AMERICAN VOLUNTEER.

PUBLISHED EVERY THURSDAY MORNING BY

John B. Bratton.

TERMS.

SUBSCRIPTION.—One Dollar and Fifty Cents, paid in advance; Two Dollars if paid within the year; and Two Dollars and Fifty Cents, if not paid within the year. These terms will be rigidly adhered to in every instance. No subscription discontinued until all arrearages are paid unless at the option of the Editor.

ADVERTISEMENTS—Accompanied by the CASH, and not exceeding one square, will be inserted three times for One Dollar, and twenty-five cents for each additional insertion. Those of a greater length in proportion.

JOB-PRINTING—Such as Hand-bills, Posting-bills, Pamphlets, Blanks, Labels, &c., &c., executed with accuracy and at the shortest notice.

Poetical.

From the Louisville Journal.

A SUMMER PIECE.

BY IDELL

It was an eve in summer,
Long ago in childhood's years,
Ere the heart had known a sorrow
Or the soul shed bitter tears—
'Twas when the earth was covered
With a thousand beauteous flowers
And the golden sunlight lingered
On the half capricious hours.

Far above me, slowly, flying,
Passed a cloud of spotless white,
Like an angel's plume it faded
From mine eyes' enchanted sight;
Far behind me stretched the hill-tops,
Clad in purple, blue, and gold,
And beneath me in the shadows
A majestic river rolled.

Birds were flying in the branches
On their tiny, painted wings,
And from the rocks were bursting
Many pure and crystal springs;
Half-shut flowerets were reclining
On each other pure and white,
Like little children sleeping
When the stars come out at night.

In the meadows flocks were grazing
Neath the chestnut's spreading shade,
And the hum of bees and beetle
Filled with music all the glade;
Oh! the earth was *full* of beauty
And my heart in perfect tune
As I talked with God and nature
Of the happy, beauteous June.

Long I wandered o'er the uplands
Till the sun had gone to rest,
Shutting down his golden portal
In the far and roseate west;
Rose the moon in all her beauty,
Climbing up the silvered east
Like a maiden decked with diamonds
Going to a bridal feast.

Stars, like eyes of angels, opened,
Giving out their softest glow,
"*Trembling o'er their own sweet beauty,*"
In the river far below;
Long I gazed upon this picture,
After God had lighted Heaven,
And now, though years have parted,
Still I love that summer even.

Miscellaneous.

From the New York Ledger.

ADVENTURE WITH A BENGAL TIGER.

BY COL. WALTER P. DUNLAP.

The night set in cold and rainy, and instead of riding over to Shreveport, to get what there might be in the post-office for us, we sat down in mammy's sitting-room, and there called upon Uncle Abner for the story he had promised us. The shooting of the tiger-cat had put him in mind of an adventure which he said he would relate to us on the first opportunity; and what *opportunity* more fitting than such an evening *in such a place?*

"Well, boys," said the old man, knocking the ashes from his pipe, and putting it on the little shelf where he kept it, "I'll tell you a bit of adventure I once had above Calcutta a bit. It wasn't very pleasant sport at the time, tho' it's well enough to think of now.

One morning a heavy lighter came alongside, manned by half-a-dozen natives. Our captain had engaged her to go after fresh water. About ten miles above Hoogly—and I don't know but it may be more—there was a fine stream of water, and there we were going, intending to be gone over one night. Our first mate, a stout, good-hearted fellow named Bill Gillot, was to take charge, and Sam Willis, Jack Springer, and myself, were to accompany him.

We got our guns and pistols aboard the lighter—for ye see, there were likely to be robbers about wherever Americans or Europeans ventured off in small parties—and having put our bedding and provisions in, we made sail up the river. We had a fair wind, and by noon we reached the mouth of the stream, up which we were to get our water. It was quite a little river, coming in from the north'rd and west'rd, and as we turned into it we could feel that it was cooler and sweeter than the water of the Hoogly.

About four miles up we came to the camp where the native water-carriers were in the habit of stopping, and here we came to, and made fast. Some forty or fifty feet back from the bank on the edge of a thick, deep jungle, there was a spring which sent out water enough to supply quite a stream. It was at this spring we meant to get our water; and as soon as all was ready we set our natives at work carrying the buckets to and from the lighter, we filling them at the spring.

As we five could fill much faster than the porters could carry, and as it was not in the contract that we should lug water under the hot sun, Gillot and I left the other three filling, while we went to explore the jungle. But we did not go a great way. The reeds were so thick and stout that we could with difficulty make our way among them; and, in fact, we could not, save where a sort of path had already been beaten. While we were in there the mate made some remark about the tiger. The very sound of the monster's name was enough to make me tremble.

When we returned we asked the natives if tigers were ever seen about in that neighborhood? They said they had never seen one, though there had been tracks found upon the edge of the spring, which were supposed to have been made by the tiger. The oldest of the Indians, and the one who hired all the others, said he had been engaged in work that had called him to this spring—more or less for fifteen years; but he had never seen anything that looked like the animal in question.

Most of the people of this country have a mistaken idea of the tiger. The few specimens which have been carried around to show are not much like the real Royal Tiger of Bengal. There are certainly three sorts of tigers, and they vary in size as well as in color. The smaller kind have the same general characteristics, and are colored after the same pattern as the larger ones; but the colors are not so bright. The Royal Tiger has a yellow ground to his skin, and then the stripes are a beautiful black, running over the back, and down the sides, about in the same course with the ribs. But it is with regard to the size of the animal that there is the most mistake. When I tell a man I have seen a tiger ten feet long from his nose to the end of his back, and then five feet of tail added to that, making fifteen feet in all, he don't want to believe me. But it is so.

The royal tiger has been seen to carry off a full sized buffalo! An old Hindoo merchant—an honorable man, and one who could have no earthly reason for deceiving me—assured me that his men killed a tiger in one of the deep jungles of the Burracoor whose body alone was thirteen feet in length! I might have hesitated about believing this had I not seen one myself—nearly twice as large as I supposed they ever grew.

You can imagine something of the strength of such an animal. It is very fortunate that they are scarce, for their destructiveness is beyond all precedent. They kill for the mere sake of killing. Let one of them make his way among a herd of cattle, and he will kill without eating a morsel while there is a living animal to be seen. While they can get blood they will not taste flesh. They do not eat to appease their hunger only; they eat to gorge themselves; They will gulp down blood while they can stand. It is said by those who best understand their habits that they love human flesh more than anything else; and will leave the blood of any animal for a man. Such taste as that, though it may flatter humanity, I must say I fail to admire or appreciate.

When night came we hauled our lighter into the middle of the stream, and then turned in. When we awoke in the morning one of the natives said he had heard a low, howling noise during the night, not far off. At one time he thought it was a tiger, and was upon the point of arousing us; but as he listened more attentively it sounded nearer like the yelping of a dog, and he concluded to let us sleep.

As soon as we had eaten our breakfast we hauled our lighter to the shore, and commenced work. The sun had got high enough to throw down an uncomfortable heat, when I plainly heard a crashing in a distant part of the jungle, and in a few moments more one of the natives started the cry:

"*The Tiger! The Tiger!*"

In all the various sounds of earth I doubt if there is another which can strike such terror to the souls of the natives of that country as does that cry. No sooner did it break upon the air than the rest of the Indians took it up, and at the same time rushed for the lighter. They had just gained it and we who stood beneath the awning which had been spread over the spring, were about to follow, when a low, deep cry, like the snarl of a cat a thousand times multiplied in volume and depth, broke upon our ears, and on the next instant a dark object came, with a sort of blurring sensation, before our eyes. We started back, and as soon as I could fairly look I saw a huge tiger crouching upon the hard sand about half way between us and the boat!

He was gazing upon the natives. They knew his habits well enough not to run any further then. They had gained the bows of the lighter only, when the tiger leaped from the jungle, and the cuddy, or little cabin, was in the after part. They knew if they turned to seek that place the monster would leap upon them; so they stood in a body and faced him; while he lay in a crouching posture, with his tail lashing the sand, and his claws gathering for a spring.

We had taken our guns up with us to the spring; for the report of the native who had heard the noise in the night served to put us on our guard. The pieces were common heavy muskets, and we had loaded them with two bullets each. We seized them as quickly as possible, but there was a difficulty in the way of our firing. The tiger was directly between us and the natives! The place where we stood was some feet higher than the shore, and the place where the monster was crouched was in a direct line with the bows of the boat.

A ball passing through his body from one of our guns would if it kept on in a straight line, strike the natives at the breast.

It was very evident that no time was to be lost, and yet our best course was not easily decided. However, we were just upon the point of moving around so as to bring tiger out from that fatal range, when I noticed that the natives were not only conversing eagerly, but were also changing their positions. I saw that they were up to some plot, but what it was I could not tell. They saw how we were situated with regard to firing, and hence they seemed to have studied for themselves. Presently one of them spoke to us:

'The tiger means for leap at us! He looks find if we got swords and guns! He find no—he leap. When you see him on the boat you fire! Fire at him ——'

The Indian probably meant to tell us where to aim, but that moment a movement in another quarter arrested his attention. They had each gained a position to suit, and then watched the tiger with the most intense eagerness.—I saw the monster's fore legs move—I saw the claws open upon the sand—and then came that peculiar gathering of the body which shows that the muscular power is all concentrated.—On the next instant the huge body left the earth; and as it did so the six natives disappeared as if by magic. They had dropped down into the spaces between the casks, doubling themselves up like hedge-hogs.

The tiger struck the tops of the casks, and seemed for a moment to be utterly confounded; and during that moment we raised our muskets. The beast stood slightly quartering, with his head from me, so that my best point of sight was just behind his shoulder. We fired together, or very nearly so.

While yet the ring of our reports was upon the air we heard a deafening howl, and before the smoke had cleared away, so that we could see the lighter, the tiger was upon the sand, very near the spot where he had crouched before. He saw us, and with another yell leaped toward us. I clubbed my musket, and struck him upon the head as he passed me, but the blow seemed to make no impression upon him. He kept on some yards beyond us, and then turned. He did not stop to gather for a spring, but rushed directly towards us. We moved quickly aside, and he passed us again.

We now knew, of course, that he was bewildered, and to such an extent that he could not reason. As he turned a second time the mate caught the axe, which we had brought with us for ordinary use, and stood by to use it. He grasped it with a steady nerve, for there was little danger now; and as the tiger came on again, hesitating and half-turning when he reached us, Bill brought him a blow upon the top of his head that split his skull. The mighty beast staggered sideways a few steps, and then fell!

The natives now came up from the lighter, and their shouts of joy and exultation were beyond anything of the kind I ever heard before. They claimed a good share of credit in the monster's death, and we were willing to grant it; for had they not acted as coolly and resolutely as they did, the tiger would not have been killed as he was; and beyond that it was impossible to judge what might have happened. At all events, I don't believe that we, had we been exactly in their situation, would have done so well as they did. We should not have resorted to stratagem so easily and naturally: but should have been more likely either to have made for the cabin, or to have faced him and made the best of it—in either of which cases we should probably have come out second best.

The tiger measured seven feet and a half in length of body, and nearly eleven feet from nose to tail inclusive. Two of our bullets had passed within half-an-inch of his heart; one had entered his head, while one was lodged in his shoulder. We voted the skin to our mate, and he was thankful and proud.

It was lucky that we had the skin to show when we returned to the ship, else the crew might not have believed that we had slain such an animal so easily."

American Volunteer.

BY JOHN B. BRATTON. "OUR COUNTRY—MAY IT ALWAYS BE RIGHT—BUT RIGHT OR WRONG, OUR COUNTRY." AT $2,00 PER ANNUM.

VOL. 44. CARLISLE, PA., THURSDAY, JULY 2, 1857. NO. 3.

HENRY S. MOTT, et al. CANAL COMMISSIONERS, vs. THE PENNSYLVANIA RAIL ROAD COMPANY, et al. LEWIS, Ch. J.

Three bills in equity have been filed, in each of which a motion is made for an injunction to prevent the sale of the Main Line of the Public Improvements of the State, under the Act of Assembly of May 16, 1857. These motions draw into question the rights of the Canal Commissioners, of the State creditors, of the taxpayers of the Commonwealth, and of the stock holders of the Pennsylvania Railroad Company, to interfere in the great question involved. On all the questions about to be decided, I proceed to deliver the unanimous opinion of the whole Court.

Although there is some difference in our reasons for denying to a dissenting stockholder, who is offered compensation for his stock by the terms of the Act, the preliminary injunction asked, we all agree in refusing his motion.—His rights are to be determined on the final hearing.

We do not consider it necessary to express any opinion on the question whether the holder of a certificate of State loan has such a pledge of the tolls on the State canals and railroads as could be enforced in a Court of Justice. Conceding, for the purposes of the present motion, that he has such a pledge, we are nevertheless of opinion that the right of a pledge extends no further than to require a sale of the thing pledged, and an application of the proceeds to the payment of his claim. This is what the Act of Assembly proposes to accomplish. It is what a Court of Equity would do, under the circumstances disclosed, if the controversy were between private individuals. But the Legislature has the right to proscribe *remedies* and change them at pleasure, so that the *rights* of the parties are not materially impaired.

We are perfectly satisfied that the rights of the State creditors will not be impaired by a fair public sale of the Main Line to the highest and best bidder, and the application of the proceeds to the payment of the State debt. On the contrary, we are bound to presume, from the evidence before us, that such a proceeding will be highly beneficial to the creditors of the State. It will reduce the amount of the public debt, and render the residue more secure. We have no right to presume that the Works will be sold for less than their full value. The creditor has therefore no case for relief on the footing of the pledge of the tools on the Public Works.

But the Canal Commissioners, the tax-payers and the creditor, object to a contract of sale under which the right to punish the purchasing corporation for misuse or abuse, and the right to tax the Pennsylvania Railroad Company for State purposes, and another Company for tonnage, is forever extinguished. It is alleged that the Legislature have no constitutional authority to bind succeeding Legislatures, in these particulars. If such a contract be unconstitutional and void, the Canal Commissioners are in the line of their duty in suggesting this objection to the Court, and if the Court should hold the Act of Assembly void, it would be the duty of the Commissioners, as faithful agents of the State, entrusted with the custody and management of the Works, to retain possession of them for the use of the Commonwealth, regardless of the unauthorized attempt to deprive the public of their rights. *If the Legislature have no right to release the means on which the State and her creditors must rely for the payment of her public debt, any creditor whose security is about to be thus impaired* has a right to be heard in opposition to the measure proposed. The taxpayers, whose burthens will be necessarily increased by releasing from taxation any portion of property liable to contribute the payment of the public debt and the expenses of government, have also an interest in the question, and, of course, have a right to be heard.

A judgment of ouster against a corporation, duly put in execution, works its dissolution.—According to the ancient common law, where there is no statute provision to the contrary, upon the civil death of a corporation all its real estate remaining unsold reverts back to the original grantors and their heirs. The debts due to and from the corporation are all extinguished. Neither stockholders nor the directors nor trustees can recover debts or be charged with them in their natural capacity. All the personal estate vests in the Commonwealth. 2 Kent's Com., 307; 1 Black's Com. 484. But under the modern rule of equity jurisprudence, the severity of the common law in this respect is greatly mitigated, and it is held that it is the *franchise*, and not the property of the corporation that is forfeited by a judgment of ouster, and that the property of the corporation is a trust fund for the payment of debts and distribution among stockholders. Wood v. Sumner, 3 Mason's Reports 309; Adair v. Shaw, 1 Sch. and Lefr. 201; Mumma v. The Potomac Company, 8 Peters, 281. The Canon Company 23, L. & B. 315, Travis v. Milne, 9 Hare 141; Baron et al. v. Robertson et al, 18 Howe U. S. Rep., 480. The 15th section of the act of 16th of May, 1857, enables the Legislature, at their election after judgment of ouster, to revoke the privileges of the corporation, and to take the roads and canals for public use, giving full compensation to the stockholders. This provision does not vary very materially from the rule which equity would adopt, independent of the act of Assembly. It is no release of the punishment for misuse or abuse. Nor is it a release of the eminent domain under which the corporation may be repealed without either abuse or misuse whenever the public interest requires it, on giving just compensation to the stockholders. The word "may," as applied to the action of the Legislature in this respect, is not to be construed as "shall" or "must."—If the construction were doubtful, the doubt must be resolved in favor of the State. A corporation can never claim a privilege against the State without showing that it is clearly entitled to it by terms of the charter. There is nothing in this section which binds the Legislature to make full "compensation to the stockholders." That is only to be done if the Legislature should by Legislative act, revoke the privileges granted; but there is no obligation, on their part, to pass any act of revocation. If this should not be done, the judgment of ouster, with all its legal and equitable incidents, would remain in full force. There is, therefore, no release of the right to punish for misuse or abuse, nor any release of the eminent domain in the provisions contained in the 15th section of the act of assembly.

We now come to the vital question involved in these applications. The Act of Assembly of 16th of May, 1857, makes provision for a public sale, and, for the purpose of inviting competition, directs that public notice of the time and place to be given in one or more newspapers of extended circulation, published in the cities of Philadelphia, Pittsburg, Washington, Boston, New York and in the borough of Harrisburg.—It authorizes "any person or persons, or railroad or canal company now incorporated, or which may hereafter be incorporated under the laws of this Commonwealth, to become the purchasers for any sum not less than seven millions five hundred thousand dollars." But there is a *proviso* in the 3d section, which declares that "if the Pennsylvania Railroad Company shall become the purchasers, at the said public sale or by assignment, they shall pay, in addition to the purchase money at which it may be struck down, the sum of one million five hundred thousand dollars, and, *in consideration thereof*, the said railroad company, and the Harrisburg, Mount Joy and Lancaster Railroad Company shall be discharged by the Commonwealth *forever*, from the payment of all taxes upon tonnage or freight carried over said railroads, and the said Pennsylvania Railroad Company shall also be released from the payment of all other taxes or duties on its capital stock, bonds, dividends, or property, except for school, city, county, borough, or township purposes." The amount of taxes purposed to be released is beyond calculation. It can only be conjectured. It would be greatly increased by the tax which would of course be levied on the property about to be sold to the Company. Judging from the increase during the last five years, and the constant augmentation of commerce and travel along the route, it would seem reasonable to believe that in five years from this time it would be double its present amount. But conceding that the tax to be released will hereafter amount to no more, per annum, than the sum paid in 1856, the amount awarding to the admission of the Railroad Company itself, would be $280,739,21 per annum, forever. This sum is more than equal to the interest at 5,000,000 at 5 per cent., the rate to be charged to the purchasers. In other words, the Act of Assembly proposes to give to the Railroad Company a consideration equal to $5,600,000 for $1,500,000, and thus to give that Company an advantage equal to $4,100,000 over every other bidder at the sale. By means of this privilege, the Pennsylvania Railroad Company may drive from the field of competition all other bidders. It is essential to every fair public auction, that all the bidders shall stand upon an equal footing.

If the object has been to make a fair sale of this portion of the State revenue, it might have been evinced by a provision for the transfer of it to the highest bidder, without any distinction in favor of any one. But this was not done.—The extraordinary *proviso*, in favor of the Pennsylvania Railroad Company, is partial and entirely repugnant to the general intent of the act, and if allowed to stand, the sale under it will furnish one of the most magnificent exhibitions of a "*mock auction*" that the world has ever witnessed. We rejoice to say that the highly respectable and upright officers of the corporation disclaim, in the most solemn manner, under oath, all agency in procuring the enactment in question.

But has the Constitution conferred upon the Legislature the authority to extinguish, *forever*, by bargain and sale, the power to raise revenue for the support of the government? All free governments are established by the people for their benefit, and the powers delegated are to be exercised for their common good, and not, under any circumstances, to be sold or destroyed, so long as the nations establishing them have the physical power to maintain their independence. Individuals cannot subsist without food. Deprive them of the "means whereby" they live, and you destroy them as certainly as if you did it by shedding their blood. The necessities of governments are as great as those of individuals. No government can exist without revenues to defray its expenses and support its officers and agents. The revenue is the food indispensable to its existence. Deprive it of this and you stop it of all power to perform its duties, *bring it into contempt by its uselessness and helplessness, and ultimately destroy it as effectually as if it were overturned by domestic violence or subjugated by the conquest of a foreign foe.* Government is but an aggregation of individual rights and powers. It has no more right to commit political suicide than an individual has to destroy the life given by his Creator. Contracting away the taxing power in perpetuity tends, as we have seen, inevitably to the destruction of the government. If twelve or twenty millions of taxable property may be released to-day, one hundred millions may be released to-morrow; and, the principle being established, the process might go on until all power to raise revenue was gone. If this did not destroy the government, it would result in something infinitely more dangerous to the liberties of the people. It would make it the servile dependent of the wealthy corporation of individuals to whom it contracted away its means of support. Although the taxing power is an incidental one, to be exercised only as the necessary means of performing governmental duties, it is nevertheless a branch of the Legislative power, which always in its nature implies not only the power of making laws, but of altering and repealing them as the exigencies of the State and circumstance of the times may require. Rutherforth's Institutes of National Law, b. 3. ch. 3, s. 3. If one portion of the legislative power may be sold, another may be disposed of in the same way. If the power to raise revenue may be sold to-day, the power to punish for crimes may be sold to-morrow, and the power to pass laws for the redress of civil rights may be sold the next day. If the legislative power may be sold, the Executive and Judicial prowers may be put in the market with equal propriety. The result to which the principle must inevitably lead, proves that the sale of any portion of governmental power, is utterly inconsistent with the nature of our free institutions, and totally at variance with the object and general provisions of the Constitution of the State. It may be urged that we must confide in the fidelity of the Legislature, and that there is every ground for hope that they would not carry such measures to an unreasonable length. This is no answer to the argument. It is a question of Constitutional authority and not a case of confidence at all. Limitations of power established by written Constitutions have their origin in a distrust of the infirmity of man.—That distrust is fully justified by the history of the rise and fall of nations.

But, conceding that this practice will not be carried so far as to destroy the government, is there any warrant for it to the extent to which the act of Assembly proposes to go in the present case? It was held by this Court in Wood's Estate, 9 Harris, 114, that the duties of sovereign and subject are reciprocal, and the person who is protected by a government in his person or property, may be compelled to pay for that protection. As taxes are to be assessed for the sole purpose of supporting the government, the propriety of exacting them, the persons and property to be made liable, and the rules for their assessment and collection are to be determined by its authority. It is, however, a rule of the public law, founded on a principle of justice, which no government can disregard without violating the rights of its citizens, that taxes shall be assessed in such manner that all the citizens may pay their quota, in proportion to their abilities and the advantages they derive from the society."—9 Harris, 114; 10 Harris, 407. This principle is sanctioned by writers of the highest authority—Vattel, b. 1, ch. 20, s. 240; Rutherford, Inst. of Nat. Law, b. 2, ch. 3, s. 5; Puffendorf's Law of Nations, b. 7, ch. 9, s. 10. It is expressly declared by Baron Puffendorf, that "no immunities or exemptions" (from taxation) ought to be "granted to certain persons to the defrauding or oppressing of the rest." It is upon this principle that, when the private property of the citizen is taken for public use, just compensation is to be made to him *but of the common fund*, in order that the contribution to the public interest may fall in a just proportion upon each citizen—Rutherforth, b. 2. ch. 3, s. 5. As the Legislature are necessarily the judges of the method of assessing taxes, it is to be presumed that they have regarded the rule of contribution sanctioned by justice and the equal rights of the citizen; and their enactments are not always subject to judicial review. Where they make appropriations to institutions of learning, or charity, or grant lands or pensions to persons who have served in the defence of the nation, it is presumed to be a compensation for the good that has been done or is to be done to the community. Where they grant to the same institutions or individuals an exemption from taxation, such grants, for the same reason, are not regarded as a violation of the rules of justice and equality. So long as there is no *contract* which may tie the hands of succeeding legislatures against repealing such exemptions—and so long as they are not repealed, they seem to have been enforced as a legitimate exercise of legislative power—I. S. & R. 62; 6 Watts, 435.

But where there is no pretence of an intention to equalize the taxation among the people, but an avowed purpose to sell to one class of citizens an exemption from all taxes forever, and thus to throw all the public burthens upon the other, for all time to come, it is, to all intents and purposes, imposing a tax upon them without the consent of their representatives, and is such a plain, palpable and open violation of the rights and liberties of the people—such a clear case of transcending the just limits of legislative power, that the judiciary is bound to pronounce such an act as null and void.

No class of corporations stand more need of the protection of the government, or occupy more of the time of the Legislature and the courts of justice, or occasion more expense to the government than railroad corporations.—From the extensive nature of their operations, the power to take private property for the construction of their works, and their continual collision with each other's interests, and with the interests of individuals and municipal communities, they require the constant and the energetic protection of the strong arm of the government. Withdraw that protection and they would be left to the mercy of popular outbreaks, manifesting themselves by opposition to their progress and the destruction of their works whenever the location of their roads or their depots, or any of their numerous and necessary operations come in conflict with the interests of particular localities. These corporations should be the last to consent that the government should be enfeebled by the diminution of its revenues, or to ask that it should be bound to exert all its energies, and incur large and constant expenditure for their protection while they are exempt from contributing their share.

These principles are not so infirm as to stand in need of the staff of authority for support.—They are the result of that liberty and equality which was established by the revolutionary struggle of our ancestors.

They are perfectly understood by every one who has capacity to comprehend the nature of our free institutions. They are deeply impressed on the hearts of the people, and they are fully recognised by the history, the objects and the language of our State Constitution.

The case of New Jersey vs. Wilson 7 Cranch, 164, is cited in opposition to this doctrine. It was decided without argument on the part of the State. It has relation altogether to the power of the Colonial Government, by treaty with the remnant of a tribe of Indians, who released lands claimed by them, in consideration of the grant of other lands free from taxation. The Indians occupied in some respects the condition of a separate nation. Nations are frequently obliged, for the sake of the public peace, to make concessions to each other, which could not be justified if the transaction were between a State and individuals, and if the rules which govern in the construction of the treaty making power, do not apply to ordinary contracts.—But it is a sufficient answer to this case to say that the powers of the Colonial Government of New Jersey, before our free governments were established by the Revolution of 1776, furnish no rule whatever for ascertaining the powers of the Legislature of Pennsylvania, under our present Constitution.

In the case of Gordon v. The Appeal Tax Court, 3 Howe, 142, it was "admitted by the Attorney General of the State of Maryland, that there was a contract between that State and the Banks, and that it was protected by the Supreme Court of the United States. The question of the constitutional power of the legislature to contract away the taxing power was therefore neither raised nor decided. If it had been, the question would have had relation to the powers conferred by the constitution of Maryland, and not to those by that of Pennsylvania.

The case of Hardy v. Watham, 7 Pick. 110, was that of an exemption granted by the old Colonial Ordinance of Massachusetts of 1650, and subsequently confirmed by the people in their State Constitution. A decision affirming the power of the people, when establishing their Constitution, to confirm an exemption from taxation granted to a college by an ancient Colonial law, has nothing whatever to do with the question involved in this case. That the people themselves possess this power has never been doubted. All power emanates from them.—But it is denied that they have in this State granted any such power to the Legislature.

In Atwater vs. Woodbridge, 6 Com. Rep. 223, and in Seymour vs. Hartford, 21 Com. Rep. 481, the question of the right of the Legislature to contract away the taxing power, so as to bind future Legislatures, did not arise, because the subsequent enactments were not construed or understood as a repeal of the exemptions previously granted. The intimations of the Judge in delivering the opinion in the last mentioned case, that such a power had been judiciously sanctioned go for little, particularly when we see that he deplores the exercise of such a "high act of legislative power," and declares the intention of the Court "not further to extend this exemption from taxation." The progress of the age and the experience of government enables it to see and correct the errors committed during its youth and inexperience.

In Brewster vs. Hough, 10 New Hampshire Rep., 138, it was held that "the power of taxation is essentially a power of sovereignty or eminent domain," and Chief Justice Parker in delivering the opinion of the Court, questions the power of the Legislature to make a contract by which it shall be surrendered without express authority for that purpose in the Constitution. He held that there is a material difference between the right of a Legislature to grant lands, or corporate powers, or money, and a right to grant away *the essential attributes of sovereignty*. These, he adds, do not seem to furnish the subject-matter of a contract. In these views we fully concur. The attribution of power by the States to the Union, is not in conflict with this principle, for the act of Union is but an enlargement of the political society for certain described purposes, and the power of taxation that passed to the Federal Government was but a natural and necessary sequence of it. It was not extinguished by contract, but merely transferred to another portion of the government to be *exercised* for the general welfare, under the limitations prescribed.

In general, the State Courts have avoided expressing an opinion on this momentous question, where the necessities of the case did not require it. The cases, which have arisen, have generally been disposed of by holding that "exemptions are binding until repealed by subsequent Legislation"—that "no charter or grant carries with it such exemption unless clearly expressed"—that "the taxing power is of vital importance and is essential to the existence of government"—that it is "a part of the power of legislation"—that "it resides in a government as part of itself," and that "the release of it is never to be assumed." Most of these principles are announced by Chief Justice Marshall in the Providence Bank vs. Billings, 4 Pet. 561, 562, 563, and recognised by many decisions in this and other States. 16 Barr., 442; 12 Harris, 232; 10 Harris, 400. But the question has been distinctly decided against the existence of any such power 5 different times by the unanimous judgment of all the Judges of the Supreme Court of Ohio.—Debolt vs. The Ohio Life Ins. and Trust Co., 1 Ohio State Reports, 563; The Toledo Bank vs. The City of Toledo; Ibid, 623; Mechanics' and Traders' Branch Bank vs. Debolt, Ibid, 591;—The Milan and Rushland Plank Road Company vs. Husted, 8 Ohio Rule Reports 578; the Norwalk Plank Road Co., Husted 8 Ohio State Reports, 586. In one of these cases, it was declared that the Legislature, had not the constitutional authority to abridge or in any manner whatever surrender any portion of the right of taxation, and that this question had been settled by solemn adjudication, and is not now an open question in that *State*. 8 Ohio State Rep. 581. It is true that the Supreme Court of the United States has taken a different view of the question, and has on several cases, reversed the decisions of the Supreme Court of Ohio. Piqua Bank vs. Knoop, 16 Howe, 296; Mechanics' and Traders' Bank vs. Debolt, 18 Howe, 380; same vs. Thomas, Ibid 384; Dodge vs. Woolsy, Ibid 331.

The decision of the Supreme Court of the United States, on the construction of the Constitution or laws of the United States, are binding on the State courts. The decisions of the Supreme Courts of the several States, on the construction of the Constitution and laws of their respective States, are in like manner, binding on the Supreme Court of the United States. That Court has no more right to overrule a judgment of a State Court, on a question of State law, than the State Court has to overrule the United States Court on a question of United States law. All contracts are to be construed and understood according to the law of the place where they are made and to be performed. The laws and constitution of a State are to be construed and understood everywhere according to the judicial construction which they receive in the State where they are made and are to operate. This is the rule of jurisprudence which prevails universally throughout the civilized world. It is the rule which always ought to govern, and which generally does govern the Supreme Court of the United States. Wherever there is a departure from it, the necessary result is to impair public confidence in that exalted tribunal and to introduce disastrous confusion into the administration of the law. It cannot be expected that the judges of the Federal Court should be as familiar with the constitution, laws and usages of Ohio, as the Supreme Judges of that State, who reside within her limits—who have been chosen on account of their acquaintance with her laws and whose especial business it is to expound them. The decision of the highest judicial tribunal in a State, on the construction of the State Constitution, or a State law, is authoritative everywhere, when the same question arises, because it is pronounced by the only tribunal having direct and immediate jurisdiction over the question. The decision of the United States Court on the same point, where it incidentally arises, *is not authority elsewhere, because it has no direct and immediate jurisdiction over the question. Its duty is to receive the State law as it is expounded in the tribunal of the last resort in the State.* These views furnish a plain rule for estimating the value of the conflicting decisions which have been cited. We have no hesitation in adopting the decisions of the State Courts, on all questions respecting the meaning of their own State Constitutions, and the extent of the powers which the people of the States have therein granted to the different departments of their own State governments. It may be added that the United States Court was divided in opinion on this question. Three eminent Judges of that Court dissenting, while the State Court was unanimous. And it is but just to say that the opinion of the State Court is sustained by a course of argument which has never been satisfactorily answered in the United States Courts, or elsewhere.

Chief Justice Taney, in maintaining the opinion of the United States Court, admits that that Court "*always* follows the decisions of the State Courts in the construction of their own Constitution and laws;" but he adds that, "where those decisions are in conflict, the United States Court must decide between them," and he then put the decision on the ground that the alleged contract was made "under a construction in favor of its validity which had been undisputed for nearly fifty years by every department of the government, and supported by *judicial* construction." 10 How, 411. If those were the facts of the case we find no fault with the decision, except that the *State* Court and not the *federal* Court was the proper tribunal to pronounce it. We have no sympathies with States or individuals who desire to break engagements entered into with their agents, on the ground that the latter have transcended their authority, after the principals, by acquiescence and encouragement, have induced unsuspecting parties to enter into such engagements; and invest their money on the faith of them. Common justice requires every principal to disavow the act of an agent who exceeds his authority the moment it is known. But, in the case now before us, there has been neither encouragement nor acquiescence. The unauthorized act is openly and promptly disavowed and opposed, in the mode pointed out by the constitution and the laws, the moment that an attempt is made to give it the form of a contract.

It is objected that the Governor is not subject to this form of our jurisdiction. It is far from our intention to claim the power to control him in any matter resting in Executive discretion. But the rule of law seems to be that when the Legislature proceeds to impose on an officer, duties which are purely ministerial he may be coerced by mandamus or restrained by injunction, as the right of the parties interested may require. In such a case, no individual in the land, however high in power, can claim to be above the law. This rule is sustained by the case of Marbury versus Madison, 1 Cranch, 137, Griffith versus Cochran, 5 Binney's Reports, 87, Commonwealth versus Cochran, 6 Bing. 456; Commonwealth vs. Cochran, 1 B. & R. 473. It seems to us that the sale of the property of the State at auction is not a part of the Governor's constitutional duty as Chief Magistrate. It is very probable that the Legislature have no power to impose any such duty upon him. But, if he consents to perform a ministerial act, the judicial power to administer justice and restrain against acts contrary to law cannot thereby be ousted or evaded. And if it be shown that the act under which he claims authority to dispose of the public property, or to divest private rights, is unconstitutional and void, he may, of course, like any other individual, be restrained from proceeding. But we have too much respect for the office to resort to this measure unnecessarily, and quite too much respect for the incumbent to suppose that any such proceeding will be necessary after the opinion of the Court is pronounced.

There is no constitutional objection to the repeal of the tonnage tax, or any other tax, whenever the Legislature, in the exercise of their discretion, shall think proper to pass such a law. The objection is to the sale of the taxing power in such a way as to put the resources of the State out of the reach of future legislatures, should the public necessities require a resort to them.

There is no legal objection to the sale of the Main Line, nor to the right of the Pennsylvania Railroad Company to become a competitor and purchaser, upon equal terms with every other person or corporation. The objection is to that part of the proviso, in the third section of the act of 16th May, 1857, which requires the Pennsylvania R. R. Co. to bid $1,500,000 more than any other bidder, and in consideration thereof, proposes to release the said Company, and also the Harrisburg, Mt. Joy and Lancaster Railroad Company forever, from the taxes therein stated. The injunction is to be awarded merely to prohibit a sale of the Public Works upon these terms. All other parts of the act are constitutional, and there is nothing to prevent a sale to the Pennsylvania Railroad Company, or any other corporation or person or persons, under the general provisions of the act.

ORDER.—It is ordered that upon the complainants, or either of them, filing a bond in the penal sum of one thousand dollars, with sufficient sureties, to be approved by this Court, or any Judge thereof, conditioned to indemnify the defendants from all damages that may be sustained by the injunction granted on this motion, an injunction be awarded, commanding the Pennsylvania Railroad Company and its officers and agents named as defendants in this bill to make no bid for or purchase of the Main Line of the Public Works under that part of the proviso in the third section of the act of 16th of May, 1867, which requires the said Company to pay in addition to the purchase money at which the Works may be struck down, the sum of one and a half millions of dollars, and in consideration thereof assumes to discharge forever the said railroad company, and also the Harrisburg, Portsmouth, Mt. Joy and Lancaster R. R. Co., from the payment of all taxes upon tonnage and freight over said railroads; and also to relieve the said Pennsylvania R. R. Co. from the payment of all other taxes or duties on its capital stock, bonds, dividends or property, except for school, city, county, borough or township purposes. And also commanding the said Pennsylvania Railroad Company, and its officers and agents aforesaid, strictly to abstain from accepting any assignment on the terms stated in the aforesaid part of the said proviso, or executing, or delivering to the Treasurer of the State any bonds of the said company, for any greater amount than the sum at which the Main Line of the Public Works may be struck down at a public sale, on a fair and equal competition with all other bidders.

And also commanding the said Pennsylvania Railroad Company, and its officers and agents aforesaid, strictly to abstain from accepting any transfer of the said Main Line of the said Public Works from the Secretary of the Commonwealth, under the great seal of the State, founded upon, or in consideration of any purchase upon the terms herein prohibited. And also commanding Henry S. Magraw, the Treasurer of the State, strictly to abstain from accepting the delivery of any bonds executed by the said Pennsylvania Railroad Company upon the terms herein prohibited, or for any greater amount than the sum at which the said Main Line of the Public Works may be struck down at a fair public sale of the same, upon equal terms to all persons and corporations desiring to purchase.—And also commanding Andrew G. Curtin, Secretary of the Commonwealth, strictly to abstain from making any transfer of the said Public Works, under the great seal of the State, upon the terms herein prohibited; or for any greater amount than the sum at which the said Works may be struck down at a fair public sale as aforesaid.

This Injunction to remain in force until hearing, or the further order of this Court.

ORIGIN OF MILLS.—In early ages, corn was planted in mortars by hand. Solomon alludes to that custom, when he says: "Though thou shouldst bray a fool in a mortar with a pestle among wheat, yet will not his foolishness depart from him." The hand mills, of later times were of very simple construction, and were operated principally by women. In process of time, shafts were added to these machines, and they were worked by cattle. Water mills were invented about the time of Julius Cæsar, but they did not come into general use till A. D. 400. It is supposed that wind-mills originated in the east and were introduced into Europe by the Crusaders. This, however, is doubted, as such mills were in use in Europe as early as the first Crusade. Feudal lords claimed the privilege of erecting all corn mills and requiring their vassals to grind at their mills, called *ban-mills*. The building of such mills was then very expensive, and none but lords and barons could afford the expense; hence they claimed all tools, from their dependants, by way of remuneration. At one time the monks of Holland desired to erect a wind-mill for their own convenience