

Flattering Unction.

We are conscious that we have said enough on the re-assembling of the Tax-Payers' Convention. We have answered certain objections to it on the score of the expected introduction into its councils of topics which had better be left alone for the present.

In the Union-Herald, of Tuesday, appeared a leader with the sacrilegious heading of "The Coming Messiah." We are not, therefore, surprised to find it destitute of regard for the truth of facts, devoid of ingenuous spirit, and utterly wanting in true manliness of thought.

Be so good, Mr. Herald, as not to put the Conservative members in a false position. Their faces are not set towards your camp. They are not traveling your way.

and abuses, which the people, not discerning so nearly, have yet determined to endure no longer. And representatives and people will be found one in effort and purpose, as they are one in intelligence, interest and sense of honor.

The remarks recently delivered by Hon. W. B. Ogden before the Spartanburg and Asheville Railroad Association, in Charleston, contain a compact and instructive argument to the value of railroads in inducing immigration, and to that of the effects of immigration in adding to the population and wealth, and promoting the production and growth of a country.

The Union-Herald says that, in face of all the great and good work which the Legislature has done, it will not tamely submit to the charges of crime and wrong which the Tax-Payers' Convention is likely to put forth concerning what it calls "our side of the house."

AMONG DR. JONES' CURES YESTERDAY were Mrs. Heister L. Clymer, of Charleston, who has for years been suffering with rheumatism and other chronic diseases. The lady wishes her case mentioned for the benefit of others, and considers her cure wonderful, after the best physicians in Charleston had failed.

ACCIDENT AND PROBABLE LOSS OF LIFE.—On Monday, Capt. Gannon, of the island steamer Pooosin, saw a sloop belonging to a Mr. Sayers, of Mount Pleasant, lying bottom up off Maffitt's Channel.

Important Letter from Hon. F. L. Cardozo, submitted to the Legislature.

EXECUTIVE DEPARTMENT, COLUMBIA, S. C., February 10, 1874.

To the Honorable the Senate and House of Representatives—GENTLEMEN: I have the honor to state that, after transmitting to your honorable bodies my communication of the 7th instant, I have, upon further reflection, deemed it proper that I should again communicate with you in relation to the matters contained in said communication.

Upon an examination of the Constitution and laws of the State it will be found that the State Treasurer, as the head of the financial department of the executive branch of the Government, has duties to perform that are, in their nature and exercise, separate and distinct from the legislative department.

Section 22, Article 2, and Sections 11, 12, 14 and 15 of Article 9 of the Constitution, prescribe plainly the mode for the disbursements of the public funds, and the manner of recording the transactions of the State Treasury.

Under the plain and positive prescriptions of the Constitution and laws, and in view of the existence of the condition of facts as before stated, charged, as I am, with the performance of such important duties, with such weight of responsibilities resting upon me, with consequences of the gravest character to myself and bondsmen, attendant upon my wrongful acts, I may well pause in the exercise of my functions to inquire into the rightfulness and validity of the claims that may be presented for payment, and may well refuse to discharge doubtful claims, until the attention of the Legislature shall have been directed to such claims.

But I am aware that, on the other hand, it is claimed that the General Assembly having made an appropriation for the claims against the State held by the South Carolina Bank and Trust Company, I am thereby estopped from inquiring as to whether the claims are really what they purport upon their face to be; that I am neither required nor authorized to ascertain from the records whether or not the consideration—namely, the pay certificates—which is supposed to have been received by the State in return for the issuance of said bills payable, were really received and canceled; and, if so received, whether the bills payable presented for payment are really those issued in return for such certificates.

By considering the history of these bills payable, it will be observed that they were made matter of record in the State treasury; that the pay certificates received were canceled, the name of the person presenting them being marked on the back of the certificate so received, together with the amount and number of the receipt given by said party, bills payable for the same being issued, bearing a face value equal to the

certificates, properly numbered or lettered.

As stated in my letter of the 7th instant, I waived the payment of the bills payable for \$25,000, now in question, for the reason, that, there being no evidence of exchange, should said claim be paid, the pay certificates would still be liable to be presented for payment, and neither the General Assembly nor myself would be able to ascertain whether or not they had already been redeemed.

Let us briefly inquire into the correctness of the theory that the Appropriation Act works a finality as to the status of the claim, and that nothing is left to be done but for the Treasurer to count out and transfer the money. There can be no question as to the meaning and intent of the General Assembly in making the appropriation. It can bear but one construction, which is this, that only valid claims should be paid.

On the contrary, those duties involve the exercise of the fullest judgment and largest discretion. It will not do to say that the appropriation of the money gives the South Carolina Bank and Trust Company an absolute, vested right to it; that the moment the Act became a law, the State lost and the bank acquired full title therein, for the history of our Government, State and national, proves the contrary; for, if for any reason the appropriation lapsed, the Legislature would, without doubt, do what has always been done by Congress and by every State Legislature—cover the money back into the Treasury.

In adopting the above views as to the duties and functions of the State Treasurer, I have not altogether been left to my own ideas and judgment. Fortunately, the duties and province of the financial officers of our Government have been the subject of judicial inquiry, and have been decided and adjudicated again and again by the highest tribunal of the country—the Supreme Court of the United States. Those views have been elaborately argued, fully considered, and completely established in the case of DeCATUR vs. PAULDING, 14 Pet. S. C. Rep., 497; case of KENDALL vs. UNITED STATES, 12 Pet., 524; BRASHEAR vs. MASON, 6 HOWARD'S U. S. Reports, 92; UNITED STATES vs. GUTHRIE, 17 HOWARD'S U. S. Reports, 284; UNITED STATES vs. SEAMEN, 17 HOWARD'S U. S. Reports, 225. The relations of the coordinate branches of State governments, and the restraining power of the one upon the other, have also been fully considered and defined. (See LOW vs. TOWNS, 8 Geo., 380; POOLPE vs. BISSELL, 19 Ill., 229; MAURAN vs. SMITH, R. I. Rep.; State of Ohio ex rel. LEWIS WHITEMAN et al. vs. SALMON P. CHASE, 5 O. S. Rep., 529.)

Upon a patient investigation of the facts in the case, and a careful consideration of the law applicable thereto, I am rightfully acted in the premises, and that it will be unlawful for me to pay the said claim of \$25,000, unless the General Assembly shall pass an enabling Act authorizing me to waive the requirement of the necessary vouchers.

In relation to the instructions given to the South Carolina Bank and Trust Company, and to myself, by the Comptroller-General, (copies of which are herewith annexed,) I would respectfully invite attention to the law regulating and governing the duties of the Comptroller-General, and law creating a depository, or depositories, for the public funds.

Sections 50, 51, 52 and 53, of Chapter 17, Revised Statutes, are as follows: "The Treasurer of the State of South Carolina shall deposit all moneys that shall come to his hand on account of this State, within three days, Sundays exclusive, after receiving the same, in such bank or banks in the cities of Columbia and Charleston as shall be designated by the Governor, Comptroller-General and Treasurer, or any two of them, and, as, in their opinion, shall be secure and pay the highest rate of interest for such deposit. The money so deposited shall be placed to the account of the Treasurer, and he shall keep a bank book, in which shall be entered his account of deposits in and moneys drawn from the banks in which such deposits shall be made.

"The said banks shall, respectively, transmit to the Governor and Comptroller-General monthly statements of the moneys which shall be received and paid by them on account of the treasury.

"The Treasurer shall not draw any moneys from such banks, unless by checks subscribed by him as Treasurer, and countersigned by the Governor; and no moneys shall be paid by either of the said banks, on account of the treasury, except upon such checks.

It will at once be seen that the power to designate a depository or depositories of the public moneys is conferred by Section 50 on a board of officers consisting of the Governor, Comptroller-General and State Treasurer, any two of whom being sufficient to designate such bank or banks. It will also be seen that it will be required, as a condition precedent, that the bank shall be secure and pay the highest rate of interest.

By reference to the said communications from the Comptroller-General, it will be seen that that officer has assumed the right to regulate the duties of the Treasurer, and to prescribe the manner in which his books shall be kept, claiming authority for such action under Chapter 17 of the Revised Statutes. By Section 3 of said chapter, he is authorized to inspect and estimate the Treasurer's books. Section 4 requires his personal superintendence of the transfer of the money and papers from the office of the Treasurer to his successor. Section 6 declares under what circumstances the Comptroller-General shall draw his warrant on the Treasurer, and the manner in which such warrants may be drawn. Section 7 requires that the Comptroller-General shall keep a set of books constituting a complete check upon that office; and shall make a report to the General Assembly. These are the only duties having reference to the treasury that are imposed on the Comptroller-General. The powers and authority mentioned in the above sections are the only powers delegated to him in this respect. Nowhere in the 17th Chapter of the Revised Statutes, now in any law of the State, is any authority to be found for the regulation by the Comptroller-General of the keeping of the records by the State Treasurer. To clothe the Comptroller-General with the power now claimed by him, will be to vitiate the object held in view by the Legislature in providing for the keeping of separate sets of books by these two officers. To grant this power will be to make the State Treasurer the mere clerk of the Comptroller-General. The record of such authority would be extremely unwise and mischievous.

The duties of the Treasurer in relation to the keeping of the books and the drawing of the checks are equally well defined. Section 31 of the same chapter declares that "it shall be the duty of the Treasurer to keep all the records, books and papers heretofore belonging to the Treasurer of the Upper Division and to the Treasurer of the Lower Division, in his office at Columbia." Section 33, already quoted, directs him to make monthly statements to the Comptroller-General. Section 34 directs that when required thereto, he shall produce to the Comptroller-General satisfactory statements of the cash in hand, and furnish him promptly with information as to the revenue and finance of the State. Such are the plain provisions of the law as to these two officers in relation to the keeping of the records of the treasury. I still fail to find any authority for the exercise of the power assumed by the Comptroller-General. I have also inquired from what source springs the right of the Comptroller-General to interrupt the monetary transactions of the government, directing the President of the South Carolina Bank and Trust Company to refuse the payment of checks drawn by the Treasurer, unless drawn in compliance with directions, as laid down in his letter of instructions. The only power he legally possesses over the bank as the depository of the State is found in Chapter XVII, Section 51, which reads as follows:

"The said banks shall respectively transmit to the Governor and Comptroller-General monthly statements of the moneys which shall be received and paid by them on account of the treasury.

All the power he has is to demand, and, if necessary, to compel the transmittal of such statement. To assume to do more is to usurp authority not delegated to him. But the object, the full scope and meaning of the foregoing section is clear when Section 53 is read. It is as follows: "The Treasurer shall exhibit his bank book to the Comptroller-General and Governor for their examination on the first Tuesday in every month, and oftener if required."

Can any one fail to understand the purpose of the sections? Do we not comprehend at a glance that the object is to furnish the Governor and Comptroller-General with the means of verifying the bank account of the Treasurer, and ascertaining from time to time the actual condition of the funds? Certainly it will not be seriously contended that any such power as that exercised by the Comptroller-General is embraced in these sections. They cannot by any ingenuity be made to bear such construction as would clothe him with such power. But let us look further at Section 52, which relates exclusively to the drawing of checks on such banks or depositories. The section is in the following words, to wit:

"The Treasurer shall not draw any moneys from such banks, unless by checks, subscribed by him as Treasurer, and countersigned by the Governor; and no moneys shall be paid by either of said banks, on account of the Treasury, except upon such checks."

This is the legal restraint upon the Treasurer in the drawing, and upon the banks in the payment of moneys on account of the Treasury. Nowhere, in this connection, is any duty imposed, or any authority conferred on the Comptroller-General. He is neither herein directly mentioned or indirectly alluded to. As a member of the board created for that purpose, he has a voice in the choice of the depository. As Comptroller-General, he has a right to

demand monthly statements from the bank in order that the bank book of the Treasurer may be verified, and his authority is at an end; here his power ceases; beyond this he cannot legally go. Anything beyond this is arbitrary and unauthorized. The act of the Comptroller-General, like the right claimed to regulate the manner in which the books of the Treasury shall be kept, is neither sanctioned by the Constitution nor authorized by law, nor demanded by the requirements of his office.

The Comptroller-General and the President of the South Carolina Bank and Trust Company have alleged that I have violated the law in not keeping a proper reserve in the bank.

If this were so, the power to correct it does not lie within their province. But it is not correct as a matter of fact.

The Tax Act levies a tax of 12 mills for State purposes; 6 1/2 mills are already appropriated and can be used; 5 1/2 mills must be reserved. The reserve is in excess of the amount required. These gentlemen base their calculations upon the amount of currency in the bank, whereas a large amount of "certificates of indebtedness," received for taxes and canceled and filed in this office, must be included in any correct computation made; for by the Tax Act these certificates are receivable for all taxes and redeemable out of any moneys received from all taxes, except the tax levied for schools and the payment of the interest on the public debt, though they were only issued for two of the eight objects levied for in the Tax Act.

Submitting these views upon the subject, and relying with confidence upon the decision of your honorable bodies, I do most earnestly invoke your judgment.

I have the honor to be, very respectfully, your obedient servant,

F. L. CARDOZO,
Treasurer State of South Carolina.

CITY MATTERS.—Subscribe for the PHENIX.

Saturday next will be St. Valentine's Day.

Fine's Norfolk oysters are all the rage—they are large, plump and juicy.

A fine drove of cattle passed through our streets, yesterday.

Cal. Wagner's Minstrels are heading this way again.

Always a feast or a famine; the famine to-day, in this column.

Charles P. Cheatham killed a man named Tompkins, in Edgefield, a few days ago.

The ladies say there is no use sewing any more, for R. C. Shiver & Co. are selling ladies' under-wear less than cost of material.

The down passenger train on the Greenville and Columbia Railroad was a little delayed, yesterday, by the running off of a freight train near Chappeil's.

Chicken thieves are still committing their nightly thefts in various parts of the city. On Tuesday night, the fowlhouse of Mr. Edgar Lowry was robbed of five fine Brahmas and Coobins.

The bankrupt sale of the stock of I. Sulzberger will be continued, to-day, at the auction rooms of Messrs. Peixotto & Sons. The attention of parties wishing to purchase is called to the advertisement in another column.

Those seventy-five cents and one dollar carpets at R. C. Shiver & Co.'s are creating quite a sensation among house-keepers.

SUPREME COURT—WEDNESDAY, February 11, 1874.—The Court met at 10 A. M. Present—Chief Justice Moses and Associate Justice Willard.

At 12 M., the Court adjourned until Friday, 27th, 10 A. M.

PARKER'S HALL.—The beautiful drop curtain and scenery for Parker's Hall has been completed, and is being rapidly placed in position for public exhibition to-morrow evening, the 13th instant.

The artist, Mr. Eugene Cramer, is represented, by those who know, to have excelled himself in these specimens of his talent. Mrs. Mattie Cramer has assiduously aided in the preparation of the canvas for the touch of the artist's brush. Mr. and Mrs. Cramer, with a good support, will give an entertainment at Parker's Hall to-morrow evening, at the opening of which Mr. Cramer will exhibit and describe the various paintings. There will be two dramatic renditions during the evening; one of which is entitled "Christine; or, the Return of the Soldiers"—a drama of the French revolution. Excellent music will be furnished, and we predict an excellent evening's entertainment. Seats can be secured at Prof. LyBrand's music store, without extra charge. See advertisement.

LIST OF NEW ADVERTISEMENTS. Beautiful Scenery at Parker's Hall. Meeting Acacia Lodge.

FIRE.—On the 28th ult., the grist mill and cotton gin of Dr. Lew and Mr. Kendrick, in the Northern part of the County of Greenville, were destroyed by fire. There was a large quantity of ginned cotton in the building at the time. The fire was accidental, it is supposed. Loss over \$6,000. The two buildings were close to each other, and a strong wind blowing at the time.