Message of Benjamin R. Tillman, Governor, to the General Assembly of South Carolina, at its regular session commencing November 28, 1893

MESSAGE

OF

BENJAMIN R. TILLMAN,

GOVERNOR,

TO THE

General Assembly of South Carolina,

AT ITS

REGULAR SESSION COMMENCING NOVEMBER 28, 1893.

COLUMBIA, S. C.:
CHARLES A. CALVO, JR., STATE PRINTER.
1893.

MESSAGE.

GENTLEMEN OF THE GENERAL ASSEMBLY: In this, the third Annual Message which I have had the honor to send to your honorable body, matters of the deepest interest and most vital significance are presented for your consideration, and to the discusssion of two of the most important questions, the Railroad Receiverships and the Dispensary Law, much time and thought has been given. The space which has been required to present these subjects fully has left little room for the usual presentation of the condition of the various public institutions and departments. You will have to depend on the Reports of the respective officers of these departments and institutions, which are full and complete, for those details which I have found it necessary to omit. I make exception of the Treasurer's Report, and give an abstract of the operations of that department of the State Government.

The year has been one of intense financial stringency, and the maintenance of the State's credit, the refunding of the five and a quarter millions Brown Consols maturing July 1st, last, and the meeting of our current obligations promptly, have caused the State Treasurer, Dr. Bates, and myself deep anxiety and concern at times, but the Treasury weathered the storm, and I can congratulate you upon the satisfactory condition now existing in regard to our finances.

The new 4½ Per Cent. Brown Consols were sold in block to a syndicate headed by the Baltimore Trust and Guarantee Company. All of the old bonds have been redeemed except $95,145, which have not yet been presented for payment; but the money is in the treasury to meet them when the holders shall come forward and ask it.

I present herewith the figures copied from the Treasurer's Report showing the fiscal operations of the year:

ABSTRACT.

Cash Liabilities October 31st, 1893.

Interest due and not called for, viz.:		
On Consols, Brown and valid Green, from 1879 to 1893..		$ 85,548 48
On 4, Per Cents Redemption Brown Consols, 1893..		5 02
On Blue 4½ Per Cents Redemption Deficiencies, 1893		78 79
On New 4½ Per Cents Redemption Brown Consols, 1893..		428 81
On Deficiency Stock, 1879 to 1888		589 79
		$86,650 89
Interest from January 1, 1880, to July 1, 1893, on $266,408.05 Brown Consols liable to be issued for valid principal and interest of Old Bonds not yet Consolidated :		
Balance of appropriation therefor..	$ 87,839 54	
Not specifically appropriated..	127,950 98	
		215,790 52
Interest on Consols to July, 1878, formerly fundable, now payable		91,480 47
		$393,921 88
Principal of Deficiency Stock due 1888, not yet surrendered by holders		657 40
Principal Brown Consols due 1893, outstanding	$152,520 27	
Less amount belonging to the Clemson Bequest	57,375 22	
		95,145 05
Loans effected by Governor and State Treasurer, authorized by Act 1892		105,000 00
Sinking Fund Commission		42,901 82
Direct Tax Fund		24,390 54
Direct Tax Proceeds, Act 1884		10,992 03
State Dispensary—Special account, sales under Section 2, Dispensary Act 1892		15,838 26
Morrill Fund due Claflin College		10,033 65
Clemson College		1,151 69
Special Accounts, viz.:		
Escheated Estate Malone	$ 706 82	
Escheated Estate Burton	1,704 93	
Downer Fund	529 67	
Clemson Bequest	1,661 23	
		4,602 65
Balance appropriations undrawn, say		18,000 00
Total		$722,634 97

Cash Assets, 31st October, 1893.

General Account	$ 12,612 44
Sinking Fund	42,901 82
Balance from Sales 4½ Per Cents for Redemption of Brown Consols	115,258 85
Dispensary, Special Fund, for Sales	15,838 26
Cash for Redemption of "Deficiencies"	938 65
Escheated Estates	2,411 75
Downer Fund	529 67
Clemson Bequest	1,661 23
Clemson College	1,151 69
Morrill Fund for Claflin College	10,033 65
Direct Tax Fund	24,390 54
	$227,728 55
Net Cash Liability, October 31st, 1893	$494,906 42

Total Liabilities, October 31st, 1893.

Liabilities other than Cash, Bond Account:		
Green Consols Outstanding	$528,556 56	
Less Estimated Invalidity	419,673 95	
		$108,882 61
Brown 4½ Per Cents "Redemption of the Brown Consols," Act 1892		5,401,955 86
Brown 4 Per Cents Redemption Brown Consols		122 04
Blue 4½ Per Cents, account Deficiencies		400,000 00
Agricultural College Scrip		191,800 00
Bonds and Stock (Principal with Interest to January 1st, 1880), authorized to be funded in Brown Consols by Act 1873 and Subsequent Acts, not including Invalidity, and which, perhaps, should be added to the cash liabilities		266,408 05
		$6,369,168 56
Net Cash Liabilities, October 31st, 1893		494,906 42
Total Net Liabilities, November 1, 1893		$6,864,074 98

Cash Receipts for Year Ending 31st October, 1893.

General Taxes, 1891 and 1892, and also back Taxes..		$ 735,411 03
Phosphate Royalty		233,544 43
Sales Brown 4½ Per Cents, issued for Redemption of Brown Consols	$2,930,346 74	
Less overpayments refunded	750 00	
		2,929,596 74
State Dispensary Sales		100,332 13
Privilege Tax on Fertilizers		50,243 95
Morrill Fund from United States Government		19,000 00
Insurance License Fees		10,000 00
Sinking Fund Commission		7,000 00
Fees of Office Secretary of State		2,521 13
Railroad Assessments for Railroad Commission		6,085 40
Special Funds		7,937 45
Loans (Governor and State Treasurer)		105,000 00
Other Sources		1,784 10
Total		$4,208,456 36
Balance Cash, 31st October, 1892		201,748 90
Total		$4,410,205 26

Cash Expenditures for Year Ending October 31st, 1893.

Legislative Expenses		$ 43,427 88
Public Printing		23,932 45
Educational, Charitable, Penal and Sanitary Institutions and Expenses		223,835 61
Clemson Agricultural College		151,700 18
Interest on Public Debt and Expenses		349,597 63
Interest on New 4½ Per Cents, Redemption Brown Consols, July 1, 1893		117,696 19
Brown Consols due July, 1893, Principal redeemed in Cash	$2,814,337 89	
Expenses Redemption Brown Consols	6,036 65	
		2,820,374 54
Deficiency Stock redeemed		60 32
State Dispensary		134,493 87
Salaries Supreme Court, Circuit Judges, Solicitors, State officers, County Auditors and Supervisors, Public Institutions, &c		151,098 14
Pensions		51,470 27
Maintaining Militia		10,000 00
Expenses of Elections		18,167 66
Contingent Funds, stationery and stamps, Executive officers and Supreme Court, Governor's office, including Civil Contingent Fund	$8,254 27	
Other officers, &c	3,320 54	
		11,574 81
Direct Tax Claims, Act 1884		1,781 15
Direct Tax Fund		36,233 16
Artificial Limbs		5,108 00
Sinking Fund Commission's warrants		959 52
Special Funds (not including $3,242.23 paid Clemson College from income of the Clemson Bequest)		6,467 11
On other accounts		24,498 22
		$4,182,476 71
Balance October 31, 1893		227,728 55
		$4,410,205 26

SYNOPSIS.

REDEMPTION OF BROWN CONSOLS UNDER THE PROVISIONS OF THE ACT OF DECEMBER, 1892, TO 31ST OCTOBER, 1893.

Principal outstanding 1st July, 1893		$5,287,261 42
Principal redeemed in Cash	$2,814,337 89	
Principal surrendered and exchanged for Brown 4½ Per Cents	2,320,403 26	
		5,134,741 15
		$152,520 27
Amount belonging to the Clemson Bequest to be placed in a permanent Fund		57,375 22
Balance outstanding not yet presented for redemption, 31st October, 1893		$95,145 05

BROWN 4½ PER CENTS REDEEMABLE 1933 (ACT DECEMBER, 1892).

Total amount issued to 31st October, 1893		$5,401,955 86
Of which amount the purchasing Syndicate received	$5,250,000 00	
Amount issued in Exchange for Brown 4 Per Cents. under Act 1892	150,926 57	
Additional amount in Exchange for Brown Consols	1,029 29	
		$5,401,955 86

On November 1st, 1892, the net cash liabilities were....	$419,641 01
On November 1st, 1893, these liabilities were.....	494,906 42
Excess of 1893 over 1892.....	$75,265 41
The cash in the Treasury on the same dates was: November 1st, 1892.....	$201,748 90
November 1st, 1893	227,728 55
	$25,979 65

But it is proper to state that neither of these amounts show the real increase of debt or the available cash which the Legislature must take into consideration in providing for next year's expenses. The $115,258.85 accruing from the sales of the new bonds are by law sacredly held to redeem the outstanding old bonds, and its use for any other purpose would be unconstitutional as increasing the debt. The $24,390.54 of the Direct Tax Fund is similarly locked up.

The principal deficit is the $105,000 borrowed to meet the extraordinary expenses. I would note in passing that the Treasury has been forced to borrow on notes for the first time since I have been in office, and I will explain why it was necessary. During the year the following extraordinary expenses were incurred :

Interest on $5,250,000 of new bonds from January to July.....	$118,125
Appropriated to Dispensary	50,000
Appropriated to Clemson College.....	50,000
For Artificial Limbs.....	5,000
	$223,125

To make the matter about the interest on the new bonds clear, it is necessary to explain that from January 1st last, until the 1st of July, we paid double interest on that part of the debt refunded, five and a quarter million dollars. The old bonds were running at 6 per cent., and the new ones, which had to be negotiated and the money obtained for them to be ready for the redemption of the old ones, also bore interest from January 1st at 4½ per cent. There was no way to prevent this, for it would have been impossible to have provided for the payment of the old bonds with bonds bearing the same date at which the others became due. We could not get the money to pay the old ones without selling new ones, and it would have been repudiation to

force the holders of the old to take the new in exchange. We were compelled to have the money to pay them.

Before dismissing this subject it is well to remind you of the painful fact that the large revenue which would have been derived next year from the phosphate royalty, and which has enabled us to make such a fine showing, will be totally lacking for the next fiscal year. The disastrous storm, a full account of which is given in the Report of the Phosphate Commission, completely broke up and partially destroyed the Phosphate Mining Industry, so much so that the Commission felt constrained to make such efforts for its relief by the reduction of the royalty, etc., as will leave no income next year other than the $75,000, which under the law must be devoted to a Sinking Fund for the new 4½ per cent. bonds. I mention this because it will be necessary to take it into consideration in making your estimates and arranging the annual tax levy.

The $50,000 appropriated for the Dispensary will be more than repaid and can go into the estimate. What additional amount may be relied upon from this source is a matter of conjecture. It was in anticipation of this extraordinary expense that the State taxes were raised last year one mill, and if it were not for the loss of the phosphate royalty we could easily the coming year reduce the tax levy to four mills or less. However, as the interest burden in future will be $78,750 less per annum by reason of the refunding of the debt we can reduce it half a mill any way.

RAILROAD TAXES AND RECEIVERSHIPS.

During the year a question of vital importance, and one more far-reaching in its consequences to the States than any that has arisen since the celebrated Virginia Coupon Cases, has been passed upon by the Federal Courts and decided in a manner that must excite the alarm and resentment of every lover of liberty and justice. The issue involved the sovereignty of the State and the equality of all taxpayers before the law; and, by the decision rendered by the Circuit Court in Charleston and sustained by the United States Supreme Court, that sovereignty has been disregarded and, in effect, destroyed, and a preferred class of taxpayers created with special privileges not vouchsafed to other citizens.

Under the Constitution of South Carolina it is declared, Article IX, Section 1: "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, &c.;" and in Article II, Section 33, it is

provided: "All the taxes upon property, real or personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment for the purpose of levying such tax."

The Statutes passed in accordance with these provisions have defined the methods of assessment and collection. The requirements of the law are explicit and clear. Real estate and personal property have their value fixed by the County Boards of Equalization in conjunction with the Auditors. Railroads, being a different class of property, passing from County to County, and often through this State into adjoining States, with nothing of a local character about them, were wisely and necessarily placed in a separate category, and the assessment of this class of property devolved upon a special and distinct Board, "The State Railroad Board of Equalization," composed of the Treasurer, the Secretary of State, the Comptroller-General, the Attorney-General, and more recently, in addition thereto, the Chairman of the Railroad Commission. These officers are necessarily men of intelligence and character, and their official action under oath in the discharge of any public trust must command respect. But while all other taxpayers have had their property assessed in the manner prescribed by the law and have paid the same, certain railroads have put forth the insolent claim that they alone should decide as to the value of their property; have tendered and paid such taxes as they considered right and proper; have refused to pay the taxes as fixed by the State Board, and are to-day in open rebellion against the State and its laws, and, under the protection of the Federal Court, snap their fingers in contempt at the State Government.

The matter is one of vital importance, and I desire to state the case clearly and fairly, in order that there may be justification for the course I shall ask you to pursue.

The State Railroad Board of Equalization, in pursuance of its duties, assessed the taxes on railroads for the fiscal year 1890–91 in accordance with its understanding of the Constitution and the law. The railroads made a return of their property at a much lower value, and, when the time for the payment came, tendered only such taxes as were due on their own assessment. Injunctions were granted by the United States Court in every case against the Treasurers, prohibiting the issue of executions and the collection of the taxes in dispute. The Attorney-General and his associate counsel denied the jurisdiction of the Circuit Court in those cases where the amount involved was less than $2,000, and denied the right of the Court to lump the amounts in the different Counties so as to bring the sum up to the requirements for obtaining jurisdiction; and the main issue as to the

legality or the illegality of the taxes was left to rest, pending the appeal to the Supreme Court on this question of jurisdiction.

In January last the Supreme Court decided the question in favor of the State, and decreed that the lower Court had no jurisdiction where the sum of taxes in dispute in any one County was less than $2,000. This at once ended the fight, so far as all the railroads not in the hands of receivers were concerned, and those roads paid the taxes due. But unfortunately out of a total railroad mileage in South Carolina of 2,552 miles, 1,419 miles, considerably more than half, are in the hands of receivers, and the question which presents itself to us is, whether, during the life of the receiverships, which depends on the will of the Courts, the State shall be denied the right to collect the taxes assessed in accordance with her laws and shall receive only what the alien owners of the roads, who select the receivers, see proper to pay.

I have had prepared a table which is inserted here for your information showing the amount of delinquent taxes due by the railroads for the years 1890–'91, 1891–'92 :

COUNTIES.	STATE TAXES.		COUNTY TAXES.		SCHOOL TAXES.		TOTALS IN EACH COUNTY.	TOTALS IN EACH COUNTY.
	1890-91.	1891-92.	1890-91.	1891-92.	1890-91.	1891-92.	1890-91.	1891-92.
Abbeville	$2,079 06 0	$ 694 80 0	$1,313 09 0	$ 505 39 0	$ 875 39 0	$ 311 00 0	$4,267 54 0	$1,511 19 0
Aiken	1,655 84 0	1,391 16 0	1,220 15 0	517 53 9	743 80 0	626 12 1	3,619 79 0	2,534 82 0
Anderson	1,336 28 0	756 35 0	914 29 3	504 23 4	562 64 2	336 16 6	2,813 21 5	1,596 75 0
Barnwell	851 54 0	563 35 0	806 72 0	375 57 0	454 17 0	250 38 0	2,112 43 0	1,189 30 0
Beaufort	523 47 0	.....	633 67 0	.....	220 41 0	.....	1,377 55 0	.....
Berkeley	1,057 23 0	302 74 0	841 93 0	277 50 0	116 60 0	134 55 0	2,015 76 0	714 79 0
Charleston	142 30 0	74 25 0	30 39 0	27 65 0	21 75 0	33 00 0	184 44 0	134 90 0
Chester	1,196 48 0	781 19 0	1,895 47 0	1,258 58 0	598 66 0	470 36 0	3,690 61 0	2,510 13 0
Chesterfield	.....	.....	.....	.....	.....	.....	.....	.....
Clarendon	.....	.....	.....	.....	.....	.....	.....	.....
Colleton	716 80 2	430 04 1	716 80 2	358 36 7	301 81 2	.....	1,735 41 6	788 40 8
Darlington	.....	.....	.....	.....	.....	.....	.....	.....
Edgefield	1,049 16 0	692 79 0	692 78 0	845 03 0	291 70 0	747 12 0	2,033 64 0	2,284 94 0
Fairfield	1,860 07 0	987 37 0	1,762 18 0	841 09 0	841 55 0	487 34 0	4,463 80 0	2,315 80 0
Florence	1,809 85 0	1,016 89 0	1,171 81 0	790 91 0	1,171 81 0	790 91 0	4,153 47 0	2,598 71 0
Georgetown	.....	.....	.....	.....	.....	.....	.....	.....
Greenville	1,471 99 0	881 35 0	1,395 49 0	2,556 61 0	673 82 0	417 73 0	3,541 30 0	3,855 69 0
Hampton	313 87 0	.....	353 13 0	.....	132 16 0	.....	799 16 0	.....
Horry	.....	.....	.....	.....	.....	.....	.....	.....
Kershaw	717 76 0	805 44 0	922 37 0	984 45 0	441 94 0	517 54 0	2,082 07 0	2,307 43 0
Lancaster	817 60 0	774 77 0	2,282 62 0	1,455 71 0	454 63 0	344 26 0	3,544 85 0	2,574 74 0
Laurens	1,097 73 0	.....	1,386 61 2	.....	462 20 4	.....	2,946 54 6	.....
Lexington	1,318 92 0	928 20 0	833 00 0	721 94 0	555 33 0	412 54 0	2,707 25 0	2,062 68 0
Marion	.....	.....	.....	.....	.....	.....	.....	.....
Marlboro	.....	.....	.....	.....	.....	.....	.....	.....
Newberry	1,309 11 0	.....	986 32 0	.....	584 91 0	.....	2,880 34 0	.....
Oconee	1,931 84 0	1,325 75 0	1,626 82 0	1,163 72 0	1,187 83 0	826 19 0	4,746 49 0	3,315 66 0
Orangeburg	1,321 19 0	1,197 32 0	903 97 0	731 70 0	651 59 0	597 70 0	2,876 75 0	2,526 36 7
Pickens	1,283 48 5	1,206 77 9	2,702 07 4	2,815 81 9	540 41 6	536 34 7	4,525 97 5	4,558 94 5
Richland	3,108 66 0	4,165 36 0	2,386 55 0	2,260 90 0	1,307 37 0	1,570 91 0	6,697 58 0	3,997 17 0
Spartanburg	3,233 63 0	2,446 48 0	5,529 28 0	4,213 38 0	1,463 19 0	1,216 92 0	11,216 10 0	7,876 78 0
Sumter	1,969 78 0	1,510 07 0	1,641 49 0	1,258 47 0	875 46 0	671 68 0	4,486 73 0	3,440 22 0
Union	221 04 0	206 01 0	488 61 0	480 69 0	93 07 0	91 56 0	1,639 72 0	778 26 0
Williamsburg	.....	.....	.....	.....	.....	.....	.....	.....
York	3,476 42 0	1,588 16 0	6,160 14 0	2,022 70 0	1,867 34 0	846 46 0	11,503 90 0	4,457 32 0
Totals	37,858 10 7	24,716 62 0	41,487 76 3	26,967 94 9	12,491 75 4	10,236 67 8	98,669 52 2	59,931 00 0

It is altogether probable, and almost certain, that while there has been some slight reduction in the assessments for this year, the taxes for 1892–'93 will be tendered by the roads on their own valuation, and we may add to the above amounts $50,000, making a total of about $208,600 due for State, County and school taxes by these corporations for the three years.

As soon as the decision was sent down last January in regard to the jurisdiction of the Court, believing that decision would enable us to collect all taxes due by the railroads where the amount was less than $2,000 in any one County, orders were issued by the Comptroller-General to the Treasurers to issue tax executions and place them in the hands of the Sheriffs for collection. These were for the taxes of 1891–'92, which had never been the subject of injunction or in any wise brought into Court, and the Sheriffs were ordered to promptly levy and collect the same. But the Richmond and Danville Railroad and the South Carolina Railway, both in the hands of receivers, applied to Judge Simonton for an injunction against the Sheriffs, and an order was issued for them to show cause why they should not be attached for contempt. The Sheriffs from the Counties of Abbeville, Anderson, Newberry and Aiken were thus summoned, and at the same time an order to "cease from interfering" with the property was issued. Feeling that the issue was one of vital consequence, and that the State could not afford to back down without testing the matter as to the legality of these proceedings, the Sheriffs were instructed to hold the property, and able counsel retained to assist the Attorney-General in presenting the State's case. Judges Goff and Simonton decided in favor of the recivers, or rather of themselves, and a decree fining the Sheriffs $500 each, and imprisoning them until they paid the fines or purged themselves, was issued. An appeal was taken to the Supreme Court under *habeas corpus* proceedings and that Court sustained the Court below. Having thus exhausted all means of redress the fines were paid, for I would not subject the State's officers to the indignity and humiliation of apologizing for obeying her laws and endeavoring to do their duty.

The amount of the fines and costs, together with the lawyer's fee, making $4,000 all told, was paid out of the Governor's contingent fund.

I propose now to discuss at some length the decisions of the two Courts—the Supreme Court and the Circuit Court. I have a three-fold purpose in doing so. To show, first: the injustice and illegality of their decisions. Second: The results that will follow. Third: The remedy for the wrong that has been done.

I know it is presumption in me, who am not a lawyer, to criticise or controvert the decisions of any Judge; but the contention made here, and the arguments made to sustain that contention, are so far-fetched, so unreasonable and so contrary to what I conceive to be the law, that I am forced to pursue this course in spite of the criticism which is sure to follow.

The first striking fact which presents itself in the consideration of this important question is this: It is one hundred and six years since the Constitution of the United States was adopted, and one hundred and eighteen years since the Declaration of Independence, when South Carolina became a sovereign State. During all this time,

MORE THAN A CENTURY,

the right of a State to levy on and sell property for taxes, by whomsoever held, has never been challenged before, and the question here involved has never been presented to the United States Supreme Court. The right of the State to levy and collect its taxes in its own way is so old, so time-honored; the right of a receiver, and the power of the Court to protect him, is so young, so new, that the two have never before come in conflict. For the first time, then, in the history of American jurisprudence two great principles of law, both based on justice and equity, were face to face—the one with the unchallenged sanction of centuries behind it; the other a fungoid growth of modern judicial precedent, based on the supposed necessities of a new order of things, but more surely resting on the love of power, and in this instance having no other foundation. One had to give way; which should it have been?

The right of the State to levy and collect taxes has never been disputed. South Carolina derived that right from the Kings of England. It is a right which rests at the root of government, and without it government would cease to exist. It has never been resisted when exercised by a sovereign except by revolution and an appeal to arms. In all free governments, or Constitutional governments, the right is exercised according to law, and ample provisions are made for injustice or inequality in the levying of the taxes.

But to prevent a

PARALYSIS OF GOVERNMENT

it has always been provided that the payment of taxes must first be made and the question of their justice or legality adjudicated afterwards. Hence we find in our State laws the following (Gen. Stats.,

Section 171): "The collection of taxes shall not be stayed or prevented by any injunction, writ or order issued by any Court or Judge thereof." Taxes are required to be paid under protest and the money set aside until the question of legality has been determined in Court. Provision is also made by which the Comptroller-General, upon a proper showing, may remit unjust taxes before they are collected, or return them afterwards. The National Government is similarly protected by Section 3224, Rev. Stat. U. S., which reads:

"No suit for the purpose of restraining the assessment or collection of taxes shall be maintained in any Court"—the language here being nearly identical and even stronger than that of our State law.

So jealous, indeed, is the United States Government of its taxing prerogative that Section 3226, Rev. Stat. U. S., provides that: "No suit shall be maintained in any Court for the collection of any internal tax alleged to have been erroneously or illegally assessed or collected, or for any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive, or in any manner wrongfully collected, until an appeal shall have been duly made to the Commissioner of Internal Revenue."

Six months must elapse before suit can be brought should the Commissioner refuse to hear the appeal.

On the other hand, the principle that property in possession of a receiver, and thus virtually in possession of the Court, should not be levied on, or taken from such possession, until all matters connected with the bankrupt estate have been adjudicated, the assets marshalled and the rights of the creditors determined, is equally strong and just. Otherwise the first creditor who might seize the bankrupt estate might get it all, or wreck it, and other claims of equal justice be debarred, entailing loss and inequality of distribution. But under the laws of this State and of the United States taxes are a "preferred and prior lien," to be paid always next to the expenses of the litigation. They do not come within the category of ordinary debts at all, and have been characterized as being "as remorseless as fate and as certain as death."

In the conflict which has occurred in this State between these two well defined and acknowledged principles of law, the question naturally presents itself, why the lesser, the comparatively modern, the doubtful right of the receiver, which rests on nothing but judicial decisions and assumption, should have been given precedence over the older and hitherto undisputed right of the State to collect its taxes in its own way.

THE LAW OF RECEIVERS IS ALTOGETHER MODERN.

It rests almost wholly on judicial legislation. It took its rise in the Court of Equity in England some hundred years ago, and up to 1860 the powers and duties of receivers and the control of bankrupt estates by Judges through them were of small importance and caused no disquiet. The receiver held the trust estate pending the litigation, took care of it, paid the taxes, when necessary kept things in repair—and that was about all. But during the last thirty-five years this small, insignificant power has spread and grown with the rapidity of a banyan tree in the tropic jungles of Asia, until it now overshadows the land and blights the sovereignty of the States, becoming a veritable Upas tree, which threatens the existence of local self-government. This development has been owing to and has kept pace with the construction of railroads and the numerous cases of bankruptcy in which they are involved by reason of bad management, watering of stock, or wreckage wrought by a bare majority of stockholders, who seize a railroad and run it in their own interests, with a view of defrauding the minority stockholders and stealing their property. Too often, alas! the Courts are instruments to carry out the robbery.

But while the powers of receivers and the rapidly increasing latitude permitted them by the Courts have rested, in the main, on right principles and the sound policy of preserving the property, many abuses have grown up with them. I can find no warrant in law and no ground in equity for the decision of the Circuit and Supreme Courts in the cases we are considering. It is not disputed by either of these tribunals that taxes are a preferred lien on the property; and the

CHIEF JUSTICE

expresses himself very emphatically as to the duty of the Circuit Court. He says: "No doubt property so situated is not thereby rendered exempt from the imposition of taxes by the government within whose jurisdiction the property is, and the lien for taxes is superior to all other liens whatsoever." In order to get an excuse, however, for allowing the receiver to resist the payment, and to paralyze the State Government in its efforts to collect taxes, he continued: "The levy of a tax warrant, like the levy of an ordinary *fieri facias*, sequestrates the property to answer the exigency writ; but property in possession of the receiver is already in sequestration, held in equitable execution, and, while the lien for taxes must be recognized and enforced, the orderly administration of justice requires this to be done by and under the sanction of the Court. It is the duty of the Court

to see that it is done, and a seizure of the property against its will can only be predicated upon the assumption that the Court will fail in the discharge of its duty."

When it does fail, what then? Continuing he says: "Whether the Sheriff were armed with a writ from the State Court or with a distress warrant from the County Treasurer, this property was as much withdrawn from his reach as if it were beyond the territorial limits of the State. The inevitable conclusion from this must be so, if constitutional principles are to be respected in governmental administration. It does not involve interruption in the payment of taxes or displacement or impairment of the lien therefor, but, on the contrary, it makes it the imperative duty of the Court to recognize as paramount, and to enforce with promptness and vigor, the just claims of the authorities for the prescribed contribution to the State and municipal revenues. And when controversies arise as to the legality of the tax claims, there ought to be no serious difficulty in adjusting such controversies upon proper suggestion."

The Chief Justice here emphasizes the question of Constitutional rights, meaning, of course, the prohibition forbidding interference with each other by the Judicial, Executive and Legislative branches. But it is a monstrous and tyrannical stretch of authority to claim that the collection of taxes on property in the hands of a receiver is an interference by the Executive with the Judiciary, and therefore unconstitutional. The levying of State taxes, which is done every year under the direction of the Legislative branch and by fixed laws, carries with it the right to collect if the levy is made according to law; and if it is an interference to collect, it is an interference to levy. It is as much a contempt of the Court to levy without leave of the Court as to collect without such leave. It is

in the face of the plain provisions of the Federal and State laws, both binding alike upon the Judge, to include taxes in the same category with other debts and claim jurisdiction to determine their legality under the pretext of a receivership alone.

To support this claim of the inviolability of the receiver's trust and his immunity from molestation of any and all kinds, it is everywhere asserted—iterated and reiterated until we grow weary of the falsehood—that the receiver is the servant of the Court, its eye and hand, a mere automaton doing its will. If such intimacy really exists, if the Judge is the receiver, and the receiver the Judge, does it not follow that the Judge will be biased against a claim which the receiver con-

siders unjust or illegal, and that he is not the proper person to pass upon it? Shall he have the right to judge his own case? Does it ever occur that the Court is the servant, and the receiver the master; that the

TAIL WAGS THE DOG,

so to speak, and the unholy alliance, claiming and exercising undisputed control and surveillance over millions and hundreds of millions, has wrought injustice and wrong, and is a stench in the nostrils and cries aloud for correction? We will see later on.

At the inception of this litigation injunctions were granted out of hand against every Treasurer in the State, without regard to the amount involved. At the hearing, the plea of the State's counsel that the jurisdiction of the Court did not extend to those cases where the amount involved was less than $2,000, and that the amounts in the different Counties could not be lumped, was sneeringly denied. The Court knew better but was resolved to protect the railroads. Judge Bond would hardly hear counsel at all; the injunctions were made permanent; and it is begging the question—a mere dodge—to say that the Constitutional prohibition of interference by the Executive with the Judiciary required that leave must be obtained of the Court to levy on the property when the amount involved clearly left the Judge without jurisdiction. The converse of the proposition is true: that lacking jurisdiction, save through the receivership, the injunction was a suit against the State and an interference by the Judiciary with the Executive. It is technical construction run mad, and the Supreme Court warps out of all reason the general prohibition against interference with property in the hands of the Court, which was intended to apply to ordinary debts and ordinary occasions, when it includes therein taxes legally levied.

This assumption can only be based on the hypothesis that it is the nature of power to seek its own aggrandizement, and that a Federal Judge can do no wrong. Why should the Court obtain jurisdiction in the matter of taxes, which it could not otherwise pass upon, simply by reason of the receivership? Why should a bankrupt corporation obtain immunity from the State law when a solvent one cannot obtain it? Why should a Federal Judge throw the protecting arm of his great power around this class of property, and give receivers special privileges which no other taxpayers can claim? If it is law, it is not right, and I think I can show that it is neither.

I have already pointed out the prohibition in the Statutes, State and Federal, against interference by the judiciary in any way with the collection of taxes. Sec. 721, U. S. Rev. St., declares: "The laws of the several States, except where the Constitution, treaties or

Statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States in cases where they apply."

What right then did the Federal Court have to begin a suit against the State through its officers to stay the collection of these taxes, when it is expressly forbidden by the XI Amendment to the U. S. Constitution to do so? Simply because the property was in the hands of a receiver. "Only this and nothing more." The State's sovereignty, its laws, the laws of Congress governing the Court, were all made to stand aside and the State's officers imprisoned; and for what? To create inequality between taxpayers and maintain the "dignity" of the Circuit Court. The levy without the gracious permission of the Judge and the refusal to release, notwithstanding that the Judge had no jurisdiction other than through the receivership, the amount involved being less than $2,000, were sufficient to make the Supreme Court sustain this great wrong, and all upon the mere pretext that the taxes may be illegal. Nay! that even is not necessary now. But why should a Judge have the right to pass upon the legality or the illegality of a tax in this

UNDERHAND AND ILLEGAL WAY?

And then, after reciting the provisions of our State law, which forbade this usurpation, we are tauntingly told by Chief Justice Fuller that "the Legislature of a State cannot determine the jurisdiction of the Courts of the United States, and the action of such Courts in according a remedy denied to the Courts of the State does not involve a question of power." Pray, then, what does it involve other than a question of the most arbitrary and tyrannical exercise of power? Had the State laws provided no remedy there might be some excuse for this stretch of authority, but under the circumstances I see none whatever.

It has not been shown, and cannot be shown, that the assessments are greater than the "actual value" provided for in Section 33, Article II, of the State Constitution, or that there is any greater lack of a "uniform and equal rate" of assessments as required under Article IX, Section 1, than exists among other classes of property. Most of the railroads are still assessed much below their value. "Uniform and equal taxation" is impossible under any system of assessment that can be devised, and the Supreme Court of the United States has decided that mere inequality is not a ground for relief so long as the assessment is not claimed to be above the actual value fixed as prescribed by the law. The claim by the railroads that their property is assessed higher than

some other property must of necessity be true. This would be so even upon the basis of their own returns. It was always so, and will continue so. At the same time it is lower. But, that the

ORDERLY ADMINISTRATION OF OUR LAWS

should be upset and the collection of the taxes stopped till the matter can be passed upon by the Courts is contrary to all precedent.

The difference between the valuation of the property by the roads themselves and that fixed by the State Railroad Board of Equalization is about 33⅓ per cent.; but if the mere claim that this excess is illegal is made the excuse to resist payment, what would hinder the roads from returning their property at one-half or one-fourth of what they now acknowledge to be its value, or even at $100 dollars a mile, and resist the payment of the balance upon the same ground? If the mere opinion of the receiver that the property is worth thus-and-so is sufficient, must all other taxpayers submit to the State's assessment and property in the hands of a receiver only be assessed by the United States Judge? This is what it amounts to. The Judge who is willing to claim and exercise jurisdiction by reason of the receivership would just as readily sustain this contention until he had passed upon it; and no stronger argument is needed to show that the claim of the Court, to pass upon the legality of the tax before it is collected, carries a train of consequences that are exceedingly dangerous and contrary to the genius of our institutions.

ALEXANDER HAMILTON,

in the Federalist, page 249, discussing the scope and power of the States under the Constitution with regard to taxation, says: "Although I am of the opinion that there would be no real danger of consequence to the State governments, which seems to be apprehended from a power in the Union to control them in the levies of money; because I am persuaded that the sense of the people, the extreme hazard of provoking the resentments of the State governments and a conviction of the utility and necessity of local administration, for local purposes, would be a complete barrier against the oppressive use of such a power. Yet I am willing here to allow in its full extent the justice of the reasoning, which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants, and in making this concession I affirm that (with the sole exception of duties on exports and imports) they would, under the plan of the convention, retain that authority in the

most absolute and unqualified sense; and that an attempt on the part of the National Government to abridge them in the exercise of it would be a violent assumption of power, unwarranted by any Article or clause of its Constitution."

I may remark in passing that when this was written the Constitution had been ratified by only four States, and Hamilton was trying to allay the distrust of the States. Had such claim been made then the Constitution would never have been ratified.

In the celebrated case of "McCullough *vs.* the State of Maryland," a case which deals exhaustively with the question of taxation by the States and the power of the United States in connection therewith,

CHIEF JUSTICE MARSHALL

said, 4th Wheaton, page 428: "It is admitted that the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax the Legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation. The people of a State, therefore, give to their government the right of taxing themselves and their property, and as the exigencies of government cannot be limited they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislator and on the influence of the constituents over their representative to guard them against its abuse."

Further on he says:

"All subjects over which the power of a State extends are objects of taxation."

And again:

"The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission."

Continuing, on page 429, he says:

"If we measure the power of taxation residing in a State by the extent of sovereignty which the people of a single State possess and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of the State unimpaired; which leaves to the State the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union,

and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the State and safe for the Union. WE ARE RELIEVED, AS WE OUGHT TO BE, FROM CLASHING SOVEREIGNTY; FROM INTERFERING POWERS; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of the right of one government to destroy what there is a right in another to preserve."

On page 431 he says: "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the Constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exercises the control, are

PROPOSITIONS NOT TO BE DENIED."

It may be said that we are not arguing the rights of the State to levy taxes, and that these quotations from Chief Justice Marshall's opinion are not relevant; that no one disputes the right of the State to tax, and that the Supreme Court acknowledges that taxes are a prior and preferred lien. But of what use is the right to tax without the right to collect? If the National and State governments are to revolve in their separate orbits without that "clash of sovereignty from which we ought to be relieved," and from "interfering powers," the judiciary of the one government should never interfere with the Legislative and Executive branches of the other in this delicate matter of taxation, except under circumstances where both justice and law clearly confer that power and require its exercise. If "the power to tax involves the power to destroy," the power to prevent the collection of the tax involves the power to starve, and thereby destroy—a power denied the National Government. But again, it will be urged that the receiver claims that the tax is illegal, and that the jurisdiction of the Court extends to controversies between a State and the citizens of another State, thereby involving a Federal question. This is not disputed; but the injustice of obtaining jurisdiction through the receivership to pass on the legality of the tax and stop its collection when the amount involved does not give jurisdiction otherwise, produces an inequality among citizens and creates a privileged class, which is the

VERY ESSENCE OF INJUSTICE, ILLEGALITY AND TYRANNY.

But Alexander Hamilton and John Marshall are old fogies not to be mentioned in the same breath with Judges Simonton and Goff; and

the Supreme Court, saturated with the idea of its own dignity, refused to release the Sheriffs, who were simply the hands of the State, because it felt that the "dignity" of the Court below must also be maintained, and contents itself with emphasizing "the duty of the Court to recognize as paramount and to enforce with promptness and vigor the just claim of the authorities to the prescribed contribution to the State and municipal revenue." It is no comfort to be told what is the duty of the Court when there is no way to make it discharge that duty without long delay and expensive litigation.

The State had exercised its sovereignty to levy taxes in accordance with its own laws. Its officers, in compliance with their oaths, proceeded to obey those laws. Every taxpayer, whether an individual or a corporation, should be amenable to those laws alike, and any decision which destroys that equality is an outrage upon justice. If all Judges were honest, or fair, or just, this power of discrimination could work no wrong; but a receiver in the matter of taxes should be the same as any other citizen or corporation. Any favoritism that is shown him is a premium on fraudulent bankruptcy and brings the judiciary into discredit. If the Court has the discretion and power through its Receiver to do all the various acts necessary to run a railroad, and even build additional mileage, as has been done, and is being done, it could pass on the advisability of paying taxes in private, and doubtless does it. When, therefore, a receiver refuses to pay taxes as illegal, it follows that the Court must think as he does, and it is a mockery to tell us to appeal to such a tribunal.

There is no law for this unwarranted interference on the part of the United States Court; there is nothing in the United States Constitution to warrant it. The authors of that instrument never dared to set up any such claim, and the Court only obtains it by a "violent assumption of power," which is the essence of tyranny. That it has required a century for

JUDICIAL INSOLENCE

to go so far is sufficient proof that it has no basis in law or justice, and could only spring from that perpetual grasping after more power which has characterized the Judges of the United States Circuit and District Courts. One by one the reserved rights of the States are being absorbed by the Federal Judiciary, and it is high time for Congress to take the matter in hand and by express limitations restrain the unlicensed and iniquitous powers exercised by the Courts in this matter of receiverships.

There is talk in some quarters, and a growing demand for

for these corporations, whether in the hands of receivers or of the owners themselves, have found such ready and willing tools among the Federal Judges, who are ever ready to stand between them and the people in their efforts to restrain them within reasonable bounds, that no other mode of relief appears possible. This is not a desirable solution of the problem, and I do not advocate it; because such control would almost inevitably be used as an engine in elections by the use of the employees at the ballot box for the benefit of the party in power. The mere idea is repugnant to a Republican form of government. But those who manipulate and control these corporations, and who grow rich in robbing the people through them—such men in particular—hold up their hands in horror at the mere idea of government ownership. But what have we in the United States at this time? What is the condition of a large number of these corporations? Upward of

THIRTY-THREE THOUSAND MILES OF RAILROADS,

one-fifth of the total mileage in the United States, and representing a capital of more than $1,400,000,000, are to-day in the hands of receivers, who are but the servants or partners of the Judges. We have here government ownership or control (at least in effect) the most absolute and irresponsible that is possible to exist. The Federal Judiciary, without any Statutes on the subject, or comparatively few limiting or defining their powers, control one-fifth of the railroads in the United States without responsibility to anybody; without any one to overlook them or their agents, the receivers; without any accounting to be had for the millions and hundreds of millions of dollars of these "wards in chancery"; issuing receiver's certificates, which are preferred liens on the property; imprisoning the State's officers when they attempt to collect taxes; arresting our Constables for the slightest interference even with freight they haul; bargaining with the receivers for the employment of kinspeople or favorites; and Congress sits idly by watching this more than Russian absolutism with seeming indifference.

With this vast amount of property held in absolute possession, without responsibility to any one, it is small wonder that there has been maladministration, peculation, robbery and widespread demoralization. One Court in Vermont has held a railroad under a receivership for twenty-seven years. Many corporations have found themselves saddled with heavy debts by the incompetency or dishonesty of the receivers, who, we will see, are sometimes the servants and at other

times the masters of the Court. Men who want to make money rapidly—honestly if they can, but who *must* "make money,"—seek the position of a receiver with avidity. The most glaring and remarkable instance of this "*facilis descensus Averni*" occurred this year when

JUDGE EDWARD M. PAXSON, CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA,

with still four years' tenure, resigned his high office to accept the receivership of the Pennsylvania and Reading Railroad. How much longer shall this abuse, which cries aloud to heaven, and which is a scandal in the land, corrupting the judiciary by the use of unbridled power, be allowed to continue? By comparison, government ownership, under strict laws and rules, such as obtain in the postal service, would be such an improvement that it is bound to come unless the abuses of receiverships are stopped.

SIMONTON AND SWAN.

I have already shown the results to the Sheriffs who, in obedience to the State laws, which are equally binding on the Federal Court, attempted to collect the taxes due. The possession by the Court of the "*res*," as the legal phrase goes, since the decision of the Supreme Court, can no longer be disputed in any particular whatever. But, mark you: The puissant Judge, whose satrapy is South Carolina, has gone one step further. He not only claims the right to control the railroads held by his receiver without let or hindrance, but he attempts, and has exercised the power, to protect contraband whiskey in the hands of that receiver as a public carrier, and has imprisoned a State Constable (Swan) who seized a barrel of whiskey in the South Carolina Railway depot in Charleston in the face of the plain provisions of the Act of Congress, which says:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

To encourage the smuggling of illicit whiskey, and protect those who deal in it, Judge Simonton says "arrival" means not only that the whiskey must reach its destination, but must be delivered to the consignee.

The law for the control of the liquor traffic, which is an exercise of the police power of the State for the welfare of the public health and morals, is disregarded and the railroads encouraged to defy the State. The analogous power to establish quarantine for a like purpose exists, and a like lucid and reasonable interpretation of the meaning of a plain English word would indicate that if a man had yellow fever or cholera and bought a ticket to Charleston over one of Judge Simonton's railroads, the quarantine officers could not stop him until he had got out of the car within the city limits. Judge Simonton would not consider him as having "arrived" within the jurisdiction of the State's law until he had completed his journey.

Is this power gone mad? Is it malice incarnate? Or is it a

SERVILE, CRINGING OBEDIENCE

to the orders of his so-called "servant," the receiver? The *argumentum ad hominem* is not one of my liking, and I would scorn to use it in a personal controversy, but in the discharge of my official duties it is a legitimate weapon where I have to deal with such men: one a Judge who sucked State's rights with his mother's milk, and now plants his dagger in the State's breast, the other an ex-carpet-bagger, who in days past did his utmost to throttle Anglo-Saxon civilization in South Carolina, and who has returned after fifteen years' absence to gloat over her humiliation at the hands of his obedient instrument. This is very strong language, but let us see if I have not warrant for it.

On May 1st last, D. H. Chamberlain, Receiver of the South Carolina Railway, and the accredited "servant" of the Federal Court in its management, wrote me a personal letter enclosing as authentic an interview with himself published in the News and Courier of that date. It was a proposition to the State government to compromise or arbitrate the question of taxes in dispute. Here is a quotation from that interview:

"Such being the situation, I say the only sensible course is to settle the difficulty here and now. It can be done if both sides will admit indisputable facts; if some one or more representatives of the State and one or more representatives of the railroads were to sit down as business men and confer, they could reach an easy general ground and one just to both parties. *I am only the agent of the Court, having no authority of my own, but I will*

the most cordial assent of the Court to any reasonable efforts to bring about an end to this fight."

Further on he says: "I am not formally authorized to speak for anybody but myself, but I will undertake to bring every railroad now in litigation with the State into an agreement to negotiate or arbitrate their differences."

It will be seen that this humble servant of the Court, while speaking with all due humility and respect, undertakes to "guarantee the cordial assent of the Court to any reasonable efforts to bring about an end to this fight;" but, covetous of the blessing which is promised to peacemakers, wants to include all the other railroads in the amicable adjustment for which he is so solicitous. He went on to say: "The victory is to-day with the railroads, but I am none the less anxious to stop the quarrel. My anxiety is in the interest of the railroads. I am not afraid to cry 'peace' before the war begins or goes further. I shall fight all the better for it, if we cannot have peace."

Is this the language of a servant or of a master? "I am not afraid," "I shall fight"—"*I.*" Who is *I?* The humble receiver and servant of Judge Simonton? Bah! The pretense makes me sick; and that a South Carolinian, who has been honored with the Federal judicial ermine, should appear in so degrading an attitude! If, resuming the phraseology once already used, the Judge is the receiver and the receiver the Judge, why did not the Judge himself, for the sake of decency, make the proposition to the State Government for peace? His "dignity," which is so dear that he is willing to go any and all lengths in usurpation to vindicate it, should at least have demanded this much. We must blush for the attitude in which he has been placed before the public.

But this is not all the proof as to the docility and subserviency of this

ORNAMENT OF THE FEDERAL BENCH.

Another State Constable found contraband liquor, shipped as other goods, contrary to the Federal and State law, in the depot at Greenwood. He obtained a warrant from a Trial Justice and seized the liquor. Here is the telegram sent to this Constable by the Attorney of the Richmond and Danville Railroad:

"GREENVILLE, S. C., Nov. 6th, 1893.

"*To Louis H. Perrin:*

"You must know that your seizure of the box addressed to Miss Jesse James is illegal under Judge Simonton's decision in the Swan

case. Unless you desire to share Swan's fate in being brought up before Judge Simonton and purnished by fine and imprisonment, you will at once release the property and return it to our agent. If I do not hear by ten o'clock to-morrow, A. M., that you have returned the property to our agent I will certainly take steps to have you brought before the Judge.

"(Signed) JAS. S. COTHRAN."

Here we have not the receiver, but the receiver's servant, a corporation counsel, who so well knows his Honor's mind, or, at least, is so well assured that whatever he is told to do he will obey, that he threatens imprisonment and fine for the seizure of goods contraband under the State and Federal laws, and with a warrant, at that. Yet we are told the receiver is the servant of the Court!

And what are we to do? Are we to tamely submit to these indignities and leave this petty tyrant to continue his acts of outrageous interference?

The South Carolina Railway has been in the clutches of this *par nobile fratrum*, Chamberlain and Simonton, for four years, and there is no knowing how much longer it is to remain there. True, an order of Court for its sale has just been filed, but that sort of hocus-pocus has been going on for over a year. The Richmond and Danville Railroad, a corporation unknown to our laws, but which has absorbed by lease or purchase seven railroads chartered by the State, has recently gone into the hands of another judicial syndicate, of which Judge Simonton is a member. If nothing is done the Judges and their "servants," the receivers, are likely to retain

POSSESSION OF THAT FAT CARCASS

for many years, and we may judge the future by the past as to the intolerable condition to which we shall be subjected by these judicial usurpations. These creatures, these corporations, holding their existence from the State's bounty and under its laws, like the monster Frankenstein, have grown greater than their creator. They already owe in the neighborhood of two hundred thousand dollars to the different tax funds of the State. They are in open rebellion against the Dispensary Law and Railroad Commission, and are bending every energy to aid those who would smuggle whiskey into the State and continue its illicit sale. There is nothing left the State, under the circumstances, since the decision of the Supreme Court, but to repeal the charters of every railroad in the hand of a receiver and destroy these creatures, which have grown so insolent that they trample our laws

under foot under the protection of this Federal Judge, and laugh to scorn the restrictions which all citizens and other corporations must obey. It is a harsh and drastic measure, which would be wholly unwarranted under any other circumstances, but it is the last desperate remedy. The

UNHOLY MARRIAGE

between the "dignity" of the Federal Court and these harlot corporations must be annulled, and the owners of the bonds made to understand that there is a point beyond which the patience of the State will not permit them to go. The Federal Court will, of course, claim that the property is in its possession and attempt to administer it; but if there is any regard for law left, such a course will force the property to sale and wind up the existence of these roads as at present organized and owned. After that is accomplished, or while it is being accomplished, provision can be made for giving them a new life upon such conditions as the Legislature may determine. Care should be taken in granting all future charters to prevent the absorption of competing lines by any railroad syndicate in or outside of the State. A law should be passed limiting the life of receiverships in the State, and a memorial addressed to the United States Congress setting forth the conditions which exist here, calling attention to the abuses which have arisen, and asking legislation to restore to the State the rights of which the Supreme Court's decision has robbed it, and the enactment of such laws as will throw the necessary restrictions around receiverships in future. Since the last decision of the Court the situation has become intolerable.

THE DISPENSARY LAW.

The agitation last year on the subject of prohibition resulted in the enactment of what is known as the Dispensary Law. The original Prohibition Bill introduced in the House, after numberless amendments, was withdrawn and a substitute incorporating most of these amendments, with others, was offered by Mr. Nettles. This, with a few minor changes, passed the House and was sent to the Senate. That body using the Nettles Bill in its entirety almost as a basis, with a few alterations and amendments made necessary on account of the change of purpose, returned the Dispensary Act as a substitute for the Prohibition Bill and the House concurred in the same without amendment, as the time was too short to even discuss it. The Act thus hurriedly prepared became a law, as a compromise between the Prohibitionists and the temperance people, who were skeptical as to the practicability

of a prohibition law. This hurry in its preparation and enactment left the law with many crudities and omissions which I will point out somewhat in detail later on.

Considering the change made in the purpose of the Act, and the lack of time to debate and digest its various provisions, it is wonderful that it has thus far stood the test of the

TEMPEST OF LITIGATION

which it has occasioned. It has been in the United States Court, in our Supreme Court, and before nearly every Circuit Judge on the Bench, but without any serious inroads thus far having been made on its Constitutionality. Perhaps no measure passed by any Legislature of any State within the memory of man has excited such widespread comment and elicited such deep interest. This is mainly owing to the fact that it is an entirely new idea, from an American standpoint, and deals with the question of controlling the liquor traffic in a new way.

In the State the Dispensary Law has been and still is the one absorbing, never-ending topic of discussion, and it has produced some

COMICAL ALIGNMENTS AND ALLIANCES

in the efforts to obstruct and defeat it. Newspapers which have always fought prohibition, and those known as the organs of the whiskey ring, have suddenly become strong advocates of prohibition. Prohibitionists who are so radical in their views that the uncharitable call them "cranks" have been found shoulder to shoulder with barkeepers and whiskey dealers in opposing it; and while many eminent divines have lent it their aid and endorsement, others are bitter in its denunciation. The more moderate prohibitionists are delighted with it. The whiskey men are more bitter in their opposition to it than they have ever been toward prohibition.

The law went into effect July 1st, and on the night of the 30th of June every bar in the State closed its doors. The work of preparation, organization and arrangements for the control of so mammoth a business had been going on for several months. The illness of Comptroller-General Ellerbe and the heavy burden of litigation which the Attorney-General had to bear (my colleagues on the State Board of Control), together with the long-continued illness of the State Commissioner, Mr. D. H. Traxler, devolved most of this work on my shoulders; and this, together with the organization and direction of the State Constabulary provided to enforce the law, has more than doubled the labors of the Executive office. It is safe to say that no member of the General Assembly, and very few others—certainly not

myself—ever conceived the magnitude of the undertaking; and yet, after it has been in operation four months, the ramifications, complications and ultimate growth of the business are still subjects of conjecture and wonder.

All of the legal whiskey traffic has been turned into one channel, flowing to Columbia, the central distributing depot. Agricultural Hall, a large two-story building with a cellar, thus making three stories 167 feet by 35 feet, has been turned into a bottling works. It is only a question of time when the erection of much larger quarters on the railroad will be necessary. Fifty-four employees, working ten hours every day, are kept busy bottling, and we find it almost impossible to keep the local Dispensaries in stock, and that, too, when I think it safe to say that not more than one-half of the liquor being drunk in the State at this time has passed through the Dispensary. Large quantities were purchased in advance, or in anticipation of the law going into effect, by consumers, while there is hardly a train entering the State, day or night, passenger or freight, which does not haul contraband liquor. Some of the railroads are yielding a measure of obedience to the law, but most of them openly defy it or lend their assistance to smuggling liquor into the State. The Richmond and Danville system and the South Carolina Railway in particular are bending every energy to defeat the law. So much for the present conditions.

I have had prepared tables covering the operations of the State Dispensary and of the County Dispensaries up to the 31st of October, the end of our fiscal year. They are printed in a separate report by the Commissioner. A careful examination of these figures will show the following results:

The Dispensary has been more than self-sustaining, and the net profits to the State for the first four months have been $32,198.16. The gross sales to consumers have been $166,043.56; total expense of State Dispensary, $72,566.36; of County Dispensaries, $19,890.00. The three principal items of expense, as will be seen, are freights, glass bottles and the Constabulary.

During the month of July twenty-nine Dispensaries were running; in August thirty-nine; in September forty-seven; in October fifty-one. One has been discontinued, leaving fifty now in operation. The number of clerks to Dispensers and assistants is twenty-four. The salaries of these local officers have been fixed by the State Board, and range from $1,000 to $300 per annum. Where the magnitude of the business requires it the Dispenser is given one or more assistants, but in no case is the salary more than $1,000.

Having shown the status of the business as a business, it is not improper to make some deductions purely from a financial standpoint. Hitherto under the license system the several Counties have derived a revenue of $100 for each license, aggregating last year for the entire State $81,100. Of this, four Counties—Charleston, Beaufort, Berkeley and Colleton—received $57,200, leaving $23,900 for the other thirty-one Counties. The State received nothing. In the cities and towns the licenses varied, but the aggregate of all towns in the State for last year was $134,372. It is impossible to do more as yet than give an approximation as to what revenue the State, Counties and towns will derive from the change in the method of controlling the liquor traffic. It is safe to say, however, that if the towns cease their unreasonable and senseless opposition, and three-fourths of the liquor, which under any conditions will be consumed in the State, shall pass through the Dispensary, the revenue of the towns will not be decreased from what it was formerly, that the Counties will receive as much, and the State will obtain a revenue equal at least to both of these.

But, notwithstanding this revenue is not to be despised, the law does not

REST ON A REVENUE BASIS,

was not enacted for that purpose, and cannot be defended on that ground. It rests wholly on its claim to being the best method of controlling the evils which are inherent and inseparable from the intemperate use of liquors, and must stand or fall on its merits as compared with other methods of controlling the evil. When the law first went into effect, outside of the city of Charleston there was almost a total cessation of the illicit sale; but, as time wore on, the men who have always dealt in liquors and grown rich thereby became more and more emboldened to disobey the law, mainly by the encouragement given them by the leading daily newspapers, which promised them immunity from punishment by juries, and presented the spectacle of the teachers of the people inculcating disobedience to law.

While the figures in the following table may be misleading, and will doubtless be modified by later statistics, showing the relative amount of drunkenness in like periods before and since the law went into effect, I have had the table prepared to give such data as could be otained. It is made up of the official responses by the Mayors and Intendants of the cities and towns to a circular asking for information. It may be as well to remark in passing, that the principal opposition to the law is among the citizens of towns and cities, and many of them are unwilling witnesses. This is shown by the fact that out of seventy-five circulars sent to all the principal cities and towns responses were received from only thirty-three.

REPORT FROM TOWNS AND CITIES OF ARRESTS FOR DRUNKENNESS AND DISORDER ARISING FROM LIQUOR DRINKING FOR A LIKE PERIOD BEFORE AND SINCE THE DISPENSARY LAW WENT INTO EFFECT.

	1892.		1893.	
	July 1st to Sept. 30th.	September.	July 1st to Sept. 30th.	September.
Seneca	.....	.....	.....	2
Lancaster	15	6	2	.....
McCormick	16	4	.....	.....
Sumter	21	14	7	4
Columbia	50	14	47	21
Union	2	1	4	1
Camden	17	10	15	14
Greenville	166	76	84	23
Easley	7	4	1	1
Winnsboro	.....	.....	.....	.....
Beaufort	43	8	43	12
Laurens	17	3	3	2
Johnston	6	.....	3	.....
Blacksburg	No	record.	3	1
Leesville	1	.....	.....	2
Pickens	.....	.....	1	.....
Chester	14	14	28	10
Charleston	158	60	70	27
Orangeburg	22	10	14	7
Spartanburg	10	4	2	4
Summerville	3	2	.....	.....
Fort Motte	.....	1	.....	.....
	577	231	287	131

22 Towns; 33 reported, but 11 had no arrests in either year.

I will now discuss

THE LAW ON ITS MERITS.

I shall premise what I shall say by observing that the United States government considers liquor a legitimate and proper source of revenue, and that it derives therefrom about $100,000,000 annually. It will

not be denied by any advocate of temperance or prohibition that it is a proper subject of taxation, and if it were proposed to remove the tax, which would inevitably reduce the cost to consumers at least three-fourths, there would be a universal howl by these two classes of citizens. The State, in the exercise of its police power for the ostensible preservation of the public health and morals has, time out of mind, required a license, and the towns and cities in turn required license; and while it is true that the State derived no revenue, and sought only to restrict the traffic within the limits of such municipalities as saw fit to grant licenses, it cannot be denied that the raising of revenue to support municipal governments has been the main factor in causing licenses to be issued by the towns. It is far-fetched, unreasonable, then—hypocritical in fact—to pretend that any disgrace can attach to the revenue feature. The men who are now most loud-mouthed in this pharisaical denunciation are the strongest advocates of the license system, and have had their municipal taxes reduced thereby. On the contrary, if it can be shown that under the Dispensary system there will be a reduction in the consumption of liquor, and a necessary reduction in crime and misery resulting from it, it must follow that the Dispensary, without regard to the revenue feature, is a long stride forward and an improvement on the license system. I will not pretend to say that it is as good as prohibition would be, but I do say that prohibition, here or anywhere else, is impossible, and the only question is how best to regulate the traffic so as to minimize the inevitable injury to society, inseparable from the sale of liquor under any circumstances. The

CLAIMS OF THE DISPENSARY TO SUPPORT,

and its superiority over any form of licensing, rest on the following grounds:

1st. The element of personal profit is destroyed, thereby removing the incentive to increase the sales.

2d. A pure article is guaranteed, as it is subject to chemical analysis.

3d. The consumer obtains honest measure of standard strength.

4th. Treating is stopped, as the bottles are not opened on the premises.

5th. It is sold only in the day time; this under a regulation of the Board and not under the law.

6th. The concomitants of ice, sugar, lemons, &c., being removed there is not the same inclination to drink remaining, and the closing of the saloons, especially at night, and the prohibition of its sale by

the drink, destroy the enticements and seductions which have caused so many men and boys to be led astray and enter on the downward course.

7th. It is sold only for cash, and there is no longer "chalking up" for daily drinks against pay-day. The workingman buys his bottle of whiskey Saturday night and carries the rest of his wages home.

8th. Gambling dens, pool rooms and lewd houses, which have hitherto been run almost invariably in connection with the saloons, which were thus a stimulus to vice, separated from the sale of liquor, have had their patronage reduced to a minimum and there must necessarily follow a decrease of crime.

9th. The local whiskey rings, which have been the curse of every municipality in the State, and have always controlled municipal elections, have been torn up root and branch, and the influence of the bar-keeper as a political manipulator is absolutely destroyed. The police, removed from the control of these debauching elements, will enforce the law against evil doing with more vigor, and a higher tone and greater purity in all governmental affairs must result.

To return to the question of revenue, I announce as a self-evident proposition that there will be a maximum of benefit from the operation of the law from the standpoint of these advantages in proportion as there shall be a large revenue. In other words, the restrictions thrown around the consumption and use of liquor by the Dispensary law and the benefits to arise therefrom will be in proportion as the liquor consumed is purchased at the Dispensary rather than obtained from illicit sources. Some fanatical, unreasonable people cry aloud against the iniquity of a government

SHARING IN THE "BLOOD MONEY,"

as they term it, the tears of women and children, whose fathers, husbands or brothers are addicted to the use of whiskey. It has already been shown that any system of license, which leaves the element of personal profit untrammelled, leaves this class of consumers utterly at the mercy of the owners of those dens of vice, the saloons. Men who are compelled to go in the daylight and get what liquor they want from a government officer and then go elsewhere to consume it will be likely to go home and be within the restraining influence of that charmed circle.

It is urged that if the State control the traffic, it should sell only at such profit as will cover expenses and no more. Is it not clear that if the price be fixed at that ratio it will act as a premium on consumption by reason of the fact that a dollar will buy more whiskey

than it does now? On the other hand an equally impractical scheme is to put the price very high and make the money that is spent on liquor go only a little way. It will be found here that, as in most things in life, "the middle way is the best." If the price is too high it puts a premium on the establishment of "blind tigers," on smuggling, on the illicit sale in every way; and, while the amount consumed will not be appreciably less, the indirect benefits to society arising from the revenue and by the destruction of all competition with the State are lost. Under the scale of prices fixed by the State Board on whiskey now sold in South Carolina there is a handsome profit, while at the same time the liquor at retail is cheaper than it was when sold across the bar. Making allowances for the watering or other adulteration of the whiskey that was formerly consumed, a half pint bottle of Dispensary whiskey that now costs twenty cents and containing five average drinks, of far superior strength, would have cost fifty cents at least from a saloon. The profit on the half pint goes to the reduction of the general tax, and the thirty cents saved to the consumer goes into his pocket for the support of his family.

It is thus seen that whiskey at retail is cheaper than when it was bought from the saloons, while at wholesale or by the gallon it is considerably higher; but the profit in its illicit sale not being very great in wholesale quantities, it is not likely that after the law has been amended in the way experience has shown to be necessary that there will be much competition with the Dispensary in wholesale quantities, by which I mean one or more gallons. It is the retailer with whom we have to deal; and he thrives on political opposition and where there is no Dispensary. When swift and sure punishment shall be meted out to those who break the law, and when public opinion shall have been educated so that the

VIOLENT OPPOSITION

now existing shall gradually disappear, there will be small competition with the Dispensaries in the Counties where they are located.

Of course it is expected that along the North Carolina border, where the United States Government has been unable to suppress the "moonshine" stills, there will be more or less whiskey entering into competition, which pays neither the Internal Revenue tax nor the profit which the State would receive on its sale.

A question which presents itself here, and which is worthy of your serious consideration, is the disposition to be made of domestic wines, and whether it is not best to except these from the general operation of the Dispensary Law. As for these wines, there is not a very large

product any way, and owing to the fact that the methods of manufacture are crude and ofttimes showing dense ignorance,—resulting in unpalatable cordials, or giving a product lacking in that uniformity which is required in an article of commerce, we find small demand for the domestic wines which under the law we must buy. But it would be a misfortune to have the growing of grapes and the manufacture of wine, an industry just beginning to take root along the Piedmont and in other parts of the State, destroyed absolutely by the Dispensary Law, as very likely it will be, unless you adopt the suggestion which I now offer.

Our people are too prone to cling to old methods and neglect diversification of industries and crops, and it would be a misfortune if viticulture should be driven from the State. I would therefore strongly recommend that authority be given the State Board to make contracts with all responsible grape growers to have their wine made after a certain method, to be of a certain strength and age before it enters into consumption. Then let the product be placed on the market through the Dispensary at such price as will cover the actual expense for bottling and distributing, and leave all the profit, or nearly all of it, to go to the manufacturer or grape grower. We cannot release domestic wines from the operation of the law entirely without throwing the door wide open to all manner of abuses in having it mixed with whiskey, or made the cloak for selling whiskey. And this appears to me to be the best and fairest method of dealing with this question. We can purchase the purest and best California wine from three to ten years old at from forty cents to one dollar a gallon; and unless instructed by the General Assembly to pursue the course I have outlined it is readily seen that the domestic product cannot enter into competition.

Now as to the question of beer, I am inclined to believe that it will be in the interest of temperance to exempt it from the Dispensary Law altogether, upon certain conditions, to wit: Require licenses under such stringent regulations as will ensure only men of probity and good character obtaining them. Put the beer seller under a ten thousand dollar bond for the strict observance of the law; the conditions of the bond to be such that whenever satisfactory proof has been adduced that he has sold anything else than beer or has broken the law in the least particular, the bond shall be forfeited in the most speedy and sure manner that the law can devise. The beer saloon can be closed at any hour the General Assembly sees proper. The point I wish to make is, that so far as we may it is good policy and in the interest of temperance to encourage the consumption of beer as against the consumption of

whiskey. Under such restrictions as I have mentioned very few men would run the risk of undertaking to sell anything else than beer. This course must be pursued or else the Legislature will have to prohibit absolutely everything of the name or nature of beer or malt liquor of any kind containing a trace of alcohol. The so-called "soft drinks," which have become so numerous since the saloons were closed, and "rice beer" especially, which has entered into consumption on the claim of being non-intoxicating, have become the screen or cloak behind which liquors of all kinds are being sold. Now as to the

ENFORCEMENT OF THE LAW.

There are many omissions, oversights and mistakes in the law as it stands. It will be much better to omit the enumeration of these and incorporate such changes as experience has shown to be necessary in a Bill than to amend the law by piecemeal. Such a Bill will be presented to you, covering in effect all the changes which experience has shown to be desirable. One feature to which I wish to direct your attention is that under the present law the punishments are too severe and the methods of securing punishment are of such a character that it will be almost impossible to convict. Grand juries will not bring in true bills, and petty juries will not find verdicts of guilty for offenses which most men consider as not meriting such severe punishment as that now provided. It is best, in my judgment, to dispense in the administration of this law, as far as the offense for selling is concerned, with juries altogether, if it can be done, and impose the duty of trying offenders upon a special officer—a Recorder or Judicial Trial Justice—to be designated in each County, who, when satisfactory proof has been presented to him that the law has been infringed, shall have the power the same as a mayor to commit the offender to the chain gang, or the Penitentiary for thirty days, or fine him within the limit of $100. It will be necessary also, in case it shall be found unconstitutional to punish by imprisonment without trial by jury, though I do not see how that can be, unless all our municipal charters are unsconstutional, that provision be made for a change of venue before a true bill is found. I judge from the reports of the Chief Constable that almost all the people of Charleston are in league against the law and determined to overthrow it. The officers of the Court, the Sheriff and others, charged with drawing the jury, and the Trial Justices are known to be friendly to ex-saloon keepers, who are defiantly continuing the sale of liquor contrary to law, and the Grand Jury has just thrown out cases resting on positive evidence.

One hundred and four licenses to sell whiskey and sixty-eight licenses to sell malt liquor have been issued by the Internal Revenue Collector since July to persons in that city; and thirty-three whiskey and thirty malt licenses have been issued in other parts of the State, showing the determination of the whiskey men to continue the traffic.

When the first arrests were made in Charleston by the State Constables under injunction proceedings, the Constables were treated in an outrageous manner by the mob; and one of the leading business men of the city of Charleston told me to my face that if he were on the grand jury he would not vote for a true bill against the most notorious offender, Chicco. It is idle then to expect conviction in that city, or true bills to be found, no matter how strong the testimony. In addition, the newpapers have heaped every possible abuse on the Constables, calling them "spies," "sneaks," and other opprobrious epithets, with a view of poisoning the public mind and discrediting their evidence, although I have used due precaution and exerted myself to select as Constables only men of good character, who, in their own communities, have the respect of their fellow citizens.

Desperate diseases require heroic remedies, and the General Assembly may as well understand that the enforcement of this law in some parts of the State, and especially in Charleston, Columbia, Greenville, Spartanburg, Beaufort and Sumter, will require some special legislation. It is against the municipal ordinances to sell whiskey without license in every town in the State, but the police in the cities as a rule stand idly by and see the ordinances broken every day; are *particeps criminis* in the offense, or

ACTIVE AIDERS AND ABETTERS

of the men who break it. As soon as a Constable arrives in town he is spotted by them and reported to those who run the illicit saloons.

Under the provision of the Dispensary Act, one-half of the revenue of the local Dispensaries over and above the expenses goes into the treasury of the municipality where they are located. I see no remedy for the condition of affairs existing in Charleston and Columbia except to provide for a system of metropolitan police, divorcing the control of the police force absolutely from politics and placing it in the hands of a Commission, who shall appoint, direct and remove such members of the force as will not enforce the law. I asked the Mayor of Charleston, with whom I had a conference, to have the police aid me in repressing and uprooting the illicit sale of whiskey, but he declined on the ground that that duty had been imposed on the State Constables.

Of the $12,000 which have been spent for Constables during the four months since the law went into effect, about one-half has gone to pay Constables who have been in Charleston making arrests and trying to suppress the illicit sale of whiskey. With the two main cities of the State officered by an efficient force of police in sympathy with the law, or, whether in sympathy or not, afraid to lose their places if they fail to do their duty, the expense of Constables would be reduced at least one-half and the backbone of opposition would be broken. In the other places I have mentioned, and in fact throughout the State, if the power is given the Governor to require the police of the various municipalities to enforce the law, and to remove and replace them if they fail to enforce it, there would be a still further reduction in the expense of Constables. Either this should be done or it be left with the State Board of Control to designate such cities and towns as shall have none of the income from the sale of liquors at the Dispensary, and let the revenue which now goes to the town pay for the expense of enforcing the law. If the citizens of the towns insist on encouraging disobedience to the law, let them pay the extra expense which the State incurs in order to enforce it.

These are drastic measures, but the law should be enforced or it should be repealed; and in so far as in me lies I shall continue, as I have hitherto done, to exert my whole power as Governor, and leave no stone unturned to see that everybody complies with its requirements. If you give me the power I will use it with the best discretion I possess, and stop the sale of whiskey, as far as may be possible, except through the legitimate channels. If you feel disinclined to go so far, then I am still ready to do the best I can. The smaller municipalities are at present at considerable expense in maintaining their local police forces. With a provision by which the Counties and the State would bear a proportionate share of this expense on condition that the law is rigidly enforced, the number of Constables would be reduced to a minimum, and a dozen or so fearless and energetic officers could look after the railroads, the illicit stills and peddlers.

One more suggestion and I shall leave this subject. Under the provisions of the Act, as it now is, the election of Dispensers in a municipality requires a petition signed by a

MAJORITY OF THE FREEHOLDER VOTERS,

and no County or town now "dry" by Statute can have one. There are in the State six Counties where the sale of liquor is thus prohibited: Oconee, Pickens, Marlboro, Marion, Horry and Williamsburg. These, of course, have no Dispensary, and their citizens are left under the

law to obtain their liquor,—whether used for medicine or otherwise,—wine for the sacrament in Church, and the alcohol for compounding physicians' prescriptions, as best they may. Law-abiding citizens have been put to great inconvenience by this, and such a condition is a premium on the illicit sale and almost precludes obedience to the law. I would not urge you to force a Dispensary on any community to which it is objectionable, but if the majority of the voters of a County shall decide in an election held for the purpose that they do not want provision made for them to get liquors in a legitimate way and for a legitimate use, then provision should be made by which the enforcement of the law in such County shall be paid for by a tax levied on the people of that County. If they want prohibition, let them have it in fact and not in name only. My observation and experience with men teach me that it is idle to expect any elective officer to enforce this or any other prohibitory Statute. Such men want votes, and will not make enemies if they can help it. It will be necessary, then, to leave such Counties to enforce the law of their own volition and through their own instrumentalities, which means a failure to enforce it at all; or to have the State Constables do it, and it would be unfair to have the revenue which is derived from the other Counties devoted to such a purpose.

In regard to the provision requiring a majority of the freehold voters to sign a petition for the appointment of a Dispenser, it is both unjust and unreasonable. Some of the present Dispensers appointed under this requirement are incompetent, and in some cases they are not fit persons to fill so responsible a position. I think a provision allowing the County Board to establish a Dispensary at such point or points in a County as will put the people to the least trouble in securing what whiskey they need for legitimate purposes should be incorporated in the amended Act. A Dispensary need not be located in a town, because it is conducted on an entirely different footing to the old saloon. I would not have Dispensaries multiplied to the degree that would encourage the consumption of whiskey by the ease of obtaining it, but the law rests upon the idea that it is the proper thing to supply what the people want for their legitimate use in the least harmful way; and the absence of a Dispensary, or its inaccessibility by reason of great distance, places a premium on the establishment of an illegal traffic. If men will have it, the State should supply it; but if the State does this in a way to cause too much trouble and expense, then others will step in and furnish it. One thing is very certain: the people of a County should not be put to the expense and trouble of getting whiskey in other Counties, or patronizing illicit sellers at home, because of op-

position to the law in the towns and the refusal to sign petitions for the establishment of a Dispensary.

EDUCATIONAL INSTITUTIONS.

The Reports of the various Boards of Trustees charged with the control of these institutions show the condition of the State's institutions devoted to higher education.

The Citadel is performing the work which it undertakes to do in its usual satisfactory manner.

Clemson College has been completed and partially equipped, and opened in July last with over four hundred boys, and there is promise that at its next session it will be filled to overflowing and many will have to be turned away.

At the South Carolina College, alone of the schools which are running, the attendance is unsatisfactory. Materially, as to plant and buildings in general, the College is in better condition than it has been for half a century. The corps of Professors is an able one, and they are performing their work with accustomed satisfaction ; but, for the causes which were set forth in my last Annual Message, the boys continue to go elsewhere. Yet I have every reason to believe that low water mark has been reached, and that the College in the future will attract a larger and larger number of students, so that the attendance will reach a satisfactory average in one or two more years.

There are two changes which suggest themselves to me as desirable, and I submit them for your consideration. One is that the Trustees shall be instructed to provide for the admission of women to the advantages of the school ; and the other is that provision be made for Normal training--the preparation of male teachers to supply the ever increasing demand of our Public Schools for men properly trained in educational work. The education given women in the various Female Colleges of the State is, at best, imperfect, and would only admit them, after graduation, to the Junior Class of the South Carolina College ; and the admission of women to the advantages offered by this College is but a matter of justice and common sense, in keeping with the spirit of the age. There are some mutterings of discontent about the expense attending the maintenance of the South Carolina College, and this is occasioned wholly by the small attendance. I feel sure, however, that the members of the General Assembly are too enlightened to have any sympathy with the demand, which comes from some quarters, that the appropriation be cut off. The school is a century old. With its past are linked the names of many of Carolina's bravest, brightest and best men ; and

upon its maintenance depends the future standard of higher learning in the State. We cannot afford to take any step backward in education; nor can we lower that standard. State pride, regard for the pledges of the Reform Movement—everything which should influence those who now guide the destinies of the State, point at this time rather to the wisdom of searching for the diseases which may cause the sickly condition of the school, and applying the remedy, than taking advantage of that unhealthy condition to strike it down, and thus remove a landmark which always has been and should continue to be the pride of every true Carolinian.

Of the South Carolina Industrial and Winthrop Normal College, which has been located at Rock Hill, after a lively competition between that city, Spartanburg and Chester, I will only say that, remembering the demand for a similar institution for boys at Clemson, the Board of Trustees are planning for a duplication of that school. The amount of money paid by the people of that thriving and ambitious little city, $60,000, will be expended in the erection of the main college building, which will afford class rooms for at least 600 girls; and we hope to have the building completed and ready for use by the 1st of September next. It is unnecessary to remind you that the condition of the people and the State's finances preclude the possibility of any appropriation to this girls' college from taxation at this time; but the college building proper can never be filled, and the advantages of the school offered to the girls of the State on conditions similar to those which obtain at Clemson, unless dormitories are supplied. It is altogether to be expected that there will be as great attendance at this girls' college as at Clemson College, if like inducements are offered; but this will be impossible without dormitories, and it is even doubtful if board can be obtained in the town for one-half of those the college is designed to receive. It is estimated that the equipment of a dormitory sufficiently large to accommodate four or five hundred girls would cost $50,000. If the two buildings are erected together, and convict labor be utilized, as is being done, it will be much cheaper than to wait, and I think we can build and equip a sufficiently large dormitory, open the college next October and run it until the Legislature meets again, for that sum of money.

I would therefore recommend and urge that you appropriate for this purpose from the earnings of the State Dispensary such a sum of money, to be available after the fifty thousand dollars appropriated last year to the Dispensary has been repaid to the Treasury If the Dispensary does not make it, then no harm will have been done. I make this recommendation with great earnestness for the reason that, having

been the first Governor of the State to advocate a college for our women, it will be a matter of intense gratification to me if, before I retire from office, I can see the twin colleges, Clemson and Winthrop, with six hundred students each, realizing that which first gave rise to the farmers' movement, inspired it with courage and carried it to victory—the demand for cheap and practical education for the boys and girls of the State.

There only remains to be mentioned the Cedar Spring Institute—the school for the deaf, dumb and blind—which has been managed with the usual good sense and judgment characterizing the institution, and merits a continuance of your fostering care.

SEA ISLAND SUFFERERS.

The 27th of August last witnessed the most disastrous storm and tidal wave on the coast from Beaufort to Charleston of which our annals have any record. The exact number of lives lost is unknown, but it was considerably over a thousand, and there was a total loss of crops on the more exposed islands all the way from John's Island to Hilton Head. Over one-half of the houses were also blown down or washed away, and the unfortunate people would have long since succumbed to starvation but for the the timely assistance and charity rendered by our own people and those living abroad. The management of the work of relief was taken in hand by local committees; but believing that methodical business arrangement and experience were better, Miss Clara Barton of the Red Cross Association, with her lieutenants, was asked to take charge of it, and this noble lady with her corps of assistants has been on the ground since the 20th of September, laboring in the cause of humanity. The extent of the disaster cannot be understood except by personal inspection. The question of relief and how best to administer it is a difficult one; even the amount absolutely necessary to prevent starvation is unknown. Although the State is poor and the crops everywhere a failure, it is not the will of the people of South Carolina that any of her citizens, no matter how humble they may be—even the poorest negroes—should starve, and when you send your Committee to investigate the phosphate industry at Beaufort as recommended by the Phosphate Commission, it would be well, I think, to instruct it to report fully also on the condition of those islands and as to the advisability of an appropriation to aid Miss Barton in relieving the suffering which is inevitable.

There is one measure of relief which is certainly demanded: These people owe taxes which they are unable to pay. The storm left their lands as bare of crops as though fire had passed over them; and the

struggle with them for the present is how to live. A subsequent storm wrought equally as great havoc around Georgetown and on the Waccamaw, though there was no such great loss of life as in the previous visitation. A great number of the sufferers have appealed to me for relief in the matter of taxes, and I would recommend that the Comptroller-General be allowed to suspend the collection on all property within the devastated region in Beaufort, Colleton, Berkeley and Georgetown, and to remit the taxes of all kinds where in his judgment it is proper to do so. No other course is practicable or feasible, because the territorial limits cannot be described, except in general terms, and even within these limits are many who can pay without serious injury to themselves, and the matter may be safely left to the discretion of the Comptroller-General after the power has been given to him.

MISCELLANEOUS.

I have devoted so much time and space to the three matters which I considered of paramount importance, viz., the railroad taxes, receiverships, and the Dispensary, that I will only deal in the briefest possible manner with the other matters of public concern.

The management of the State Lunatic Asylum and of the State Penitentiary is all that could be desired. While the State farm on the Wateree suffered severe loss by the breaking of the dam and the consequent overflow of seven hundred acres of crop by the river, the institution has been more than self-sustaining, has met payments on the property, and has a large cash balance to its credit. It is the intention of the Directors to so increase the strength and height of the dam that such a disaster will be impossible in the future. The number of convicts in the institution shows a heavy increase, being 1,033 against 900 last November.

The number of inmates in the Asylum has remained about at the average and the capacity of the institution is tested to its utmost. The Superintendent makes a suggestion, in connection with the use of convicts, to make bricks in anticipation of the necessity for enlarging the quarters for the colored males and guarding against fire, which I think a capital idea.

I would also direct your attention to the correction of an abuse which he points out, namely: the use of the Asylum by persons feigning insanity to escape criminal prosecution. Of course it is not proposed to put insane people in the Penitentiary, but they can go there with perfect propriety when they are charged with crime until insanity is satisfactorily proven.

The Adjutant and Inspector-General reports that the Confederate Rolls, the completion of which was provided for at your last session, will soon be as full and satisfactory as we can hope to have them. He suggests that provision be made for their publication, so that the names of those who yielded their lives or bared their breasts to the bullets of our then enemies, in defense of home and native land, may be placed on file in enduring and accessible form. But there is something lacking, and that is a brief history of the different brigades, regiments and batteries, to show the date of enlistment, battles in which they were engaged and the part they took in the war generally. This need not be lengthy, but it will be very valuable and dear to our children; and while the State has been appropriating money of late to copy the records in the British Museum bearing upon our Colonial history (a work which having been begun I hope you will complete), it is meet and proper and very much to be desired that nothing be omitted in preparing data for the future historian who shall tell the story of the Lost Cause and the part Carolinians bore in it. This work could best be done, in fact could only be done, by some one of the noble veterans who participated in that second revolution which only lacked success to have given it a place in history alongside of that of the War of Independence. I therefore suggest an appropriation of $——— for this purpose, and, with your permission, will nominate for this trust and duty a man whose name is inseparably connected with the annals of the struggle: the knightly soldier, Joseph B. Kershaw.

In this connection I would mention that the sum appropriated at the last session, $5,000, for distribution among those who were disabled or lost an arm or leg in the war, was distributed by the Board in the manner prescribed, the distribution being confined to those who lost limbs. There are, however, on file in the Comptroller-General's office applications for relief which we were compelled to disallow by reason of the smallness of the fund. Many of the applicants were equally as worthy as those whose limbs are gone, and I leave it to your generosity to provide for these such aid as the State may be able to give. Many of them are well-to-do and do not need it. I would again urge the organization of the Confederate soldiers of the State, as recommended in my last Annual Message, and the entrusting to them of the pension appropriation, so that it may be distributed in proportion to the merit and necessities of the applicant, rather than upon a horizontal scale.

CONCLUSION.

In conclusion I beg to remind you, gentlemen, that this session of the Legislature, by reason of the fourth Tuesday falling so near the end of the month, will be shorter by a week than the average, should you adjourn at Christmas in accordance with the unwritten law. No session of the General Assembly in the history of the State has ever had to deal with more important and vital questions. In addition, you have to elect five of the eight Circuit Judges and one Justice of the Supreme Court. My experience and judgment have shown me that when important elections are pending the public business is neglected and the Legislators seem paralyzed, becoming partisans of this candidate or that, and paying no heed to matters of legislation.

I therefore urge on you to appoint a day not later than Monday, the 4th of December, for getting rid of these elections—obstructions to legislative business. The new Criminal and Civil Code has to be passed on; the Dispensary Law must be amended and perfected; a wise and judicious Bill reducing salaries, not the haphazard Act now on its passage, should be passed; a new system of County government, simplifying and affording a greater measure of local control than now exists, is altogether desirable, and the General Assembly will in a measure confess its imbecility if it fail to provide such a law. You should overturn that edifice of wrong and oppression erected by the United States Court in the matter of receiverships, and the reclaiming of competing lines of railroads from the Richmond and Danville monopoly. All these important measures are enough and more than enough to occupy every moment of working time that will be left you; and if you could and would be wise enough to leave off the interminable, abominable waste of time and public money on petty special and local legislation, which has become a disgrace to which there seems to be no end, you would immortalize yourselves and gain the plaudits and well-done of your fellow citizens. If this General Assembly would signalize itself, it could not do better than to kill out of hand every Bill of that character which may be presented, and for once devote itself to legislating for the State, pass such of the Acts indicated as it may deem wise and proper, the Appropriation and Supply Bills, and go home. I can only repeat what I have said once before, that I am ready and willing at all times to furnish any facts or suggestions I may have, or lend any help that I can, for the information of members or Committees; and, invoking the blessing of the Divine Ruler on your labors, and praying that He may grant you the wisdom to do the right, I feel assured that you will work wisely and well for the best interests of the State.

B. R. TILLMAN, Governor.