all of the objections urged, there was not one against investing them with the power of construing acts of Congress, nor any intimation that such a power was not expressly conceded. From the mass of testimony we select extracts from four speeches, which fully show the intention and understanding of the whole."

DRY GOODS. 1870. A MONTH OF Great Bargains.

B. Lowenstein & Bros. Washing, before taking stock on February 1st, to further reduce Our Immense Stock.

STAPLE & FANCY DRY GOODS. We propose to offer to the public, Great Bargains DURING THIS MONTH.

OUR ENTIRE STOCK Winter Goods WILL BE SOLD AT Sacrificing Prices.

B. Lowenstein & Bros. 242 & 244 MAIN ST. WHOLESALE DEPARTMENT, 242 Main St. HOME WASHER.

HOME WASHER! Excellence, Economy, Simplicity. A good, reliable washing machine is wanted by every householder. A machine that will really save time, labor and clothes, works easily and is durable will be purchased by every well-to-do family. Such a machine we offer in this.

LADIES FURS. FURS! FURS! FURS! If you want a fine set of LADIES FURS, Manufactured of the finest MINK, BEAVER, and all other standard furs, at VERY LOW PRICES, visit

WHEATON & CO.'S Hatters and Furriers, 273 Main Street, Sign of the Tiger. STOVES, ETC.

THE FAVORITE is guaranteed to be in all respects a FIRST-CLASS COOK STOVE. Call and examine them. For sale by T. S. JONES, 328 Second Street.

MISCELLANEOUS. For Sale—100 Horses & Mules. Diggs & Wofford's SALE AND LIVERY STABLE, No. 376 Main Street.

INSURANCE. PEOPLE'S INSURANCE COMPANY OFFICE: 16 MADISON ST., MEMPHIS, TENN.

CAPITAL STOCK, \$300,000 00 ASSETS: Cash Assets, \$179,182 12; Stockholders' Notes Secured, 150,000 00; Total, \$329,182 12.

MASONIC MUTUAL Life Assurance Association OF MEMPHIS. OFFICE—No. 324 FRONT STREET.

THE GEORGIA HOME INS. CO. OF COLUMBUS, GA. Capital, \$350,000. J. P. HOZEMAN, PRESIDENT; D. W. WILCOX, SECRETARY.

W. H. MOORE, AGENT, 293 MAIN STREET, (with German National Bank). HERNANDO INSURANCE COMPANY OF MEMPHIS.

S. H. DUNSMUIR, PRESIDENT; W. B. GALBREATH, Vice-President; F. M. NELSON, Sec'y; W. B. MALLORY, Asst. Secretary.

PHALON'S 'VITALIA' Salvation for the Hair. CLEAR AND WATER! WITHOUT SEEDING!! OPEN TO THE LIGHT!!!

PHALON'S 'VITALIA' differs utterly from all the hair coloring preparations heretofore used. It is rapid, sweet smelling, precipitates no muddy or slimy matter, requires no shaking, imparts no stain to the hair. Hold it to the light and it is clear and cloudless. It leaves no mark on the scalp; yet it reproduces in gray hair the natural color that time or sickness may have bleached out of it.

PHALON'S 'VITALIA' is for one sole purpose, that of reproducing, with absolute certainty, the natural color of the hair. It is not intended as a daily dressing, nor for removing scurf or dandruff; nor for curing baldness; nor for stimulating the growth of the hair.

ROSENBAUM BROS., Cor. Main and Washington Sts., MEMPHIS, TENN. MANUFACTURERS AND WHOLESALE & RETAIL DEALERS.

FURNITURE. CARPETS, Oil Cloth and Shades.

A New and Elegant Stock just received by E. FEGAN, 260 Second St., Vincent Block. Which I propose to sell Cheap for CASH.

ATTORNEYS AT LAW. T. H. LOGWOOD, T. B. MICO, W. C. POLKES. Logwood, Mico & Folkes.

ATTORNEYS AT LAW, 15 Union Street, MEMPHIS, TENNESSEE. W. C. POLKES, Commissioner for Arkansas.

E. M. YERGER & M. D. WELCH, ATTORNEYS-AT-LAW, 65 Madison Street, Memphis, Tenn.

BROWN, LYLES & BROWN, LAWYERS, OFFICE, No. 19 WEST COURT ST., Corner of Main, MEMPHIS, TENN.

WM. M. SMITH, Attorney at Law, OFFICE, 308 1-2 Second St., CORNER OF MONROE.

GROCERS AND COTTON FACTORS. TOBIN, LYNN & CO., Commission Merchants & General Dealers.

THOMAS & GROSS, MANUFACTURERS OF LEATHER. Foreign and Domestic Calf and Kip Skins, Tanners' Oils, Etc., 366 Main St., Memphis, Tenn.

ASHBROOK & WHITE, Successors to Geo. Phillips & Co., Dealers in Hides and Peltries. Highest Cash Prices Paid for Hides, Furs, Deer Skins, Beeswax, Tallow, Wool, Etc.

Carolina Life Insurance Co. OF MEMPHIS, TENNESSEE.

Hon. JEFFERSON DAVIS, President, W. J. WICKS, 1st Vice-President, J. T. PETTIT, 2d Vice-President, W. F. BOYLE, Secretary, J. H. EDMONDSON, General Agent.

Assets over \$654,000 00 Annual Income over 500,000 00

PRINCIPAL OFFICE—No. 291 MAIN STREET. Hon. J. T. PETTIT, 2d Vice-President, J. H. EDMONDSON, General Agent.

THE SOUTHERN LIFE INSURANCE COMPANY, General Office, 17 Madison St., Memphis, Tenn. ASSETS 1st NOVEMBER, 1869, OVER \$600,000

Dividends to Policy-Holders, July 1, 1869, 40 PER CENT. BOARD OF DIRECTORS: MEMPHIS, TENNESSEE.

R. C. BRINKLEY, Pres't and L. R. R. W. H. CHERY, Pres't of Commerce F. M. WHITE, Pres't, and T. R. AMOS WOODRUFF, Vice-Pres't, R. F. S. DAVIS, Pres't of Nat. Bank, Memphis, C. KORTRECHT, Atty-at-Law, Memphis, T. A. NELSON, President, Memphis.

OFFICERS: T. A. NELSON, President, BEN MAY, Secretary, AMOS WOODRUFF, First Vice-Pres't, F. M. WHITE, Second Vice-Pres't, C. T. PATTERSON, Ass't Secretary, F. S. DAVIS, Treasurer.

THOMPSON & CO., General Agents for Tennessee and North Mississippi. HARDWARE. LEGAL NOTICES. Administrator's Notice.

ATTORNEYS AT LAW. W. M. SMITH, Attorney at Law, OFFICE, 308 1-2 Second St., CORNER OF MONROE. GROCERS AND COTTON FACTORS. TOBIN, LYNN & CO., Commission Merchants & General Dealers.