[*Continued from the First Page.*]

act, for a company whose name was studiously kept out of view. This is a sort of Canadian reciprocity, all the benefits on one side.

But if this view be correct, still the Pennsylvania Charter of the Atlantic and Great Western Company remains, and we have it before us.

The Little Schuylkill Railroad Company was incorporated by an act of 31st March, 1831 (P. Laws, p. 159). In 1849 its name was changed to the Catawissa, Williamsport, and Erie Railroad Company. By an act of 21st March, 1860 (P. Laws, p. 234), and a judicial sale of the said railroad, the whole became vested in a new company called the Catawissa Railroad Company, which Company, by an act of 10th April, 1861, was permitted to mortgage its road for $250,000 (P. Laws, 1862, p. 397).

On the 31st of October, 1860, the Sunbury and Erie Railroad Company entered into an agreement with the Catawissa Railroad Company, whose road extended from Tamaqua to Milton, the object of which was that the Sunbury and Erie should furnish sufficient motive power to haul over their own road between Milton and Williamsport all the passenger, express, and baggage cars of the Catawissa road to and from Williamsport, upon certain terms and conditions there mentioned, and this agreement was to continue in force for twenty years. This agreement passed to the Philadelphia and Erie, and the Pennsylvania Railroad Company, under their contract and lease.

In this state of affairs, on the 1st November, 1865, the Catawissa Railroad Company of the first part made a contract and lease with the Western Central Railroad Company of Pennsylvania and the Atlantic and Great Western Railway Company of the States of Ohio, New York, and Pennsylvania of the second part, by which the party of the first part leased to the party of the second part their road and property for the term of 999 years.

The legality therefore of this contract and lease depends upon the construction of the three Acts of Assembly referred to in the commencement of this opinion. The first is "An act in reference to running of locomotive engines and cars on connecting railroads," of the 13th of March, 1847 (P. Laws, 337), which enacts that in all cases where two railroads in this Commonwealth are or shall be connected, it shall be lawful for the company owning either of the said railroads (with the consent of the company owning the other of the said railroads, to run its cars and locomotive engines upon said other railroad, and to erect water stations and other buildings for the due accommodation of the cars and engines employed thereon. Provided, that nothing herein contained shall be construed or interpreted to release or exonerate any company owning a railroad from the obligation and duty which may be imposed by existing laws of transporting, subject to the rules and regulations of said companies, by locomotive steam engines, the cars, whether loaded or empty, of all persons and companies who may require such transportation, over and along so much and such parts of their railroad as locomotive steam engines shall be run upon, whether they be run by the company owning the road, or by any other company.

This act clearly contemplates mechanical connection, for the roads then were all four feet eight and a half inch narrow gauge roads, which fitted into each other, so as to form practically but one road. That this was the true meaning is shown by the eighth section of a supplement to the act incorporating the Sunbury and Erie, passed 27th March 1852 (P. Laws, 188) (Act 27th March, 1852), which provides "That the said Company may run their cars and locomotives upon the said road and its branches, and over any other railroad which at any time may connect, either directly or by means of other railroads, therewith in such manner as may form complete railroad connections between the cities of Philadelphia and Erie," clearly intending an actual mechanical connection, and not a mere business connection.

The act of March 29, 1859 (P. L., 290), is a supplement to an act in reference to running of locomotives and cars on connecting railroads, approved March 13, 1847, and it enacts that that act shall be so construed as to authorize companies owning any connecting railroads in the State of Pennsylvania to enter into any leases and contracts with each other in respect to the use, management, and working of their several railroads. Provided that the company so contracting for or leasing any such railroad may have the right to fix the tolls thereon, but not at a higher rate than is authorized by the charter of either of the said railroad companies.

This also undoubtedly means mechanical connection, for it merely enlarges the powers of the roads included within the terms of the original act. But there might be an intervening road connected mechanically with both roads, and the roads at either end could not contract with each other because not connecting directly, and this occasioned the last act of 23d April, 1861 (act of 23d April, 1861), entitled "an act relating to certain corporations" (P. Laws, p. 410), to provide for this case, and to extend the powers of such connecting roads.

It enacts "that it shall and may be lawful for any Railroad Company created by and existing under the laws of this Commonwealth from time to time to purchase and hold the stock and bonds, or either, of any railroad company or companies, chartered by, or of which the road or roads is or are authorized to extend into this Commonwealth—and it shall be lawful for any railroad companies to enter into contracts for the use or lease of any other railroads upon such terms as may be agreed upon with the company or companies owning the same, and to run use, and operate such roads in accordance with such contract or lease; provided that the roads of the companies so contracting or leasing shall be directly or by means of intervening railroads, connected with each other.

The word "connected" has in this law the same meaning as in the two preceding laws. If you leave out the interposed words, and read it "directly connected with each other," this is beyond doubt, and the interposed words must receive the same construction. The effect is, that if there is an intervening railroad, it and the other roads at either end must all be mechanically connected, which can only be when the gauge of all the roads is the same, so that the same cars and locomotives may be run over all of them without change, obstruction, or delay.

In considering the evils of a break of gauge, we not only have the positive evidence of our senses, but the opinion of a very able gentleman, a former President of one of the defendants. "The immense and decided superiority," said he, "of the Sunbury and Erie route over the others, in consequence of its freedom from the necessity of frequent transhipments, will not be sufficiently appreciated by those not familiar with railroad traffic and a change of one, ton of merchandise from one car to another is about equal to the cost of transporting it fifty miles;" what would be its practical effects upon a ton of coal?

The act of Congress of the 3d of March, 1863, to establish the gauge of the Pacific Railroad and its branches, has enacted, "That the gauge of the Pacific Railroad and its branches throughout their whole extent, from the Pacific coast to the Missouri, shall be and hereby is established at four feet eight and one-half inches," a most wise and prudent measure, which should be followed by the States and the general Government in sanctioning any future railroads, and the exceptional guage of four feet ten inches, should be reduced to the standard guage of the country. The advantage of a uniform gauge such as that of the Pacific Railroad, over the whole of the United States, would be incalculable both in peace and war, as the same locomotives and cars could be used on every road in the Union.

I cannot understand how a six feet guage road running through our State, and crossing a narrow guage road, with which it mechanically cannot connect, can be called a connecting road. I am therefore of opinion that the Atlantic and Great Western Railroad Company, and the Catawissa Railroad Company are not "directly, or by means of intervening railroads connected with each other," and, of course, that their agreement, of the 1st of November, 1865, is entirely null and void.

But supposing this to be the case, it is said that the complainants are not entitled to take advantage of its invalidity, because they have no such interest as enables them to apply to a Court of Equity for the exercise of its equitable powers.

In Andrew Scott's bill against the defendants, it was sworn on their part, that he was not a stockholder in the consolidated company, but he exhibited a certificate of stock showing he was a holder of twelve shares in the Atlantic and Great Western Railroad Company, the Pennsylvania corporation, and the only one I can recognize. It was then the ordinary case of a shareholder in a company asking the interposition of a Court of Equity, to restrain the commission of acts which were *ultra vires*. I thought this was settled in the case of Sanford vs. Railroad Company, 12 Harris, 378, where the plaintiff was the holder of only ten shares, and was the member of a rival Express Company, and had purchased the stock for the purpose of filing the bill. It was held there that the contract made by the Railroad Company was against law and void, and it was ordered to be cancelled, and delivered up. In the case of Gratz vs. Pennsylvania Railroad and Philadelphia and Erie Railroad Companies (5 Wright, 442), the suit was by a single shareholder, brought to restrain acts alleged to be *ultra vires*.

As several cases in England have been cited by the defendants, and the question has been argued at length, I shall consider them briefly, to see whether we have been in error in Pennsylvania. In Sparks vs. Southwestern Railway Company, 1 Small & Gifford, 142, Vice-Chancellor Stuart, on the 14th of January, 1853, held that the plaintiffs having been aware of the intention to construct the line, and not having applied with diligence, the court would not grant the injunction; and at page 166 he says:—"No doubt it has been held in several cases that the mere fact that the plaintiffs are shareholders in a rival company is no reason for the court in a proper case refusing its aid to prevent the violation of contracts.

"But where the fact is established that under the pretence of serving the interests of one Company, the shareholders in a rival company by purchasing shares for the purposes of litigation can make this Court the instrument of defeating or injuring the Company into which they so intrude themselves in order to raise questions and disputes on matters as to which the other members of the company may be agreed, I cannot consider that in such a case it is the province of the Court *ordinarily* to interfere." This is not the case before us, taking the language in its strongest sense.

In Rogers vs. Oxford, etc., Railway Company, 2 De Gex and Jones, 662, the bill was filed by a clerk of a rival company, who had made him a shareholder with a view solely to their own interests, and the case was heard and decided on the merits against him, the act complained of not being *ultra vires*. Lord Justice Knight Bruce said:—"But if on the legal point there is room for doubt, the circumstances do not in my judgment render it imperative on the Court to act against the Company."

In Forrest vs. Manchester, Sheffield and Lincolnshire Railway Company, 30 Bevan 40 (30th May, 1861), where the plaintiff, who held £82 of stock of the Railway Company, had an interest amounting to £360 in a Packet Company, whose profits were interfered with by the excursion traffic of the defendant, he was also a Director of the Packet Company, and the Directors *directed the institution of the suit*, and indemnified him against the costs. The Master of the Rolls decided the case on the merits against the plaintiff.

Upon appeal Lord Chancellor Woodbury on the 13th of July, 1861, affirmed the decree of the Master of the Rolls (2 Jurist, N. S., 887) not upon the ground taken below, but entirely upon that of personal exception to the character of the plaintiff as being the mere puppet of the Packet Company, who had directed the institution of the suit.

In Hare vs. London and Northwestern Railway Company (2 Johnson & Hemming, 80), Vice Chancellor Wood, on the 11th of June, 1861, held the agreement complained of was not *ultra vires*, and it was queried whether the plaintiff as a shareholder in one company had, with full knowledge, received profits under an agreement between that company and others, can afterwards, on purchasing shares in one of the other companies parties to the agreement, sustain a bill on behalf of all shareholders in such company impeaching the agreement as *ultra vires*, more especially if it appears that he is really suing in collusion with one of the companies parties to the agreement.

I have stated these cases in detail to show that the case before the court has no features in common with them.

In the leading cases of Coleman vs. The Eastern Counties Railway Company, 10 Bevan; Lord Langdale, on the 17th November, 1846, where a plaintiff filed a bill in behalf of himself and other stockholders in a railway Company, to restrain the Directors committing a breach of trust, and it appeared that he was suing at the institution of another rival company, held that this circumstance was not of itself sufficient to prevent him from obtaining a special injuction on the merits of the case.

In Bagshaw vs. Eastern Union Railway Company (6 Railway and Canal cases, 152) Vice-Chancellor Wigram and Lord Cheltenham held that the holder of two scrip certificates might maintain a bill against the Company.

L. Simpson vs. Westminster Palace Company and Sir C. Wood (House of Lords cases, 212), the bill was by one individual, the holder of fifty shares; and in Government Attor-General vs. the Great Northern Railway Company (2 Law Times Reports, 683), Vice-Chancellor Kindersley, said, p. 656, "A single shareholder, even if 599 out of 600 shareholders agreed to carry on a different business in addition to the railway business, and it was clearly for the benefit of the company, and if it was clear that they had made enormous profits from doing it, and were continuing to derive those profits, a single shareholder has a right to say 'That is not our contract among ourselves, you shall not do it,' and he may come and get an injunction. I may here observe with reference to some of the observations made by Mr. Stevens, that it is perfectly immaterial what is the motive of the party in coming.

"In the case of the Eastern counties, at the Rolls, where the company were engaged in establishing packets to trade from Barwich to the Continent, I think a single individual, or one or two individuals came, and it was proved to demonstration that they were persons who had actually bought their shares in the railway company for the purpose of preventing this, because they belonged to some rival steam packet company. But the motive has nothing to do with the matter; it is against law, it is against the contract between the shareholders, and it is against the contract which is made between the public and the company, when the company is incorporated for the purpose of carrying on their business as railway carriers. It is therefore illegal, and in effect, though not in terms, prohibited by the law to a railway company."

The whole of this opinion is most instructive as to the absolute necessity of the public good, that these powerful railway corporations should be kept strictly within the limits of their charters. Everything beyond these limits is prohibited, the very doctrine established by our own Court.

In Hattersley vs. The Earl of Shelburne (31 Law J., ch. 873), which was a suit by a single shareholder, a railroad company had entered into an agreement to lease their line to another company, and the agreement contained provisions which were legal, and others which were *ultra vires*, but an application was to be made to Parliament for power to carry out such provisions as should be *ultra vires*. It was held in that case by the same learned Judge (30 July, 1862), that as the agreement provided for a number of things to be done, which were all for the purpose of accomplishing a certain object which was *ultra vires*, the parties had no right by virtue of that agreement, until they had obtained the authority of Parliament, to do even those acts which, independently of the agreement, they did not require the authority of Parliament to do. "But I apprehend," said the Vice Chancellor, p. 878, "it is perfectly clear, that if there was in this agreement no provision for an application to Parliament, so far as the assistance of Parliament is required, such an agreement as this would be entirely *ultra vires*, and illegal, and I think that according to the principle of Beman vs. Rufford, followed as it has been in other cases, this court will not allow any of the acts which are agreed to be done by that illegal agreement, merely because independently of the agreement some of these acts might be done. I think that principle is established, and it is a principle which commends itself to one's sense of right and justice, that although a Company may do a certain act independently—that company is not to agree to do that act as part of a series and collection of acts to be done for the purpose of working out an illegal agreement.

It was objected to the plaintiff that he was not a *bona fide* plaintiff, but intended simply to subserve another company, but although the Vice-Chancellor said he could conceive Mr. Hattersley may desire to favor the interests of another company, yet he considered him entitled to maintain the suit. He was in fact a discarded contractor who had quarrelled with the company he sought to enjoin.

In Mansell vs. The Midland Great Western (Ireland) Railway Company (82 Law J. Ch. 513), Vice-Chancellor Wood (3d June, 1863), on a bill filed by shareholders, granted them relief against the acts of their directors which were *ultra vires*; and in White vs. Caermarthen and Cardigan Railway Company (33 Law J. Ch. 93), the same Judge held (November 16, 1864) that a shareholder suing a company and the directors for a breach of trust must sue on behalf of himself and the other shareholders. The reason assigned by him is that "it would be a most improper arrangement to allow a bill to be filed by one person with an intent that 300 or 400 shall be summoned in chambers by notice of the decree being given, when the forms of the court plainly allow a bill to be filed by him on behalf of himself and all other shareholders. If the plaintiff is right in saying that it is *ultra vires*, it does not signify whether all the other persons wish it done or not, because where it can be assumed to be for the benefit of everybody, the party may sue on behalf of himself and all others, except the persons he charges with misconduct."

The result of this examination of the authorities clearly shows that Andrew Scott had a clear right to institute this suit in order that the company in which he is a stockholder may be restrained from acts which are illegal and *ultra vires*.

The next question is, have the Philadelphia and Erie Railroad Company, and of course their lessees, the Pennsylvania Railroad Company, such an interest in the subject-matter of the controversy as entitles them to the interposition of a Court of Equity in relation to the contract of the 1st November, 1865, and the parties to it, the defendants in these proceedings? The Catawissa road is a connecting road with the Philadelphia and Erie, and under the acts of 13th March, 1847, and 29th March, 1859, they are intimately connected by the contract of 31st October, 1860, for a period of twenty years.

This contract embraces the running of the locomotives and cars of the Catawissa upon the other road, and the use, management, and working of these several roads, and was necessary for the successful management by the Catawissa of their through line between Williamsport and Philadelphia. The contract of the 1st of November last transferred all the right, property, and franchises of the Catawissa to the Western Central and the Atlantic and Great Western, and left nothing to the Catawissa but the shell of a corporation. This contract is founded upon the hypothesis that the Catawissa and the Atlantic and Great Western are connected with each other by means of the Philadelphia and Erie as an intervening railroad—a question in which that Company have a very deep interest.

As it is clear that the contract of the 1st November last, is illegal and void, and *ultra vires* of all the parties to it, can it be said that the intervening road which has so important a contract with the Catawissa, has not a direct and positive interest in preventing illegal acts by illegal assignees in relation to this contract and the working of its road which can only be effected by the restraining power of a Court of Equity? I cannot doubt that this is such an interest as a Court of Equity will protect, particularly where the intervening road is not to be used according to the intention of the Legislature, but a new and hostile road is to be constructed to connect with the leased road.

The Atlantic and Great Western has no authority to contract to build the railroad specified in the contract, nor has the Western Central, for by the Reading contract it was thought necessary to add another company to complete the route, and it is perfectly certain that the Catawissa had no authority to enter into such a contract which on all hands was *ultra vires*.

Herapath's *Railway Journal*, May, 1865, page 383), says: "A gentleman who takes a very active part in railway affairs said sometime ago, at one of the railway meetings, that the 'gauge' was the Great Western's master evil. It is, however, an evil that will be mastered. The great evil of it, or rather of the adoption of two different gauges in the country, was the expensive battle of the gauges which was fought some years ago, and the interruption of traffic a break of gauge naturally causes. It is desirable to change the broad into the narrow gauges all over the Great Western system it can be done gradually at no cost or waste, or very little—a broad can be easily turned into a narrow guage by the addition of a single rail inside, forming the mixed guage broad and narrow. But a mixed guage is rather more expensive in maintenance than a purely narrow guage. For mineral and suburban traffic, and for railway extension, the narrow is decidedly preferable to the broad guage. In our opinion it is a pity the broad guage was ever introduced into South Wales, and we think the narrow should be as rapidly substituted for the broad there as can be conveniently done.' * * "The Great Western is now as much a narrow as a broad gauge railway—up to the end of last January it had more goods engines on the narrow than on the broad gauge, but less passenger engines of the broad gauge. Of goods and passenger engines the Company then owned 360 broad and 337 narrow gauge engines, but new engines are, we believe, being constructed on the narrow guage. The number of carriages and wagons the Company had at the end of January last was 6797 broad guage, and 10,043 narrow; so that here already the narrow guage vehicles outnumber the broad. In the year from January, 1864, to January, 1865, the Company increased their broad guage engines by 11, and their narrow by 36; their broad carriages and wagons by 11, and their narrow by 824."

"By gradually reducing the area of the broad gauge working, and confining it to those districts where the passenger is the principal traffic (and passengers seem to rather prefer the broad gauge travelling to the narrow gauge), the change may be effected without the waste of carriage, a truck or a rail for the purposes of maintenance, you must constantly make new carriages, engines, and rails, and the renewals may be made of the narrow instead of the broad gauge. Thus the Great Western may be gradually changed as far as it needed (or even entirely) from a broad to a narrow gauge without waste or loss, and even with gain in the working expenses compared with the present rate, for there is no question that a heavy minerals and goods traffic can be more economically conducted by means of a narrow guage line and stock than a broad.

There is no question that freighters prefer the narrow to the broad guage, especially where they have to supply their own trucks, and have dealings with distant parts of the country, reached only by the narrow guage."

Where acts have been done by corporations so entirely illegal and in such utter violation of the well-established policy of the State, I think it is the duty of this Court to exert the power entrusted to it, at the suit of any one having such an interest, however small, as entitles him to equitable relief. It is the interest of the public that these unauthorized stretches of power of great corporate bodies, who are sometimes controlled by a board three thousand miles distant, should be restrained by the arm of the law.

The true object of the Atlantic and Great Western, viz., "a great through route to New York city," is openly avowed in the Catawissa contract. If it had been a scheme for Philadelphia it would have connected at Lewisburg with the Philadelphia and Erie, and by it have reached the metropolis of the State.

The contract with the Philadelphia and Reading falls with the contract with the Catawissa, and this has two singular features in it—one the contract to build roads and bridges, for which they have no authority by law, and the other to make subscriptions for objects not contemplated by the Pennsylvania charters of either of the two contracting railroads. The real object in this agreement is the same as in the Catawissa. But the whole contract is *ultra vires*.

I see nothing in the various points and objections of the learned counsel of the defendants to alter the views I have already expressed. I do not regard it as enforcing a forfeiture; it is simply declaring an act contrary to law and restraining it and thus saving the parties from any forfeiture. As I do not intend to touch the contract of 31st of October, 1860, nor to express any opinion upon the points presented by the plaintiffs in their second prayer for relief, I do not see how the provision permitting a reference as to disputes under the contract can interfere with the present proceeding.

On the 10th February instant, the Chief Justice delivered an opinion in the Lehigh Valley Railroad Company vs. the Lehigh Coal and Navigation Company, in which he says:—"The bill and affidavits profess the corporate purpose to reach the Wyoming coal field, and their charter requires them to connect with the Lehigh and Susquehanna Railroad, and by a connection I understand such a union of the two roads at some point as to enable cars to pass from one road to the other for business purposes. Such a connection must be made with the Lehigh and Susquehanna Road, and must be formed by the plaintiffs, before they finish their work, but I make no account of the fact that they have not yet selected the point of connection, nor disclosed it in the bill and affidavits." (In the word "cars" the Chief Justice includes locomotives.) This strengthens me as to the correctness of my opinion, for both of us have arrived at the same conclusion without consultation with each other. In the Passenger Railway acts the word connection is used in its mechanical sense.

Mr. Smith, the President of the Reading Railroad says, in his affidavit, "Car trucks constructed for a track of four feet eight and a half inches guage, can run upon a track of four feet ten inch guage, provided the wheels are made with a broad tread. But it is impossible for cars specially constructed for a track of four feet ten inch guage to run upon a track of four feet eight and a half inch guage." In none of the affidavits is it alleged that the locomotive of one road can run on the other of either of these guages. This clearly establishes the entire and complete uniformity contemplated by our acts of Assembly, for the locomotives and cars are to run over the connecting roads.

When General Grant took Petersburg, and pushed on after General Lee, he ordered his supplies to follow him by rail. The road from City Point to Petersburg was the regular narrow gauge of 56½ inches, but it was found the road from Petersburg to Burksville was a five-foot guage, and the construction corps at once altered it to the regular narrow guage; but this caused a temporary but serious stoppage of supplies. (See appendix B.)

Upon looking back to 1863, I find the exceptional guage of 5 feet 6 inches (the Canadian guage) advocated on the same grounds that Mr. Brunel selected the broad guage for the Great Western by the friends of the Portland and Montreal roads.

"In addition to all this there are some hundreds of miles of connecting roads on the same guage in Canada, that are for all practical purposes just as valuable to our road as if they were embraced in the same Company. Looking beyond the western limits of Canada the same line is to extend to Lake Michigan at Grand Haven, 1000 miles from Portland west, while at the east a branch will extend to Quebec and Trois Pistoles, the gauge of our road receiving it from being tapped on the south, so that passengers and freight seeking the Atlantic seaboard or Europe, will naturally continue on the line from its Western terminus to Portland."

"A system of railroads occupying an independent position by the difference of gauge from all the narrow gauge railways south of it."

Uniformity of gauge proposes the same advantages as the interchangeable Springfield musket, each part of which will fit any musket manufactured for years back—with one uniform gauge the same locomotive and car could be run upon every road in our country.

I have had the assistance of very able arguments on both sides, which have covered a great deal of ground, and must form an apology for the length of this opinion; all the counsel were of the Pennsylvania bar, two had been Judges of this Court, and one of these, with another eminent gentleman, had occupied high executive positions at Washington, whilst the others, members of our Philadelphia bar, are distinguished for their learning and ability. This has necessarily increased the responsibility of the Court in considering and weighing the various arguments addressed to me upon the law, and also as to the discretion to be exercised by a Court of Equity in granting a preliminary injunction.

I am of opinion with the plaintiffs (the railroad companies and Andrew Scott), that their first prayer for relief is well founded, and that the contract of the 1st November, 1865, is invalid and void. I express no opinion on the second prayer of the plaintiffs, but grant the fourth prayer and such part of the third prayer as is consistent with the fourth prayer, and is necessary to carry it into effect. The second prayer in Andrew Scott's bill is also granted.

Let decrees be drawn in conformity to the above.

APPENDIX (A.)

[Herapath's *Railway Journal*, September 9, 1856, p. 971.]—At the sixtieth half-yearly meeting of The Great Western Company on the 7th of September last, the Chairman said:—"It is with great regret that we are not able to propose to you to-day a higher rate of dividend than two per cent. per annum. * — * About the time of the cessation of the civil war in America, there was a considerable falling off in one or two large branches of the traffic which came upon your line.

"The mineral trade from South Wales, especially in steam coal, was largely diminished by the sudden cessation of the demand for blockade-runners." The cost of maintaining the permanent way was increased by the substitution of the improved cross sleepers and fish-jointed rails for the old Barlow rails. "The expenses of the maintenance of the permanent way and works of the Great Western Railway are heavy from these causes; in the first place, it is more expensive to maintain a mixed gauge, of which we have 220 miles, than either a broad and narrow gauge separately."

And he adds, "As to the iron traffic, they had been excluding from their rails not only the coal traffic of North Wales by preferential rates, but also the South Wales coal by reason of the break of gauge."

APPENDIX B.

"The gauge of the Richmond and Danville, and South Side (or Petersburg and Lynchburg) Railroad is now and was during all the war, the same five (5) feet. After the retirement of General Lee's army from the lines around this place and Richmond, the gauge of the Lynchburg and Petersburg road was narrowed to 4 feet 8½ inches, from City Point to the junction with the Danville road, by the Federal authorities as they progressed inwards. The Piedmont road was of the narrow or 4 feet 8½ inches gauge during the war, while the Danville road was of the five (5) feet gauge, and in consequence there was a break of bulk at Danville.

This difference in the gauge was insisted on by the State of North Carolina to prevent a deviation of the trade and travel from the interior of the State. That State has but recently consented to the widening of the guage of this road to the same width as that of the Danville road.

This difference of gauge at Danville was of incalculable disadvantage during the war: so much so that the Confederate authorities had determined to widen or harmonize the guage of the Piedmont road with that of the Danville.

The disadvantages of break in the gauge are incalculable, not only preventative of all mechanical intercourse between the motive power or rolling stock of the two roads, but of proper despatch and economy in the continuous transportation of passengers and tonnage as between connecting roads.

New York Bank Statement.

NEW YORK, February 26.—The Bank Statement for the week ending on Saturday, shows:—

A decrease of loans	$3,292,550
A decrease of circulation	24,256
A decrease of deposits	6,535,886
A decrease of legal tenders	3,200,259
An increase of specie	3,904,593

FROM FORTRESS MONROE.

FORTRESS MONROE, February 24.—The steamer *Evening Star*, from New Orleans, February 7, arrived here this morning, with the 1st U. S. Colored Cavalry, 856 men, under the command of Lieutenant-Colonel W. H. Seip.

This regiment was organized in December, 1863, and was recruited in the vicinity of Camp Hamilton, two miles from Red Point, Virginia. Under the command of Colonel Jeptha Zerrard, who subsequently resigned, it participated in the memorable operations on the James river, as part of the 25th Army Corps, up to the siege of Petersburg, and was sent to Texas about the middle of last June. Since that time the regiment has taken an active part in the army in Texas, under Major-General Weitzel, and has at various times been stationed at Brazos, and on the banks of the Rio Grande. The troops disembarked from the steamer *Evening Star*, and were marched to their old place, Camp Hamilton, whence they will be transported to City Point to be mustered out. The following is a list of the officers, the rest, with about fifty men, having been mustered out in Texas:—

Lieutenant-Colonel W. H. Seip, Captain Charles Schwartz, Lieutenant G. Page, Acting Adjutant; Lieutenant Charles H. Labeau, Acting Quartermaster; Lieutenants A. M. Spencer, F. W. Smith, and F. Ohlenberger.

The 22d of February was celebrated on the *Evening Star*, off the coast of Florida, by the officers of the regiment and the passengers, in a very creditable manner. A procession was formed, headed by the band of the regiment, and marched around to the forward part of the ship. Speeches were delivered by the Hon. J. B. Richardson, of Miss., and by Dr. C. F. Gardiner, of Boston.

Washington's Farewell Address was read by Colonel Seip, and an elegant collation was partaken of by the passengers.

The steamer *Guiding Star* was to have left New Orleans to-day with the 2d Regiment of United States Cavalry, under the command of Brevet Brigadier-General G. W. Gale, also *en route* to City Point to be mustered out of the service.

In anticipation of the arrival of these colored troops at City Point, Colonel William L. James, Chief Quartermaster of the depot, directed Captain A. H. Comstock, Assistant Quartermaster, to assume charge at that post, and no delay will occur in shipping the troops from here as fast as they arrive, and quartering them at City Point.

The barque *Welkin* sailed to-day for Liverpool with a cargo of cotton and tobacco.

The steamer *City of Richmond*, lately on the line between Norfolk and Richmond, has been sold, and will shortly start for New York.

Permission has been received at Norfolk from the Treasury Department to open a bonded warehouse there.

Mr. F. C. Clarke, brother of the defaulting banker, who left Norfolk under such mysterious circumstances about a week since, was arrested there yesterday.

The United States revenue cutter *Kankakee*, which has been stationed here for three years, leaves on Monday for Philadelphia. Her place will be supplied by the revenue cutter *Moccasin*.

FINANCE AND COMMERCE.

OFFICE OF THE EVENING TELEGRAPH, Monday, February 26, 1866.

The Stock Market was very dull this morning, with the exception of Railroad shares, which continue the most active on the list. Catawissa sold largely at 32@32¾ for preferred, a slight decline; and 25¾@25¾ for common. The decision of Judge Read, which is against the above road, will be found in another part of to-day's paper. Reading sold at 50, a slight advance; Philadelphia and Erie at 29½; Northern Central at 43½; Camden and Amboy at 117½, a slight decline; and Pennsylvania Railroad at 56½, an advance of ¼; 31 was bid for Little Schuylkill; 53½ for Norristown; 54½ for Minehill; 36 for North Pennsylvania; and 62 for Lehigh Valley.

In Government bonds there is less doing. 7·30s sold at 99¼; 104 was bid for 6s of 1881; 102¾ for 5-20s; and 94 for 10-40s. City loans are unchanged; the new issue sold at 91½.

HARPER, DURNEY & Co. quote as follows:—

	Buying.	Selling.
American Gold	135¾	137
American Silver, ½s and ¼s	131	132
American Silver Dimes and Half Dimes	127	128
Pennsylvania Currency	⅛	¼
New York Exchange	1-20	par.

PHILAD'A GOLD EXCHANGE QUOTATIONS.

10 A. M.	136¾	12 M.	137
11 A. M.	136⅞	1 P. M.	137

PHILADELPHIA STOCK EXCHANGE SALES TO-DAY

Reported by De Haven & Bro., No. 40 S. Third street

FIRST BOARD.

$850 U S 7·30s.June	99¼	100 sh Cata pt.	32¾
$500 City 6s mun.	91¼	100 sh do.....b5	32¾
$1000 Reading 6s, 70.	93½	500 sh do.....lots	32½
$500 Sch Nav Loan.	82	200 sh do..lts..s5.	32½
$1000 C & A mg.6s..83	85	100 sh do.	32½
100 sh Reading...30d	50	400 sh do lots..s10	32½
100 sh Cata pf.	32¾	100 sh do.....s10	32½
100 sh do.....s5.	32¾	200 sh do.....s5.	32½
100 sh do.	32½	100 sh do.....s30	32½
100 sh do.	32¾	100 sh do.	32½
200 sh do..lots s10	32¾	200 sh do..s10wn	32½
100 sh do..s10wn	32¾	100 sh Catawissa	25¾
100 sh do.....s30	32¾	100 sh do.	25¾
100 sh do.	32¾	100 sh do.	25¾
100 sh do.....b5	33	2 sh Phil & Erie	28¾
200 sh do....lots.	32¾	150 sh Sch N pf lots	29
100 sh do.....b5	32¾	4 sh Lehigh Nav.	52¾
100 sh do.	32¾	100 sh Susq. Cl..b60	12¼
100 sh do.....b10	32¾	100 sh N Central.b10	43¼
100 sh do.	32¾	6 sh Cam & Am.ls	117½
100 sh do....s10..	32¾	50 sh Penn R.	56½
100 sh do.	32¾	75 sh Wash City Gs	23
100 sh do..s10wn	32¾	37 sh Spr & Pine lis	35
100 sh do.	32¾		

BETWEEN BOARDS.

$1000 U S '81s.	104	100 sh Ph & E....b30	29½
$1000 do....c&p.	104	300 sh do.....b30	30
$1000 do.	104	100 sh Catawissa pf..	32¾
$2150 do.....reg.	104	100 sh do.....2d	32
$18000 do.....reg.	104	100 sh do.....2d	32
$2200 City 6s, old.	87½	200 sh do.....s5.	32
$500 do.....new	91½	100 sh do.	32
100 sh Reading....b5	50	100 sh do.	32
100 sh do.	50	100 sh do.	32
100 sh do.....b5	49¾	200 sh do.	32
100 sh do.....b5	49¾	100 sh do.	32
2 sh F and M. Bk.	121	100 sh do.	32
100 sh Spr and P.b15	35	49 sh Hazleton.	51
100 sh McClintock.	1·31	100 sh Sch Nv pf.	29
50 sh Green & Coates	32	100 sh do.	29½
200 sh N Y & Mid.	6¼	15 sh Minehill	54½

Markets by Telegraph.

NEW YORK, February 26.—Cotton is dull at 44@45c. for middlings. Flour is dull; sales of 4400 barrels at $6·55@8 for State; $8@10·05 for Ohio; $6·50@8 for Western; Southern quiet; 450 barrels sold at $8·60@15·50; Canada dull at $7·40. Wheat dull. Corn steady; sales of 21,000 bushels at 76@78c. Beef quiet. Pork heavy at $27·87½@28 for Mess. Lard steady at 17@19½c. Whisky steady.

NEW YORK, February 26.—Stocks are better. Chicago and Rock Island 103¾; Cumberland preferred 44¼; Michigan Southern, 68½; New York Central, 91½; Reading, 100; Hudson River, 103; Missouri 6s, 77; Erie, 81⅞; Cleveland and Pittsburg, 76¼; Western Union Telegraph, 70; Coupons, 1862, 102¾; Ten-Forties, 93½; Treasury 7·3-10s 99@99¼; Gold, 137.

BALTIMORE, February 26.—Flour dull; Howard super. $8·50@8·87½. Wheat firm; white $1·85@1·90; red $1·15@1·25. Corn firm; white 74c.; yellow 72c. Oats steady. Seeds nominal; Cloverseed $8@8·50. Lard 18½@19c. Sugar heavy. Whisky firm at $2·23.

FOURTH EDITION

LATEST FROM WASHINGTON.

CABINET CHANGES.

SERENADE TO COL. FORNEY.

THE FREEDME .

Etc., Etc., Etc., Etc., Etc., Etc., Etc.

Our Special Despatches.

WASHINGTON, February 26.

Cabinet Changes.

The statement so positively made by the New York *Tribune* and *Herald*, that Secretaries Stanton and Harlan have resigned, is not true. Such differences of opinion as have been held by members of the Cabinet on the President's late policy, have been amicably maintained, and have led to no rupture thus far.

Serenade to Colonel Forney.

A serenade is to be given to-night to Hon. John W. Forney, and it is expected that Messrs. Stanton and Harlan will be called on to give their views, if possible, on the political situation.

The Freedmen.

Telegrams received at the Freedmen's Bureau from Assistant Commissioners state that persons in the South, known to be inimical to the Government, are assuming a defiant attitude, and that the freedmen are becoming uneasy, believing that they are about to lose the protection of the Government.

CONGRESS.

Senate.

WASHINGTON, February 26.—Mr. Grimes, in presenting a petition from citizens of Iowa, said he would take occasion to reply to a despatch published in the *Intelligencer* this morning, stating that an immense ratification meeting had been held in Keokuk, Iowa, at which the Veto Message and the President's administration had been endorsed. He said the author of that despatch had been opposed to the war all along, and that his press had been thrown into the river for the utterance of disloyal sentiments. He was unwilling that the despatch referred to should go forth as a reflex of the sentiments of the people of Iowa.

Mr. Lane (Kansas) moved to take from the files the papers in the case of Messrs. Baxter and Snow, Senators elect from Arkansas, and refer them to the Committee on the Judiciary.

Mr. Clark called for a division of the motion, and the question was called for on withdrawing the papers from the files, which was decided in the affirmative.

Mr. Clark then moved to lay the credentials on the table with those of others late in rebellious States.

Mr. Lane called for the yeas and nays, and the question was decided negatively—yeas, 27; nays, 10.

Mr. Lane then moved to admit Baxter and Snow to seats on this floor, which was laid on the table.

At one o'clock the regular order was taken up, being the concurrent resolution that no Senators or Representatives from any seceded State shall be admitted till such State shall have been declared entitled to representation.

Mr. Sherman took the floor, maintaining that the resolution could confer no power not already vested in Congress. He said a similar resolution had been adopted by the last Congress.

House of Representatives.

Mr. Beaman (Mich.) introduced a bill to continue in force and to amend the Freedmen's Bureau bill.

Mr. Trowbridge (Mich.) offered a resolution, which was adopted, instructing the Committee on Military Affairs to inquire into the quality of the artificial limbs supplied to soldiers and sailors, and if found defective to report the needful legislation.

Mr. McClurg (Mo.) offered a preamble and resolution, instructing the Joint Committee on Reconstruction to inquire whether the late seceded States are still in contumacy, and if so, to inquire into the expediency of levying contributions on the disloyal inhabitants there of defraying the extraordinary expenses of the General Government.

On motion of Mr. Schenck (Ohio), the resolution was referred, without instructions, to the Reconstruction Committee. Yeas 102; nays 27.

Mr. Bingham reported from the Reconstruction Committee a joint resolution to amend the Constitution by adding the following article:—

That Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all the privileges and immunities of the citizens of the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property. He supported it in a short speech.

Mr. Rogers (N. J.) spoke against it as a most dangerous movement towards centralization.

CANADA.

Proclamation Concerning International Trade.

OTTAWA, February 26.—The Canada *Gazette* contains a proclamation, warning American fishermen that they cannot use the Canadian shore fisheries after the 17th of March proximo. The following is the substance of the proclamation:—

Whereas, A certain treaty was made between her Majesty and the United States of America, on the 5th of June, 1854, providing for reciprocal trade, and the United States have given notice for the termination thereof;

And whereas, The said treaty will expire on the 17th of March, 1866;

And whereas, Under the said treaty many persons, citizens of the United States, have invested moneys and fitted out ships for carrying on inshore fisheries within the territory of Canada, and may be unaware that their right to carry on said fisheries will end on the 17th of March, 1866;

Therefore, to prevent injury or loss to our subjects, or to citizens of States with which we are in amity, we do caution and warn all persons not subjects of our realm, that after the said 17th of March next no vessel owned and manned in the United States of America can pursue the inshore fisheries without rendering themselves liable to the confiscation of their vessels, and such other penalties as are imposed by law.

The United States Supreme Court.

WASHINGTON, February 26.—At the close of the case now on argument before the Supreme Court of the United States, that of John Maguire vs. the State of Massachusetts will be argued. General Cushing will open the case for the liquor dealers, and Attorney-General Read will argue for the State. Mr. Richardson, of Boston, will close for the liquor dealers. It is said that the case presents only one of the points raised by the laws of Massachusetts, and will not settle the general question.