# LOCAL INTELLIGENCE.

## From Yesterday's Evening Gazette.

### Coon vs. The County Treasurer---Important Opinion by Judge Sterrett.

Some days since, in giving the decision of Judge Stowe in the matter of the application of D. R. Coon, for a writ of mandamus to compel the County Treasurer to pay a warrant for jury fees, we stated that Judge Sterrett was preparing an opinion on the same subject. This opinion was filed this morning, and will be perused with interest by every citizen of the county. After recounting the application; and the answer of the respondent, and referring to the law regulating the payment of jury fees, his Honor goes on to say that the question raised by the petition and answer is, whether the money in the Treasurer's hands must be applied to the mandatory writs of the Circuit Court, to the exclusion of the relator's warrant, and then proceeds to give the reasons upon which the Court founds its judgments, as follows:

*First*—The process against the Treasurer, under which the judgment creditors are alleged to claim the fund, is without authority of law. There is no law authorising such process against the County Treasurer. The mandatory writs in question were issued under and by virtue of a rule of the Circuit Court, adopting as part of its civil process the sixth and seventh sections of an act in relation to actions by and against counties and townships, approved April 16th, 1834. (Beeson's Court Rules, 234.) We must therefore look to the act for the authority claimed. It is not pretended that any other authority exists. What then are the provisions of the act thus adopted as part of the civil process of the Circuit Court? It provides that a party entitled to the benefit of a judgment obtained against a county, "shall have execution thereof, as follows, and not otherwise," viz: "It shall be lawful for the Court in which such judgment shall be obtained, to issue thereon a writ commanding the Commissioners of the county to cause the amount thereof with interest and costs, to be paid to the party entitled to the benefit of such judgment out of any moneys unappropriated of such county, and if there be no such moneys, out of the first money that shall be received for the use of said county, and to enforce obedience to such writ by attachment." (Purdon, 172.) The Court is authorized to issue "a writ commanding the Commissioners," not the Treasurer, of the county to cause the amount to be paid. The creditor shall have execution of his judgment in the manner specifically pointed out by the act, "and not otherwise." The Commissioners of the county are the only persons to whom the act authorizes the mandatory writ to be addressed. So far as any authority is given by the act, it might as well be addressed to the Sheriff, or to the President of any of our banks, as to the Treasurer. But, it is suggested that the Treasurer comes within the *spirit* of the act, and, therefore, the writ is well addressed to him—a very common and a very lame apology for what may be appropriately called judicial legislation. They invoke the *spirit* of the law in order to justify a writ against the Treasurer, when the law itself, in very terms declares that you may have the writ against the Commissioners, and no one else? When the remedy provided is so specifically pointed out, it is unnecessary to inquire what else may or may not be embraced within its spirit. If the Legislature had intended to subject the Treasurer to the operation of the writ, they would have said so; and if the act is defective, let the Legislature amend it. It is the duty of Courts to construe laws, not to make them. The judiciary and legislative departments have each their appropriate spheres, and the one should not encroach upon the others. The case of Monaghan vs. the City of Philadelphia, (4 Casey, 207,) is not an authority against this construction of the act. The question in that case was, whether an ordinary writ of *fieri facias* against the city could be satisfied or not. It was held that it could not; and the opinion was expressed that a mandatory writ would be the proper one; but this expression was not intended to apply in the case of a county, for which, as we have already seen, the act makes full and specific provision.

*Second*—The funds claimed to be held by the writs of the Circuit Court are not "moneys unappropriated of the county," and, therefore, not subject to those writs. The 5th section of the act of May 1st, 1861, entitled "An act relating to Allegheny County," (Pamp. Laws, 451,) requires the Controller, on or before the first day of February, annually, to submit to the Commissioners, in writing, a detailed estimate of the expenditures for the legitimate purposes of the county for the current year; and the Commissioners are required to act upon the same within fifteen days thereafter, and levy a tax "sufficient to meet the said expenditures." The same section prohibits the Commissioners from increasing, by contract or otherwise, the expenses of the county beyond the taxes so assessed. In accordance with this provision of the act, the Controller, on the first day of February, 1862, laid before the Commissioners a detailed estimate of expenditures for the current year, embracing over thirty items—among which are the following, viz:

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| Expenses of Dis. Court, including Jurors | | | $9,800 00 |
| do | Com. Pleas, | " " | 8,500 00 |
| do | Quar. Ses., &c., | " " | 13,500 00 |
| do | Sup. Court, | " " | 480 00 |
| Road Damages | | | 2,500 00 |

Within the time prescribed, the Commissioners assessed a tax of *five* mills to meet all these items of expenditure, amounting in all to $ . They also at the same time assessed a tax of *twenty-seven* mills to pay interest on railroad bonds, amounting to $ , as estimated by the Controller; and also *three* mills for State tax. These several assessments were made for the purpose of meeting the different items of expenditure, specified in the Controller's estimate—that is to say, the assessment of three mills was made for the express purpose of paying the State tax, and for nothing else; the five mills for the express purpose of defraying the ordinary current expenses of the county government, such as expenses of the jail, prisoners in the penitentia y, House of Refuge, court expenses—including jurors' fees—road damages, building and repairing bridges, &c., &c. It may, therefore, with the strictest propriety be said, that the amounts of tax thus assessed were respectively appropriated to the several objects for which the assessments were made. If this is not an appropriation, we are at a loss to know what it should be called. Standard lexicographers tell us that to appropriate is to set apart or vote a sum of money for a particular object.

The annual appropriations of the Legislature are on the same principle. An estimate of the various receipts and expenditures of the State government is made—the amount required for each item or class of expenditures is fixed, and provision is made to raise and bring into the treasury sufficient revenue to meet the same. The Legislature regulates the amount to be expended for various objects during the current year, and provides, by taxation and otherwise, the funds necessary to meet the same. The Controller and County Commissioners are clothed with similar powers in respect to the county government. The Controller estimates and fixes the amount necessary to be expended for each department of the county government, and the Commissioners assess and cause to be collected, the tax necessary to meet the same. The one is just as much an appropriation as the other.

Again: If any doubt existed on the subject, it is entirely removed by the 9th section of the supplement to the act of May 1st, 1861, which requires that the Controller's estimate of annual expenditures, "when approved by the Commissioners, shall be classified in detail under the heads of appropriations for the several departments of the county; and after the Commissioners have fixed such rate of taxation upon the taxable property of the county as will raise a sum sufficient to meet said expenditures, then the said estimated amounts shall remain and stand as appropriations, numbered regularly for each of said departments; and no transfer from one appropriation to another shall be made, unless in case of absolute necessity and by consent of the Controller and Commissioners in writing, filed of record." May we not, therefore, safely conclude that the funds in the treasury, assessed and collected for the express purpose of paying jurors and other necessary current expenses are not "moneys unappropriated of the county," and, that consequently, they are beyond the grasp of the writs in question?

*Third*—Apart from all other considerations, a sound public policy forbids that the funds necessary to defray the ordinary current expenses of the county should be withdrawn from the treasury and applied to other purposes. It is by means of the county organization and government that the Commonwealth, in a great measure, exercises her sovereign powers. Her courts and penal institutions are in a very great degree dependent on the county organization for their efficiency. Her revenues are mainly collected through the agency of the county authorities. In short, the county government enters so largely into, and forms such an essential part of the State government, that whatever impedes the one, must necessarily embarrass the other.

The public necessity and welfare transcend everything else. All other interests are necessarily subservient. And this is the view that has been uniformly taken by our courts in every case where the question has arisen. (1 Wharf. 3, 2 Wharf. 204.) These cases both arose since the act of 1834. They were both rules for mandamus on the county Commissioners to draw warrants on the Treasurer. In the first case the Commissioners answer, "that there is no money in the treasury except that which is wanted to defray the ordinary and current expenses of the county." The Supreme Court, in deciding that the answer was sufficient, says, "We should probably stop the wheels of government if the mandamus were allowed." In the other case the answer of the Commissioners is "that there is no money in the treasury, which is not wanted to defray the ordinary current expenses of the county, and that there is not sufficient even to defray them."

Mr. Justice Sergeant, in delivering the opinion of the Court, sustaining the answer and refusing the mandamus, 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." More recently, the same principle arose in the District Court of this county. (Lerimer vs. Pitt Township, *Legal Journal*, vol. 7, No. 10.) In that case a mandamus execution, under the 7th section of the act of 1834, was issued on a judgment against the township, and the township officers, notwithstanding the writ, continued to apply the funds of the township to the support of the poor and repairing the roads. An attachment was applied for, and Judge Hepburn, in a well considered opinion, held that the township officers had properly discharged their duty in applying the funds as they did, and that the mandatory writ would hold nothing but the surplus that might remain, after defraying the ordinary and necessary expenses of the township.

The uniform policy of the Commonwealth, in relation to her turnpikes, railroads and all other interests—as indicated by her legislation and the decisions of her courts—has been based upon the same principle; and we feel inclined to adhere to it, unless the court of last resort construes the law otherwise. The idea of locking up the county treasury and stopping the machinery of government, with all the disastrous consequences that must much, is a modern suggestion, entirely at variance with the policy of the government. We hope that the Treasurer will see that it is his duty promptly to honor warrants drawn for the necessary current expenses of the county, so long as there are funds in his hands which have been assessed and collected for that purpose.

THE ATLANTIC MONTHLY FOR MARCH has been received by W. A. Gildersleeve. We have already spoken of it. It is an excellent number.

### The Gambling Case--How McKee Silences his Victims.

In the Court of Common Pleas, this morning, the case of Francis Ward, charged on oath of John McKee with being a common gambler, came up for a hearing upon the motion to reduce the amount of bail.

Mr. Hasbrouck, counsel for Ward, asked that he be discharged on his own recognizance, or that the bail be reduced to $200, which he was able to give. He stated further that the information did not set forth that the gaming was for money, but simply that Ward had "dealt faro" and other games of hazard, contrary to the 55th section of the penal code. The information by McKee against Ward was not made until the 16th of February, while that of Ward against McKee, charging him with keeping a gambling house, was made on the 4th—twelve days previously. Mr. Hasbrouck was further prepared to show that the only object McKee had in prosecuting Ward was to effect a suppression of the first information.

John Cook was called and testified that after the arrest of McKee, and previous to the arrest of Ward, he had a conversation with McKee, who told him (Cook) that he would put Ward in jail; that he was a stranger here, and being without friends, could not get bail; and that he could beat him in that way. After Ward was arrested, McKee told the witness that when he skinned a fellow pretty heavily he generally *got him behind to deal a few games*, so that he could *get a cue on him*. In other words, he got Ward to deal a game or two, so that, if occasion required it, he could appear before a magistrate and swear his victim into jail as a common gambler!

District Attorney Kirkpatrick stated that he had sent a messenger to the Mayor's office, requesting the clerk to send up the information in the case against Ward, and had received a very polite note informing him that it would be attended to in a few minutes. It was not sent, and an officer of the Court was then dispatched, making the same request. The officer was given to understand that the Mayor was busy, that a proper person had not been sent to make the demand, and that he was under no compulsion to send the information until the regular return day. The officer was returned at once, to notify the Mayor that if he did not have the document in Court, in ten minutes time, he would send a process for him. The time had about expired, and the District Attorney rose to his feet to ask for a process, when one of the Mayor's police appeared with the *information against McKee*. This was not what was wanted, but on examining it he found that there was no endorsement of the arrest, or the amount of bail given, although the information was made on the 4th inst., and it was now the 23d. He had it sent back, that these endorsements might be properly entered, which was done. The bail was fixed by Samuel Shore, in the sum of $500. Since the information was in Court, the District Attorney believed that the ends of justice would be subserved by keeping it there.

The Court, after consultation, required Ward to enter bail in $200 for his appearance, and also took his own recognizance in a similar amount to appear as a witness in the case against McKee. They regarded this as important as to appear in his own case. The sum of $200 was deposited by Cook, the witness above named, and Ward was discharged after giving his recognizance to appear and prosecute his suit against McKee.

There are said to be eight or ten gambling houses in the city, equally as notorious as McKee's, and why the police have permitted them to remain undisturbed, is a question we cannot answer. Is it because of hush-money, or is it for want of energy and efficiency? It is rather singular, too, that respectable magistrates will aid these sharks by taking informations against their victims, instead of going to work and rooting out the evil by breaking up these dens.

### Singular Disappearance of a County Treasurer--A Man's Wife, but no Money Missing.

On Friday last, S. S. Wilson, Treasurer of Summit county, Ohio, handed the keys to Auditor Crouse, together with a paper, addressed to the Commissioners of the county, tendering his resignation, and then, instead of his going to his home in Northampton, took the cars for Hudson, and from thence left for parts unknown. The report spread more in connection with the sudden departure of Mr. Wilson, mostly of a scandalous nature, the general purport of which is, that the cause of his thus abandoning his family, and the honorable, social and official position which he held, was a too close intimacy with the wife of one of his neighbors, by whom it is said, he is to be accompanied on his journeyings, she having left her home on the same day, ostensibly for the purpose of visiting friends in the State of Michigan.

Mr. Wilson, strange as it may appear, left the funds all safe and in good order. The funds due the State had been duly paid into the State Treasury on Tuesday previous to his resignation, while the money belonging to County, School and Township money was found on hand, and is now ready to be paid out to the various persons authorized to receive it.

It is said that Mr. Wilson borrowed $3000, giving a mortgage on his farm (which is ample security) a short time before he left, and that he had also disposed of the greater portion of his farm stock and personal property, leaving his family without much ready means, but in possession of the farm, in which they will retain a homestead. He also left some minor matters in the hands of an attorney for collection and disbursement. The affair has created great excitement, as Mr. Wilson was the last man in the county who would have been suspected of a dishonorable act, and it is still hoped that the story of his having eloped with the lady in question will prove unfounded.

### Larceny of Variety Goods.

A man named James Harrison was arrested and committed to jail to-day by Alderman Humbert, charged with the larceny of about $300 worth of variety goods, the property of James Green. It appears that Green keeps a huckster stand or box in the Diamond market, in which he secured his goods as usual on Saturday night. Monday morning he found that the box had been broken open and robbed. Nearly all of the goods were recovered, and the police are searching for the balance.

IMPORTANT ARREST OF COUNTERFEITERS.—In Philadelphia, on Friday evening last, two men and two women were arrested on a charge of counterfeiting. The officers secured the machinery used in making bank notes, consisting of presses, rollers, plates, paper, chemicals and engraving tools. Also a large number of plates for making alterations. Among the plates found was one for the five on the Western Bank, issued some time since, and which was so well executed as to almost defy detection. Some of the plates are also believed to be altered for U. S. Treasury notes. The whole amount of counterfeit bills recovered is between $40,000 and $50,000.

THE CONTINENTAL MONTHLY.—The March number of this able competitor with older rivals, is laid on our table by Mr. John P. Hunt, Masonic Hall, Fifth street, and opens with an interesting and hopeful paper on "Turkey"—which the writer regards as likely to be "a great country" yet. The author of "Among the Pines" continues his always welcome "Merchant's Story." Robert J. Walker, F. P. Stanton, Charles G. Leland, and several other distinguished contributors have articles in this number. The *"Continental"* is a live magazine, and highly creditable to the periodical literature of our country.

ALMOST A CONFLAGRATION.—A few evenings since, Oil City made a very narrow escape from destruction by fire. An individual, while passing the well of Wood & Co., of this city, carelessly struck a match against the receiving tank of the well, which was nearly full of oil. The tank, or rather a small portion of it, took fire, but was promptly smothered out by putting a blanket between the outside iron and the tank itself. There was between 250 and 300 bbls. of oil at the well, and had this taken fire, it is likely that the whole town would now have been in ashes.

SINGULAR ACCIDENT.—Wilber Joslen, aged about twelve years, and residing near Girard, Erie county, met with a singular accident a few days ago. He slipped and fell with an open knife in his hand, the point striking in his right eye, perforating the under lid and piercing the eyeball. It is feared he has destroyed or seriously impaired the sight.

ATLANTIC MONTHLY FOR MARCH.—John W. Pittock has received this last publication, and offers it for sale. This number has been so highly praised, that any more comments would be superfluous.

HUNT has received a large supply of reliable and correct photographs of the renowned Gen. Tom Thumb and his wife. Price only five cents.

RELEASED ON PAROLE.—Adjutant T. Brent Swearingen, of the Ninth Reserves, and Capt. Charles Owston, of the Pittsburgh Rifles, attached to the same regiment, have been released by the rebels and are now at Annapolis, Maryland. Both these gentlemen were wounded at the battle of Fredericksburg, captured and taken to Richmond, where they were held as prisoners until a few days since, when they were paroled.

## LATE TELEGRAPHIC NEWS.

[FROM OUR EVENING EDITION.]

### IMPORTANT FROM VICKSBURG!

***Active Hostilities Commenced!***

**OUR POSITION CHANGED.**

THE BOMBARDMENT RENEWED.

### The Result Not Known.

CHICAGO, Feb. 23.—A special Memphis dispatch, dated Saturday, furnishes advices from Vicksburg to the 18th. It says that active hostilities against Vicksburg had commenced.

On that day mortar boats were towed into position, and opened briskly.

The effect of the shots were not known.

The firing was responded to by three batteries, when our position was found to be too much exposed for effective operations, and it was changed.

The bombardment was then renewed.

### The Boundary between California and Nevada--Sailing of Mexicans for Acapulco.

SAN FRANCISCO, Feb. 21.—A serious controversy has grown up in Honey Lake Valley over the boundary question between California and Nevada, both sides claiming jurisdiction over the land in dispute. A California sheriff attempted to serve a civil process on the 14th inst., when the residents of the valley fired on the sheriff and his assistants and six of them were wounded. The sheriff sent reinforcements, and his assailants also expected to be reinforced. Both parties are very defiant, and it is said accounts were fortifying themselves in log houses.

A schooner which has just arrived brings advices from Mazatlan to the 22d of January.

Four thousand Mexicans, commanded by La Vega, had sailed for Acapulco. The object of the movement is not known.

### Slave Property in Maryland.

BALTIMORE, Feb. 23.—The appraisers of the property of the late Charles Carroll, of this State, one of the largest slave owners of Maryland, have made their return to the Orphan's Court, assessing the value of the hundred and thirty slaves at an average of only five dollars. This, they say, was the highest rate they could name, after a consultation with various slave owners and dealers. A slave dealer told the appraiser that he would not give $500 for the whole lot. This is considered a striking illustration of the depreciation of slave property by the rebellion, and will have a powerful influence in this State.

### California U. S. Circuit Judge Appointed.

WASHINGTON, Feb. 23.—At the unanimous request of the California Congressional delegation, Stephen J. Field, now Chief Justice of California, has been appointed U. S. Circuit Judge for that State, vice Judge McAllister, resigned.

### Arrival of European Steamers.

BOSTON, Feb. 23.—The royal mail steamship Canada arrived at 10 o'clock this morning, from Liverpool, via Halifax.

PORTLAND, Me., Feb. 23.—The steamer Nova Scotian arrived at this port this morning. Her advices have been anticipated.

### Fire at Titusville.

TITUSVILLE, Pa., Feb. 23.—A fire last night destroyed Culver's banking house. Loss $1,000. Also Laird's dry goods building; loss $8,000. Jameson's shoe store; loss $5,000; and the *Gazette* office; loss $2,000.

### Washington's Birthday in Baltimore.

BALTIMORE, Feb. 23.—Washington's birthday is being celebrated in this city to-day, with a great display of flags, ringing of bells and firing of salutes.

## COMMERCIAL RECORD.

### PITTSBURGH MARKETS.

OFFICE OF THE PITTSBURGH DAILY GAZETTE, MONDAY, Feb. 23, 1863.

Coin continues to fluctuate somewhat in New York, but here, there is no change whatever in rates. Our bankers are buying at 140 for Silver, 155 for Gold, and 154 for Demand Notes. Eastern Exchange is unchanged at par buying, and ¼ per cent selling (