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OFFICIAL.

LAWS OF THE UNITED STATES.

Passed at the Second Session of the Thirty-seventh Congress.

[PUBLIC—No. 138.]

AN ACT to amend an act entitled "An act to prohibit the sale of spirituous liquors and intoxicating drinks in the District of Columbia in certain cases," approved August fifth, eighteen hundred and sixty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person offending against the provisions of the act entitled "An act to prohibit the sale of spirituous liquors and intoxicating drinks in the District of Columbia in certain cases," approved August fifth, eighteen hundred and sixty-one, may be tried before any justice of the peace for the District of Columbia, and, upon conviction, shall pay a fine of twenty dollars, or in default of such payment shall be committed to the jail in Washington county, in the District of Columbia, for thirty days.

Sec. 2. *And be it further enacted,* That any person licensed, or who shall hereafter be licensed, to sell spirituous liquors or or intoxicating drinks within said District, who shall suffer or permit any soldier or volunteer in the service of the United States, or any person wearing the uniform of such soldier or volunteer, to drink any spirituous liquor or intoxicating drink upon his premises, shall be deemed guilty of the same offence mentioned in the act hereby amended, and upon conviction before any justice of the peace as aforesaid shall be punished in the manner prescribed by this act.

Sec. 3. *And be it further enacted,* That any person convicted under the provisions of this act, and the act hereby amended, shall forfeit his license to sell spirituous liquor and intoxicating drink; and any license thereafter granted to any such person during the continuance of the existing rebellion shall be void.

Sec. 4. *And be it further enacted,* That all fines collected under the provisions of this act and the act hereby amended shall be paid to the Levy Court of Washington county, in the District of Columbia, for the use of said court.

Approved, July 14, 1862.

[PUBLIC—No. 139.]

AN ACT to further provide for the collection of the revenue upon the northern, northeastern, and northwestern frontier, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of October next the master or manager of every vessel which is enrolled or licensed for carrying on the coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall, before the departure of his vessel from any port, file a manifest of his cargo with the collector and obtain a clearance; and if said vessel shall touch at any of the ports of the United States, and there receive on board any goods, wares, or merchandise, or discharge any portion of her cargo, the master or manager shall report to the collector such arrival and produce his manifest, and it shall be the duty of the collector to indorse thereon, certified by himself, a description of the goods, wares, or merchandise so taken on board or unladen, and return the same to the master or manager, who shall deliver to the collector of the port at which the unlading of the cargo is completed, the manifest to be placed on file in his office. And the owner or owners of every vessel whose master or manager shall neglect to comply with the provisions of this section shall forfeit and pay to the United States the sum of twenty dollars for each and every offence, one-half for the use of the informer, and for which sum the vessel shall be liable, and may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction of the offence.

Sec. 2. *And be it further enacted,* That collectors and surveyors of the collection districts on the said frontiers are authorized to keep on sale, at their several offices, blank manifests and clearances required for the business of their districts, and to charge the sum of ten cents and no more for each blank which shall be prepared and executed by them.

Sec. 3. *And be it further enacted,* That goods imported under the reciprocity treaty with great Britain may be entered at any port on the northern, northeastern, and northwestern frontiers of the United States, upon satisfactory evidence being given to the collector at the port where such goods are offered for entry, that they are of the growth or production of Canada, without the consular certificate now required.

Sec. 4. *And be it further enacted,* That for every entry of goods at any custom-house on the northern, northeastern, and northwestern frontiers of the United States a fee of forty cents shall be charged by the collector and accounted for to the Government.

Sec. 5. *And be it further enacted,* That the Secretary of the Treasury be and he is hereby authorized in all cases where ports may be opened within the limits of insurrectionary States, during the existing rebellion, to appoint special agents to perform the functions of the ordinary officers subordinate to the Treasury Department at such ports: *Provided,* That the compensation to be allowed such temporary officers shall not exceed that paid to permanent officers of the same position during the year eighteen hundred and fifty-nine, nor exceed the compensation ordinarily allowed to such official agents.

Approved, July 14, 1862.

[PUBLIC—No. 140.]

AN ACT in relation to the election of representatives to Congress by single districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in each State entitled in the next and any succeeding Congress to more than one representative, the number to which such State is or may be hereafter entitled shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which said State may be entitled in the Congress for which said election is held, no one district electing more than one representative: *Provided,* That the provisions of this act shall not apply to the State of California so far as it may affect the election of representatives to the thirty-eighth Congress: *And provided further,* That in the election of representatives to the thirty-eighth Congress from the State of Illinois the additional representative allowed to said State by an act entitled "An act fixing the number of the House of Representatives," from and after the third of March, eighteen hundred and sixty-three, approved March fourth eighteen hundred and sixty-two, may be elected by the State at large. And the other thirteen representatives to which the State is entitled by the districts as now prescribed by law in said State, unless the Legislature of said State should otherwise provide before the time fixed by law for the election of representatives therein.

Approved, July 14, 1862.

[PUBLIC—No. 141.]

AN ACT to establish additional post routes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following be established as post roads:

CALIFORNIA.

From Carson, Nevada Territory, to Aurora, California.

From Ione City, via Lancha Plana, Poverty Bar, Jenny Lind, Brushville, Salt Spring Valley, Copperopolis, O'Byen's Ferry, and Jefferson, to Sonora.

DELAWARE.

From Townsend, via Black Bird, to Deakynesville.

MASSACHUSETTS.

From Hancock to Lanesborough.

INDIANA.

From Grandview, via Newtonville, Buffaloville, Santa Claus, and Morgan Hill, to Ferdinand.

From Madison, via Brooksburg and Braytown, to Mount Sterling, and thence via Howe and Mannible to Madison.

From Freedom, in Owen county, in Indiana, by way of Arney, intersecting the present established route at Hannersville.

From Harrison, Ohio, to Mount Carmel, Indiana.

From Ogden to Rushville.

From Sullivan, via Merom, Indiana, and Palestine, Illinois, to Robinson, Illinois.

From New Point, (Rossburgh Post Office,) via Saint Maurice, to Clarksburgh.

From Waterloo City to Angola.

From Bremen, via Hepton and Millward to Leesburgh.

ILLINOIS.

From Metamora, via Low Point and Washburn, to Lacon.

From Toulon, via Elmira, Osceola, and Neponset, to Sheffield.

From Shelbyville, via Holland, Accommodation, and Mowkison, to Fremanton.

MAINE.

From Wilton to Weld.

MICHIGAN.

From Frankfort, via Benzonia, to Traverse City.

From Ionia to Stanton.

From Middleville to Wayland.

From Miles, via Berrien Centre, Berrien Springs, Eau Claire, Pipestone, and Sodus, to Said Joseph.

IOWA.

From Des Moines, Polk county, to Dalmanutha, Guthrie county.

From Decatur City, via Terrehoute, Decatur county, to Eagleville Harrison county, Missouri.

MISSOURI.

From Perryville, via Brible's Store and Stamer's Mill, to Greene.

From the old depot of the North Missouri Railroad Company, in First street, Saint Louis, via the railroad track, through blocks two hundred and thirty-four and two hundred and thirty-three, and along Lewis street, as the railroad has been located by the Government of the United States, thence through block two hundred and twenty-seven, to Front or Levee street, and along said track laid on said street to the depots, respectfully, of the Pacific and Iron Mountain railroads.

MARYLAND.

From Fallston to Pleasantville.

From Berkleyville to Hempstead.

NEW HAMPSHIRE.

From Union, via Wakefield, North Wakefield, Wolfborough, Ossipee, Ossipee Centre, and Effingham Falls, to Freedom.

From Greenfield, via Bennington, to Antrim.

NEW YORK.

From Bloomingdale to Brighton.

OHIO.

From Cherry Valley, via West Andover, Ohio, to Espyville, Pennsylvania.

From Cold Water to New Bremen.

PENNSYLVANIA.

From Barnesville to Mahonoy City.

From Pine Grove, via Freidensburg, to Schuylkill Haven.

From Easton, via Martin's Creek, Boston, and Mount Bethel, to Dill's Ferry.

From Miltonberger's, via Philip Kresge's to Tannersville.

From Moscow, via Slote's Corner's Dalesville, and Springbrook, to Pittston.

From Centreville, via Bovard's Mills, to Annandale.

From Warfordsburg, via Mount Airy, Emmaville, and Cherry Grove, to Bloody Run.

From Brickerville, via Eberly's store and Lincoln, to Ephrata, Lancaster county.

VERMONT.

From Boston Landing, via Coventry and Salem, to Newport.

From Chelsey to Williamstown.

COLORADO.

From Denver, via Burlington and Laporte, to Fort Larinte.

From Cache Creek, via Poncha Pass, to Conejos.

From Colorado City to Russellville.

From Pueblo, via Huerfano to Trinidad, on the Purgatorie.

From Cannon City, via the Arkansas, Route and Pass, to Camp Crittenden, in Utah Territory.

WASHINGTON.

From Walla-Walla to Fort Colville.

From Vancouver City to Walla-Walla.

From Fort Madison, via Muckellre, Atwatsidi, to Coveland.

Approved, July 14, 1862.

[PUBLIC—No. 142.]

AN ACT concerning the courts of the United States in and for the district of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in addition to the courts now provided by law to be held in the district of Michigan, a general term of the circuit court of the United States for said district of Michigan shall be held annually at the court-room in the city of Detroit on the second Monday of February, and that all writs, bills, pleas, suits, appeals, recognizances, indictments, and all other proceedings, civil and criminal, shall be proceeded with as said term in like manner as now at the June and October terms of said court.

Approved, July 14, 1862.

[PUBLIC—No. 143.]

AN ACT to extend the territorial limits of Territory of Nevada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, namely: beginning at the point of intersection of the forty-second degree of north latitude with the thirty-eighth degree of longitude west from Washington; thence running south on the said thirty-eighth degree of west longitude until it intersects the northern boundary line of New Mexico; thence due west to the thirty-ninth degree of longitude west from Washington; thence with said thirty-ninth degree north to the intersection of said forty-second degree of north latitude; thence east with said forty-second degree of north latitude to the place of beginning, be and the same is hereby attached to and made a part of the Territory of Nevada, subject to the limitations, restrictions, and provisions of the act organizing the Territory of Nevada.

Approved, July 14, 1862.

SOLAR OIL WORKS COMPANY, of PENNSYLVANIA. Office, St. Clair Street, Coal Hill Bridge. Buy and sell CARBON OILS on commission—cash or time. CRUDE OILS, of all descriptions, wanted. Address J. WEAVER, Jr., Secretary and Treasurer. my15dam

GOTHIC CHIMNEY TOPS received and for sale by HENRY H. COLLINS.

Pittsburgh Gazette.

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WEDNESDAY MORNING, SEPT. 24.

The Capture of Mobile.

This is not as yet announced as a fact achieved, but a correspondent of the New York *Times*, in a letter written on board the gunboat Cayuga, one of the blockading squadron off Mobile Bay, says that operations looking to the capture of Mobile are to be commenced at once. It is considered essential at all events, if the blockade is to be maintained, that the forts at the entrance of the harbor should be in our possession, as the coming storms of that locality will render it impossible for our fleet to be effective outside. The forts once in our possession, approaches will be made to the city in such a manner as to insure its capture, in spite of the formidable obstructions in the harbor, iron-clads, rams, &c., and the shore batteries, said to command all points of approach. Mobile in our hands, Montgomery on the Alabama river, and Tuscaloosa on the Tombigbee, must soon follow—thus giving us possession of the railroad system between the Eastern and Western States of rebeldom.

Meeting of the Governors.

The Governors of Maine, New Hampshire, Massachusetts, Rhode Island, and we believe of one of the other New England States, have arrived in this city, on their way to Altoona, Pennsylvania, to attend the convention of loyal Governors about to assemble at that place to deliberate on the condition of our affairs, and to unite on counsels to be laid before the President.—*N. Y. Eve. Post, Monday.*

The above paragraph, from the New York *Evening Post*, shows that New England will be well represented at the meeting of the Governors. How it will be as to the Western and other States we have no means of forming any opinion. What the special purpose of the meeting is, is equally a matter of uncertainty. We incline to think, however, that the President has "stolen a march" upon the Governors, by his proclamation of yesterday, and that they will have much less to suggest than when the meeting was called. But, be this as it may, the meeting can do no harm, and possibly it will find some good to do.

—We announced yesterday that Gov. MORTON, of Indiana, would pass through Pittsburgh this afternoon, on his way to Altoona. We look for a good gathering at the depot, when the Western train arrives, as our people have long held the name of Governor MORTON in honor, for his distinguished services in the public cause ever since the war commenced.

The Retreat Into Virginia

There are two ways of looking at the retreat of the rebels into Virginia. Thus, for instance, the well-posted correspondent of the New York *Times* in Washington writes:

The result proves that there was no great risk run by them in this expedition, inasmuch as they always had a safe back door, obligingly left open by us, to facilitate their escape; while the *possibility* that a chance might offer to strike Washington or Baltimore, was enough to stimulate them to effort. That they are greatly the gainers by the operation *thus far*, I think no one can doubt. They have made it, at one and the same time, an insult, a raid and a *reconnoissance* in force. The invasion has increased their self-confidence; the raid has supplied their ragged and starving cohorts with clothes, shoes and rations; and the *reconnoissance* has pretty accurately revealed to them the numbers and condition of our troops in the East. With these results they can afford to fall back upon their base at Winchester and invent a new combination, while we are congratulating each other upon their discomfiture.

On the other hand, "Occasional," in the Philadelphia *Press*, says:

Lee had barely time to look from the mountain—he could see, but he could not enter the promised land. He aspired to be the Joshua, but he is not even the Moses of the rebellion, for when he turned away from the hills of the Monocacy, it was never again to look upon them, except as a prisoner or a fugitive.

He goes back to Virginia, a baffled, beaten, wretched adventurer. He goes back to Virginia with the curses of dishonored Maryland following him, and the curses of his outraged and bleeding mother-State greeting him everywhere. He goes back trailing in the dust the banners which he had so proudly flaunted over his legions.

Why the Rebels Fight Desperately.

The desperate bravery of the rebels has been the subject of remark to many who have witnessed their fighting. A correspondent of the New York *Tribune*, who was in the late battle near Sharpsburg, says:

The rebels fight with perfect self-devotion. As long as their officers will lead them and command them, the rebel rank and file will obey in anything possible to self-sacrifice, while they have breath. It is not for love, however much as they profess it, of the cause. It is for *hate*, in part, of the d—d Yankees. They have been educated to hate us for generations by all the art and assiduity of their subtle masters, the slaveholders. But mainly it is in slavish fear of their officers. They are ruled with the most rigid tyranny, and the least infraction is visited with the speediest and cruelest repression.

A rebel soldier was set upon and abused by his company officer in the street of Middletown, before we drove the last of them out. The soldier presumed to say that if his colonel were there he would not treat him that way; and the officer cut him in the neck with his sword, gagged him, and had him bound upon his back on a carriage wagon and dragged off! We may guess that it is much safer to fight stubbornly under such discipline than to shirk. Straggling is certain death. Desperate fighting gives nine chances to one for his life, though it may have to be dragged out upon one leg.

WHEN GENERAL RENO fell, Gen. Sturges was within a few yards of him. He was in command of the division formerly commanded by Reno, increased by several new regiments, and the men had just distinguished themselves in driving the rebels from the summit of the Blue Ridge. These generals were bosom friends; had been classmates at West Point, and graduated together. When Reno fell, Sturges ran to his assistance, had him picked up, and said, "Jesse, are you badly wounded?" To which he replied, "Yes, Sam, I am a dead man." Gen. Sturges had him placed upon a litter and carried to the rear, where he died in an hour. His last words, before leaving the battle field, were, "Boys, I can be with you no longer in body, but I am with you in spirit."

THE NEWS of the great battles in Maryland will reach Europe sooner than is generally believed. The steamer City of New York, which sailed on Saturday week, passed Cape Race on Wednesday evening. She was boarded by the news yacht, and dispatches were handed in containing announcements of rebel victories. They will thus be known in Europe in about a week from their occurrence.

After the Battle--The Events of Thursday.

The following letters from the battle-field will give our readers a view of what follows even a victory:

ON THE FRONT, Sept. 13, 1862—10 P. M.

A day of rest—such rest as can be found with three miles of dead men to bury, and thousands of wounded to bring from the field. A day of standing on the line where the battle closed—of intermittent sharpshooting, occasional discharges of artillery, but no general skirmishing—no attempt to advance on either side.

The enemy is still here, apparently in strong force. Sorely pressed back yesterday, to-day he could not attack, and we have not. This morning, with the fresh arrivals, and one full corps not engaged yesterday, we could have thrown thirty or forty thousand new men into action. We have been waiting, it is said for the troops to rest, for some kinds of exhausted ammunition to come forward, for reinforcements to arrive. The troops are rested, the ammunition is received, the reinforcements are here.

The newly arrived divisions are sent up to the front; to-night, we have planted new batteries, and the general better is that we attack in the morning. Will the enemy be here for another life-or-death struggle, or will he adopt his old policy, and improve the leisure we have given him, by stealing away in the night? He has no empty breastworks with which to endow us, but he can leave us a field ploughed with shot, drenched with blood, and thick with dead.

"A great victory," said Wellington, "is the most awful thing in the world except a great defeat." If yesterday's battle was not a great victory, at least it had all the terrific features of one. Our loss in Generals is unparalleled; and the Commander-in-Chief estimates the total of our killed and wounded at 10,000.

Many of the wounded have been taken back to Frederick, 18 miles. Keedysville and Boonsborough, with every house and barn in the adjacent country, are full of them; and large numbers are carried to Hagerstown, whence they will be carried by railroad to Harrisburg, Philadelphia, and New York.

On the whole our troops behaved admirably. No great army ever did better. Every loyalist who saw how steadily and solidly they moved forward to encounter that terrific storm of iron and lead felt his heart swell with pride.

The opportunity for seeing the battle was unparalleled. A single stand-point commanded nearly the whole field from dawn to dark. No one who looked upon that wonderful panorama can describe it; neither can any who saw forget. Contrary to his usual policy, the enemy met us in open country, and he was pressed back. But every hill and valley, every corn-field, grove, and cluster of trees was fiercely fought for.

The artillery was unceasing; we could often count more than 60 guns to the minute; and the musketry was like the patter of raindrops in an April shower. On the great broken field were riderless horses and scattering men; clouds of dirt from shot and exploding shells, long dark lines of infantry swaying to and fro, with columns of smoke rising from their muskets—with flashes and white puffs from the batteries—with the sun shining brightly on all this scene of tumult, and beyond it, upon the dark, rich woods, and the clear blue mountains, flows the Potomac.

Amid all the screaming of shot, and thundering of cannon, and whistling of balls, with the fearful carnage they brought, I saw no considerable breaking among our troops, save with several new regiments of French's division, in Sumner's corps. They fell back in confusion, losing considerable ground. True, it was ground we had won from the enemy; and Franklin afterward recovered the most of it, but not all. A narrow strip is still within the rebel lines, and more remains disputed territory.

To-day on the front has been devoted mainly to the burying of the dead. In front of Richardson's (now Hancock's) division, at 4 p. m., a flag of truce was raised, and the sharpshooting ceased. On the debatable ground between our line and the enemy's, Gens. Hancock and Meagher rode over into a cornfield and met Gen. Roger A. Pryor. Pryor stated that the flag had been raised by us, and asked if we desired permission to take off our dead and wounded. Our Generals indignantly denied that the signals for a truce came from us, as we claimed the ground. They informed Pryor that we had been engaged during the whole day in bringing off and caring for both our wounded and his, and suggested a cessation of sharpshooting until all the suffering could be removed. This he declined, though the ground is so exposed to our advance that the rebels' line made no attempt to bring in their wounded, and in two minutes the firing ceased.

In front of Couch's lines, by common consent, both the rebels and our own soldiers were mingling freely, taking away the wounded. One of our regiments was within a quarter of a mile of a rebel battery, and the ground near it was covered with spectators from our lines. Whenever the enemy detected any one using a field glass on his camp or battery, his sharpshooters would at once re-open notwithstanding the informal truce.

The Crowning Error.

The crowning error of the Government is, not that it appointed "educated military men" of West Point graduates—to the command of our armies; but that, when these men proved their incapacity, it did not at once and summarily remove them to make way for their successors, to be proved in their turn. The natural course for the President and his Cabinet, in the hour of danger, was to turn to these very men; prudence demanded, the country expected, and the Government did it. But here is the fault—the supposition that every graduate of the Military Academy was fit for an important and responsible command—an error so grievous that it has cost the country more than five hundred millions of money, and the lives of more than one hundred thousand men. The root of the evil is in the belief that generals—by Generals we mean great commanders—are made, not born. Not one has been made since the world began. The genius for command is as much a part of the natural endowment of the successful General, as the sense of harmony and time is the gift of him who excels in music; and it is just as much impossible to make a successful commander out of one who lacks this fundamental and natural qualification, as for a pupil, who is insensible to time and harmony, to be educated into a Mozart or Beethoven. No culture can confer upon anybody the quick eye, the instantaneous judgment, the power of weighing force and resistance, the capability of instant and decisive action, the correct topographical sense, and the moral power necessary for a Turenne or a Napoleon. Where these gifts are congenial, cultivation will improve and strengthen them and subordinate them in their proper order and relation; but all the professors that ever taught cannot create them. Hence, when the boy who went to West Point without them graduates, the honors conferred upon him by reason of his technical studies are no evidence that he ought ever to rise higher than a captain of a company by a colonel of a regiment—no matter what the extent of his theoretical acquirements. Most military graduates of the Academy are well learned in the details of their profession—the branches which qualify them for places in the engineering or ordnance departments of the army, and for drill masters of regiments and companies. They can calculate the explosive force of powder, the force and velocity of projectiles, the advantages gained by the use of rifled guns and conical shot, in preference to the smooth-bore and the spherical ball. They know fortification as a science, whether field or permanent; they study and master the duties of the quartermasters and commissaries offices; they are familiar with the construction and defense of camps, and can mathematically determine, and no doubt correctly, most military questions that mathematics can solve. But most of their studies are technically and preparatory, that hardly do more toward making a commander, than a knowledge of the construction of a piano or a violin will do toward making a musician. They may create and organize armies; but to conquer with them is quite another thing—a thing which the schools cannot teach. These are the facts that the Administration has forgotten, and these are unquestionably the cause of all our woes. By and by the reform will come, and the great Commander will be found.—*Chicago Tribune.*

Important Decision.

The following highly important opinion was delivered in the Court of Common Pleas, this morning, by Judge Sterrett. The points involed are interesting to every tax payer in the county, and are fully set forth in the opinion:

Commonwealth ex. rel. The Western State Penitentiary vs. Aaron Floyd, Treasurer of the County of Allegheny, No. 340, October Term, 1862, Rule for Mandamus, &c.

This is a rule on the respondent to show cause why a *mandamus* should not issue, commanding him to pay a warrant for $1,440 88-100, dated February 19, 1862, drawn by the Commissioners, and countersigned by the Controller of Allegheny county, in favor of the relator, for expenses of keeping the convicts of the county in the penitentiary.

All the requirements of the law, in relation to the presentation and approval of the relator's account—the drawing of the warrant therefor, &c., appear to have been strictly complied with. On the 18th day of July, 1862, the warrant was presented to the Treasurer, and payment thereof demanded. He refused on the ground that all the money in the treasury was held by virtue of *mandamus* executions, issued by the Circuit Court of the United States for the Western District of Pennsylvania, on judgments obtained against the county for arrears of interest on bonds executed by the County Commissioners in favor of certain railroad companies—which writs were served on him before the warrant in question was presented.

In his answer to the rule the respondent admits, that, at the time the warrant was presented to him, he had funds of the county sufficient to pay the same—that he has since received, and now has money—levied and collected for the purpose of defraying the ordinary expenses of the county sufficient to pay the warrant, but not enough to pay it and the writs of the Circuit Court.

The question thus presented is, whether the *mandamus* writs of the United States Court are entitled to payment out of the funds on hand, in preference to the warrant of the relator.

The writs of the Circuit Court were issued under a rule of that Court, adopting, as part of its civil process, the 6th and 7th sections of an act, relative to actions by and against counties and townships, approved April 15th, 1834. Consequently they have just the same force and effect as similar writs issued by the State Courts. The 6th section of the act is as follows, viz:

"If the judgment shall be obtained against a county in any action or proceeding, the party entitled to the benefit of such judgment may have execution thereof, as follows, and not otherwise, viz: It shall be lawful for the Court in which such judgment shall be obtained, &c., to issue thereon a writ commanding the commissioners of the county to cause the amount thereof, with interests and costs, to be paid to the party entitled to the benefit of such judgment, out of any moneys unappropriated of such county; or, if there be no such moneys, out of the first moneys that shall be received for the use of such county, and to enforce obedience to such writ by attachment."—Purdon, 172.

According to the plain reading of the act, it might well be questioned whether it was ever intended to authorize the issuing of a *mandamus* writ against the County Treasurer, or any other officer not named in the act; but the Supreme Court in Monaghan vs. The City of Philadelphia, 4th Casey, 297, has intimated that it may be done; and it is said in that case that, "although cities are not expressly named, yet they are clearly within the spirit of the act," and consequently a mandatory writ may be directed to a city treasurer, or other officer having the custody and control of municipal funds. For the purpose of this case, then, we may assume that the mandatory writs were properly directed to the County Treasurer.

The claim of the relator is one of the highest order. It is in fact a debt due the Commonwealth herself. The Treasurer of the Penitentiary is but a trustee for her use; and though in the suit is in the name of the Western State Penitentiary, the Commonwealth is the actual party, and entitled to insist on her prerogative. Commonwealth vs. Baldwin, 1 Watts, 56. It is well settled that a claim of the Commonwealth cannot be affected either by the statute of limitation or a certificate of bankruptcy, 6 Barr, 293—10 Barr, 468.

In *Commonwealth vs. Baldwin*, it was held that the lien of a judgment in favor of the Commonwealth is not barred by lapse of time. An action of debt, for $10,200, was commenced against Baldwin in 1810, and the defendant confessed judgment in April, 1816, at which time he was seized of lands which subsequently, in September of the same year, he mortgaged to the Bank of Pennsylvania. Upon the sale of these lands in 1830, the money was brought into Court for distribution. It was held that the lien of the Commonwealth was unaffected by lapse of time, and the judgment was paid out of the fund. In this case, as well as others that might be cited, the exemption of the Commonwealth is put on the ground of her prerogative as a sovereign; and in delivering the opinion of the Court, Chief Justice Gibson remarks that without pretending to fix its limits in all cases, it may safely be asserted that this prerogative is a principle of government and a part of the law of the land.

Upon the principle pervading these cases, therefore, it would seem that the claim in this case occupies a higher position than an ordinary debt against the county.

Again, we think it is distinguished from ordinary claims against the county, by the act of April 23d, 1829, in relation to the Eastern and Western Penitentiaries, which directs that the expenses of keeping the convicts shall be borne by the respective counties in which they shall be convicted. The 9th section, among other things, makes it the duty of the Treasurer to accept orders and make provision for the payment of these expenses. It requires the Inspectors of the Penitentiary to furnish the County Commissioners annually, on or before the first Monday of February, with a probated account of the expenses; and the Treasurer, upon receiving notice of the amount from the Commissioners, is required to collect and retain money to pay the same when the order therefor is presented. It also provides that the order shall not be presented to the Treasurer before the first Monday of May." Purdon, 649, 315.

The provisions of this section are somewhat modified by "an act relating to Allegheny county," approved May 1st, 1861, which requires that all accounts and claims against the county, shall first be presented to and approved by the Controller; but the duty of the Treasurer, under the former act, "to collect and retain moneys, for the payment" of warrants, drawn for the expenses of keeping convicts, remains the same. The act, in effect, appropriates the necessary amount for that purpose.

In view of the character and position of the demand in this case, and the provisions of the act requiring the payment of such claims, we are of opinion that it was the duty of the Treasurer to retain sufficient funds and pay the warrant in question, notwithstanding the writs of special *Fieri Facias* issued by the Circuit Court.

This might be sufficient to dispose of the case, but one or two other positions, in support of the rule, may be briefly noticed.

It is claimed that funds necessary to defray the ordinary and current expenses of the county should not be withdrawn from the treasury by *mandamus* executions. There are strong reasons as well as authority for this position. If all the funds in the treasury can be thus withdrawn—leaving nothing to pay jurors, the expenses of the jail and convicts in the penitentiary, and other indispensable current expenses—how is the administration of public justice to be maintained and the machinery of the county government to be kept in motion? It cannot be done. The necessary funds are just as indispensable to the existence of the government as food is to the support of animal life. If the rolling stock and whatever else is necessary to the successful operations of railroads, is held to be exempt from seizure and sale, on the ground of public interest and convenience, should not a similar protection, to a reasonable extent, be given to the treasury of a municipal government. But we are not without authority on this point. So far as our Courts have indicated any opinion on this subject, it has been in favor of considering the ordinary current expenses as having the first claim upon the treasury. 6 *Binney* 5.

Commonwealth Ex. Rel. Price vs. the Commissioners of Philadelphia, 1 Whart. 1.—A rule was granted to show cause why a mandamus should not issue, commanding the commissioners to draw an order in favor of the relator for damages assessed in the opening of certain streets. The substance of the commissioners' answer to the rule was, that all the funds in the treasury were required to defray the ordinary current expenses of the county, and that they did not consider it their duty, as public agents, to continue drawing warrants upon a treasury which they know to be in effect empty. The court, in discharging the rule and refusing the writ, says: "It appears by the affidavit of the commissioners that there is no money in the treasury, except that which is wanted to defray the ordinary and current expenses of the county. The writ of mandamus is not of course. It will be granted when a plain case of necessity is shown, and where, in the discretion of the court, it appears to be advisable. In this case we should probably stop the wheels of the county government, if a mandamus were allowed."

Again, in *Commonwealth vs. The Commissioners of Philadelphia County*, 2 Whart. 290—A similar rule was taken, to which the Commissioners, among other things, answered "that there is no money in the treasury which is not wanted to defray the current expenses of the county, and that there is not sufficient even to defray them." The Court, in deciding that the answer on this point was sufficient, says "the County Commissioners must exercise a sound and just discretion in reserving money to defray the current expenses of the county, because they are of the first importance to the welfare of the public."

We are not aware that these cases have ever been overruled; on the contrary, the principle involved in them has been affirmed whenever the question has properly arisen. In Larimer, for use vs. Pitt Township, the same doctrine was held by the District Court of this county, in a very able opinion, not published. It was there held that, notwithstanding a *mandamus* execution under the act of 1834, against the Auditors of the township, they were fully justified in paying out money of the township, for the support of the poor—repairing highways, and other necessary expenses, and the Court refused to attach them.

Again, it may well be questioned whether money, levied, as our county taxes are, for the express purpose of defraying certain specified current expenses of the county, can be treated as "*money unappropriated of the county*," except where there is an excess, not required for the payment of the objects included in the estimate. The law requires that near the close of each year "an estimate of the probable expenses of the county for the ensuing year, shall be made. This estimate contains the several items of ordinary current expenses of the county, such as repairs of public buildings, jurors' fees, jail expenses, keeping convicts in the penitentiary, etc., and upon it the tax is levied. It would perhaps not be a strained construction to hold that the several sums, thus designated, are, in effect, set apart—*appropriated* to the particular objects named, and that they should not be diverted to objects not embraced in the estimates. Any other construction would render any appropriation—except by actual payment from the Treasury—impossible. In other words, it would render any appropriation of the moneys of the county impossible.

We leave this question, however, as one worthy of consideration when it properly arises. For the reasons, before given, viz: The nature of the debt, and positive directions of the act as to its payment, and the exemption from seizure, on grounds public policy, of money required for current expenses of the county, we are all of opinion that the writ should be awarded.

And now, Sept. 23, 1862, this cause having been argued by counsel, and duly considered, the rule is made absolute, and an alternative *mandamus* awarded—returnable the 1st Monday of October next.

The Proposed Extension of the Cleveland Railroad---Important Opinion.

The following opinion, in the matter of the Petition of the Cleveland and Pittsburgh Railroad Company, for the appointment of Viewers to assess damages to the Pittsburgh, Fort Wayne and Chicago Railway Company, in the extension of the track of the petitioners, from Rochester to this city, was delivered in the Court of Common Pleas this morning, by Judge Ritchie:

In the matter of the Petition of the Cleveland and Pittsburgh Railroad Company for appointment of Viewers. No. —, October Term, 1862.

The petition in this case sets forth that the petitioners have located, marked, etc., a route for a railroad, in pursuance of the act of incorporation, and of the laws of Pennsylvania, from the line between Beaver and Allegheny counties, to the property of J. & H. Phillips, near Manchester, in Allegheny county; that "said route is located partly on lands the fee simple of which is in the Pittsburgh, Fort Wayne and Chicago Railway Company, and in other places partly on lands which the said Pittsburgh, Fort Wayne and Chicago Railway Company allege are embraced in their rights of way; but that the lands thus owned or claimed by the said Pittsburgh, Fort Wayne and Chicago Railway Company, over which the route of the petitioners' road is located, is not necessary for the uses and purposes of said Pittsburgh, Fort Wayne and Chicago Railway Company."

The petition states also that petitioners have not been able to agree with the Pittsburgh, Fort Wayne and Chicago Railway Company, as to the compensation for damages, etc., and asks the Court to appoint Viewers to estimate the damages, etc., under the provisions of the 11th section of the act of Assembly of 19th February, 1849, regulating railroad companies, Pamph. Laws, 84.

On part of the Pittsburgh, Fort Wayne and Chicago Railway Company it is alleged that all the lands and rights of way owned by them "are necessary for the uses and purposes, present and prospective, of their road. The Pittsburgh, Fort Wayne and Chicago Railway Company also deny that the petitioners have any authority, by virtue of their charter and the laws of Pennsylvania, to construct a railroad over and upon the premises and property described in their petition. The Pittsburgh, Fort Wayne and Chicago Railway Company further allege that prior to the 19th day of April, 1853, they had constructed and were using, under and in pursuance of their charter and the laws of Pennsylvania, a railroad over and along property which had been appropriated under its charter, part of which the said petitioners now attempt to take and appropriate for the route of their contemplated railroad."

The charter of the Pittsburgh Fort Wayne and Chicago Railway Company authorizes the company to construct and maintain a railroad, with a single or double track, with such side tracks, turnouts, offices, and depots, as they may deem necessary. As a preliminary matter, it was alleged on the argument of this case that the petitioners have no corporate authority from Pennsylvania to build a road from Rochester, in Beaver county, to Pittsburgh. The Court is of opinion that the act of 18th of April, 1853, Pamph. Laws, 473, to incorporate the Cleveland and Pittsburgh Railroad Company, and the act supplementary to said act, of 11th of April, 1862, Pamph. Laws, 436, do give authority to petitioners to build a railroad from Rochester to Pittsburgh.

The petitioners allege that under the words of the 11th section of the act of 19th February, 1849, regulating railroad companies, the Court has no discretion, but must proceed to appoint viewers as prayed for. The Supreme Court of Pennsylvania, in a case similar in principle to this one, (Hays vs. Risher, 8 Casey, 174,) says the better practice is to arrest the proceedings in limine if, on the face of the application, fatal objections are revealed. The language of the act is mandatory that the Court shall appoint a view; but this means that they shall appoint a view only when the petitioner brings his case within the act. So here, on the application of the petitioners disclosures an intention to take property belonging to the Pittsburgh, Fort Wayne and Chicago Railway Company, which that company alleges to be necessary for the proper conduct of its business. The Court will exercise its discretion on the subject, and prevent anything from being done, which it would afterwards feel itself bound to undo. No actual appropriation of the said property by petitioners, will be permitted until their right to appropriate is first established.

With regard to this subject, the Court is of the opinion that the Legislature has no power to authorize another Railroad Company to appropriate any premises of the Pittsburgh, Fort Wayne and Chicago Railway Company, which are necessary to the proper conduct of its business. The rights conferred upon it cannot be taken away and given to another Railroad Company, even by express words, much less by mere implication from authority given to another company to build a road between certain termini. The right of eminent domain can only be exercised where the property taken is converted from a lower to a higher use. For the discharge of the same use, the State has no right to transfer property from one person or body corporate to another.

"The right of eminent domain, or inherent sovereign power, gives to the legislature the control of private property for public uses only." "It undoubtedly must rest, as a general rule, in the wisdom of the legislature, to determine when public uses require the assumption of private property; but if they should take it for a purpose not of a public nature, as if the legislature should take the property of A and give it to B, or if they should vacate a grant of property or of a franchise, under pretext of some public use or service, such cases would be gross abuses of their discretion, and fraudulent attacks on private right, and the law would be clearly unconstitutional and void." 2 Kent Com., 339 340.

In the case of Boston Water Power Company vs. Boston and Worcester Railroad Corporation, cited by petitioners, the Supreme Court of Massachusetts (23 Pick. Rep. 393) says: "If it is suggested, that, under this claim of power, the legislature might authorize a new turnpike, canal or railroad, on the same line with a former one