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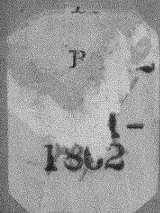
JOURNAL
OF THE
HOUSE OF REPRESENTATIVES
OF THE
STATE OF DELAWARE,
AT A
SPECIAL SESSION OF THE GENERAL ASSEMBLY,
CONVENED AND HELD AT DOVER,
On Monday, the 25th day of November,
IN THE YEAR OF OUR LORD,
ONE THOUSAND EIGHT HUNDRED AND SIXTY-ONE,
AND OF THE
INDEPENDENCE OF THE UNITED STATES,
THE EIGHTY-FIFTH.

WILMINGTON:

HENRY ECKEL, PRINTER,

South-East corner of Fifth and Market Street.

1862.



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JOURNAL
OF THE
HOUSE OF REPRESENTATIVES
OF THE
STATE OF DELAWARE.

The House of Representatives of the State of Delaware convened in Special Session, at Dover, November 25th, 1861, at 3 o'clock, P. M., pursuant to the Proclamation of His Excellency, William Burton, Governor of said State.

By direction of the Speaker, the Proclamation of His Excellency the Governor, convening the Legislature, was read by the Clerk, as follows:

WHEREAS, by an act of Congress of the United States, approved on the fifth day of August, A. D. 1861, entitled "An Act to pro-

vide increased revenue from imports to pay interest on the public debt, and for other purposes," it is provided by the 8th Section thereof, that a direct tax of twenty millions of dollars shall annually be laid, of which the sum of Seventy-four thousand six hundred and eighty-three dollars and thirty-three cents, is apportioned to and required to be paid by the State of Delaware: And whereas, by the 53d Section of said act, it is provided that any State may assume, collect and pay into the Treasury of the United States its quota of said tax in its own way, and regulate the assessment and collection thereof, for which payment a deduction of fifteen per cent. will be allowed: And whereas, it may be deemed more advantageous to the State, to regulate the assessment, and provide for the collection and payment of said tax by its own authority, and in such wise as the Legislature, in its wisdom, may, by law, provide, than for the assessment and collection thereof to be made by the General Government, according to the provisions of the said act of Congress; and the Legislature being the representatives of the people of every section of the State, are presumed to know the wishes of those whom they represent, and to understand their best interests: And whereas, the time fixed for the assessment and collection of the said tax precludes the possibility of any legislative action in reference thereto, without a special session of the Legislature:

Now, therefore, I WILLIAM BURTON, Governor of the State of Delaware, being prompted by a sense of duty, and considering that since the adjournment of the last Legislature, such an extraordinary occasion has arisen as is contemplated by the 12th Section of the 3d Article of the Constitution of the said State of Delaware, do, under and by virtue of the authority vested in me by the 12th Section of the 3d Article of the Constitution, by this, my proclamation, order and direct that the General Assembly of the said State of Delaware do convene at Dover, in the State House on Monday the twenty-fifth day of November next, for the purpose of deliberating upon and adopting such measures in reference to the subject matter to which I have alluded, and to such others of a special character, as, in their judgment, may be expedient and necessary for legislative action before the next General Assembly.

In witness whereof, I have hereunto set my hand and
 { L. S. } caused the Great Seal of the State to be affixed, this, the
 nineteenth day of October, A. D. eighteen hundred and
 sixty-one.

WILLIAM BURTON.

By the Governor:

EDWARD RIDGELY, Secretary of State.

The roll being called, the following members answered to their names, viz :

Messrs. Appleton, Betts, Broadaway, Calhoon, Chandler, Churchman, Clements, Cochran, Collins, Davis, Higgins, J. A. Moore, Phillips, Rickards, Robinson, Virden, Waples and Mr. Speaker.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had organized and was ready to receive any communication from the House.

And he withdrew.

Mr. Betts moved,

That the Clerk be directed to inform the Senate that the House had organized and was ready to proceed to business.

When,

Mr. J. A. Moore moved,

That the House do now adjourn.

Upon which motion,

The House being divided,

The yeas and nays were called,

And were as follows :

Yeas—Messrs. Broadaway, Calhoon, Clements, Cochran, Collins, Davis, J. A. Moore, Robinson, Virden—9.

Nays—Messrs. Appleton, Betts, Chandler, Churchman, Higgins, Phillips, Rickards, Waples, Mr. Speaker—9.

So the motion to adjourn was

Lost.

The question recurring upon the motion of Mr. Betts, to inform the Senate of the organization of the House ;

And the House being divided,
 The yeas and nays were called,
 Which being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Chandler, Churchman, Higgins,
 Phillips, Rickards, Waples, Mr. Speaker—9.

Nays—Messrs. Broadaway, Calhoon, Clements, Cochran, Collins,
 Davis, J. A. Moore, Robinson, Virden—9.

So the motion was *Lost,*

Mr. Broadaway moved,
 That the House adjourn,
 On which motion,
 The yeas and nays were called,
 And being taken, were as follows :

Yeas—Messrs. Broadaway, Calhoon, Clements, Cochran, Collins,
 Davis, J. A. Moore, Robinson, Virden—9.

Nays—Messrs. Appleton, Betts, Chandler, Churchman, Higgins,
 Phillips, Rickards, Waples, Mr. Speaker—9.

And the motion to adjourn was *Lost.*

Mr. Waples then moved,

That the House adjourn until to-morrow morning at ten o'clock.

Which motion *Prevailed.*

And the House stood adjourned.

TUESDAY, *November 26, 1861, 10 o'clock, A. M.*

The House met pursuant to adjournment.

Messrs. Boyce, Jonathan Moore and C. Williamson, appeared and took their seats.

Mr. Clements moved,

That the House proceed to investigate whether Capt. C. R. Layton is qualified or is acknowledged the Clerk of the House or not.

Pending the question on said motion,

Mr. Clements asked leave and was allowed to withdraw the same.

Mr. Churchman moved,

That the Clerk be directed to inform the Senate that the House of Representatives was duly organized, and ready to proceed to business.

The ayes and nays being called,

Were as follows :

Yeas—Messrs. Appleton, Betts, Chandler, Churchman, Cochran, Higgins, Jonathan Moore, Phillips, Rickards, Waples, Mr. Speaker—11.

Nays—Messrs. Boyce, Broadway, Calhoun, Clements, Collins, Davis, J. A. Moore, Robinson, Virden, C. Williamson—10.

So the motion

Prevailed.

C. Rodney Layton, Clerk of the House of Representatives, presented the following communication, which was read by the Speaker :

HOUSE OF REPRESENTATIVES, }
Dover, November 26, 1861. }

GENTLEMEN :

I hereby tender my resignation of the Clerkship of your Honorable body. In doing so I desire to return my thanks for the honor conferred upon me, in selecting me for the position, for the confidence thus reposed in me, and for the many acts of kindness received at your hands during my connection with your body.

Very respectfully,

Your ob't servant,

C. RODNEY LAYTON.

To the Honorable the Members of the House of Representatives of the State of Delaware.

Which,

On motion of Mr. Churchman,

Was

Accepted.

On motion of Mr. Appleton,

Mr. Waples was appointed Clerk, *pro tem.*

On motion of Mr. Appleton,

The House proceeded to ballot for Clerk.

Upon the ballots being counted, it appeared that Richard G. Cooper had received eleven votes, and John B. Pennington had received ten votes.

Whereupon,

Richard G. Cooper was declared duly elected Clerk of the House.

On motion,

Mr. Chandler was appointed a committee to inform Richard G. Cooper of his election.

Whereupon, he was introduced, sworn, and took his seat at the Clerk's table.

Mr. Robinson offered the following resolution :

Resolved, That a committee of three on the part of this House, be appointed to act jointly with a like committee on the part of the Senate, to wait on His Excellency the Governor, and inform him that a quorum of both Houses of the Legislature had convened, organized, and are ready to receive any communication he may see proper to make.

Which,

On his motion,

Was read.

And,

On his further motion,

Adopted.

Whereupon,

Messrs. Robinson, Churchman and Rickards, were appointed said committee.

Ordered to the Senate for concurrence.

Mr. Pratt, Clerk of the Senate, being admitted; informed the House of the concurrence of the Senate in the resolution, and that Messrs Cannon and Gemmill, were appointed such committee.

Mr. Chandler offered the following resolution :

Resolved, That the Rev. J. D. Curtis be invited to act as Chaplain of the House of Representatives during the present session of the General Assembly.

Which,

On motion of Mr. Higgins,

Was

Adopted.

On motion of Mr. Chandler,

A committee of two were appointed to wait on the Rev. J. D. Curtis, and inform him of the invitation of the House.

Whereupon,

Messrs. Chandler and J. A. Moore, were appointed said committee.

Mr. Robinson, Chairman of the committee appointed to wait on His Excellency the Governor, reported that the committee had discharged the duty devolving upon them, and that His Excellency the Governor would, in ten minutes, through the Secretary of State, transmit a written communication to the House.

Edward Ridgely, Esq., Secretary of State, being admitted, presented a written message from His Excellency the Governor, with sundry accompanying documents.

On motion of Mr. Waples,

The Message of the Governor, was read, as follows :

Fellow Citizens of the Senate and of the

House of Representatives :

It is with unfeigned regret that I cannot address you with the usual congratulations on the peace, prosperity and happiness of the country ; but notwithstanding it is unfortunately involved in a civil war, one of the most deplorable calamities that can befall any country, we have great reason to render thanks to the Ruler of the Universe, that Delaware is not the scene of action, and that we are not in the midst of its horrors and terrible ravages. Our citizens have acted in a manner highly creditable to them, and well deserve the quiet they have enjoyed. Those, if there be any, and doubtless there

are some everywhere, whose sympathies incline to the South, are quiescent, laying no impediments in the way of the Government, nor affording its enemies any sort of aid. Some of the innumerable rumors afloat throughout the country, may, perhaps, represent a different state of things; but were the test of truth properly applied to those reports, most of them would be found wholly unreliable.

The lamentable condition of the country is too familiar to you, and to all others who feel at all interested in its welfare, to require any extended remarks by me, either as to the causes which led to the unfortunate rupture, or the results that may flow from it. I shall therefore content myself with a very brief allusion to the several matters to which I desire to call your attention. I am aware that there is a difference of opinion as to the necessity or propriety of any legislation on any of the subjects to which I shall refer, but a sense of duty constrained me to convene the General Assembly, which I am authorized to do by the twelfth section of the third article of the Constitution, upon extraordinary occasions. Whether any and, if any, what legislative action is proper and necessary, will be a matter for the Legislature, in its wisdom, to determine. My own official duties are quite arduous and perplexing enough, without assuming to myself those of another branch of the government, with which I have nothing to do.

By an act of Congress, passed at an extra session, which commenced on the fourth day of July last, and approved on the fifth day of August, A. D. 1861, entitled "An act to provide increased revenue from imposts to pay interest on the public debt, and for other purposes," it is provided by the eighth section thereof, that a direct tax of twenty millions of dollars shall annually be laid, of which the sum of seventy-four thousand six hundred and eighty-three dollars and thirty-three cents is apportioned to and required to be paid by the State of Delaware; and it is further provided by the fifty-third section of the said act, that any State may assume, collect, and pay into the treasury of the United States, its quota of the said tax in its own way, and regulate the assessment and collection thereof, and a deduction of fifteen per cent. shall be made for such collection and payment. Whether any and, if any, what provision can be made by law for the assessment and collection of the tax referred to, which will be more conducive to the convenience and interest of your constituents, than for its assessment and collection to be made by the General Government, under the provisions of the act of Congress, is for you, in your wisdom, to consider and determine.

On the seventeenth ultimo, I received a communication, bearing date the fifteenth, from Brigadier-General Ripley, authorized by the

Secretary of War, requesting me to deliver to Brigadier-General Lockwood, "the ordnance and ordnance stores, arms and equipments belonging to the General Government now in the State of Delaware." This communication I answered, declining to comply with the order, on the ground that I had no authority or control over the ordnance, ordnance stores, arms and equipments, which would enable me to deliver them to the authorities of the General Government, for the reasons set forth in my answer. The act of Congress of the 29th of April, 1816, provides that the annual sum of two hundred thousand dollars shall be appropriated for the purpose of providing arms and military equipments for the whole body of militia of the United States, either by purchase or manufacture, by and on account of the United States; and it is further provided, that all the arms so procured shall be transmitted to the several States composing the Union and territories thereof, to each State and Territory respectively, in proportion to the number of the effective militia in each State and Territory, and by each State and Territory to be distributed to the militia in such State and Territory, *under such rules and regulations as shall be by law prescribed by the Legislature of each State and Territory*. Pursuant to the provisions of the act of Congress, the Legislature of Delaware, being thus specially and exclusively authorized to distribute this State's quota of arms, equipments, ordnance and ordnance stores, provided by law for the safe keeping and distribution thereof, not giving the Executive any authority or control over them, except for very special and limited purposes. They are therefore entirely subject to the disposition of the Legislature, in anywise that may be conformable to the act of Congress; and the expediency or propriety of returning them to the General Government, and whether at the request of the President, or whether Congress alone has the power to require their return, are matters which do not fall within the province or duty of the Executive to decide, but are peculiar subjects for legislative action. All of which are respectively submitted for your consideration.

I also received, about the same time, a communication dated the 14th ultimo, from the Secretary of State of the United States, the general character and tone of which seem to indicate apprehensions that our country may become involved in controversies with European powers, with which, it is very properly said, every public interest and every interest of mankind require that it should remain in relations of peace, amity and friendship; and although the prospect of any such disturbance was thought less serious than at any period since the insurrection, it is said: "It is nevertheless necessary now, as it has hitherto been, to take every precaution that is possible to

avert the evils of foreign war to be superinduced upon those of civil commotion;" and to this end it is deemed necessary by the General Government that our ports and harbors on the seas and lakes should be put in a condition of complete defence; but it appears from the communication of the Secretary of State that Congress, being chiefly absorbed during its recent extra session with other measures, did not provide as amply as could be wished, for the fortification of our sea and lake coasts. Therefore it is desired that I should call the attention of the Legislature to the subject, and I therefore submit it to your consideration, with the hope, however, that as Congress will assemble in a few days, that no action on the subject will be necessary on your part; but that Congress will take the necessary steps and adopt proper measures for perfecting these desirable and necessary defences.

In a few days after I received the communications referred to, persons believed to be in the United States' service, and, I presume, acting under its authority, took from the arsenal in Sussex County, all the public arms and accoutrements. And two volunteer companies in Sussex County, and one in Kent County, which had been supplied with arms and accoutrements in accordance with the provisions of the act of Assembly, were in like manner disarmed; and recently two six-pound brass pieces were taken from the artillery company of Capt. George R. Riddle, in the city of Wilmington, and one of similar description from the company of Capt. Thomas M. Ogle, in the town of New Castle. Some thirty or forty rifles also were taken from Captain Riddle's company, some sixty rifles from Capt. Thos. F. Bayard's company, and about thirty rifles from Captain Ogle's company; all these arms had been supplied to these companies in accordance with the provisions of the act of Assembly. For what reason these arms were taken, I am not officially informed. I call your attention to the subject in order that you may relieve the commissary, who had charge of the arms and accoutrements in the arsenal, and the several officers of the volunteer companies to which I have referred, from their respective obligations. You will perceive, by referring to title third, chapter fifteen of the Revised Code, that it is made the duty of the commissaries of the respective counties to keep all the military stores of the county, and keep all the public arms in the arsenal in perfect order for duty, and not give them out except to the order of the Adjutant-General, unless he is directed by the Governor, Major-General, or the Brigadier-General of his county. For the faithful performance of these duties every commissary is required, before he enters upon the duties of his office, to give bond to the State in the sum of one thousand dollars, with approved security.

You will also find, by the same reference, that it is provided that volunteer companies of artillery, infantry, grenadiers, riflemen and troops of cavalry or dragoons, may be formed, and that they shall, as nearly as practicable, be officered, armed and equipped, and disciplined according to the army regulations of the United States; that such companies may elect their officers, who shall be commissioned by the Governor, and when any company is so formed and its officers thus commissioned, it shall be supplied with arms and accoutrements, and it is only in case such company or troop so raised, shall not in one year from the appointment of its officers, contain at least twenty privates, or shall be reduced under that number, and so remain for six months, that such corps shall be deemed to be disbanded and no longer entitled to the arms and accoutrements, and the same are then required to be returned, and the Governor, in such case, may order them to be delivered to the commissary, or officer having charge of the arms for the county in which such corps belongs, the law expressly declaring that *under no other circumstances shall the arms thus furnished any company or troop be demanded from them.* It is very evident, therefore, that the Executive has no authority conferred upon him, either by the act of Congress or by the Legislature of the State to make the arms and accoutrements, ordnance and ordnance stores in this State, subject to his order. The officers of such companies or troops, when supplied with arms, are also required to give bond with security for their safe return in proper order and condition. Some of these officers, together with the commissary, have applied to me to cancel their obligations or otherwise relieve them from their liability, and no authority being vested in me to do so, I feel it my duty to invite your attention to the subject; the Legislature alone having full power and authority to relieve them.

I herewith transmit to you copies of the several communications referred to, together with a copy of my answer to the War Department.

And now, gentlemen, having thus imperfectly performed my duty by communicating to you such information as I possess, and by submitting to your consideration the several special matters to which I have thought proper to call your attention, trusting that you will confine your action to subjects of a special character alone, and not, at this time, enter into general legislation, allow me to invoke for you the favor of the All-wise and Overruling Providence, upon whose will the destinies of all men and nations depend, that, in all your consultations and deliberations, your hearts and minds may be so

guided and governed as to lead you to proper conclusions and the happiest results.

WILLIAM BURTON.

DOVER, November 25th, 1861.

COPY OF LETTER FROM BRIGADIER-GENERAL RIPLEY
TO THE GOVERNOR.

ORDNANCE OFFICE,
Washington, Oct. 15th, 1861. }

Governor Burton, Milford, Delaware :

SIR : Please deliver to Brigadier-General Lockwood the arms and equipments, ordnance and ordnance stores, belonging to the General Government, now in the State of Delaware, in accordance with instructions sent to me, to-day, from the Secretary of War, as follows, viz :

Brigadier-General Ripley :

Please issue on order to the Governor of the State of Delaware to turn over to Brig'r-General Lockwood the ordnance and ordnance stores, arms and equipments, belonging to the General Government, now in the State of Delaware.

Respectfully,

Y'r ob't serv't,

JAS. W. RIPLEY,
Br.-Gen'l.

REPLY OF GOVERNOR TO BRIGADIER-GENERAL RIPLEY.

STATE OF DELAWARE,
EXECUTIVE DEPARTMENT,
Dover, Nov 2, 1861. }

To Brigadier-General Ripley:

SIR: I have received your letter of the 15th ultimo, communicating to me an order of the War Department, by which I am requested to deliver to Brigadier-General Lockwood all the public arms in this State belonging to the U. S. Government.

After an attentive consideration of my powers on the subject, under the act of Congress and the law of the State, touching the distribution of the public arms, I regret to find myself unable to comply with this order of the War Department.

By the act of Congress of 23d April, 1808, for the distribution of arms and military equipments among the militia of the United States, these arms are in express terms made distributable, in a certain proportion, "to the militia in each State and Territory, under such rules and regulations as shall be by law prescribed by the Legislature, of each State and Territory." In effect, the Legislature is made the agent of the Federal Government for the distribution and safe-keeping of the public arms. Exercising the authority conferred by this act of Congress, the Legislature of Delaware have, by statute, placed the public arms in the custody of the commissaries of the several counties, subject to distribution to companies or troops organized pursuant to the statute under the order of the Governor, the Major-General, and the Brigadier-General of the county, and being so given out to any organized company or troop, the statute expressly provides that they shall not be demanded of the company or troop, unless it shall become disbanded by the reduction of its privates below twenty in number.

The act of Congress and the action of the Legislature of Delaware under it, manifestly gives to the Governor no such general control

of the public arms within this State as would enable him to direct their delivery to the order of the War Department. I may add, however, that a special session of the Legislature of this State has been convened to meet on the 25th instant, which body will possess full control of the subject.

An apology is due for my delay in replying to your communication. It was caused by an assurance given to me, as I supposed, from an authoritative source, that the order was about to be countermanded. A letter, however, since received from Brigadier-General Lockwood, proposing arrangements for carrying the order into effect, leaves me to infer that it has not been revoked, and that a response from me may be expected.

Very respectfully,

Your obedient servant,

WILLIAM BURTON.

COMMUNICATION FROM SECRETARY OF STATE.

DEPARTMENT OF STATE, }
Washington, 14th October, 1861. }

To His Excellency William Burton,

Governor of the State of Delaware:

SIR: The present insurrection had not even revealed itself in arms, when disloyal citizens hastened to foreign countries to invoke

their intervention for the overthrow of the Government and the destruction of the Federal Union. These agents are known to have made their appeals to some of the more important States without success. It is not likely, however, that they will remain content with such refusals. Indeed, it is understood that they are industriously endeavoring to accomplish their disloyal purposes by degrees and by indirection. Taking advantage of the embarrassments of agriculture, manufactures and commerce, in foreign countries, resulting from the insurrection they have inaugurated at home, they seek to involve our common country in controversies with States with which every public interest and every interest of mankind require that it shall remain in relations of peace, amity, and friendship.

I am able to state, for your satisfaction, that the prospect of any such disturbance is now less serious than it has been at any previous period during the course of the insurrection. It is nevertheless necessary now, as it has hitherto been, to take every precaution that is possible to avert the evils of foreign war, to be superinduced upon those of civil commotion, which we are endeavoring to cure. One of the most obvious of such precautions is that our ports and harbors on the seas and lakes should be in a condition of complete defence; for any nation may be said to voluntarily incur danger in tempestuous seasons when it fails to show that it has sheltered itself on every side from which the storm might possibly come.

The measures which the Executive can adopt in this emergency are such only as Congress has sanctioned, and for which it has provided. The President is putting forth the most diligent efforts to execute these measures, and we have the great satisfaction of seeing that these efforts, seconded by the favor, aid and support of a loyal, patriotic and self-sacrificing people, are rapidly bringing the military and naval forces of the United States into the highest state of efficiency. But Congress was chiefly absorbed, during its recent extra session, with those measures, and did not provide as amply as could be wished for the fortification of our sea and lake coasts. In previous wars, loyal States have applied themselves, by independent and separate activity, to support and aid the Federal Government in its arduous responsibilities. The same disposition has been manifested in a degree eminently honorable by all the loyal States during the present insurrection. In view of this fact, and relying upon the increase and continuance of the same disposition on the part of the loyal States, the President has directed me to invite your consideration to the subject of the importance of perfecting the defences of the State over which you preside, and to ask you to submit the sub-

ject to the consideration of the Legislature when it shall have assembled. Such proceedings by the State would require only a temporary use of its means. The expenditures ought to be made the subject of conference with the Federal Government. Being thus made, with the concurrence of the Government, for general defense, there is every reason to believe that Congress would sanction what the State should do, and would provide for its reimbursement. Should these suggestions be accepted, the President will direct proper agents of the Federal Government to confer with you, and to superintend, direct, and conduct the prosecution of the system of defence of your State.

I have the honor to be, sir,

Your obedient servant,

WILLIAM H. SEWARD.

On motion of Mr. Churchman,

One thousand copies were ordered to be printed for the use of the House.

On motion of Mr. Betts,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

The House met pursuant to adjournment.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had passed and requested the concurrence of the House in a joint resolution, authorizing John D. Burton to purchase a United States flag to be raised on the Capitol during the session of the State Legislature.

And he withdrew.

On motion of Mr. Appleton,

So much of the Governor's Message as relates to the subject of this State's assuming its share of the direct tax laid by the General Government, was referred to a special committee of five, with leave to report by bill or otherwise.

Whereupon,

Messrs. Appleton, Broadaway, Rickards, Chandler and Robinson, were appointed said committee.

On motion of Mr. Appleton,

The Joint Resolution from the Senate referring to the procuring an United States flag,

Was read.

On motion of Mr. Higgins,

The said resolution was

Concurred in.

Mr. Betts presented the account of Joseph M. Barr,

Which,

On being read,

Was referred to the Committee on Claims.

Mr. J. A. Moore presented the account of John W. Graham,

Which,

On his motion,

Was read, and referred to Committee on Claims.

Mr. Rickards presented the account of Edward P. Aldred,

Which,

On his motion,

Was read, and referred to Committee on Claims.

The Speaker laid upon the Clerk's table, and desired him to read, the following communication from the State Treasurer:

*To the Honorable the Senate and House of Representatives
of the State of Delaware:*

The undersigned, State Treasurer, respectfully represents to the General Assembly, That under the provisions of an act of the General Assembly of said State, passed at Dover January 26, 1859, entitled "An act for the encouragement of internal improvements in the State of Delaware," it is in substance provided that the grantee or his assignee shall pay to the Treasurer of this State on the first days of January and July in each and every year, the sum of eighteen thousand dollars, for and during the term of twenty years, or until the sum of seven hundred and twenty thousand dollars is paid into the Treasury of said State. That Richard France the grantee named

in said act, furnished me, the said State Treasurer, with a notice of assignment of the grants, privileges and liberties contained in said act to one John A. Morris, and which said notice bearing date on the 28th day of October now last past, alleged that the said assignment was made on the 8th day of the said month of October. That at the time of said notice being served upon me, to wit, on the 28th day of October now last past, the semi-annual instalment due under the provisions of said act on the first day of July A. D. one thousand eight hundred and sixty-one, had not been paid as required by said act; that I received on the said 28th day of October last of Richard France, by the hands of John A. Morris his assignee, a check on one of the banks of the city of New York for the sum of eighteen thousand dollars, in payment of the sum due on the first day of July last. That the said check has been duly honored and the money now remains in my hands. Inasmuch, therefore, as the said payment was not made within the time prescribed by the said act for its payment, I would most respectfully ask and request the advice and instructions of the General Assembly of my duty in the premises, and such other instructions as to your honorable body may seem meet and proper.

I am very respectfully,

Your obedient servant,

SAMUEL B. HITCH,

State Treasurer.

Dover, Delaware, Nov. 26, 1861.

Mr. Betts offered the following resolution :

Which,

On his motion,

Was read :

Resolved, That the communication of the State Treasurer be referred to a Special Committee of three members, who are hereby authorized to consult legal counsel, and send for persons and papers, in pursuing their investigations, and who shall report to this House by bill or otherwise, at as early a day as practicable.

Mr. Betts then moved,

That the resolution be adopted.

Pending which,

Mr. Waples moved,

To postpone the further consideration of the resolution until to-morrow.

Which motion

Prevailed.

Mr. Churchman gave notice that upon to-morrow or some future day, he would ask leave to introduce a bill entitled, "An act to amend an act entitled 'An act securing to mechanics and others payment for labor and material in erecting or repairing any building or structure within the State of Delaware.'"

Mr. Chandler, Chairman of the committee appointed to wait on the Rev. J. D. Curtis, reported that they had complied with the same, and that the Rev. J. D. Curtis will attend as invited.

Mr. Waples moved,

That so much of the Governor's message as refers to the Coast defences be referred to a committee of three, with leave to report by bill or otherwise.

Which motion

Prevailed.

Whereupon,

Messrs. Waples, Collins and Churchman, were appointed said committee.

On motion of Mr. Clements,

So much of the Governor's Message as refers to the State arms was referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Clements, Betts and Jonathan Moore, were appointed said committee.

Mr. Churchman offered a joint resolution as to adjournment,

Which,

Upon leave,

He withdrew.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had passed, and requested the concurrence of the House in, a Joint Resolution authorizing John D. Burton to purchase a State flag.

And he withdrew.

Mr. Robinson moved,

That the resolution be concurred in,

Pending which motion,

On motion of Mr. Waples,

The further consideration of said resolution was postponed until to-morrow.

On motion of Mr. Appleton,

The House adjourned.

WEDNESDAY, *November 27, 1861, 10 o'clock, A. M.*

The House met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate requested the return of the Joint Resolution authorizing John D. Burton to purchase a State flag.

And he withdrew.

Mr. Betts moved,

That the Clerk be directed to return the joint resolution as requested by the Senate,

Which,

Upon leave,

He afterwards withdrew.

On motion of Mr. Churchman,

The Joint Resolution authorizing John D. Burton to purchase a State flag,

Was taken up for consideration.

The question being on Mr. Robinson's motion to concur,

Mr. Robinson asked leave to withdraw the motion.

Objection being made,

Mr. Betts moved,

That Mr. Robinson have leave to withdraw his motion.

The yeas and nays were called,

Which being taken, were as follows :

Yeas—Messrs. Betts, Boyce, Broadway, Calhoon, Clements, Collins, Davis, J. A. Moore, Phillips, Rickards, Robinson, Virden, C. Williamson—13.

Nays—Messrs. Appleton, Chandler, Churchman, Higgins, Jonathan Moore, Waples, Mr. Speaker—7.

So the motion

Prevailed.

Whereupon,

Mr. Robinson withdrew his motion.

On motion of Mr. Robinson,

The Clerk of the House was ordered to return the Joint Resolution authorizing John D. Burton to purchase a State flag, to the Senate.

Mr. Phillips presented the petition of Henry Maloy and sixty-five others, praying An act prohibiting the setting of seins and nets in Indian River,

Which,

On his motion,

Was read.

Mr. Phillips moved,

To refer said petition to a committee of three, with leave to report by bill or otherwise.

On motion of Mr. Betts,

Mr. Phillips was granted permission to withdraw his motion.

Mr. Phillips then withdrew said motion.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had passed and requested the concurrence of the House in a "Joint Resolution on the adjournment of the General Assembly."

And he withdrew.

Mr. Appleton, Chairman of committee on the assumption by this State of the tax imposed by the General Government, offered the following resolutions :

- *Resolved*, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That in pursuance of the provisions of section 53, of the Act of Congress entitled "An act to provide increased revenue from imports, to pay interest on the public debt and for other purposes," approved August 5, 1861, the State of Delaware, hereby assumes the payment of its quota of the direct tax by the said act imposed upon the said State, and will pay the same into the Treasury of the United States.

Resolved, That the Governor of this State be and he is hereby requested to give notice, according to the provisions of said act of Congress, to the Secretary of the Treasury of the United States, of the intention of the State of Delaware to assume and pay into the Treasury of the United States the quota of the direct tax imposed by the said act upon the said State.

Mr. Churchman moved,

The adoption of said resolutions.

Mr. Robinson moved,

To postpone further consideration of the resolutions until the 14th day of January next, (1862.)

Mr. Waples moved,

To amend by striking out all after the word "until," and insert in lieu thereof, the words "this afternoon."

The amendment not being seconded, and rejected by Mr. Robinson,

The question recurring on the original motion to postpone until January 14, 1862.

The yeas and nays being called,

Were as follows :

Yeas—Messrs. Boyce, Broadaway, Calhoon, Clements, Collins, Davis, J. A. Moore, Robinson, Virden, C. Williamson—10.

Nays—Messrs. Appleton, Betts, Chandler, Churchman, Higgins, J. A. Moore, Phillips, Rickards, Waples, Mr. Speaker—10.

So the motion was

Lost.

Mr. Waples moved,

To postpone the further consideration of the resolutions until this afternoon.

The yeas and nays were ordered,

Which on being taken, were as follows :

Yeas—Messrs. Appleton, Calhoon, Chandler, Churchman, Clements, Higgins, Jonathan Moore, Phillips, Waples, Mr. Speaker—10.

Nays—Messrs. Betts, Boyce, Broadaway, Collins, Davis, J. A. Moore, Rickards, Robinson, Virden, C. Williamson—10.

So the motion was

Lost.

Mr. Waples moved,

To adjourn.

Which motion was

Lost.

The question recurring on the original motion of Mr. Churchman to adopt the resolutions,

The yeas and nays were called,

Which being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Chandler, Churchman, Higgins, Jonathan Moore, Phillips, Rickards, Virden, Mr. Speaker—10.

Nays—Messrs. Boyce, Broadway, Calhoon, Clements, Collins, Davis, J. A. Moore, Robinson, Waples, C. Williamson—10.

So the motion was

Lost.

On motion of Mr. Betts,

The joint resolution on the adjournment of the General Assembly was taken up.

Which,

On his motion,

Was read :

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That both branches of the Legislature will adjourn to-day at noon, until the second Tuesday of January next, at three o'clock.

Mr. Churchman moved,

To concur in the joint resolution.

Mr. Churchman moved,

To strike out all after the word "noon," and insert the words "*sine die*."

Which motion was

Lost.

The question recurring on the motion to concur with the joint resolution on adjournment of the General Assembly ;

The yeas and nays were called,

Which being taken, were as follows :

Yeas—Messrs. Betts, Boyce, Broadaway, Calhoon, Chandler, Clements, Collins, Davis, Higgins, J. A. Moore, Jonathan Moore, Phillips, Rickards, Robinson, Virden, Waples, C. Williamson—17.

Nays—Messrs. Appleton, Churchman, Mr. Speaker—3.

So the motion

Prevailed.

On motion of Mr. Betts,

The resolution in reference to the communication of the State Treasurer,

Was taken up for consideration.

The question recurring on the motion to adopt,

Mr. Robinson moved,

To amend by striking out all in said resolution after the word "members" in the third line, to the word "who," in the sixth line.

Mr Churchman moved,

To amend the amendment by inserting in lieu of the part stricken out, the words "who are hereby authorized to consult legal counsel in pursuing their investigations and,"

Which motion

Prevailed.

The question recurring on the amendment as amended,

On being put,

Prevailed.

The question recurring on the motion to adopt the resolution as amended,

Which is as follows :

Resolved, That the communication of the State Treasurer be referred to a special committee of three members who are hereby authorized to consult legal counsel in pursuing their investigations,

and who shall report to this House by bill or otherwise, at as early a day as practicable.

Which,

On being put,

Prevailed.

Whereupon,

Messrs. Betts, Broadaway and Rickards, were appointed such committee.

Mr. Waples moved,

To reconsider the vote by which the House refused to adopt the resolutions as to this State's assuming the tax imposed by the General Government.

Which,

On leave,

He withdrew.

On motion of Mr. J. A. Moore,

The House adjourned until the second Tuesday in January next, at three o'clock, P. M.



ADJOURNED
SPECIAL SESSION.



ADJOURNED
SPECIAL SESSION
OF THE
HOUSE OF REPRESENTATIVES
OF THE
STATE OF DELAWARE.

*The House of Representatives of the State of Delaware convened
in Special Session, at Dover, Tuesday, January 14th, 1862, at
3 o'clock, P. M., pursuant to adjournment.*

Prayer by the Chaplain.

Mr. Betts presented the following communication,

Which,

On his motion,

Was read :

To the honorable the Senate and House of Representatives of the State of Delaware, in General Assembly met :

The subscribers, citizens of Wilmington, respectfully represent, that on or about the twelfth day of February last, they gave bond to the State of Delaware in accordance with the provisions of its laws, for two brass six pound cannon, with certain equipments, and fifty short range rifles and equipments. These cannon and rifles were used by Company B, Light Artillery, (of which Charles M. Allmond was duly commissioned first Lieutenant) in a commodious building at the corner of Front and Tatnall streets, for the purpose of drilling said Company, every member of which was a loyal citizen, and most of whom had taken the usual oath as prescribed by the Mayor, "To sustain the Constitution of the United States and the Constitution of the State of Delaware, and obey the legal orders of the Mayor."

On the night of the 14th inst, or the morning of the 15th, a company of United States soldiers whom we understand, represented themselves to be a detachment from General Lockwood's brigade, entered the drill room of the aforesaid building, broke open the door and window to the armory, and took therefrom the cannon, rifles, equipments, &c., as well as a drum and fife, which drum and fife were the private property of the Captain of the company. It is meet for us here to say, that if Lieutenant Rigby, who, we have since understood, was in command of the detachment, had produced us an order from General Lockwood for said arms, we would have thrown no obstacle in his way, but given them up, under protest—thereby releasing us, so far, from our obligation to the State. Any resistance we believe, would have been improper, and only increased the already unnecessary and too violent excitement in the neighborhood.

These arms became the property of the State, by virtue of an act entitled "An act making provision for arming and equipping the whole body of the militia of the United States," passed by Congress April 23, 1808, the 3d section of which reads as follows :

"That all the arms procured in virtue of this act, shall be transmitted to the several States composing this Union and Territories thereof, to each State and Territory respectively, in proportion to the number of effective militia in each State and Territory, and by each State and Territory to be distributed to the militia in such State and Territory, under such rules and regulations as shall be by law prescribed by the Legislatures of each State and Territory." (See U. S. Statutes at large, vol. 2, p. 492.)

A few months since, as before stated, in accordance with the law of the State of Delaware, as prescribed or suggested by the act of the Federal Government, the arms in question became the property of Company B, Delaware Light Artillery, upon bond and security being given, in the name of the State, by an officer of said Company, for their safe return in proper order and condition, when said Company, or six months thereafter, shall not contain at least twenty privates; upon the order of the Governor, and in failure thereof the officer giving the bond shall be liable thereon. (See chapter 15, Revised Code.) This property, however, has been taken from said Company in the manner and by the authority cited; and under such circumstances simple justice to us seems to demand that our bond to the State should be cancelled, or the guns, &c., returned in as good order and condition as when taken.

Your obedient servants,

CHARLES M. ALLMOND,
JAMES M. WATSON.

Wilmington, Del., November 25, 1861.

On motion of Mr. Betts,

The foregoing communication was referred to the Committee on so much of the Governor's Message as refers to the State arms.

Mr. J. A. Moore offered the following joint resolution:

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That this General Assembly will receive no other new business, and that it will legislate only on the business received while in session in November last.

And moved its adoption.

Mr Robinson moved,

The further consideration be postponed till to-morrow afternoon, at 3½ o'clock.

Which motion

Prevailed.

Mr. Betts presented a petition of James Fletcher and nine others,

praying "An act of incorporation for the Wilmington Council, No. 1, United American Mechanics, of Wilmington, Delaware.

Which,

On his motion,

Was referred to the Committee on Corporations, with leave to report by bill or otherwise.

Mr. Betts offered the following resolution :

Resolved, That the Clerk be directed to furnish each member of the House with two daily papers of his choice during the session.

And moved its adoption.

On motion of Mr. Waples,

The resolution was amended by striking out the word "two" and inserting in lieu thereof the word "one."

Mr. J. A. Moore moved,

That the further consideration of the resolution be postponed till day after to-morrow.

Which motion was

Lost.

On motion of Mr. Appleton,

The resolution was further amended by adding thereto after the word "choice" and before the word "during," the words, "and two copies of each of the papers published in the State for the use of the House."

The question recurring on the adoption of the resolution as amended,

On being put,

Prevailed.

Pursuant to previous notice,

Mr. Churchman asked,

And,

On motion of Mr. Betts,

Obtained leave to introduce a bill entitled "An act to amend an act entitled 'An act securing to mechanics and others payment for labor and materials in erecting or repairing any building or structure within the State of Delaware.'"

Which,

On motion of Mr. Churchman,

Was read.

Mr. Betts gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "An act to authorize the Recorder of Deeds in and for New Castle County to transcribe the marriage index of his said office."

On motion of Mr. Appleton,

The House adjourned.

WEDNESDAY, *January 15, 1862, 3 o'clock, P. M.*

House met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Higgins offered the following Joint Resolution allowing the Auditor to provide additional conveniences for papers, &c.,

Which,

On his motion,

Was read :

Resolved, by the Senate and House of Representatives, in General Assembly met, That the Auditor of Accounts be authorized and is hereby directed to provide additional conveniences for papers, &c., provided the sum expended shall not exceed ten dollars.

And,

On his further motion,

Was

Adopted.

Ordered to the Senate for concurrence.

Mr. Phillips presented the account of D. Dodd,

Which,

On his motion,

Was read, and referred to the Committee on Claims.

Mr. Betts presented the account of George W. Vernon,

Which,

On his motion,

Was read, and referred to the Committee on Claims.

Mr. Phillips presented the petition of John M. Houston and others, praying an amendment of chapter 59, section 7, of the Revised Code,

Which,

On his motion,

Was read, and referred to a committee, with leave to report by bill or otherwise.

Whereupon,

Messrs. Phillips, J. A. Moore and Churchman, were appointed said committee.

On motion of Mr. Churchman,

The bill entitled "An act to amend an act entitled 'An act securing to mechanics and others payment for labor and materials in erecting or repairing any building or structure within the State of Delaware,'"

Was taken up for consideration.

Mr. Churchman offered the following amendment:

By adding the following: "And said act shall be so read and

construed and shall be so printed in any edition of the laws hereafter to be published."

Which,

On his motion,

Was read, and

Adopted.

On the further motion of Mr. Churchman,

The bill was read a second time by its title.

Mr. Betts presented the petition of Ann Jane Birnie, praying a divorce from the bonds of matrimony.

Which,

On his motion,

Was read, and referred to the Committee on Divorce.

Mr. Cochran presented two petitions of Charles Tatman, Jr., and others, citizens of Middletown, praying an amendment of the act of incorporation of said town.

Which,

On his motion,

Were read, and referred to the Committee on Corporations.

Mr. Appleton from the committee on so much of the Governor's Message as relates to the subject of this State's assuming its share of the direct tax laid by the General Government,

Reported the following Joint Resolution :

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That Samuel B. Hitch, State Treasurer, be and he is hereby authorized to ascertain for the information of this General Assembly, whether the banks of this State can loan the State the sum of sixty-five thousand three hun-

dred and eighty-five dollars and twenty-three cents, (\$65,385 23) for a period of six months."

He moved its adoption.

Pending which motion,

On motion of Mr. Waples,

The further consideration of said resolution, was postponed till this afternoon.

Pursuant to previous notice,

Mr. Betts asked, and,

On motion of Mr. Chandler,

Obtained leave to introduce a bill entitled "An act to authorize the Recorder of Deeds in and for New Castle County, to transcribe the marriage index of his said office."

Which,

On motion of Mr. Betts,

Was read.

Mr. Cochran presented the petition of R. R. R. Rothwell and others, praying the repeal of so much of the act of the General Assembly in relation to roads in St. Georges and Appoquinimink Hundreds passed at Dover February 21, 1859, as relates to Appoquinimink Hundred.

Which,

On his motion,

Was read, and referred to the Committee on Roads and Highways.

On motion of Mr. Phillips,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

House met pursuant to adjournment.

Mr. Boyce presented the petition of Burton P. Truitt and others, praying for a public road,

Which,

On motion,

Was read.

On a further motion of Mr. Boyce,

It was referred to the Committee on Roads and Highways.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had concurred in the Joint Resolution allowing the Auditor to provide additional conveniences for papers, &c., and returned the same.

And he withdrew.

On motion of Mr. Appleton,

The "Joint Resolution of inquiry as to effecting a Loan,"

Was taken up for consideration.

The resolution being before the House on the motion to adopt,

The yeas and nays were called,

Which being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Broadaway, Calhoon, Chandler, Churchman, Clements, Cochran, Collins, Higgins, J. A. Moore, Jonathan Moore, Phillips, Rickards, Virden, Waples and Mr. Speaker—17.

Nays—Messrs. Boyce, Davis, Robinson C. Williamson—4.

So the resolution was *Adopted*.

Ordered to the Senate for concurrence.

Mr. Betts gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "An act prohibiting Justices of the Peace from receiving money in civil suits."

Also, a bill entitled "An act to amend the act entitled 'An act to create a Board of Fire Wardens in the city of Wilmington.'"

On motion of Mr. J. A. Moore,

The "Joint Resolution on opening general legislation and receiving new business,"

Was taken up for consideration.

The question being on the motion to adopt,

Mr. J. A. Moore moved,

To amend by striking out all after the word "will" and inserting in lieu thereof the words "adjourn *sine die*, on Friday the 24th instant."

Pending which motion,

Mr. Higgins moved,

That the further consideration of the resolution and amendment be postponed till next Friday.

Which motion,

On being put,

Was

Lost.

The question recurring on the amendment,

Which,

On being put,

Was

Lost.

The question recurring on the adoption of the resolution,

Being put,

Was

Lost.

Mr. J. A. Moore presented the account of James Kirk for advertising.

Which,

On his motion,

Was read, and,

On motion of Mr. Higgins,

Referred to the Committee on Claims.

Mr. J. A. Moore presented the petition of H. C. Douglass and others, praying an amendment of the law regulating the sale of intoxicating liquors,

Which,

On his motion,

Was read.

Mr. Chandler moved,

That the House do now adjourn.

Which,

On being put,

Was

Lost.

Mr. J. A. Moore presented the petition of Elizabeth E. Townsend, praying an act divorcing her from the bonds of matrimony.

Which,

On his motion,

Was read, and referred to the Committee on Divorce.

On motion of Mr. Robinson,

The House adjourned.

THURSDAY, *January 16, 1862, 10 o'clock, A. M.*

The House met pursuant to adjournment.

Prayer by the Chaplain.

On motion of Mr. Churchman,

The bill entitled "An act to amend an act entitled 'An act securing to mechanics and others payment for labor and materials in erecting or repairing any building or structure within the State of Delaware,'"

Was read a third time by paragraphs, and

Passed the House.

Ordered to the Senate for concurrence.

Mr. Chandler from the Committee on Divorce, reported a bill entitled "An act to annul the marriage contract between James W. and Ann Jane Birnie,"

Which,

On his motion,

Was read.

On motion of Mr. Betts,

The bill entitled "An act to authorize the Recorder of Deeds in and for New Castle County to transcribe the marriage index of his said office,"

Was read a second time by its title.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had passed and requested the concurrence of the House in a Joint Resolution appointing a Committee on Claims."

And he withdrew.

The resolution,

On motion of Mr. Churchman,

Was read, as follows :

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That a committee of two members on the part of the Senate be appointed to act with a similar committee on the part of the House, as a joint Committee on Claims."

On his further motion,

The resolution was

Adopted.

Whereupon,

Messrs. Higgins, J. A. Moore and Rickards, were appointed said committee.

Ordered that the Senate be informed thereof,

And the resolution returned to that body.

Pursuant to previous notice,

Mr. Betts asked, and,

On motion of Mr. Chandler,

Obtained leave to introduce a bill entitled "An act to amend the act entitled 'An act to create a Board of Fire Wardens in the city of Wilmington.'"

On motion of Mr. Betts,

The bill was read.

On motion of Mr. Appleton,

The committee on so much of the Governor's Message as relates to the subject of this State's assuming its share of the direct tax laid by the General Government,

Obtained leave to sit during the sessions of the House.

Mr. Betts gave notice that he would, on to-morrow or some future day, ask leave to introduce a bill entitled "An act to amend an act entitled 'An act authorizing the Recorder of Deeds of New Castle County to make an indirect mortgage index.'"

Mr. Clements presented the petition of Joshua P. Hayes, with accompanying papers, praying an act locating certain vacant lands in Little Creek and Dover Hundreds, Kent County.

Which,

On his motion,

Was read, and referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Clements, Chandler and Phillips, were appointed said committee.

On motion of Mr. Betts,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

The House met pursuant to adjournment.

Mr. Higgins offered the following resolution :

Resolved, That the use of this Hall be granted to the Rev. B. F. Price, this evening at 7½ o'clock, for the purpose of delivering a lecture, the proceeds of which to be applied to a charitable object.

Which,

On his motion,

Was

Adopted.

Mr. Clements from the committee on so much of the Governor's Message as refers to the State arms, asked for further time to report.

On motion of Mr. Boyce, •

Leave was granted.

Mr. Davis presented the petition of H. C. Douglass and others, praying the passage of an act authorizing the laying out of a public road in New Castle and Kent Counties, from Sassafras Crossing to Clayton.

Which,

On motion of Mr. Betts,

Was read.

On motion of Mr. Davis,

It was referred to the Committee on Roads and Highways.

On motion of Mr. Higgins,

The House adjourned.



FRIDAY, *January 17, 1862, 10 o'clock, A. M.*

The House met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Betts presented the account of Caleb P. Johnson, for advertising,

Which,

On his motion,

Was read.

On motion of Mr. Higgins,

It was referred to the Committee on Claims.

Mr. Betts from the special committee to whom was referred the communication of the State Treasurer, submitted a report with accompanying documents.

Which,

On his motion,

Was read.

On motion of Mr. Betts,

N. B. Smithers, Esq., was requested to read his legal opinion before the House, upon questions referred to him by said committee.

Whereupon,

Mr. Smithers read such opinion.

The following is the report of said committee :

"The special committee to whom was referred the communication of the State Treasurer, beg leave to report that they have given the matter much consideration, and in accordance with the authority conferred upon them have engaged the services of distinguished and able counsel upon the subject :

Your committee asked their opinion upon two points. First : As to the acceptance of the payment made to the State Treasurer and referred to by him ; and, Second : As to the legal standing or position of the grant made to Richard France, since his failure to comply with its provisions. The opinions of Messrs. Smithers and Comegys, the counsel employed, are herewith submitted and recommended to the consideration of the House ; from them it will be in-

ferred that the State Treasurer has authority to make the division of said payment among the beneficiaries as heretofore, and also that the said grant is voidable at the option of the Legislature.

Your committee, therefore, recommend the passage of a Joint Resolution declaring that the State Treasurer has authority to receive the said payment, and also recommend the passage of an act declaring the franchise given to Richard France to have been forfeited, and resuming the grant by the State, with the necessary provisions for sustaining the action of the Legislature before the Courts if needed.

Copies of which resolution and act are herewith submitted.

All of which is respectfully submitted,

EDWARD BETTS,
A. BROADAWAY,

Committee.

January 17, 1862.

OPINION OF

N. B. SMITHERS AND J. P. COMEGYS, Esq's,

*As to the proper construction of the Act of the General Assembly of
the State of Delaware, passed January 26, 1859, granting
Lottery Privileges to Richard France.*

On the twenty-sixth day of January, A. D. 1859, the General Assembly of the State of Delaware passed an act entitled "An act for the Encouragement of Internal Improvements in the State of Delaware," 11th Vol. Del. Laws, page 594, the declared object of which was to extend the aid of the State, by donations of money, to certain corporations and commissioners therein mentioned, to be expended in the construction of works of public improvement. The mode of raising the money was by the sale of lottery privileges.

By the 3d, 4th, 5th and 7th Sections, it was enacted as follows :

"SEC. 3. That in consideration of the sum of seven hundred and twenty thousand dollars, to be paid to the State Treasurer of this State as hereinafter provided, Richard France, of the City of Baltimore, in the State of Maryland, be and he is hereby authorized and empowered, and he has special liberty to prepare schemes of lotteries, to sell lottery tickets and to draw lotteries in this State, by himself, his agent or agents, assignee or assignees, for the term of twenty years from and after the passage of this act.

"SEC. 4. That before the said Richard France, his agent or agents, assignee or assignees, shall exercise any of the privileges hereby conferred, he shall give bond to the State of Delaware, with security to be approved by the Governor, or by the Chancellor, or by any one of the Judges of the Superior Court of this State, conditioned for the payment of all prizes sold and drawn in any of the lotteries authorized by this act, and also for the payment by the said Richard France, or by his assignee or assignees, to the State Treasurer of this State, of the sum of seven hundred and twenty thousand dollars of lawful money as follows : that is to say, the sum of eighteen thousand dollars, part thereof to be paid on or before the first day of July now next ensuing, and the further sum of eighteen thousand dollars on or before the first day of January now next ensuing, and the balance thereof in thirty-eight equal semi annual installments of eighteen thousand dollars each, to be paid on or before the first day of July and the first day of January, in each and every year thereafter.

"SEC. 5. That upon a failure to pay to the State Treasurer aforesaid, any one of the several payments, as provided for in the fourth section of this act, within thirty days after the same shall have become due and payable, then all the grants, liberties and privileges herein contained and specified, shall from thenceforth cease and be of no effect.

"SEC. 7. That the Governor of this State shall appoint two commissioners to superintend the drawings of all lotteries by this act authorized ; and he shall have power to fill any vacancy that may occur in the said office of commissioner ; and the said commissioners shall receive each the sum of one dollar for actual attendance at each drawing of said lotteries, to be paid by the said Richard France or his agent or agents, assignee or assignees."

Richard France, the grantee, having complied with the condition prescribed in the fourth section, by giving bond with security, proceeded to exercise the privileges conferred by the act, and duly made the semi-annual payments, until the payment which became due on the first day of July, 1861. The sum of \$18,000, payable on the said first day of July 1861, was not paid by Richard France, or by

any other person, on or before that day, nor within thirty days thereafter.

Subsequently, by a notice addressed to the State Treasurer, dated October 28, 1861, Richard France informed that officer, that he had assigned to one John A. Morris, by deed dated October 8th, 1861, the grants, liberties and privileges specified and contained in the act of the General Assembly above mentioned, and on the same day the State Treasurer received from the hands of John A. Morris, the assignee, a check, drawn on one of the Banks of the City of New York, for eighteen thousand dollars. This check was duly honored and was received by the State Treasurer in payment of the installment of eighteen thousand dollars, which by the condition of the bond of Richard France, made in conformity with the provisions of the fourth section of the act, was payable on or before the first day of July, 1861. After this payment, John A. Morris proceeded to exercise the privileges mentioned in the act, claiming a right to do so by force of the assignment.

The money thus derived from the check being in the hands of the State Treasurer, he applied to the General Assembly for instruction in reference to his duty in the premises, and the communication having been referred to a committee, of which you are chairman, I am asked for my opinion in relation to the proper construction of the Act and the rights of the parties.

It is obvious that any inquiry as to the rights of the parties must be confined to their *legal* rights. No question of morality,—no consideration of the propriety of the grant, can be allowed to warp the judgment. The Legislature was undoubtedly capable to make such grant, and although in the exercise of that power it may, in the opinion of many persons, have acted unwisely, nevertheless, if the grant constitutes a contract, public faith requires that it shall be kept inviolate. The purpose of the General Assembly must be taken to have been that which it has itself declared—the extending of its aid to internal improvements; the means of raising the money, that which it devised—the sale of a lottery privilege; the beneficiaries, of sufficient public importance to warrant the means—for of the proper recipients of its bounty it was the only judge, and in the interpretation of the act, common sense and legal rules concur in recommending such construction as will effectuate the intention and object of the statute.

The relation, between the State and the grantee, arises wholly from the sections of the act above recited, and to these alone we are to look for the rights and duties growing out of and incident to that

relation, except only so far as the object of the act, as shown by the other sections, may afford aid in their construction. The payments were to be made to the State Treasurer in his official capacity, and within thirty days after the receipt of each payment, it was his duty to distribute and pay over the same to the beneficiaries, in proportion to the several gross sums appropriated to them respectively. This distribution and payment, however, was the act of the officer as the agent and almoner of the State after the money had been paid into the Treasury. The obligation of the grantee was fulfilled by the payment to the State Treasurer of the sums stipulated to be paid, at the respective periods nominated in the bond, and he had no concern with the subsequent distribution or disposal.

With these general premises I proceed to consider the special provisions of the act.

The third Section, for the consideration of the gross sum of \$720,000, grants to Richard France "special liberty to prepare "schemes of lotteries, to sell lottery tickets and to draw lotteries in "this State, by himself, his agent or agents, assignee or assignees, "for the term of twenty years from and after the passage of this "act."

This constitutes the grant. It contains all the elements of a contract—a grantor—a grantee—a thing granted and a consideration for the grant. The thing granted is a franchise, defined in England as "a royal privilege in the hands of a subject," and in this country as "a privilege conferred by grant from government and vested in individuals."

These franchises are immunities, which cannot be exercised without authority derived from the sovereign power, and when actually or in legal contemplation founded on a valuable consideration, an estate in such a franchise and an estate in land rest upon the same principle, being equally grants of a right or privilege for value received, and in all questions touching them, "although a State is a party, the contract ought to be construed according to the well established principles which regulate contracts generally." [C. J. Marshall in *Huidekoper's Lessee vs. Douglass*, 3 Cranch, 70.]

The third Section having thus conferred the franchise, the fourth provided the means of enforcing the payment of the consideration money. This was to be secured by the bond of Richard France, with sufficient surety, and to ensure the execution of such bond the Legislature declared that its delivery should be a condition precedent to the exercise of any of the privileges conferred by the act. When the bond was executed the condition was complied with, and France

became invested with the franchise and the rights incident to it. The bond formed the only security upon which the State could rely to enforce payment of the consideration. The first installment did not become due for nearly six months after the act was passed, and each subsequent installment was payable at intervals of six months afterwards, so that the grantee or his assignee could enjoy the franchise for any six months, and if at the end of that time the obligor and his surety should happen to be insolvent the State was remediless. With a view to this contingency, and also to induce prompt payment, the fifth Section was enacted.

The proper construction of the provisions of this section, and their application to the state of facts existing subsequently to the failure to pay the \$18,000, due on the first day of July, 1861, within thirty days thereafter, form the material subjects of consideration.

It will be noticed that this section confers no means of enforcing payment. Its operation is solely on the grant. The proceeding to obtain the money, in case France or his assignee failed to pay, was on the bond, by the condition of which, payment was to be made on the first days of July and January, and on which a right of suit accrued on failure to pay on those days. This right of suit existed independent of, and cumulative to the remedy proposed in the fifth section, which arose only upon a failure to pay for the space of thirty days afterwards.

Recurring then to the language of that section, the words are: "Upon a failure to pay to the State Treasurer aforesaid any one of the several payments, within thirty days after the same shall have become due and payable, *then* all the grants, liberties and privileges herein contained and specified, shall *from thenceforth* cease and be *of no effect.*"

This qualification was introduced to secure *prompt* payment, and upon failure thereof to operate in some mode as a defeasance of the grant.

The first question that occurs is, whether these words are to be construed as a *limitation* of the term originally granted, operating by way of *expiry*, and making the franchise to cease as though it had been originally limited to that time, or whether as a *condition* operating by way of *forfeiture*, in the defeasance of an estate previously vested and which otherwise might have continued. In the former case, the grant instantly ceases, of itself—in the latter, it endures unless the grantor takes advantage of the breach of the condition. To determine this question, it will only be necessary to advert to the difference between a condition and a limitation. "A limita-

tion marks the utmost time of continuance—a *condition* marks some event, which if it happens in the course of that time, is to defeat the estate.” 2 *Thomas’ Coke*, 70.

A *limitation* is so called because it defines the boundaries of a grant beyond which it never could have existed, while a *condition* is something, which, if it occur within the time of the limitation, operates to put an end to the grant, although the period affixed by the limitation may not have arrived. 11 *Metcalf*, 99.

Applying these tests to the Act, it will be seen that the grant conferred was to endure for the term of twenty years from and after its passage. This was the period of its *limitation*—the appointed time of its continuance. It might have endured, and so far as the Legislature was concerned, was intended to have endured, for the whole time expressed in the grant. The fifth section interposed, within the period of the continuance of the franchise, as bounded by the third section, an event, which, if it happened, was to have the effect of causing the term, previously limited, to cease before the time when the grant, as originally defined, would have expired. This clearly sounded in forfeiture,—its operation was, *by default*, to defeat the estate previously vested. The fifth section is, therefore, to be construed as a *condition*.

Supposing the construction of the fifth section as importing a condition to be correct, then the contingency therein provided for, to wit, the failure to pay the \$18,000, due on the first day of July 1861, within thirty days thereafter, actually happened. The question then occurs, what effect had this non-payment on the grant? Did it, by that fact, become absolutely void or was it voidable only, at the option of the grantor? The distinction between a grant void, and one voidable only, is that a grant becoming void, instantly and of itself determines and is incapable of confirmation or continuance, even by the assent of both parties, while a voidable grant will determine only at the option of the party not in default and may be continued at his election. In the former, all rights and liabilities necessarily fall with the grant, while in the latter, the rights may be enjoyed and the liability of the defaulter enforced, by the innocent party. This difference, it will readily be seen, is material as to the consequences.

The intention of the parties constitutes the contract, and we must resort to the Act to learn what the contract is. The *object* is always to be regarded as a useful guide to its proper construction, and, as before observed, such construction must be given as will effect, not defeat, that object. The purpose of the State, at least, is plainly

declared—it was to furnish money to the corporations and commissioners through the whole period of twenty years, and it is submitted that it would be a sinister construction, that would enable the party from whom the money was to come, to defeat that object at his pleasure, by his own default.

Still all contracts are made subject to the rules of law governing the construction of the terms which the parties see fit to employ, and they are supposed to be cognizant of these rules and to contract with reference to them. From the operation of this principle a State can claim no exemption.

These rules are to be extracted from judicial decisions in parallel cases. To them, therefore, we must look for guidance. Most of the cases, involving the construction of similar phrases, have occurred in reference to forfeitures for breach of condition for non-payment of rent, and the non-performance of covenants in leases of lands.

In relation to forfeitures growing out of conditions annexed to freehold and leasehold estate, these rules formerly prevailed :

1. In freehold estates, as the estate commenced by livery of seisin, it must be determined by the same formality, so that in relation to such estates, as in a lease for life, if the condition was that upon non-payment of rent the lease should "*cease and be void*," inasmuch as entry by the landlord was necessary to defeat the estate, if he chose not to take advantage of the forfeiture, by entry, the estate continued ; so that by reason of the nature of the estate, the lease was voidable only and not void.

2. So likewise in the case of a lease for years, rendering rent and upon failure to pay, that the lease "*should be void*" and the "*lessor should have the right to re-enter*;" here, as the condition was annexed that the lessor should re-enter, it was considered that this was necessary to avoid the lease, and as it was an act to be done by the lessor, in order to perfect the forfeiture, if he chose to omit the act the forfeiture was incomplete ; so that the lease was voidable by reason of the nature of the contract.

3. As a lease for years began without livery, no entry was necessary to terminate it, but it could be determined without any act to be done on the part of the landlord, and, therefore, it was held, that if the parties chose to make a lease, for years "*to become, ipso facto, void*" upon non-payment of rent, then, upon the happening of the contingency, it became instantaneously void, and being utterly void, no waiver could set it up.

Thus stood the law from the beginning, and stands now, in relation to freehold estates and leases for years determinable upon re-entry. But in reference to such leases, with a condition, in terms, rendering them absolutely void, a different construction has of late obtained, and though, perhaps, not universally acknowledged, it may be considered settled that such leases are now held to be voidable only. The cases of *Rede vs. Farr*, 6 M. & S., 121; *Bryan vs. Banckes*, 4 Barn. & Ald. 400; *Arnsby vs. Woodward*, 6 Barn. & Cress 519; *Roberts vs. Davey*, 4 Barn. & Adol. 665; *Nash vs. Birch*, 1 Mees. & Wels. 402, and *Jones vs. Carter*, 15 Mees. & Wels. 718, may be considered as having effected a revolution in England against the doctrine of the older cases of *Finch vs. Throckmorton*, Cro. Eliz. 221; *Browning vs. Beston*, 1 Plow, 136, and third resolution in *Pennant's Case*, 3 Coke, 64.

So in New York, in the case of *Clark vs. Jones*, 1 Denio, 516, where there was a condition in a lease that it "*should cease and determine*," if the rent should be in arrear for thirty days after any day of payment, Judge Bronson decided that the neglect to pay did not render the lease absolutely void, but that as to the lessor it was voidable only, and that he might dispense with the forfeiture and affirm the continuance of the lease.

It is true that in the prior case of *Smith vs. Saratoga County Mutual Fire Insurance Company*, 3 Hill, 511, the same Judge ruled that the words "*shall thenceforth be void and of no effect*," in a policy of insurance, providing for forfeiture in case of assigning without consent, rendered the policy absolutely void on the happening of the contingency, and that it was incapable of confirmation, but this decision was based on the cases of *Pennant*, and *Finch vs. Throckmorton*.

A comparatively recent case, *Kenrick vs. Smick*, 7 Watts & Serg. 41, is also supposed by an annotator to the case of *Jones vs. Carter*, to militate against this doctrine. In that case, where the agreement was, that the Trustees of a church, to whom a lease was made forever, should pay, semi-annually, the sum of \$145.65, but if the said Trustees should become indebted for the amount of \$291.30, and should, for three months after the said sum became due, neglect to pay the same, then the lease, *after ten days written notice, should become null and void*, the Supreme Court of Pennsylvania expressed the opinion "that on a lease for years with such a condition, if the condition be broken, the interest of the defendants would be *ipso facto void* by the breach, without any re-entry, and when the lease is made *ipso facto void* by the breach, then no subsequent recognition can set it up," and cited *Pennant's case*.

Now, it is submitted that if the court intended that mere non-payment, without being followed by notice, would have rendered the lease void, it is not sustained by Pennant's Case, for, even according to that case, it would have been voidable only, being in terms made to be avoided by notice; but if they meant that it would have been determined by the notice, in conformity with the provisions of the lease, then, it is not controverted by any authority and is not incompatible with the modern doctrine, for the notice would have been the exercise of the option and the case would have fallen within the principle of *Jones vs. Carter*, above cited.

Supposing then the rule to be, that the words "*null and void*," "*cease and determine*," "*cease and be of no effect*," and words of like signification, will receive the same construction, whether formed in conveyances operating to vest a freehold, in leases with or without clauses of re-entry, and in covenants and contracts generally, it will not be improper to refer to other cases where similar words have received judicial interpretation.

In the case of *Ludlow vs. the New York and Harlem Railroad Company*, 12 Barbour, 440, where the plaintiff conveyed to the defendants, in fee simple, a parcel of land on which to construct their road, and with a condition in these words: "This conveyance to *cease and be void* unless the said railroad is completed through the above described piece of land on or before the first day of January, A. D. 1843," it was held that the neglect to perform the condition did not, *ipso facto*, determine the estate, but only exposed it to be defeated and determined at the election of the grantor and his heirs, to be signified by some act equivalent to a re entry at the common law.

Phelps vs. Chesson 12 Iredell, 194. The Legislature of North Carolina, by statute, provided "that when a grant of swamp land had been obtained from the State and the grantee, his heirs or assigns have not regularly listed the same for taxation and paid the taxes due thereon, *they shall forfeit and lose all right, title and interest in said land and the same shall ipso facto revert to and be vested in the State* unless the grantee, his heirs or assigns, shall, in twelve months from the passage of this Act, pay, to the Sheriff of the County in which the land lies, all the arrearages of taxes due on the said lands, with lawful interest thereon from the time the said taxes ought to have been paid."

In that case it was proved that the lands have not been listed for taxation, nor the taxes paid for more than ten years after the

Act. The court held that an estate once vested cannot be defeated by a condition or forfeiture, without some act on the part of the grantor or his heirs, by which to take advantage of the condition, even where the words of condition are, "*the estate shall therefore be void and of no effect,*" and that these words are of the same legal import as *ipso facto void*.

The People vs. President, &c., of the Manhattan Company, 9 Wendell, 351. This was an information in the nature of a *quowarranto* against a corporation for a forfeiture incurred by non-compliance with a condition contained in its charter, in these words, "Provided the said Company shall within ten years from the passing of this Act furnish and continue a supply of pure and wholesome water, sufficient for the use of all citizens dwelling in said city as shall agree to take it, on the terms to be demanded by the said Company, in default whereof the said corporation shall be dissolved." It was held, that the failure of the defendants to perform the condition did not *ipso facto* produce a dissolution of the corporation, but amounted to a *cause of forfeiture only*, of which the State could take advantage, but which might be waived, and in that case was held to have been waived by enactments borrowing money from, and depositing public funds with, the corporation subsequently to forfeiture incurred, which acts were held to be inconsistent with the idea of forfeiting and therefore operated as waiver, and the court in arguing say: "It would not be competent for a debtor of the company when sued, to set up by way of defence that the corporation was dissolved, unless such dissolution had been established by the judgment of this court. When the corporation *expires by lapse of time it may be otherwise, and in such case only.*"

It is true that, on another branch of the case, the court incidentally remark that waiver does not apply to cases where, by the contract, the estate absolutely determines upon failure to perform the condition, and cite Pennant's case. No doubt this is good law, but the question is, when does the estate become absolutely void. It was held not to be void by the use of the word "dissolved," nor would it have been otherwise if it had been "*ipso facto dissolved.*"

The case of *Roberts vs. Davey, 4 Barnwell & Adolphus, 665,* above cited, may be quoted more fully even at the expense of proximity.

In that case, the plaintiff was in possession of a tract of land on which the defendant entered and dug mines, for which an

action of trespass was brought. The defendant pleaded, that one Stephen Ustwicke was the owner of the land before the plaintiff's title accrued; and that Ustwicke granted to one Bullock the right to dig mines there for the term of twenty years; that Bullock died before the term expired, and by his will constituted his widow, executrix, who authorized the defendant to dig as her servant. To this plea it was replied, that the grant to Bullock was subject to a condition, that if the grantee, his executors, &c., should neglect to work the mines for any time exceeding six months in any one year, or should fail in the performance of any of the covenants, "then and from thenceforth the indenture and the liberties, licenses, powers, and authorities thereby granted and every of them, should cease, determine and be utterly void and of no effect to all intents and purposes," and alleging the facts necessary to constitute a breach. To this, there was a demurrer, which admitted the facts. Upon the demurrer two questions arose. 1st. Whether, as there was nothing in the pleadings to show that the plaintiff derived title from Ustwicke, the grantor, he could, as a stranger, take advantage of the forfeiture, and it was held that he could not. 2nd. Whether admitting that he was a privy, and therefore entitled to take advantage, the grant was void or voidable, and it was held that it was voidable only.

Denman, C. J.—"There is nothing to connect the plaintiff with Ustwicke, and it is possibly he may come in by title inconsistent with that of Ustwicke, who had only a third part of the land. Assuming, however, that it had appeared that he represented the grantor of the license, I think it quite clear, according to *Doe vs. Bancke*, 4 B. & A., 401, and on the wording of this grant that it was necessary for him to have done some act shewing his intention to determine the license—until such act were shewn, it continued in force."

Park, J.—"The question is upon the construction of this instrument, whether the grant is void or voidable only on the default in question. If it be void, the plaintiff is entitled to judgment; if it be voidable only, then, as it does not appear that the grantor did any act amounting to an exercise of his option, the defendant is entitled. It is not necessary to decide whether the word void, means voidable by entry or voidable by other act showing the election of the grantor, because in either case *Doe vs. Bancks*, 4 B. & A., 401, shews that a lease containing such a proviso is not void at all events, and that a breach of it cannot be taken advantage of by a stranger, which the plaintiff here must be taken to be, for we cannot infer any privity between him and Ustwicke. He must

be taken, on these pleadings, to be in lawful possession, but he may have been so as the owner of the other two-third parts. In order to avoid the license it ought to have been shewn that Ustwicke, or somebody claiming under him, had done some act to determine it."

The principles that lie at the foundation of these and other similar rulings are :

1. The grant is not void *in favor of the grantee*, because it would be iniquitous to permit him, of his own motion, to terminate the grant by his own default, and by taking advantage of his own wrong, to deprive the other party of the benefit of the contract.

2. The grant is not void *in favor of the grantor*, because this would enable him to perpetrate a fraud, by permitting the grantee to remain in possession of the grant and by feigned acquiescence for never so long a time after condition broken, induce him to incur expenditures and liabilities, and then, at his own pleasure, to oust him of his grant.

3. The grant is not void *in favor of a stranger*, because he is a mere volunteer, without privity and consequently without any right to intermeddle.

It makes no difference that the words to be construed are contained in a statute, because, as before observed, the statute forms a contract and the same rules of construction are to be applied as to contracts between individuals, and there are many cases of statutes, both in England and in this country, in which instruments have been declared, in the most positive language, to be *void*, where from the reason of the thing they have been held to be *voidable* only. *Luby vs. Cox*, 2 Harrington, 184.

If, then, these principles were reasonable and sufficient to induce the construction given to the several grants, covenants and conveyance in the cases above cited, they seem to me entirely applicable to the letter, and peculiarly so to the spirit of the Act of 1859 under consideration, and the happening of the contingency provided for in the 5th Section, in my opinion, presented a *cause of forfeiture* to be insisted on or waived at the option of the grantor.

Assuming the conclusion to be correct that the grant was voidable only, and therefore capable of being continued, at the option of the grantor, by a waiver of the forfeiture for the particular breach, it is to be considered :

1. Whether it has been waived by the act of the State Treasurer, on the 28th of October, 1861, in receiving the installment of \$18,000, payable on the first day of July, 1861?

Waiver of forfeiture for breach of condition, is where a party, privy in contract or estate, has the right to insist on the forfeiture by taking advantage of the non-performance of the condition, but instead of doing so, indicates his election that the contract or estate shall continue, by doing something inconsistent with the idea of availing himself of the right. In general, mere omission will not operate as waiver, but omission coupled with knowledge of, and acquiescence in, the acts of the other party, in derogation of the right, rendering it unjust to insist on the forfeiture, has been considered sufficient—such knowledge and acquiescence being construed as license.

It is manifest, however, that the act which constitutes the waiver must be the act of the person in privity of contract or estate who has the right to insist on the forfeiture.

Was the State Treasurer such person? His authority and agency was confined to receiving the money due on the bond, and paying it over to the corporations and commissioners, in the manner provided for by the act. His receipt was good for the payment, and would be competent evidence in any proceeding on the bond, for the installment. For that purpose he was the agent of the State, but he had no dispensing power to relieve a delinquent party of forfeiture. This rested with the Legislature.

An illustration may be drawn from the act. By the seventh section the Governor has power to fill any vacancy that may occur in the office of Commissioner. After the non-payment of the July installment, Mr. Wootten, one of the Commissioners, originally appointed, resigned. Suppose the Governor, after cause of forfeiture accrued, had made an appointment to fill the vacancy. Would that have worked a waiver? This question arose in New York in the case of *The People vs. The Phoenix Bank*, 24, Wend 431. In that case, by the act of incorporation of a banking company, the power was reserved, of annually appointing one of the Directors by the Governor and Senate. In 1836 and 1837, the Bank took usurious interest in making loans, by reason whereof a liability to forfeiture was incurred. Subsequently, in 1840, the Governor and Senate, in pursuance of the power contained in the act of incorporation, appointed a director of the company in lieu of a director whose term had expired. Upon proceedings had against the corporation to enforce forfeiture, it pleaded that the appointment of the director sub-

sequently to the cause of forfeiture was a waiver, but the court thought otherwise, and gave judgment of ouster against the corporation. One of the grounds of the decision was that the Governor and Senate had no authority to waive the forfeiture—that they were the agents of the State for another purpose, and that the right of waiver was in the Legislature alone. If the views above expressed in relation to the State Treasurer require confirmation, it is submitted that the analogy of this case is sufficient.

If the act of the State Treasurer did not amount to waiver, will the adoption of that act by the General Assembly, instructing the State Treasurer to retain and disburse the \$18,000, proceeds of the check received October 28, 1861, have that effect?

The payment was made to the State Treasurer by the check of F. Morris, drawn on the Union Bank of the City of New York, in favor of John A. Morris & Co., and by them indorsed specially to the State Treasurer, and was delivered to the State Treasurer by John A. Morris on the 28th October, 1861, after he had received notice of the assignment by Richard France to John A. Morris, which assignment was stated to be by deed dated October 8, 1861. This check was received by the State Treasurer, as payment of the installment due July 1, 1861, and was duly honored. The receipt by which the State Treasurer acknowledged the payment stated, in terms, that the payment was received of Richard France by the hands of John A. Morris, assignee. The cause of forfeiture accrued thirty days after the first day of July, 1861. The General Assembly may be said to be fixed with knowledge of these facts by the communication of the State Treasurer.

This question presents a twofold aspect :

1. It is to be considered as if the payment had been made by Richard France, as the receipt imports.

2. As if made by John A. Morris, assignee of Richard France, as the mode of payment would seem to indicate.

1. Suppose the payment to have been made by Richard France, does its acceptance by the General Assembly constitute a waiver?

In order to constitute waiver, it will be observed that the act relied on, as waiver, must be an act inconsistent with the exercise of the right to take advantage of the forfeiture and indicative of an intention to continue the grant.

In considering this question we are again compelled to resort for authority, mainly to cases adjudged upon the waiver of forfeiture for

breaches of condition arising upon non-payment of rent, but the analogy is perfect and the principle identical.

The rule is thus laid down by Lord Coke in Pennant's case :

"If a man makes a lease for years, rendering rent on condition that if the rent be behind that it shall be lawful for him to re-enter ; in that case if the lessor demands the rent and it is not paid, and afterwards he accepts the rent, before the re-entry made, at a day after" (that is, due at a day after) "he hath dispensed with the condition, for then the condition being annexed to the rent, and he having made a demand for the rent, he well knew that the condition was broke ; but although, in such a case, he accepts the rent, due at the day for which the demand was made, yet he may re-enter, for as well before as after his re-entry he may have an action of debt for the rent, on the contract between the lessor and lessee."

The same authority speaking in relation to feoffments, in his chapter Of Estates upon Condition 2, Thomas' Coke, 211, *b.* says :

"If the condition be broke for the non-payment of the rent, yet if the feoffer bringeth an issue for the rent due at that time, he shall never enter for the condition broken, because he affirmeth the rent to have continuance and thereby waiveth the condition. And so it is if the rent had had a clause of distress annexed unto it, if the feoffer had distrained for the rent, for the non-payment whereof the condition was broken, he should never enter for the condition broken, but he may receive that rent and acquit the same and yet enter for the condition broken. But if he accept a rent due at a day after, he shall not enter for the condition broken, for he thereby affirmeth the lease to have a continuance."

To understand this rule, it may be proper to observe, that, at common law when a man made a feoffment reserving rent, his estate was in the rent, and a denial of payment, was called a disseisin, for the recovery of which estate an issue or assise was the remedy, and in such assise he recovered seisin of the rent, as an estate, with all arrearages and costs, and if he were again disseised of the rent, by non-payment, he had a new assise, so that by bringing such an action, he proceeded to re-instate himself as in his former estate and therefore waived the forfeiture. So, at common law, a distress could only be made during the tenancy and not after its determination, so that a distress, of itself, affirmed the existence of the tenancy *at the time of distress taken*, and therefore waived the forfeiture.

The rule is also clearly laid down in Green's case, *Cro. Eliz.* 3. This was an action by a tenant to recover his term from the landlord

who had entered after forfeiture accrued, for non-payment of rent reserved by a lease, with a clause of re-entry, in case of breach. Land was let to Green, for years, rendering rent and a re-entry for non-payment. The rent was demanded and was not paid, and, two days after, the lessor received the rent of him and made him an acquittance by the name of his tenant, and whether that receipt barred him of his re-entry was the question. And it was clearly adjudged that the bare receipt of the rent after the day was no bar, for it was a debt due to him; but a distress for the rent or a receipt of rent due at another, that is, subsequent day, was a bar, for those acts affirm the lessee to have lawful possession. So if he makes an acquittance, reciting that he is his tenant. And in that case by calling him tenant in the receipt, it was adjudged to be a declaration of his meaning to continue him his tenant, and it was held that the right of entry had been waived and that the entry was not lawful.

These authorities have been approved in many cases and cited as the foundation of the decisions subsequently made, where the question of waiver has arisen, and it may be considered settled, that the mere receiving, after cause of forfeiture, rent which accrued previously, or even the rent, the non-payment of which formed the cause of forfeiture and which constituted a debt or duty for which an action could have been maintained on the contract to pay, will not amount to a waiver of the right to forfeit.

Nash vs. Birch 1 M. & Wels. 402. *Jackson vs. Allen*, 3 Cowen 220. *Jackson vs. Sheldon*, 5 Cowen, 448.

Applying this principle to the case under consideration, it will be remembered that the obligation of Richard France, by which he was bound to pay the installment of \$18,000, was independent of the fifth section, which contains the clause of forfeiture, and that the remedy by forfeiture was distinct from the right to sue on the bond—that the right to sue accrued on the failure to pay on the first days of July and January, so that on the first day of July 1861 the sum of \$18,000 formed a debt, due to the State, secured by the obligation, while the cause of forfeiture was the non-payment of that debt for thirty days afterwards, and was a liability superinduced by the *detention* of the debt—the debt itself remaining, in the meantime, as a distinct demand, for the recovery of which the remedy was on the contract. I think, therefore, that the receiving from Richard France of the sum of \$18,000, due July 1, 1861, will not amount to a waiver of the right to forfeit.

Suppose the payment of the \$18,000 to have been, in fact, made by John A. Morris, will the acceptance of the money from him waive the forfeiture?

By recurring to the facts, it will be seen that long after the period when the right of forfeiture accrued, to wit : on the eighth of October, 1861, Richard France assigned the grant to John A. Morris, and on the twenty-eighth of October, the assignee paid to the State Treasurer the installment that became due on the first day of July preceding. This payment was made by the check of F. Morris, endorsed by John A. Morris & Co., and at the time of the payment the State Treasurer knew the fact of the assignment and actually stated in the receipt that he received the payment by the hands of John A. Morris, assignee.

It may be conceded, and is proper to be considered, that if the money was paid by John A. Morris, it was so paid, as far as the State is concerned, in view of the prospective enjoyment of the franchise and as an inducement to the continuance of the grant. Can the State, then, take the money from him with one hand and shut the door in his face with the other, or is she precluded by the acceptance, from avoiding the grant in *his* hands?

If the latter consequence follows, it must be because she recognizes him as assignee of Richard France, and by the act receives from him a valuable consideration in that character. If, indeed, the act of the State, after forfeiture, should have constituted him assignee when he would not otherwise have been so, then, in view of the preceding principles regulating waiver, it might well be contended that she had done an act inconsistent with the purpose of avoiding the grant; as, if the cause of forfeiture had been assignment without license, and she had afterwards recognized him in that character, it would undoubtedly have amounted to a waiver of the forfeiture incurred by the act of assignment. But if John A. Morris, on the twenty-eighth day of October, was, legally and in fact, the assignee of the grant, by force of a bargain between him and Richard France, then it is difficult to perceive how the General Assembly, by recognizing him in a character which he really possessed, and in that character receiving from him a sum of money due before forfeiture incurred, can be construed as waiving the forfeiture. It is, therefore, important to have a clear perception of the relation in which John A. Morris stood to the original parties to the contract and the incidents growing out of that relation.

We have seen that the grant, upon the happening of the contingency involving forfeiture did not become void, but voidable only. It therefore remained a subsisting grant, capable of being exercised with all its incidents until avoidance, and one of these incidents was the right of assignment. This right of assignment was to be exercised and perfected between the grantee and assignee, and the latter

took the interest of the former in the grant, affected by the liability to forfeiture. That interest was vendible, and, as to every other person than the grantor, was indefeasible. It was an estate, in the enjoyment of which, as against strangers, he had the right to be protected, and, as to the State, he acquired the contingent right to a continuance of the franchise in case she chose to waive the forfeiture. Both these rights were valuable and both he acquired by the assignment. He was, therefore, *the assignee of Richard France*, but nothing passed to him as against the State, except she chose to validate the grant. These principles follow naturally from the voidable quality of the grant, and are sustained by the cases of *Phyfe vs. Wardell & Woolley*, 5 Paige, 268, and *Husbrook vs. Paddock*, 1 Barbour 636. So far then as calling him *assignee of Richard France* is concerned, it seems that it can have no effect to produce waiver, for he was, in truth, his assignee of a valuable, though voidable franchise.

Nor is it true that the taking the money from Morris would work any injustice, but on the contrary is consistent with the highest equity and the most scrupulous regard to the rights of all the parties.

Morris was the purchaser from France of a valuable privilege, defective, but curable. At the time of the purchase, France was indebted to the State in the sum of \$18,000, for the payment of which he was personally liable on his bond. The State, as has been seen, had the right to compel payment of the money by France and also to forfeit the grant. Now it is probable, nay certain, that if the money was, in fact, the money of Morris, it formed a part of the consideration for the purchase from France, and its payment enured directly to the benefit of France, by relieving him from liability on his bond, and it is therefore manifest, that if the receiving of the payment from Morris could be deemed a waiver, so as to compel the State to reject it in order to save the right of forfeiture, the liability of France would continue undiminished, notwithstanding Morris had acquired the contingent right to renewal, with the privilege of the exercise of the franchise in the meantime.

Nor is it unjust to Morris. He dealt with his eyes open. He knew that he was buying a grant, at least voidable in its nature and liable to defeasance. He graduated the price by the quality of the article. He bought a defective franchise. He knew when he bought it that the only hope of rendering it valid, was to pay the back installment, and by substituting a solvent and prompt assignee, in lieu of a tardy and apparently insolvent grantee, to induce the Legislature to waive the forfeiture. He took the risk, and if in the

turn of the wheel, he shall discover that he holds a blank franchise, he is doubtless too familiar with such operations to experience any considerable disappointment.

Nor is it wrong in the State to receive it, for though the money may be the wages of iniquity, yet it is compensation for privileges already enjoyed, and, like a consideration for past concubinage, is allowable in conscience.

It will be perceived that I have viewed this question in the light most unfavorable to the State—I have considered it as though the State, by the acceptance of the money, adopted the language employed by the State Treasurer in the receipt acknowledging the payment, in calling Morris the assignee of Richard France, and I have also chosen to waive the suggestion that Morris, by accepting a receipt stating the money to have been received from Richard France, was estopped from shewing that it was, in fact, paid by himself. Believing that the conclusion rests on a substantial basis I was not disposed to place it on technical grounds.

Suppose the Legislature to exercise the option, by insisting on the forfeiture, then the grant becomes absolutely void and all the rights and liabilities, futurely incident thereto, immediately determine. The declaration of forfeiture operates as notice to the other party that he is no longer to enjoy the privileges, nor be held to the performance of the obligations, arising out of the grant. This doctrine is clearly announced in the case of *Jones vs. Carter*, 15 Mees. & Welsby, 718. In that case it was held, that the service by the lessor upon the lessee, of a declaration in ejectment for the demised premises for a forfeiture, operates as a final election by the lessor to determine the term, and he cannot afterwards, although there has been no judgment in the ejectment, sue for rent due or covenants broken after the service of the declaration.

The same view was taken by the Court of Appeals of Virginia, in the well considered case of *McIldoe's Executor vs. Darracott* where the subject of waiver is discussed, 13 Grattan, 278.

So in this case, as the bond of Richard France was given to secure the consideration for the *right* to exercise the franchise, if the Legislature take away the *right*, it cannot hold him to any liability for future payments.

It is hardly necessary to observe, that, as a declaration of forfeiture by the General Assembly is *exparte* merely, and depends for its efficacy upon a question of fact, viz: the existence of the cause of forfeiture, by the breach of the condition subsequent, the grantee or

his assignee has the right to traverse the allegation of fact and have it judicially ascertained.

Having thus noticed the material questions arising out of the act of 1859, so far as they relate to the subject with which your committee is charged, my conclusions on the whole matter are :

1. That the act of 1859 constituted a contract, vesting in Richard France a lottery franchise for twenty years.

2. That the fifth section is to be construed as a condition subsequent, and not as a limitation.

3. That the happening of the contingency therein provided for, did not render the grant void, but voidable only, and therefore waivable.

4. That nothing has heretofore occurred to waive the forfeiture.]

5. That the instruction by the General Assembly to the State Treasurer, to disburse the \$18,000, received on the 28th of October, 1861, among the beneficiaries named in the act, will not amount to waiver.

N. B. SMITHERS.

Jan. 15, 1862.

To EDWARD BETTS, Esq., *Chairman, &c.*

I have patiently examined the questions discussed in the foregoing argument, and am of opinion that the conclusions arrived at by Mr. Smithers are correct, and fully sustained by the authorities cited.

J. P. COMEGYS.

Jan. 17, 1862.

To EDWARD BETTS, Esq., *Chairman, &c.*

On motion of Mr. Betts,

The Joint Resolution declaring the State Treasurer authorized to

pay certain moneys therein mentioned, reported by the committee,

Was read, as follows :

Resolved, by the Senate and House of Representatives of the State of Delaware, in General Assembly met, That Samuel B. Hitch, State Treasurer, is authorized and has lawful right to distribute and pay to the corporations and persons respectively entitled to receive the same, the sum of eighteen thousand dollars now in his hands, received from Richard France by the hands of John A. Morris in payment of the instalment secured by the bond of said France, and which instalment became due on the first day of July A. D. 1861, by force of the provisions of the act entitled "An act for the encouragement of internal improvements in the State of Delaware," and in the respective sums to which they are severally entitled."

On motion of Mr. Betts,

The bill reported herewith entitled "An act declaring the forfeiture of the grants, liberties and privileges contained and specified in the act of the General Assembly of the State of Delaware, entitled 'An act for the encouragement of internal improvements in the State of Delaware,'" passed at Dover January 26, 1859, and to resume and revest the same in the said State :

Was taken up and read.

Mr. Appleton presented the petition of A. P. Shannon and others, praying an act authorizing the appointment of an additional Justice of the Peace for White Clay Creek Hundred ;

Which,

On his motion,

Was referred to a special committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Appleton, Davis and Jonathan Moore were appointed said committee.

Mr. Rickards presented the account of Richard N. Merriken, for services in Court of Errors and Appeals, &c.,

Which,

On his motion,

Was read, and referred to the Committee on Claims.

Mr. Clements from the committee to whom was referred the petition of Joshua P. Hayes, praying an act to locate certain vacant lands in Little Creek and Dover Hundreds,

Reported a bill entitled "An act to enable Joshua P. Hayes to locate certain vacant lands in Little Creek and Dover Hundreds in Kent County, and complete his title to the same."

Which,

On his motion,

Was read.

Mr. Appleton moved,

That when the House adjourns this afternoon, it adjourns till Monday next at 3 o'clock.

Which motion

Prevailed.

On motion of Mr. Betts,

The bill entitled "An act to annul the marriage contract existing between James W. and Ann Jane Birnie,"

Was read a second time by its title.

On the further motion of Mr. Betts,

The bill entitled "An act to amend the act entitled 'An act to create a Board of Fire Wardens in the city of Wilmington,'"

Was taken up and read a second time by its title.

Pursuant to previous notice,

Mr. Betts asked, and,

On motion of Mr. Phillips,

Obtained leave to introduce a bill entitled "An act to amend an act entitled 'An act authorizing the Recorder of Deeds of New Castle County to make an indirect mortgage index.'"

On motion of Mr. Betts,

The bill was read.

Mr. Chandler from the Committee on Divorce, to whom was referred the petition of Mary E. Townsend,

Reported a bill entitled "An act to divorce Mary Elizabeth Townsend, formerly Mary Elizabeth Wheatly, from the bonds of matrimony,"

Which,

On his motion,

Was read.

On motion of Mr. Chandler,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

The House met pursuant to adjournment.

Mr. Clements presented the petition of Edward Willey, praying an act remunerating him for certain services ;

Which,

On motion of Mr. Clements,

Was read, and referred to a special committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Clements, Chandler and Waples, were appointed such committee.

On motion of Mr. Broadaway,

The House adjourned until Monday afternoon at three o'clock.

MONDAY, *January 20, 1862, 3 o'clock, P. M.*

The House met pursuant to adjournment.

Prayer by the Chaplain.

On calling the roll, it appeared that there was not a quorum of members present.

Whereupon,

On motion of Mr. Waples,

The House adjourned.

TUESDAY, *January* 21, 1862, 10 o'clock, A. M.

The House met pursuant to adjournment.

Prayer by the Chaplain.

The Speaker laid upon the Clerk's table a communication from John A. Morris, giving notice of his intention to tender to the State Treasurer the interest upon \$18,000 from the 1st of July, 1861, to the 28th of October, 1861.

Which was read, and,

On motion of Mr. Churchman,

Was referred to the committee on the communication of the State Treasurer.

Pursuant to previous notice,

Mr. Betts asked, and,

On motion of Mr. Rickards,

Obtained leave to introduce a bill entitled "An act prohibiting Justices of the Peace from receiving money in civil suits,"

Which,

On motion of Mr. Betts,

Was read.

On motion of Mr. Clements,

The bill entitled "An act to enable Joshua P. Hayes to locate certain vacant lands in Little Creek and Dover Hundreds, in Kent County, and complete his title to the same,"

Was taken up for consideration.

On the further motion of Mr. Clements,

The bill was recommitted to the committee.

Mr. Higgins gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "An act to amend the 28th section of the 60th chapter of the Revised Code."

Also, a bill entitled "An act to authorize the Levy Court of New Castle County to purchase or acquire a lot of land in Appoquinimink Hundred near to Taylor's Bridge."

Mr. Clements gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "An act authorizing Samuel F. Hewes to change the public road in Dover Hundred."

Mr. Higgins presented the petition of Isaac S. Cleaver and others, praying an act to revive an act concerning marsh in St. Georges and Red Lion Hundreds.

Which,

On his motion,

Was read, and referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Higgins, Virden and Jonathan Moore, were appointed said committee.

On motion of Mr. Betts,

The bill entitled "An act to authorize the Recorder of Deeds in and for New Castle County to transcribe the marriage index of his said office,"

Was read a third time by paragraphs, and

Passed the House.

Ordered to the Senate for concurrence.

Mr. Rickards, from the Committee on Roads and Highways, to whom was referred the petition of H. C. Douglass, et. al., praying an act to lay out a public road in New Castle and Kent Counties,

Reported a bill entitled "An act appointing commissioners to lay out a public road, partly in New Castle and partly in Kent Counties,"

Which,

On motion of Mr. Rickards,

Was read.

On motion of Mr. Betts,

The bill entitled "An act to amend an act entitled 'An act authorizing the Recorder of Deeds of New Castle County to make an indirect mortgage index,'"

Was read a second time by its title.

Mr. Rickards from the committee to whom was referred the petition of Burton P. Truitt and others, asked leave, and,

On motion of Mr. Betts,

Obtained further time to report.

Mr. Collins presented the petition of Elijah Satterfield and others,

praying an act to authorize the laying out and vacating certain public roads ;

Which,

On his motion,

Was read, and referred to the Committee on Roads and Highways.

Mr. Higgins presented the petition of Joseph Cleaver and others, praying an alteration in the general assessment law.

Which,

On his motion,

Was read, and referred to a committee of three with leave to report by bill or otherwise.

Whereupon,

Messrs. Higgins, Davis and Rickards, were appointed said committee.

Mr. Pratt, Clerk of the Senate being admitted, informed the House that the Senate had concurred in and passed the bill entitled "An act to amend an act entitled 'An act securing to mechanics and others payment for labor and materials in erecting or repairing any building or structure within the State of Delaware.'"

Also, in the "Joint Resolution of inquiry as to effecting a Loan."

Also, that the Senate had passed and requested the concurrence of the House in a "Joint Resolution authorizing John Green to draw on the State Treasurer for certain expenses therein named."

And he withdrew.

On motion of Mr. Betts,

The bill entitled "An act declaring the forfeiture of the grants, liberties and privileges contained and specified in the act of the General Assembly of the State of Delaware, entitled 'An act for the encouragement of internal improvements in the State of Delaware,'

passed at Dover January 26, 1859, and to resume and revest the same in the said State,"

Was read a second time by its title.

On motion of Mr. Betts,

The bill entitled "An act declaring the forfeiture of the grants, liberties and privileges contained and specified in the act of the General Assembly of the State of Delaware, entitled 'An act for the encouragement of internal improvements in the State of Delaware,' passed at Dover January 26, 1859, and to resume and revest the same in the said State,"

Was taken up for consideration.

On motion of Mr. Betts,

The bill was amended as follows:

By striking out the words "and that said grants, liberties and privileges are hereby declared to have been forfeited," in the 11th, 12th and 13th lines of section 1.

On the further motion of Mr. Betts,

The bill was further amended by striking out in the 9th line of section 2, these words, "*scire facias, quo warranto or,*" between the words "by" and "any," and also the word "other" in the same line between the words "any" and "appropriate."

On his further motion,

The title of the bill was amended by striking out of the first line the word "forfeiture" and inserting the word "*cesser*" in lieu thereof.

On motion of Mr. Churchman,

The further consideration of the bill was postponed till to-morrow.

On motion of Mr. Chandler,

The bill entitled "An act to divorce Mary Elizabeth Townsend, formerly Mary Elizabeth Wheatly, from the bonds of matrimony,"

Was read a second time by its title.

Mr. Betts presented the memorial of Wood, Eddy & Co., praying relief and redress for losses sustained on account of certain proceedings of the Attorney General in the Court of Chancery enjoining them from further exercising certain privileges.

Which,

On his motion,

Was read as follows, and referred to the committee on the communication from the State Treasurer.

To the Honorable the Senate and House of Representatives of the State of Delaware, in General Assembly convened:

The undersigned respectfully submit to the consideration of your honorable bodies the following facts, and pray for such relief in the premises as your sense of justice may dictate.

The Legislature of this State, on the 7th day of February A. D. 1852, passed an act whereby Azariah E. Stimson of New Castle County, was authorized to raise by lottery or lotteries, by the first day of January A. D. 1862, for the benefit of the State of Delaware, the sum of \$100,000, by sale, contract or otherwise, provided, that the said Stimson, or the contractors or managers, should give to the State bond with ample security, approved by the Governor, or by one of the Judges of the Superior Court, conditioned for the payment to the Treasurer of this State the aforesaid sum of \$100,000, in the following instalments, that is to say, \$10,000 dollars, part thereof, on or before the first day of April A. D. 1852, and the balance thereof, in ten equal annual payments of \$9,000 each, on or before the first day of January in each and every year.

The said A. E. Stimson, in pursuance of the powers thus conferred upon him, on the 14th day of February, 1852, assigned and transferred to Walter Gregory and Jourdan W. Maury the Lottery or Lotteries, authorized by the aforesaid act, together with the franchises, rights, liberties and privileges thereunto in any wise belonging, and on the same day, the said Gregory & Maury did give the

required bond with security approved by the Hon. James Booth then Chief Justice of the State of Delaware.

The undersigned further show, that on the 18th day of October A. D. 1858, the aforesaid Walter Gregory and Jourdan W. Maury assigned and transferred to your petitioners, Benjamin Wood, George P. Eddy and Charles H. Murray, the said Lottery or Lotteries, together with the franchises, rights, liberties and privileges thereunto belonging, and thereupon your petitioners set about to discharge the duties thus devolving upon them, by reason of their acceptance of said assignment and transfer.

Your petitioners further state, that at the time of said transfer from Gregory & Maury to them, the said Gregory & Maury had paid to the Treasurer of the State the 1st instalment of \$10,000, on the 1st day of April, 1852, as required by said act of the Legislature, that on the maturity of the second instalment of \$9,000, at the request of the Treasurer of the State, and for the accommodation of the beneficiaries of the grant, they advanced \$1,000, making the payment \$10,000 instead of \$9,000 as required by the act, and they continued to advance, for the purpose above specified, each and every year the sum of \$1,000, until the sum of \$70,000 was paid to the State Treasurer by the 1st day of January A. D. 1858, instead of \$61,000, which only was due at that time.

That your petitioners continued to make the same advance of \$1,000 upon their regular and prompt payments on the 1st day of January of each and every year thereafter to the State, until the whole amount to be raised by the 1st day of January, 1862, was paid to the State Treasurer by the 1st day of January, 1861, making in all the sum of \$100,000 paid to the State of Delaware, by the managers and contractors, acting under and by virtue of the said act.

Thus, having taken upon themselves the labor, risk and enormous expense of drawing and superintending the drawings of the Lotteries, for the purpose of raising \$100,000 for the benefit of the State of Delaware, and thus as contractors with the State, have promptly discharged all their undertakings and liabilities in strict conformity with the terms of their contract, advancing the sums as before designated.

Your petitioners further show, that notwithstanding by the act of the Legislature passed as aforesaid, A. E. Stimson or the managers or contractors were authorized to draw the same till the 1st of January, 1862, and were given that period of time to raise the said sum of \$100,000, and notwithstanding the faithful performance of their

part of the contract, by the payment to the State Treasurer of the said sum by instalments, as provided in said act or contract, and by the advancements as aforesaid, an injunction issued out of the Court of Chancery of this State, at the instance of the Attorney General, acting in the name and on the behalf of the State, enjoining them from further proceeding under said contract. Said injunction was served upon your petitioners within a short time after the payment of the last instalment to the State, without notice or any opportunity being given to your petitioners for a hearing, by the representative of the State, the Attorney General.

This sudden and peremptory stoppage of a business so ramified throughout the entire country, and attendant with such enormous expense, and the employment of so many persons has put your petitioners to great inconvenience and caused them to sustain very heavy pecuniary loss.

In view of the foregoing facts, it is most respectfully submitted to your honorable bodies, that your petitioners having taken upon them the onus of this contract and faithfully discharged it to the benefit of the State, that they in turn should have been permitted to enjoy without let or hindrance on the part of your Attorney General, the rights and privileges accruing to them, for a valuable consideration under said contract.

We, therefore, respectfully pray your honorable bodies, to pass an act, refunding to your petitioners, contractors as aforesaid, that portion of the last payment of \$10,000, paid to the State Treasurer, for which they have received no benefit, being the pro rata portion from the 5th day of April, A. D. 1861, to the 1st of January, 1862, and such other relief, as in your wisdom you may deem just and proper.

And your petitioners will ever pray.

(Signed,)

WOOD, EDDY & CO.,

Wilmington, Del.

On motion of Mr. Robinson,

The "Joint Resolution authorizing John Green to draw on the State Treasurer for certain expenses therein named,"

Was taken up for consideration.

Which,

On his motion,

Was read.

Mr. Robinson moved,

That the House concur in the above resolution.

Pending which motion,

On motion of Mr. Clements,

Its further consideration was postponed till to-morrow.

Mr. Waples from the committee to whom was referred so much of the Governor's message as refers to Coast defences, asked leave, and,

On motion of Mr. Robinson,

Obtained further time to report.

Mr. Waples presented the petition of Henry Hickman and others, praying an amendment to the ditch or canal law.

Which,

On his motion,

Was read, and referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Waples, C. Williamson and Cochran were appointed such committee.

On motion of Mr. Betts,

The bill entitled "An act to annul the marriage contract existing between James W. and Ann Jane Birnie,"

Was read a third time by paragraphs in order to pass the House.

On motion of Mr- Robinson,

The petition and papers were read..

On the question,

“ Shall this be section 1 of the bill?”

The yeas and nays were ordered,

Which on being taken, were as follows :

Yeas—Messrs. Betts, Boyce, Calhoon, Clements, Collins, Higgins, Jonathan Moore, Phillips, Rickards—9.

Nays—Messrs. Broadway, Chandler, Churchman, Cochran, Davis, Robinson, Virden, Waples, C. Williamson, Mr. Speaker—10.

So the first section was

Lost.

On motion of Mr. Betts,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

The House met pursuant to adjournment.

Mr. Appleton from the committee to whom was referred the petition of A. P. Shannon and others, praying the appointment of an additional Justice of the Peace for White Clay Creek Hundred,

Reported a bill entitled "An act to authorize the appointment of an additional Justice of the Peace in New Castle County to reside at Christiana."

Which,

On his motion,

Was read.

Mr. J. A. Moore presented the account of Robert D. Hoffecker, against the State for advertising,

Which,

On his motion,

Was read, and referred to the Committee on Claims.

Mr. Higgins presented the account of James W. Wise for work on case,

Which,

On motion of Mr. Betts,

Was read, and,

On motion of Mr. Higgins,

Referred to the Committee on Claims.

Mr. J. A. Moore presented the account of James L. Smith, for work on furnaces, &c.

Which,

On his motion,

Was read, and referred to the Committee on Claims.

Mr. Appleton offered the following resolution :

Resolved, That the committee on so much of the Governor's Message as relates to the direct tax be empowered to employ counsel for the purpose of drafting a bill."

Which,

On his motion,

Was

Adopted.

Mr. Betts presented the account of Henry Eckel, for advertising,

Which,

On his motion,

Was read and referred to the Committee on Claims.

Mr. Phillips from the committee to whom was referred the petition of John M. Houston and others,

Reported a bill entitled "An act to amend section 7, of chapter 59, of the Revised Code of the State of Delaware,"

Which,

On his motion,

Was read.

Mr. J. A. Moore presented the petition of John R. Latimer and others, praying an appropriation for the benefit of the inebriates and insane.

Which,

On his motion,

Was read, and,

On his further motion,

The further consideration of which was postponed till January next, 1863.

Mr. Betts from the Committee on Corporations, to whom was referred the petition of James Fletcher and others, praying an act of incorporation :

Reported a bill entitled "An act to incorporate Wilmington Council, No. 1, United American Mechanics, of Wilmington, Delaware."

Which,

On his motion,

Was read.

On motion of Mr. Churchman,

The bill entitled "An act to amend section 7, of chapter 59, of the Revised Code of the State of Delaware,"

Was,

By special order,

Read a second time by its title.

On motion of Mr. Churchman,

Rule 13th of the House was suspended.

On the further motion of Mr. Churchman,

The bill entitled "An act to amend section 7, of chapter 59, of the Revised Code, of the State,"

Was read a third time by paragraphs, and

Passed the House.

Ordered to the Senate for concurrence.

On motion of Mr. Chandler,

The House adjourned.

WEDNESDAY, *January 22, 1862, 10 o'clock, A. M.*

House met pursuant to adjournment.

Prayer by the Chaplain.

Mr. Waples from the committee to whom was referred the petition of Henry Hickman and others, praying an amendment to the ditch or canal law,

Reported a bill entitled "An act to amend chapter 59, of the Revised Statutes of the State of Delaware."

Which,

On his motion,

Was read.

Mr. Rickards presented a communication purporting to be the petition of John A. Morris,

Which,

On his motion,

Was read.

Mr. Betts moved,

That the further consideration of the communication be indefinitely postponed.

Pending which motion,

Mr. J. A. Moore moved,

To postpone the further consideration till this afternoon.

Which motion was

Lost.

The question recurring on the motion to indefinitely postpone,

The yeas and nays were ordered,

Which being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Broadaway, Calhoon, Chandler, Churchman, Clements, Cochran, Davis, Higgins, J. A. Moore, Jonathan Moore, Rickards, Mr. Speaker—14.

Nays—Messrs. Boyce, Collins, Phillips, Robinson, Virden, Waples, C. Williamson—7.

So the motion

Prevailed.

And the further consideration was indefinitely postponed.

On motion of Mr. Betts,

The bill entitled "An act declaring the cesser of the grants, liberties and privileges contained and specified in the act of the General Assembly of the State of Delaware, entitled 'An act for the encouragement of internal improvements in the State of Delaware,' passed at Dover, January 26, 1859, and to resume and revest the same in the said State."

Was read a third time by paragraphs in order to pass the House.

The question being,

"Shall this bill now pass the House?"

Mr. Robinson moved,

That the further consideration of the bill be postponed till to-morrow afternoon.

Pending which,

The Speaker suggested that several members having spoken frequently, were out of order.

Whereupon,

On motion of Mr. Waples,

The member from Kent, (Mr. J. A. Moore) was allowed to address the House.

The question being on the motion to postpone till to-morrow afternoon,

The yeas and nays were ordered,

Which being taken, were as follows :

Yeas—Messrs. Boyce, Calhoon, Collins, Davis, J. A. Moore, Jonathan Moore, Phillips, Rickards, Robinson, Virden, Waples, C. Williamson—12.

Nays—Messrs. Appleton, Betts, Broadway, Chandler, Churchman, Clements, Cochran, Higgins, Mr. Speaker—9.

So the motion

Prevailed.

And the further consideration of the bill was postponed till to-morrow afternoon.

Mr. Clements from the committee on so much of the Governor's message as refers to the Stats arms,

Reported a bill entitled "An act for the relief of the officers of

volunteer companies, and persons from whom arms have been taken,"

Which,

On his motion,

Was read.

On motion of Mr. Broadaway,

The vote on section 1, of the bill entitled "An act to annul the marriage contract between James W. and Ann Jane Birnie,"

Was

Reconsidered.

Mr. Broadaway presented a letter from Rev. Wm. C. Roberts, concerning the bill,

Which,

On his motion,

Was read.

The question being,

"Shall this be section 1 of the bill?"

The yeas and nays were ordered.

Mr. Appleton asked, and,

On motion of Mr. Waples,

Was excused from voting.

On being taken, the yeas and nays were as follows:

Yeas—Messrs. Betts, Boyce, Broadaway, Calhoon, Clements, Collins, Higgins, J. A. Moore, Jonathan Moore, Phillips, Rickards, Robinson, Virden, C. Williamson—14.

Nays—Messrs. Chandler, Churchman, Cochran, Davis, Waples,
Mr. Speaker—6.

So section 1 of the bill, and the bill

Passed the House.

Ordered to the Senate for concurrence.

Mr. Higgins from the committee to whom was referred the petition of Isaac S. Cleaver and others, praying an act to revive an act concerning marshes in St. Georges and Red Lion Hundreds,

Reported a bill entitled "An act to revive the act entitled 'An act to amend the act entitled A further supplementary act to the act entitled An act for the stopping St. Georges Creek, and for embanking and draining a quantity of marsh and cripple on both sides of said creek, being deemed about three thousand acres situate in Red Lion and St. Georges Hundreds and County of New Castle, and for keeping the dykes and dams belonging to the same in good order and repair.'"

Which,

On his motion,

Was read.

Mr. Rickards from the committee on Roads and Highways, to whom was referred the petition of Elijah Satterfield, praying an act to authorize the laying out and vacating certain roads,

Reported a bill entitled "An act to authorize Elijah Satterfield to change a certain public road in Milford Hundred, Kent County, Delaware,"

Which,

On his motion,

Was read.

Mr. Phillips from the Committee on Enrollments, reported the following Joint Resolutions as duly and correctly enrolled, and presented the same to the Speaker for his signature, viz :

“Joint Resolution of inquiry as to effecting a loan.”

“Joint Resolution allowing the Auditor to provide additional conveniences for papers, &c.”

Also, the bill entitled “An act to amend an act entitled ‘An act securing to mechanics and others payment for labor and materials in erecting or repairing any building or structure within the State of Delaware,’”

Pursuant to previous notice,

Mr. Clements asked, and,

On motion of Mr. Broadaway,

Leave was granted to introduce a bill entitled “An act authorizing Samuel F. Hewes to change the public road in Dover Hundred.”

Which,

On motion of Mr. Clements,

Was read.

On motion of Mr. J. A. Moore,

The bill entitled “An act to divorce Mary Elizabeth Townsend, formerly Mary Elizabeth Wheatly, from the bonds of matrimony,”

Was taken up, read a third time by paragraphs, and

Passed the House.

Ordered to the Senate for concurrence.

On motion of Mr. Appleton,

The bill entitled "An act to authorize the appointment of an additional Justice of the Peace in New Castle County, to reside at Christiana."

Was read a second time by its title.

On motion of Mr. J. A. Moore,

The House adjourned.

SAME DAY, 3 o'clock, P. M.

The House met pursuant to adjournment.

On motion of Mr. J. A. Moore,

The petition of H. C. Douglass and others, praying an amendment to the license law,

Was taken up for consideration and read.

On his further motion,

It was referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. J. A. Moore, Churchman and Jonathan Moore, were appointed said committee.

On motion of Mr. Phillips,

The petition of Henry Maloy and others,

Was taken up for consideration and read.

On his further motion,

It was referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Phillips, C. Williamson and Cochran, were appointed said committee.

Mr. Pratt, Clerk of the Senate, being admitted, informed the House that the Senate had indefinitely postponed the bill entitled "An act to authorize the Recorder of Deeds in and for New Castle County, to transcribe the marriage index of his said office."

Also, that the Senate had passed and requested the concurrence of the House in the following bills, entitled :

"An act to establish the Brandywine and Centreville Cemetery of Christiana Hundred."

"An act to authorize the Clerk of the Orphan's Court in and for New Castle County to procure a new seal of office."

"An act to authorize the Register of Chancery, in and for New Castle County to procure a new seal of office."

And he withdrew.

Mr. Betts presented the claim of James Montgomery for advertising.

Which,

On his motion,

Was read, and,

On motion of Mr. Higgins,

It was referred to the Committee on Claims.

Pursuant to previous notice;

Mr. Higgins asked, and,

On motion of Mr. Chandler,

Obtained leave to introduce a bill entitled "An act to authorize the Levy Court of New Castle County to purchase or acquire a lot of land in Appoquinimink Hundred near to Taylor's Bridge."

Which,

On his motion,

Was read.

On motion of Mr. Robinson,

The Joint Resolution authorizing John Green to draw on the State Treasurer for certain expenses therein named,"

Was taken up and read.

Mr. Robinson moved,

That the House concur in the resolution.

Pending which motion,

On motion of Mr. Churchman,

The further consideration of the same was postponed till Friday next.

On motion of Mr. Rickards,

The bill entitled "An act appointing commissioners to lay out a public road, partly in New Castle and partly in Kent Counties,"

Was read a second time by its title.

Mr. Betts from the Committee on Corporations to whom was referred the petition of citizens of Middletown,

Reported a bill entitled "An act amending the act incorporating the town of Middletown, passed at Dover February 12, 1861."

Which,

On his motion,

Was read.

On motion of Mr. Churchman,

The Senate bill entitled "An act to establish the Brandywine and Centreville Cemetery of Christiana Hundred,"

Was taken up for consideration and read, and,

On his further motion,

Referred to the Committee on Corporations.

Mr. Betts gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "A supplement to an act

entitled 'An act relating to arrests in civil cases in the State of Delaware.'

Also, a bill entitled "An act supplementary to the act entitled 'An act regulating the sale of intoxicating liquors,' passed at Dover March 3d, 1857."

Mr. Betts from the Committee on Corporations,

Reported a bill entitled "An act further to amend the act entitled 'An act allowing an additional Constable in St. Georges Hundred, New Castle County,' passed at Dover January 21, 1851."

Which,

On his motion,

Was read.

Mr. Rickards, from the Committee on Roads and Highways, to whom was referred the petition of Wm. M. Wilson, et. al.,

Reported a bill entitled "An act declaring inoperative so much of an act entitled 'An act in relation to public roads and highways in St. Georges and Appoquinimink Hundreds in New Castle County,' passed at Dover February 21, 1859, as relates to Appoquinimink Hundred,"

Which,

On his motion,

Was read.

Mr. Cochran presented the petition of Levi W. Lattomus and others, praying an act changing the name of "Townsend" to "Lancaster."

Which,

On his motion,

Was read, and referred to a committee of three with leave to report by bill or otherwise.

Whereupon,

Messrs. Cochran, Davis and Waples, were appointed said committee.

On motion of Mr. J. A. Moore,

The Senate bill entitled "An act to authorize the Register of Chancery in and for New Castle County, to procure a new seal of office,"

Was taken up and read.

On motion of Mr. Betts,

The bill entitled "An act prohibiting Justices of the Peace from receiving money in civil suits,"

Was read a second time by its title.

On motion of Mr. Phillips,

The Senate bill entitled "An act to authorize the Clerk of the Orphan's Court, in and for New Castle County, to procure a new seal of office,"

Was taken up and read.

On motion of Mr. Betts,

The bill entitled "An act to incorporate Wilmington Council, No. 1, United American Mechanics, of Wilmington, Delaware,"

Was read a second time by its title.

Mr. Cochran presented the petition of Theodore D. Price, praying an act to locate certain vacant lands.

Which,

On his motion,

Was read, and referred to the Committee on Vacant Lands.

On motion of Mr. Betts,

The bill entitled "An act to amend an act entitled 'An act authorizing the Recorder of Deeds of New Castle County to make an indirect mortgage index,'"

Was read a third time by paragraphs, and

Passed the House.

Ordered to the Senate for concurrence.

Mr. Davis presented the petition of citizens of Smyrna Station praying an act to change the name to Clayton."

Which,

On his motion,

Was read, and referred to a committee of three, with leave to report by bill or otherwise.

Whereupon

Messrs. Davis, Cochran and Waples, were appointed said committee.

Mr. Higgins offered the following resolution :

Resolved, That the Committee on Vacant Lands be directed to report to this House upon the propriety of the State charging a nominal rent for the occupancy of all Vacant Lands, with a view to prevent title being obtained to certain lands by occupancy merely.

Which,

On his motion,

Was

Adopted.

Mr. Churchman presented the account of Thomas M. Ogle against the State for serving requisition.

Which,

On his motion,

Was read, and referred to the Committee on Claims.

On motion of Mr. Phillips,

The House adjourned.

THURSDAY, *January 23, 1862, 10 o'clock, A. M.*

House met pursuant to adjournment.

Prayer by the Chaplain.

The Speaker laid upon the Clerk's table and requested to be read,

he petition of George W. Groves and others, praying the repeal of the laws relating to roads and highways, passed at Dover, February 21, 1859.

Which,

On being read,

On motion of Mr. Churchman,

Was referred to the Committee on Roads and Highways.

Mr. Robinson gave notice that he would, on to-morrow, or some future day, ask leave to introduce a bill entitled "A supplement to the act entitled "An act to authorize the laying out a public road in Kent County," passed at Dover January 24, 1861.'"

On motion of Mr. Waples,

The bill entitled "An act to amend chapter 59, of the Revised Statutes of the State of Delaware,"

Was read a second time by its title.

On motion of Mr. Appleton,

The bill entitled "An act to authorize the appointment of an additional Justice of the Peace in New Castle County to reside at Christiana,"

Was read a third time by paragraphs in order to pass the House.

On the question,

"Shall this bill now pass the House?"

The yeas and nays were ordered,

Which being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Boyce, Broadaway, Calhoon, Chandler, Churchman, Clements, Cochran, Collins, Davis, Higgins,

J. A. Moore, Jonathan Moore, Phillips, Rickards, Robinson, Virden, Waples, C. Williamson, Mr. Speaker—21.

Nays—None.

So the bill having received the constitutional majority,

Passed the House.

Ordered to the Senate for concurrence.

Mr. Robinson presented the remonstrance of Thomas B. Sipple and others, remonstrating against the passage of an act "which will prevent the completion of the railroad from the Milford Junction to the Breakwater, and the breaking up of the lottery which is the only means by which it can ever be made."

Which,

On his motion,

Was read.

On motion of Mr. Rickards,

The bill entitled "An act appointing commissioners to lay out a public road, partly in New Castle and partly in Kent Counties,"

Was taken up to be read a third time by paragraphs in order to pass the House.

Pending the question,

"Shall this be section 2 of the bill?"

Mr. Churchman moved,

That the further consideration of the bill be postponed till tomorrow morning.

Which motion

Prevailed.

Mr. Chandler presented the petition of Thomas Lynam, praying

an act authorizing him to lay out a private road at his own expense.

Which,

On his motion,

Was read, and referred to a committee of three, with leave to report by bill or otherwise.

Whereupon,

Messrs. Chandler, J. A. Moore and Calhoun, were appointed said committee.

On motion of Mr. Churchman,

The Senate bill entitled "An act to authorize the Register of Chancery in and for New Castle County to procure a new seal of office,"

Was read a second time by its title.

On motion of Mr. Phillips,

The Senate bill entitled "An act to authorize the Clerk of the Orphan's Court, in and for New Castle County to procure a new seal of office,"

Was read a second time by its title.

On motion of Mr. Betts,

The bill entitled "An act to amend the act entitled 'An act allowing an additional Constable in St. Georges Hundred, New Castle County, passed at Dover January 21, 1851,'"

Was read a second time by its title.

On motion of Mr. Betts,

The bill entitled "An act amending the act incorporating the town of Middletown, passed at Dover February 12, 1861,"

Was read a second time by its title.

On motion of Mr. Betts,

The bill entitled "An act to incorporate Wilmington Council, No. 1, United American Mechanics, of Wilmington, Delaware,"

Was read a third time by paragraphs in order to pass the House.

On the question,

"Shall this bill pass the House?"

The yeas and nays were ordered,

Which on being taken, were as follows :

Yeas—Messrs. Appleton, Betts, Boyce, Broadway, Calhoon, Chandler, Churchman, Clements, Cochran, Collins, Davis, Higgins, J. A. Moore, Jonathan Moore, Phillips, Rickards Robinson, Virden, Waples, C. Williamson, Mr. Speaker—21.

Nays—None.

So the bill having received the constitutional majority,

Passed the House.

Ordered to the Senate for concurrence.

Pursuant to previous notice,

Mr. Higgins asked, and,

On motion of Mr. Churchman,

Obtained leave to introduce a bill entitled "An act to amend section 28th, of chapter 60, of the Revised Statutes of the State of Delaware."