PHILADELPHIA, THURSDAY, FEBRUARY 17, 1870.

# FIRST EDITION

CITY TRUSTS.

DECISION OF THE CASE.

The Supreme Court Sustains the Constitutionality of the Act Creating the Board of Trusts-The Opinion in Full.

This morning Justice Sharswood delivered the following opinion of the Court in the above mentioned case, which was in the shape of an appeal from the decree of the Nisl Prius, refusing an injunction to restrain the new Board of Trustees from entering upon their duties, and which was instituted solely for the purpose of testing the constitutionality of the Act of Assembly taking the management of the trusts from the city, and vesting it in a Board of Directors to be appointed by the Judges of the Supreme Court and of the local city courts. The decision esta-blishes the validity of the act, and affirms the decree of the Nisi Prius. There was no dissent on the part of any of the Judges.

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City of Philadelphia ca. Fox. Appeal from the decree of the Court of Nisi Prins. In equily.

The city of Philadelphia is, beyond all question, a municipal corporation, that is, a public corporation created by the government for political purposes, and having subordinate and local powers of legislation. 2 Keat. Comm., 275—an incorporation of persons, schabitants of a particular place, or connected with a particular district, enabling them to conduct its social civil government. (How, Max. Corp. I.) It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency, having no vested right to any of its powers or functions—the charter or act of erection being in no sense a contract with the State, and therefore fully subject to the control of the Legislature, who may enlarge to the control of the Legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangement or destroy its very existence, with the mere breath of arbitrary discretion. Sie volo, sie jubeo, that is all the sovereign authority need say. This much is un-deniable and has not been denied. That while it deniable and has not been denied. That while it thus exists in subjection to the will of the sovereign, it enjoys the rights and is subject to the liabilities of any other corporation, public or private, is equally undoubted. This was the very object of making it a body politic, giving it a legalientity and name, a seal by which to act in solemn form, a capacity to contract and be contracted with, to sue and be sued, a persona staudi in judicia, to hold and dispose of property, and thereby to acquire rights and incur responsibilities. These franchises were conferred upon it for the purpose of enabling it the better to effect the main design of its institution, the exercise of certain of the powers of government, subordinate to the Legislature over a certain part of the territory of the State. But all this affects its relations to other persons, natural or artificial: it does not touch its relation to the State, its creator. It is nothing to other persons, natural or artificial: It does not touch its relation to the State, its creator. It is nothing to the purpose, then, to show that city may act in certain particulars as a private corporation—may make contracts as such, and that it cannot impair the obligation of a contract entered into by it in that capacity because it may deem it for the benefit of its sitzens to do so; nor is it in the power of the Legislature, under the provisions of the Constitution, to authorize the violation of such a contract. Western Saving Fund Society vs. City of Philadelphia, 7 Casey, 175, 185. It is equally aside from any question respecting its essential nature and subjection to the sovereign will to discuss its liabilities for the acts or neglects of its officers or agents, or whether it can rightly be made or has been made or whether it can rightly be made or has been made responsible for such as are not appointed or selected responsible for such as are not appointed or selected by itself, but by the State, or in some special mode provided by the State. Mayor vs. Baily, 2 Denio. 433; Pruther vs. City, 13 B. Mansor, 559; Alcorn vs. The City, S. Wright, 348. The sovereign may continue its corporate existence, and yet assume or receive the appointment of all its officers or agents into its own hands; for the power which can create and destroy can modify and change. Indeed, the Legislature of this Commonwealth, under the Constitution could not by contract invest any municipality. Legislature of this Commonwealth, under the Constitution, could not by contract layest any municipal corporation with an irrevocable franchise of government over any part of its territory. It cannot alienate any part of the Legislative power which by the Constitution is vested in a General Assembly already convened. Parker vs. The Commonwealth, 6 Barr, 507. If the Legislature wish to attempt to

liament derogatory from the power of subsequent Parliaments bind not. 1 Blackst. Com., 90. That such political institutions have not and cannot have any vested rights as against the State is strikingly illustrated and exemplified in the Borough of Dunmore's Appeal, 2 P. F. Smith, 374, when it was held by this Court that municipal corporations, being creatures of legislation, have no constitutional guarantee of trial by jury, and such trial may be

Such a municipal corporation may be a trustee

erect a municipality with a special provision that its charter should be unchangeable or irrevocable, such provision would be a nullity; for acts of Par-

under the grant or will of an individual or private corporation, but only as it seems for public pur-poses germane to its objects. The Mayor vs. Elliott, 3 Rawle, 170. Cresson's Appeal, 6 Casey, 487. Vidal vs. The Mayor, 2 Howard, 127. I am aware that it has been said by high authority in England that it may take and hold in trust for purposes altogether private. The Mayor vs. Gloucester, I House of Lords, 285. But the administration of such trusts, and the consequent liabilities incurred, are alto-gether inconsistent with the public duties imposed upon the municipality. It could hardly be pretented, I think, in this country that it could be a trustee for separate use of a married woman, to educate children of a donor or testator, or to accumulate for the benefit of particular persons. It certainly is not compellable to execute such trusts, nor does it seem competent to accept and administer them. The trusts held by the city of Philadelphia, which are enumerated in the bill before us, are germane to its objects. They are charities, and all charities are in some sense public. If a trust is for any particular persons, it is not a charity. Indefiniteness is of its easence. The objects to be cenefited are strangers to the donor or testator. The widening and improvement of streets and avenues, planting them with ornamental and shade trees, the education of or-phans, the building of schoolhouses, the assistance and encouragement of young mechanics, rewarding ingenuity in the useful arts, the establishment and support of hospitals, the distribution of soup, bread, or fuel to the necessitous, are objects within the general scope and purposes of the municipality.
The king himself may be a trustee, though he cannot be reached by the process of any court without his consent, Hill on Trustees, 49, and so may the State, though, as I take it, under the Constitution only, for objects germane to the purposes of government. The Government of the United States has accepted and administered such a trust under the will of James Smithson, "for the promotion of knowledge among men." When, therefore, the donors or testators of these charitable funds granted or devised them in trust to the municipality, they must be held to have done so with the full knowledge that their trustee so selected was a mere creature of the State, an agent elected was a more creature of the State, an agent acting under a revocable power. Substantially they trusted the good faith of the sovereign. It is plain— too plain, indeed, for argument—that the corporation, by accepting such trusts, could not thereby invest itself with any immunity from legislative action Such an act could not change its essential nature. It is surely not competent for a mere municipal organization, which is made a trustee of a charity, to set up a vested right in that character to maintain such organization in the form in which it existed when the trust was created, and thereby prevent the State from changing it as the public interests may require. Montpelier vs. East Montpelier, 29 Vermont, 21. This whole question is put at rest, and that as to one of the meat important of these teach. require. Montpelier vs. East Montpelier, 29 Vermont, 21. This whole question is put at rest, and that as to one of the most important of these trusts and as to this trustee, by the opinion of the Supreme Court of the United States in Girard vs. Philadelphia, 7 Wallace, 14;—"It cannot admit of a doubt," says Mr. Justice Grier, "that where there is a valid devise to a corporation, in trust for charitable purposes, unaffected by any question as to its validity because of superstition, the sovereign may interpose to enforce the execution of the trusts, either by changing the administrator, if the corporation be dissolved, or if not by modifying or enlarging its franchises, provided the trust be not perverted, and no wrong done to the beneficiaries. Where the trustee is a corporation no modification of its functions or change in its name, while its identity remains, can affect its rights to hold property devised to it for any its name, white its identity remains, can affect its rights to hold property devised to it for any purpose." With equal plausibility might it be pretended that the acceptance by the Government of the United States of the bequest of James Smithson limited the power of amendment contained in the Federal Constitution. If it could have such effect, the only logical consequence would be that the acceptance of the trust would be uttra

tefries, and void; and so if the acceptance of a trust by a municipal corporation can operate to impair the power of the sovereign over it as such, the accept-

cirias, and void; and so if the acceptance of a trust by a municipal corporation can operate to impair the power of the sovereign over it as such, the acceptance is a nullity.

In consistency with these views, for which I have forborne to cite cases, which might, however, be heaped up ad sauseam, on what principle can the set of June 30, 1860 (Pamph. L., 1276), be declared unconstitutional? It provides merely that one class of the functions of the municipality shall be administered in a manner different from that which has been used heretofore. The head and front of its offending hath this extent—no more. It is a change in internal organization. It provides a separate body of citizens for the administration of the trusts vested in the city. It makes that body a permanent one—holding their office during good behavior. It imposes all the duties devolved on the corporation itself as trustee. It perverts no one of the trusts; it does wrong to none of the beneficiaries. We have nothing to do with the wisdom of the measure—with the policy of having such a board, dissociated from the general government of the city, or with the mode of its selection. Those are questions exclusively for the Legislature. No one, I think, can doubt that it was entirely competent for that authority to vest the entire management and centrol of all municipal affairs in just such a body as that constituted by this act. If they could do the greater, they can do the less. They could make a similar provision for any other department of the municipality. They might establish a board of police, of highways, of sewerage, of cleansing. They have often done so. The department as of the prison, of health, of the poor, and of the public schools have been placed in the hands of bodies of men constituted and appointed just as is 'The Board of Directors of City Trusts," and no one has of men constituted and appointed just as is 'The Board of Directors of City Trusts," and no one has ever thought of questioning the constitutionality of these several acts of the Legislature. For if the Legislature, acting for the State, can resume all the franchises of the municipality into its own hands, which is a conceded premise, it can certainy resume

which is a conceded premise, it can certainy resume any part. Onne majus continet in seminus.

It is said, however, that as to some of the tracts under the will of Stephen Girard, there was a contract which the Legislature cannot constitutionally impair. If this was so, it would be no valid ground for declaring the act void as to all the other trusts. But there is no such contract impaired by this act. Mr. Girard left three hundred thousand dollars to the Commonwealth to be applied to the purposes of internal navigation, on the condition that certain laws should be passed as to Delaware avenue, Water street, and wooden or brick-paved buildings. The money was accepted and the laws were passed. They stand unchanged and unrepealed on the statute book. No alteration or modification of them by any of the provisions of this act has been or can be pointed out. It is a contract, if a contract at all, completely executed and fulfilled on both sides.

sides.

It remains to consider one more ground of objection to this act. It is seriously and earnestly contended that it is in contravention of the eleventh section of the ninth article of the Constitution, which declares "that all courts shall be open, and every man, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered without sale, decital, or delay." It is supposed, if I understand the argument aright, that because the Judges of this Court, and of the District Court and the Court of Common Pleas of Philadelphia, are vested with the function of appointing the Directors of the City Trusts, of displacing thum if unfaithful, and of filling vacancies, they are thereby rendered incompatent to decide any controversies which may arise out of the manthey are thereby rendered incompetent to decide any controversies which may arise out of the management of the Trusts by them. It is said they are thereby made judges in their own cause. Conceding it to be unconstitutional for the Legislature to make a man a judge in a case in which he is a party litigant, it is not easy to comprehend how it reaches this act. As was well said in the argument, this very proceeding is a practical refutation of the idea that this Court or any other court is not open to these plaintiffs, or anybody else who may have just cause of action at law or in equity against this inst cause of action at law or in equity against this Board of City Trusts. Nay, can any one doubt that this proceeding might have been anticipated in limine, and a bill filed against the Board of Appointment itself to enjoin it from proceeding to obey the behests of the Legislature." A judge who is actually a trustee of a charity may from delicacy decline to

behests of the Legislature? A judge who is actually a trustee of a charity may from delicacy decline to act in a case in which he is a party as such, but surely, as he has no pecuniary interest in the result, there is no moral or legal reason why he should not. If it is not necessary, it is his duty to do so. I have no deubt it has been often done, but I will mention one instance within my own experience.

The city of Philadelphia in 1859 filed a claim for taxes against the building occupied by the American Philosophical Society, on Independence Square, under a grant from the Commonwealth, and issued a scire jacias thereon in the District Court for the city and county of Philadelphia, and it was necessary that the Court should decide upon the liability of the society to pay those taxes. My brother Hare and myself were both members of the society, and would gladly have excused ourselves from taking any part in the decision. But it was taking any part in the decision. But it was impossible. Without one of us at least there could have been no court. We heard and decided could have been no court. We heard and decided the case in favor of the society, and that judgment was affirmed by this Court. City of Philadelphia vs. The American Philosophical Society, 6 Wright, 9. The true rule unquestionably is that whenever it becomes necessary for a judge to sit even where he has an interest, when no provision is made for call-ing another in, or when no one else can take his place, it is his duty to hear and decide, however dis-agreeable it may be. The rights of the other party

place, it is his duty to hear and decide, however disagreeable it may be. The rights of the other party require it. 2 Rall., Abr. 93.

Drines vs. Grand Junction Railroad, 3 House of Lords Cases, 759. The Act of Assembly of April 14, 1834, section 37 (pamphlet 2, 239), makes provision for special courts in four cases specified:—When a President Judge is personally in the Court at any case depending; when the title of either party is derived from or through risk, or when he holds under the same title; when any near relation of the President shall be a party or interested; or where he has been an attorney or counsel for where he has been an attorney or counsel for either party in the case, or any other case touching the same subject matter. And by the eighth section of the act of April 4, 1843, (pamphlet 2, 183), the provisions of the act of 1834, above referred to, are ex-tended to the judges of the Orphans' Court, Register's Court, Quarter Sessions or Over and Terminer.

It will be observed that the case of a judge being a nominal party is not specified as a disqualification, unless he is personally interested.

This Court has heid that an objection to competency, under the act for the establishment of special courts, must be addressed to the discretion of the highest himself and his decision is not reviewable on Judge himselfand his decision is not reviewable on a writ of error. Barrington vs. Bank of Washington 14 S. and R., 405; Ellmaker vs. Buckley, 16 S. and R. 14 S. and R., 405; Ellmaker vs. Buckley, 16 S. and R., 12; Philadelphia Library Company vs. Myham, 1 Wharton, 72. "This," said Gibson, C. J., "is conformable to the principle of the common law, which exempts a judge from challenge." That a judge is one of the trustees of a charity is no disqualification, much less when he merely appoints such trustees. No one ever heard before that he was disqualified to act in the case of a trustee of his own amountment. In the case of a trustee of his own appointment. In the case di-rectly before us there is nothing in the position of the judges as members of the Board of Appointment which could possibly influence their opinion, or pre-vent a fair and impartial consideration and decision of any case which might grow out of their proceed-

igs. Decree affirmed and appeal dismissed at the costs

# AMERICAN COMMERCE.

Important Recommendations of the Special Committee.

The Special Committee on Navigation Interests will make their report in the House of Re-presentatives to-day. The suggestions they make deal only with the question of the decadence of American commerce, its causes, and their remedies. The latter consist of a proposed drawback on imported material, or an equivalent bounty when American material is used, allowing the use of bonded ship stores and coal for vessels salling to foreign ports, and also giving a small bounty to American vessels engaged in the foreign trade. All State and municipal taxes, dues, and fees, except wharfage and pilotage, are to be abolished, and a uniform tonnage duty of thirty cents per ton is proposed to be levied. The committee expect to make a further report on the matter of aid to mail steamship lines. There are several propositions referred to them, which are now under consideration. They hope also to report a revised code for the protection of our merchant service, and to promote its efficiency and character. The committee have had under discussion the idea of establishing a Naval Reserve system like the one in use by Great Britain, which enables that Govern-ment to summon to her service twenty thou-

the policy to be pursued generally. The three Democrats—Messrs, Calkin of New York, Weiss of Missouri, and Holman of Indiana—are active in its support, agreeing fully with the Republican majority in the necessity of adopting a vigorous American policy.

## THE MAGGIE HAYS EXPLOSION.

Full Particulars of the Mississippi Disaster— Statement of the Mate of the Steamer. The Pittsburg Commercial of last evening

Mr. Andrew Wilson, mate of the ill-fated steamer Maggie Hays, arrived in this city this morning from Cincinnati, to which place he accompanied the remains of Captain Martin, and gave them into the charge of two brothers of deceased. The body was to have been taken to Sisterville to-day for interment. Mr. Wilson resides opposite Economy, and left for home this morning. He gave us some additional particulars concerning the explosion, and among other things emphatically denied the statement made by some of the papers that the second engineer was compelled to run the boat contrary to his own wishes. Mr. Wilson states that when the boat reached Oliver's wood that when the boat reached Oliver's wood yard, one of the boilers was found to be leaking badly, and it was deemed best to tie up at that point until repairs could be made. The first engineer, Mr. Fleming, was accordingly dis-patched to Memphis to make arrangements for having the repairs made. After he had started, the second engineer, Mr. McDermott, told the captain in Mr. Wilson's presence that he could make the repairs and run the boat to Memphis. The captain replied that he did not want to run any risk, and rather than do so would prefer to wait until Mr. Fleming should return. Mr. McDermott, however, patched the leak, and when the captain returned, he told him what he had done, and said he could take the boat up in safety. Steam was raised, and after considerable difficulty, owing to a heavy wind blowing at the time, the boat got out from shore and started up the river. The boat had gone not more than two miles when the explosion occurred. Mr. Wilson gives it as his opinion that the immediate cause of the explosion was want of water in the boiler, and accounts for this de-ficiency by the circumstance that the engineer was so busily engaged at the engines during the efforts to get away from shore, that he had no opportunity of watching the boilers. At the time of the explosion Mr. Wilson was on the barge in tow. He states that when he heard the report, he turned around, the boat was enve-loped in smoke and vapor, and in an instant a huge mass of fire from the furnaces, together with portions of the deck and cabin, fell into the barge. As soon as he could reach the boat he found the captain near the capstan, in a half standing position. The captain recognized him and inquired, "What has happened?" when he was informed, he said, "Leave me and save the passengers." The passengers by this time had nearly all reached the barge, and after the captain had been carried ashore, successful efforts were made to extinguish the flames which had been communicated to the barge from the fire blown from the furnace. Wilson further states that the deck beneath the boilers was crushed to pieces, thus letting them down into the hold. He is unable to state whether more than one of the bollers exploded, but the appearance of the wreck showed that the force was exerted both upward and downward. Concerning the deck hands who are lost, he says he had sent them to the rear of the boat to coll up a stern line, and as the line was found colled up, he supposes that they were on their way forward when the explo-sion occurred. The fireman who escaped had just closed the doors of the furnace and stepped to the starboard side of the boat. He escaped with slight injuries. The other fireman is among the missing. Some of the deck hands who were engaged in colling some lines on the bow of the boat were uninjured. Mr. Wilson states that Mr. Oliver did everything in his power to alleviate the sufferings of the injured persons,

The scene of the terrible accident was fortyfive miles below Helena, and one hundred and orty-five miles below Memphis. ANOTHER ACCOUNT.

all of whom were taken to his house, and that

he and his family were unremitting in their at-

The Memphis Appeal of the 12th inst. contains the following particulars:—
Mr. Hamlin, the pilot on watch, makes this statement:-We left New Orleans on Thursday, the 3d instant, arriving, after various delays, at the foot of Island No. 66 on Thursday. Something was the matter with the boiler, and the first engineer, Mr. Fleming, went to Memphis to get tools to repair it, leaving the second engineer, Mr. McDermott, in charge. We left our landing about 2 o'clock on Thursday afternoon, towing a barge, and started up the chute of Island 66. About half an hour after we had been under way, the explosion accurred. I do not know what caused it. Captain Martin was sitting forward in the shears, and all at once with a tremendous sound the texas and forward part of the hurricane deck was blown away. saw bricks and other fixings of the boiler going up in the air, and the smoke-stacks immediately careened to larboard, as did the pilot house where we were. The first person whom I saw was Mrs. Durr, daughter of Captain Reese, of Pittsburg, and sister of the second clerk, who was sitting in the office at the time of the explosion, and who got out I know not how. She came to the pilot house where we, myself and partner, Mr. Jones, were, and asked us what she should do. I told her to sit down and be calm, while I tried to get the boat ashore, Mrs. Suydam, sister-in-law of Mrs. Durr (both of whom, with several others, were on a pleasure trip with us), came up also, both of them blackened with the explosion. Both sat down as we told them, and I tried to get the boat's head ashore. It was lucky we were not in the stream. The boat had not caught fire yet, although we could see plenty of fire amid the wreck. She swung around towards shore, and the barge which we were towing touched the bank. There was no way to make it fast, however, and, leaving the wheel, I cut the guy ropes of the chimney, and, knotting them, threw them ashore. Mr. Jones, my partner, ran out and made the end fast. Meanwhile I saw the boat taking fire forward, and I sent Mrs. Durr and Mrs. Suydam aft, and put them under the charge of the mate, Mr. Andy Wilson, who took them down the after stairway and put them on the barge, where the other passengers had most of them already congregated. In a short time the guy rope that I had thrown out parted, but the mate got out a hawser and made fast. The crew meanwhile were doing everything in their power to suppress the flames, but soon found their attempt without avail. The captain had been found shortly after the explosion standing forward by the capstan, perfectly black, and burned so that no one could have recognized him. He recognized the mate, however, and asked him what had happened. He was taken on the barge and carried ashore. We had made shore at the landing of B. Oliver, who immediately commenced doing all he could for us, working as if his life depended upon it. The second engineer, Mr. McDemott, was hunted for and tound. He was still alive, and though horribly burned and scalded, was perfectly sensible. He was able to talk, and said that he was standing just aft of the boller that blew up (the larboard one). He was carried ashore, and though everything that could be was done for him, he died in the course of two hours and a half, perfectly conscious to the last. The Hays was burning meanwhile, and burned down to the water's edge. On call-ing over the list after we got so that we could do so, we found that besides the captain and engineer, there were four hands missing, all negroes. One was named James Murdon, a fireman from New Orleans; the other three were roostabouts, named Tom Walker and Dan Skluner, from Belleair, and John Harris, from

Pittsburg. Mr. B. L. Oliver did everything in the world that humanity could dictate to alle-viate the wants and sufferings of all the sur-vivors. Not a passenger was injured. The vivors. Not a passenger was injured. The second clerk was aft; he tried to get to the office but could not. He says when the explosion occurred the safe and office furniture wear blown overboard. The first clerk left the boat at New Orleans to settle up some of her business, and took the railroad up to Memphis, where he was to oin us. About 6 o'clock the steamer Commercial came along and took us off. She stayed alongside an hour and a half or two hours, and took us all aboard. Captain Martin lingered a short time, and died before we got to Helena. We left his remains there.

### THE TWELVE TEMPTATIONS.

Complications Growing out of a Grand Opera House Sensation-Who Owns the Play and Who Ought to have the Proceeds.

On Monday last Joseph C. Foster, who is in the employ of James Fisk, Jr., in a suit brought by him against John E. McDonough and William E. Deverna, obtained an order from Judge Barnard, ex parte, appointing John F. Cole, treasurer and general business agent of the Grand Opera House, New York, receiver "of all personal cyattels, and especially the wardrobes, scenic effects, scenery, and other properties scenic effects, scenery, and other properties of the play called *Tweice Temptations*," of which the defendants were joint owners with the plantiff; also of the manuscript of the play and moneys accrued or to accrue, other than the proportion going by contract to the Grand Opera House; and enjoining the defendants from inter-fering with the production of the play. The defendants were required to show cause yesterday, before Judge Barnard, why the order should not be continued and made permanent.

FOSTER RESTRAINED. On Tuesda A, Judge Van Brunt granted an injunction restraining Foster, John F. Cole, James Fisk, Jr., and the Eric Railway Company "from assigning, disposing of, or incumbering the manuscripts, wardrobe, properties, accessories, or scenic effects of the "Twelve Temptations, and from paying out or disposing of or dividing among themselves any part of the of or dividing among themselves any part of the receipts arising from the performance; and fur-ther ordering that they show cause to-day why an order should not be continued.

ORIGIN OF THE TWELVE TEMPTATIONS. The defendants allege in their complaint that the "Twelve Temptations" was originally written in German, and was known as "Eve; or, The Devil's Hoof;" that Foster conceived the idea of reproducing it here, and he had not the means or the necessary knowledge for so doing, Deverna assisted in the preparation of the ward-robe and advanced \$3800; that McDonough also advanced \$7000, and a contract was entered into whereby they each were to have a third interest in the matter; that they then made an agreement with Cole, who claimed that he sepresented the Grand Opera House, but that Fisk now claims to be the manager of the Grand Opera House to the exclusion of Cole.

#### THE PROCEEDS.

That by the contract with Cole, Foster, Deverna, and McDonough were to have one half the net proceeds from the representation of Twelve Temptations, less \$3800 weekly; that the receipts have averaged \$2000 per night, but that Foster refuses to account and he and Fisk and Cole have conspired to defraud Deverna and McDonough of their just rights; and they ask for an accounting. The papers in the case were served upon Mr. Cole, the principal defendant, on Tuesday evening, and service was made upon Mr. Fisk yesterday.

THE CASE TO BE SIFTED:

The case of Foster against McDonough and Deverna, was called up yesterday before Judge Barnard, Supreme Court Chambers, when Mr. Fine, counsel for the defendants, asked for a few s postponement, saying that he had not yet had an opportunity to prepare the necessary papers. Judge Barnard said the case must go on, but finally granted an adjournment till to-morrow on condition that McDonough and Deverna consent to postpone until Monday the hearing upon the order returnable to-morrow before Judge Van Brunt. This was assented to, and the hearing will take place to-morrow.

# A NATURAL SUSPICION.

A Miss Not a Miss-The Entirely Natural Doubts of an Old Lady of Georgia.

Mrs. Dr. Walker, having occasion recently to pass up the Missouri river, was interviewed at New Madrid by the editor of the Record, and in the course of her conversation the Doctor related the following incident of her war experience in Georgia:-

I frequently rode outside our lines, and visited the farm houses, where I found much destitution among the women. The men were generally absent in the Confederate army, or had fied at our approach. I administered to a great many sick among those destitute Geor-gians. On one occasion I called at the house of an old lady who was sick, and had quite a pretty young daughter living with her. I prescribed for the old lady, and furnished her with medicine and some needed delicacies, and gave her great and speedy relief. At her request I remained all night, and, there being no vacant bed in the house, slept with the daughter. Soon afterwards I was called upon to visit a very sick young man in the same neighborhood. proper medical treatment and attention he was soon convalescent and I suddenly became very famous in that neighborhood. Examgerated counts of my skill and learning were noised abroad, and reached the ears of the old lady just mentioned. Not long after I was overtaken night outside of the lines, and called upon the old lady for another night's entertainment. my surprise she seemed reluctant and hesitating,

and then said:-"Look here, I'm afeard of you; I'm afeard to let you sleep with my daughter again, for I am afeard you ain't a woman; I don't believe any woman could know as much about doctoring

folks as you do."

I tried to disabuse her mind of such an impression, but she only shook her head and said, "I'm afraid—I'd rather not." At length I unfastened my hair, and, shaking it out upon my

"Look there, did you ever see a man have such hair as that? Is not that a woman's hair?" "Oh, I don't know," said the old woman "tolks has got a curious way of fastening bair on their heads in these days, and maybe its jist fastened there. I'd rather not let you sleep with my daughter any more. You know too much for a woman." I tried other means with better success, and, greatly relieved, the old lady again put me in her daughter's bed.

Stock Quotations by Telegraph-I P. M. Giendinning, Davis & Co. report through their New York house the following:-

N. Y. Cent. & Hud R N. Y. Cent. & Hud R

Con. Stock Scrip. 9814 | Pacific Mail Steam. 4314

do. scrip. 9614 | Western Union Tele 3434

N. Y. & Erie Rail. 27 | Western Union Tele 3434

Ph. and Rea. R. 9714 | Mil. & St. Paul R. ex d 6614

Mich. South. & Nl. R. 8854 | Adams Express. 6214

Cle. and Pitt. R. 10134 | Wells, Fargo & Co. 2019

Chl. and N. W. com. 7314 | Tennessee 6s, new. 4216

Chl. and R. L. R. 12214 | Market irregular.

There was a meeting held in Petersburg Va., the other day, to nominate a candidate for Judge, and among those present was one of Lee's veterans. The meeting was a large one, and it was found present the most of the control of and it was found necessary to make the voters stand in line to count them. The line being somewhat irregular, one of the tellers cried out, "Right dress," whereupon our veteran ex-claimed, "Look here, mister, if you are going to start another war, you must count me out. I've had enough of that sort of thing;" and with a spring to the rear, he made double-quick time away for his home, and thus one vote was lost.

#### LATEST BY TELEGRAPH.

Board of Examiners of Retired Naval Officers-The New Projectile-It is not a Great Success-The British Steamer Monarch at Fortress Monroe -Advices from the Pacific.

Financial and Commercial

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

## FROM WASHINGTON.

The Retiring Naval Board. Special Despatch to The Evening Telegraph.
Washington, Feb. 17.—Secretary Robeson.

has appointed Rear Admiral L. M. Goldsborough, U. S. N., President, and Rear-Admiral A. A. Harwood, U. S. N., and Captain William Reynolds, U. S. N., members, and Commander T. 8. Fillebrown, U. S. N., Recorder, to constitute a board to meet at the Navy Department on the 21st instant, to examine the records of the courts of inquiry and of boards that have been held in the cases of all (surviving) officers of the navy and of the Marine Corps, who have been retired under the act of February 28, 1855; the third section of the act of February 21, 1861, the sixteenth, seventeenth, twenty-second, and twentythird sections of the act of August 3 1861, and the first and fourth sections of the act of April 21, 1864, and also to examine the proper records of the Navy Department, in the cases of officers concerning whose retirement, under the abovenamed acts and sections of acts, no record of a court of inquiry, or of a board, is on file in the department, in order to ascertain the cause or causes of their retirement, with the view of classifying the retired officers appropriately in the Navy Register. The board is to make a specific report to the department, in each case of a retired officer, as taken from the proper records of the department, in order that it may clearly appear whether the retirement took place owing to "incapacity to perform the duties of his office resulting from long and faithful service, from wounds or injury received in the line of duty, from sickness or exposure therein, or from other incident of service," or owing to "disability or incompetency proceeding from other causes."

Arrival of the Monarch.

The British iron-clad steamer Monarch passed in] the Capes this morning, at 7 o'clock, for Annapolis. She has a fine breeze from the east and is using sails.

#### Naval Qrders. Despatch to the Associated Press.

WASHINGTON, Feb. 17 .- Master George Norris is detached from signal duty at Washington, and ordered to the Michigan. Ensigns Albert R. Conden and George J. Mitchell are detached from the Plymouth, and ordered home. Ensign W. B. H. Frailey has resigned.

Customs Receipts.

The following are the Customs receipts for the week ending February 12:-Boston. \$273,243 New York. 2,448,784 Philadelphia.... 136,987 

Appointment. Robert J. Stevens, formerly Superintendent of the Branch Mint at San Francisco, has been appointed one of the Assay Commissioners, vice R. B. Swain, declined.

# FROM THE SOUTH.

The New Projectille Not a Success. FORTRESS MONROE, Feb. 17 .- The recent experiment with the double-shotted projectile at this place does not seem to be as satisfactory as was at first supposed. The information was chiefly derived from Messrs. Hill and Roberts, the inventors, who were perfectly satisfied with the result of the experiment. This statement is made in justice to Colonel Baylor, the ordnance officer who conducted the experiment, and who does not pronounce it a "success." The British Steamer Monarch.

Her Britannic Majesty's ship-of-war Monarch, from Portland, Me., is expected to arrive at the Capes some time to-morrow, on her way to Annapolis. She draws twenty-eight feet of water, and two pilots have been detailed to carry her up the bay. She is expected to pay a visit to the Roads, but will not do so until her return from Annapolis.

# FROM CALIFORNIA.

Arrival of the Japan at San Francisco. San Francisco, Feb. 17 .- The steamer Japan from Hong Kong, January 17th, and Yokohama, Japan, on the 24th, arrived at half-past eleven

o'elock last night. Her list of passengers, which is unusually small, includes M. Hengelmuller and Colgate Baker, for New York.

The merchandise by this steamer to go overland to New York includes 57 boxes of tea, 34 packages of silk-worm eggs, one case of silk.

and for Europe 15 bales of silk. The Japan spole the steamskip America, hence for China. All well.

# FROM EUROPE.

This Morning's Quotations.

By the Anglo-American Cable.

LONDON, Feb. 17—11:30 A. M.—Consols opened at 92% for money, and 92% for account. American securities quiet. U. S. Five-twenties of 1862, 87%; of 1865, eld, 87%; of 1887, 86%; 10-408, 88%; Stocks quiet. Eric Raliroad, 22; fillnois Central, Stocks quiet Erie Haliroad, 22; Illinois Central, 100%; Great Western, 20.

Liverpool, Feb. 17—11:50 P. M.—The Cotton market closed dull last night. Middling uplands, 11½6; 11½d.; middling Orieans, 11½611½d. The sales were 10,000 bales, including 2000 for export and speculation. This morning the market opened quiet, and quotations unchanged. The sales are estimated at 10,000 bales. Breodstuffs closed quiet last night. Paris, Feb. 17.—The Bourse opened firm. Rentes. 731, 49c.

Rentes, 73f, 49c.
ANTWERP, Feb. 17.—Petroleum opened firm at 61f. 2%. FRANKFORT, Feb. 17.—U. S. bonds opened firm at 2% for the issue of 1859.

HAVRE, Feb. 17.—Cotton opened quiet and steady.
PARIS, Feb. 17.—The Bourse closed quiet. Rentes

37. 37c. FRANKFORT, Feb. 17.—United States Five-twenties closed active and firm at 93%.

ANTWEAP, Feb. 17. — Petroleum closes frm at 60%.

# SECOND EDITION FINANCE AND COMMERCE.

OFFICE OF THE EVENING TELEGRAPH,

The money market, since the subsidence in the activity of the stock market, has become very quiet and easy, and the supply of currency is so great that it is literally a drug. It is offered freely at 5 per cent. on call, and often at 4 per cent., without finding takers. The best paper is eagerly taken up both at the banks and on the street at 6 per cent, but it is very secret. the street at 6 per cent., but it is very scarce and in great demand.

Gold was quiet, and rather steady, the sales opening and closing at noon at 119%, dropping down to % in the course of the morning. Government bonds were in some demand for investment, but prices, in sympathy with gold, are off about % from the closing quotations yesterday. The stock market was less active, and prices of all speculative shares fell off. In State loans there were limited sales of the first series of sixes at 104, and city sixes, new bonds, at 100 \( \) \( \) \( \) \( \) Lehigh gold loan was steady at

Reading Railroad was active, with sales at 4834@4834. Sales of Lehigh Valley Railroad at 5434: Pennsylvania Railroad declined to 5634@5634; North Pennsylvania Railroad sold at 3644; Minehill Railroad at 51%; and Oil Creek and

Allegheny Railroad at 40%.

The balance of the list was neglected. Sales

of St. Nicholas Coal at 274, and Chesnut and Walnut Streets Railroad at 44. PHILADELPHIA STOCK EXCHANGE SALES.

A WEST OF THE PARTY WAS IN TO WAR	W. Mann C. Werners A. Calles Schools and Street
deported by De Haven & B	ro., No. 40 S. Third street
FIRST I	BOARD.
\$700 Pa 6s, 1 se ls.104	100 sh Read, s10wn, 48
\$500 City 68, New 100 %	100 do 481
\$300 dolsb3,100%	
\$5400 do100 %	100 do., slown, 485
\$100 do10036	600 dols. 483
\$3000 C & A m 6s, '89	100 do48 8
lots 94	100 dos5wn, 48
\$1000 N Penna 7s 88%	100 do s10wn. 48
\$500 Leh gold L 93%	100 do830.48 d
\$1000 do 92%	200 dols.s10. 48
50 sh Penna R 567	200 do830.48*
100 do 56%	
2 do 56%	20 sh Cam & AR. 115
26 dois. 56%	6 sh Minehill R
100 sh N Pa R b30. 36%	
100 sh O C & A R. 530 40 1	8 sh Ch & Wal R 44

do......ls, 40 100 sh St Nich C.... 236

10.00	A.	M		119%	10.55	A. M.	 		66	-11
10.19	**	*****		11936	11:00	46	 			. 11
10:36				119%	11-92	44	 	24	٠.	. 11
10:50	44	*****	or e a	11934	11:46		 			.11
10:51	+5			119	11:47	56.0	 	- 20-4		.11

New York Money and Stock Markets. New York Money and Stock Markets.

New York, Feb. 17.—Stocks steady. Money easy at 5.26 per cent. Gold, 1194. Frvetwenties, 1862, coupon, 1144; do. 1864, do., 114; do. 1865, do., 114; do. do., new, 112%; do. 1867, 113%; do. 1868, 113%; 10-40s, 112%; Virginia 6s, new, 66%; Missouri 6s, 91%; Canton Company, 56; Cumberland preferred, 34; Consolidated New York Central and Hudson River, 98; Eric, 27%; Reading, 97%; Adams Express, 62%; Michigan Central, 121; Michigan Southern, 88%; Illinois Central, 121; Cleveland and Pittsburg, 101%; Chicago and Rock Island, 121%; Pittsburg and Fort Wayne, 191%; Western Union Telegraph, 34%.

Saltimore Produce Market. BALTIMORE, Feb. 17.—Cotton dull and nominal at 24%c. Flour active and higher for low grades; Howard Street superflue, \$4.75@5; do. extra, \$5.25@6; do. family, \$6.25@7; City Mills superflue, \$4.75@5500; do. extra, \$5.26.5500; do.

do. extra, \$5:50@6.; db. family, \$7@8-75.; Western superfine, \$4:75@5; do. extra, \$5:25@5.75; do. family, \$6:12%@6.75. Wheat unchanged; Pennsylvania, \$1:26. @1:28. Corn less firm; white, 93@96c.; yellow, 93@96c. Oats, 53@55c. Rye, 95c.@1. Mess Pork quiet at \$27.50@28. Bacon firm; rib sides, 15%@16c.; clear do., 164@16%c.; shoulders, 12%@13c.; hams, 19@20c. Lard quiet at 16%c. Whisky better at 99 @\$1:00 for wood and iron-bound.

Philadelphia Trade Report. THURSDAY, Feb. 17 .- The demand for Flour from the home consumers is fair at yesterday's quotations. Sales of 900 barrels, including superfine at \$4 25@4 50; extras at \$4 62 \@4 75; Iowa, Wisconsin, and Minnesota extra family at \$5@5.75; Pennsylvania do. do. at \$5@5.50; Indiana and Ohio do. do. at \$5-25@6-25; and fancy brands at \$6-50@7-50, ac-

\$4.75 \$\pi\$ barrel.

There is no change to notice in the Wheat market. Sales of 1600 busheis Pennsylvania red at \$1.25.2 126. Rye sells in a small way at \$1.7 bushel for Western and Pennsylvania. Corn is in demand at full prices. Sales of 5000 bushels new yellow at 85@ 91c. Oats are unchanged. 2000 bushels Pennsylva-nia sold at 54@55c. Nothing doing in Barley or

cording to quality. Rye Flour may be quoted at

Malt.

Bark—In the absence of sales we quote No. 1 Quercitron at \$30 \$\overline{a}\$ ton.

Seeds—Cloverseed is steady, with sales of 100 bushels at \$\$68.25, the latter rate for choice. Timothy and Flaxseed are nominal.

Whisky is held at 98c.@\$1 \$\overline{a}\$ gallon.

#### LATEST SHIPPING INTELLIGENCE. For additional Marine News see Inside Pages.

PORT OF PHILADELPHIA ...... FEBRUARY 17 STATE OF THERMOMETER AT THE EVENING TELEGRAPH 7 A. M. .......37 | 11 A. M. ......51 | 2 P. M. .......55 ARRIVED THIS MORNING.

Steamship Prometheus, Grav, from Charleston, with midse, to B. A. Souder & Co.
Steamship El Cid, Nickerson, 24 hours from New York, with midse, to John F. Ohl. Steamer Diamond State, Wood, 13 hours from Bal-timore, with mode, to A. Groves, Jr.

BELOW. Brig Ellen P. Stewart, from Sagua. WENT TO SEA.

Brig Josephine, hence for Saguz, went to sea yes-

MEMORANDA. Ship Westmoreland, Letournau, from New Orleans, at Bremerhaven 2d inst. Steamship Fanita, Freeman, hence, at New York yesterday.
Steamship Tonawanda, Jennings, hence, at Savannah yesterday.
Bark Don Justo, Ludwig, for Philadelphia, sailed from Liverpool 4th Inst.
Bark Athenais, Baker, for Philadelphia, cleared at ondon 1st inst.
Bark Bessie Harris, Allen, hence, at Queenstown Bark Dorette, Schulken, hence, at Bremerhaven

Ist inst.

Brig Alice Lea, Foster, for Philadelphia, sailed from Liston 14th ult.

Brig B. Rogers, Crosby, hence, at Antwerp 31st Brig Max, Knochel, hence, at Bristol, Eng., 4th Instant.
Schr Lizzie Batchelder, English, for Philadelphia, cleared at Matanzas 10th inst.
Schr Nellie Doe, hence, at Savannah yesterday,

leaking. Schr Ralph Souder, Millan, at Havana 8th inst. from St. John, N. B. Schr Wm. H. Tiers, Gifford, sailed from Matanzas 7th inst. for a port north of Hatteras.
Schr Roswell, Copp, sailed from Matanzas 9th inst.
for a port north of Hatteras.
Schr Relecca Florence, Rich, at St. Jago 2d inst.

Schr Amos Edwards, Somers, at Matanzas sta inst. from Providence.
Schr M. E. Staples, Coffin, sailed from Cardenas.
Ith inst. for a port north of Hatteras.