THURSDAY, APRIL 29, 1886.

THE regular annual rebellion has broken out in Mexico. It comes with "the flowers that bloom in the spring," if not oftener, and blooms and dies as quickly as any spring flower ever did.

Our North Carolina delegation seem to have taken a strong underhold of the internal revenue iniquities and are wrestling with them vigorously. Good is bound to come of such honest, patriotic, untiring work and honor to the

Congressman Reid, in securing a place on the calendar for the Blair bill, has made a ten strike. Now, if his faithful efforts shall be crowned with a prompt consideration of the measure and its enactment into law, his triumph will indeed be great. His most commendable course in this matter has not been unobserved by the people of North Carolina and will not fail of its due re-

THE CODE DUELLO.

News of a warlike nature comes to us for blood ascends to Heaven from the top of Asheville's loveliest mountain. the field of honor.

The NEWS AND OBSERVER is not a friend to the Code. It deprecates personalities, personal dispute.

life-an unfortunate, unhappy condition, the collection. calling for generous sympathy instead of issue eventuates in deplorable calamity. heartily wish the persons concerned an amicable and sensible settlement of their differences.

THE BLAIR BILL.

It is said that the committee on labor has determined by a vote of ten to three to offer a substitute for the Blair bill, making the distribution direct to the any ofthose provisions which rendered the Blair bill objectionable to States rights men; and, secondly, basing the distribution on the number of school children and not on the proportion of illiterates.

We prefer the proposed measure to the Blair bill, which, while we were quite ready to accept it; contained some objectionable features, and we hope it will pass.

The position of our educational matters is this: The bulk of our people appreciation of education, but there has been a great advance made in that direction, and there is a very widespread interest manifested in the matter. The ability of our people to pay taxes is perhaps only a tithe of the ability of an equal number of people in the Northern States, and we have taxed ourselves to the utmost for this purpose. Yet our school fund is insufficient to maintain our common schools more than two months in the year, with the effect of keeping the schools very inefficient and causing great dissatisfaction. Many persons of good judgment hold the opinion that the schools as at present maintained are nearly worthless and are not worth the cost. An increase of the fund now will enable us to extend the school system to four months, which would give a different aspect to the matter. Our schools would then be practically efficient; the disaffection would disappear; the rising generation would be educated, and before the lapse of another decade the leaven would leaven the whole lump; and when we consider the material progress the South is making, at the end of that time, with the additional tioned as required by law, a notice shall out impairing the force of the enactstimulus to exertion, we would certainly. be issued to the defendant, by the clerk ment. But the statute itself directs an be in a condition to stand alone. Once of the superior court of Durham, that illegal and unauthorized disposition of let the people feel the full effects of a they, their agents and attorneys are, enfour months' term and they will never joined and, forbidden, till the further proves, and therefore the restraining abandon it. No finer spectacle has ever order of the court, from appropriating been presented in the history of the world any of the proceeds of said tax. for the facts shown. In this refusal there is on the facts shown. In this refusal there is on the proceeds of said tax. been presented in the history of the world than that of the Southern people in these educational matters. It has won the graded school of the town of Durbelow.

SMITH, C. J.

On thin, poor land, use 20 businessed or equivalent in stable manure, 600 pounds to the graded school of the town of Durbelow.

SMITH, C. J. ern educator who has come among us, and forbidden in apportioning said fund To belittle our earnest endeavors in this to make any discrimination on account behalf by characterizing our wish for of race, or to apportion it in any other temporary assistance as a revolting species of mendicacy comes with very bad 2635 of the Code. grace from any resident of the North
where the children of three hundred thousand families are fed clothed and thousand families are fed, clothed and denied. educated at the public expense, chtail-

the public treasury.

THE DUBHAM GRADED SCHOOL.

THE OPINION OF THE SUPREME COURT IN THE

Rigsbee vs. Durham At its session in 1881 the general assembly passed an act "to establish a graded school in the town of Durham", chapter 231, the provisions of which, so far as they relate to the present controversy, are in substance these:

The first section directs the submision to the voters of the town of the question whether an annual tax shall be levied for the support of a graded school in the town, and prescribes the mode in which the popular will shall be ascer-

The second section, in case of an afthe value of the former and seventy-five cents upon the latter, within the town and subject to taxation, the proceeds of which, it is declared, "shall be applied exclusively for the support of a 'graded public school' and shall not be appropriated or expended for any other pur-

Section three is in these words: "The pecial taxes thus levied and collected from the taxable property and polls of white persons shall be expended in keeping up a graded public school for white persons of both sexes, between the ages of six and twenty-one years; and the special taxes thus levied and collected from the taxable property and polls of colored persons shall be expended for the benefit of the public schools of the colored children between the ages of six and twenty-one years."

The other sections of the act regulate the management of the school and the administration of the funds and are not important in the present exigency. Nor from Asheville. There is another is the principle involved affected by the Richmond in the field! And the cry subsequent amendments. Acts 1883, chapter 377; acts 1883, private, chapter 106; acts 1885, chapter 87, private. An election was held and a favorable vote But yet we shall hope that neither of taken, pursuant to which a graded two very valuable lives will be lost on school was set up for the education of white children only, to support which the taxes derived from white tax-payers were appropriated, while those from colored persons were distributed among it deprecates personal encounters, it de- the colored districts which entered precates a resort to the duel. It urges | within the corporate limits of the town moderation in language-a high cour- in the general division of the county tesy-a manly forbearance-a courage- into separate school districts for the edous self-control in difficult matters of ucation of both classes of children. The county authorities accordingly fixed As for the duel, the law forbids it; upon the maximum allowed by the enand we preach that it is incumbent on actment upon property and upon sixty all men to observe the law because it is cents on the poll, preserving the constia law; no man or set of men should as- tutional equation between the two which sume to themselves that they are above the act disregarded in imposing the the law and that the law was not made | limitations, and a tax list was made out for them. It is made for all. And yet and delivered to the town tax collector cases have arisen and doubtless will who was proceeding to levy and collect hereafter arise wherein right-thinking when the present action was instituted by the issue of a summons against him and the other defendants on the 18th There are some matters that touch a day of February of the present year man's honor, and a man's honor is or The purpose of the suit is to have a ought to be dearer to him than his life. perpetual injunction against the en-When he feels himself sorely wounded forcement of the tax, preliminary to the in this tenderest part, he puts aside final hearing of which the plaintiffs thoughts of life. That must needs be upon notice applied to Clark, J., on the an agonizing frame of mind which leads | 18th day of the same month, for an inone to prefer death rather than endure termediate restraining order to prevent

It was in evidence in support of the any sarcasm or cruel levity. Generally plaintiff's motion that in the town do not appreciate this until the untoward for colored children; that the town contains over two thousand inhabitants; It is the better part to hold in view the that the territory embraced in the corserious aspect of such matters and to porate limits of Durham constitutes parts of three colored districts into which the county is divided and the school houses in each are outside the town limits; that there are no school houses therein for educating colored children, or into which they are allowed to enter; and that the taxes collected from that race are distributed among the county col ored districts, enuring as well to the benefit of colored children therein who States for educational purposes without reside without as to those who reside within the town. It was insisted for the plaintiff that the act in its essential provisions and purposes is in violation of subserving its general object, it must the constitutions of the United States stand as a unity or fail altogether. and of this State, in making unwarranted distinctions between the white and colored races, and that it is inoper-

The court rendered judgment as fol-

A. M. Rigsbee and others vs. Town of Durham and others.

This cause coming on to be heard upon a motion by the plaintiff for an injunchave not been educated up to a proper tion, notice of motion had been duly served upon the defendants and both parties being present, the complaint, (which is read as an affidavit) and af- other of the several sections which contidavit of plaintiff and also affidavit of stitute this enactment. The money is defendant being read, and it being agreed | raised for a specific object - the mainby both parties that the statements in tenance of one or more graded schools said complaint and affidavits shall be taken as facts admitted, (and they are found as facts by this court) and upon agreement of counsel, the court being taxable property therein. The great

1. That there is no irregularity or illegality in the mode of leaving or colbeeting the tax complained of.

2. That clause 3 of the act (chapter 321, acts 1881;) is unconstitutional and void so far as it directs a discrimination | decides is forbidden by the constitution between the races in the apportionment and as the object in view cannot be or appropriation of the fund raised by accomplished by using the bonds as

3. That nothing in said act permits under the statutory requirements, it or authorizes the appropriation of the clearly ought not to be taken from the money raised by said tax to the benefit tax-payers at all, because this is but a of the public schools or to any other means of effecting an illegal end. We purpose than for graded schools for the do not advert to the actual misapprotown of Durham.

It was ordered by the court: a bond in the sum of \$100, condi- disbursing it, and may corrected with-

WALTER CLARK. ing an annual charge of \$60,000,000 on At Chambers, Greensboro, February 19th, 1886,

We do not lay any stress upon the omission to designate the schools to which the money chilected from colored tax-payers as "graded," as is done in directing the application of the money derived from white taxpayers, but it is quite mauifest that the statute means to furnish the increased educational facilities resulting from the local assessment to the children of both classes resident in the town and to confine the benefits to them The departure from this requirement in the distribution of the taxes drawn from colored persons is, in our opinion, at variance with the language and intent of the enactment. Moreover the sanction of the voters, on which its efficacy depended, was given to the act in the firmative vote, authorizes the imposition form in which it came from the hands and collection by the town authorities of a tax upon property and polls, not exceeding one-fifth of one per cent upon are charged with the disbursement of 6 the fund

The judge ruled that the third sec-

tion of the act so far as it discriminates between the races in the apportionment of the fund was repugnant to the constitution, and that it was not allowable to use it for any other than graded schools in Durham. But he declared that there iwas no irregultarity or illegality in the mode of levying and collecting the tax, and refused to issue a restaining order to this effect. The ruling as to the discriminative features of the act is fully sustained by the decision of this court, in Puett vs commissioners, made at the present term, we do not propose to reenter upon the discussion of the same matter in the present opinion. If the only purposes for which the taxes are to be levied and used are condemned by the paramount law of the constitution, and they cannot when collected be expended as the statute directs, why should they be raised at all? The moneys thus obtained are but the means by which some supposed or real useful end is to be attained; and if the proposed expenditure is forbidden, so must be the provision for raising the money to be thus used. The one is an inseparable incident of the other and an essential and controlling element in the enactment. It matters not however regular and free from objection may be the prescribed method of levying the taxes, if, when collected, those paid by one race are to be separated and applied exclusively to the support of schools in which the children of that race are taught, the same discrimination in the dispos tion of the fund is made as if the taxes had been raised by separate and distinct assessments upon the races. It is true, as was ruled by the judge, the present assessment is uniform and not obnoxious to one of the objections considered in the case referred to, but the essential objection remains that there is a "discrimination in favor of or to the prejudice of" one of the races. Const. art. 9, sec. 2, which renders the enforcement of the tax for such purposes

The judge held that while the moneys could not be used in the manner pointed out and commanded in the statute, they could nevertheless be collected, acting upon the proposition that while some provisions of an enactment might be void, others might remain and be enforced. The proposition is correct to a cases: Berry vs. Haines, 2 Car. L. Rep., 428; McCubbins vs. Barringer, Phill L. 554: Johnson vs. Winslow, 63 N.

But it is otherwise when the parts of the statute are so interlaced and dependent one on the other, as uniting and constituting the whole, necessarily conducive to one and the same object, so that the dislocation of the illegal part would so affect its operation as that the act would fail of its essential object and could not be supposed in its mutilated form to effect the end intended by the enacting power. When such relations exist among the parts as that they make one consistent whole, and each material to the efficacy of the statute in

Judge Cooley states the proposition to be that the unconstitutional do not affect the constitutional parts of a statute unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose or otherwise so connected together in meaning that it cannot be presumed that the legislature would have passed the one without the other." Const. Lim., 178, 215, with cases cited in notes 2 and 3.

Such is clearly the relation to each within the limit of the town-and it comes, in addition to other public burdens, from the resident tax-payers and bulk of it is appropriated to a graded school for white children, the residue to such a school for colored children. The fund is divided by races, distinctions depending on the source from which the moneys are derived. This as the judge directed, or for any other purpose printion of the tax from colored persons to county school districts, since this is N C Lime Phosphate. priation of the tax from colored persons 1 That upon the plaintiff's executing the wrongful act of agents employed in

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