

THE DAILY REVIEW.

VOL. VI WILMINGTON, N. C., MONDAY, MARCH 14, 1881. NO. 13

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Opera House.
THE RECORD OF OUR LAST VISIT A GUARANTEE FOR THIS ONE.
Thursday, Friday and Saturday Nights and Saturday Matinee.
Re-engagement of the Distinguished Artist, Miss
ADA GRAY.
Supported by Chas. A. Watkins' Fifth Avenue Company.
Thursday Night—CAMILLE.
Friday Night—Benefit of Miss Ada Gray—FROU-FROU.
Saturday Matinee—THE NEW MAGDALEN.
Saturday Night—RUTH TREDGETT, The Tramp; or CHARITY.
Usual prices of admission will prevail. Seats can be secured without extra charge at Heinsberger's Bookstore.
Secure Matinee Tickets at Heinsberger's without extra charge and avoid the rush at the box office.
March 14-31-in-the-fri

Ship Notice.
ALL SHIPMENTS ARE BEING BY ORDER OF THE STEAMSHIP COMPANY OF THE S. S. COMPANY, as no debts of their contracting will be paid by the Captain. GEO. HARRISS & CO., Consignees.
Full Stock.
FRESH GOODS, LOW PRICES. EVERY effort made to supply the demand in every line. Office and Family Stationery, School, Blank and Miscellaneous Books, Fancy Articles, Picture Frames in stock and made to order. Organs on the Installation Plan, at
Yates' Book Store.
March 14

Family Bibles.
NEW TESTAMENTS, Psalms and Hymns, Books of Worship, Baptist Hymn Books, Common Prayer and Hymnals, Methodist Hymn Books, Catholic Prayer Books. For sale at
HEINSBERGER'S, Live Book Store.
March 14

"Pride of the Pantry"
Another lot of this
Celebrated Flour
Just received,
Fresh and Sweet
It has no equal
in this market for family purposes.

John L. Boatwright,
11 and 13 North Front St.
Malt Liquors.
Barkley & Perkin's Brown Stout,
Bass' Pale Ale,
Lemp's "St. Louis" Lager,
Rochester Export Beer.
Wines.
White Supperwong,
Old Roca Golden Sherry,
Sicily Madeira,
Star Cadiz Sherry,
Old Oporto Port.
Together with all other Imported Wines.
For sale low by
JOHN L. BOATWRIGHT,
Nos. 11 & 13 N. Front St.
March 14

LOCAL NEWS.
New Advertisements
J L BOATWRIGHT—"Pride of the Pantry"
GEO HARRISS & Co.—Ship Notice
OPERA HOUSE—Ada Gray
HEINSBERGER—Family Bibles
C W YATES—Full Stock
A SHERR—Spring Styles 1881
For other locals see fourth page.

The "Czar" Killed.
Information was received here yesterday to the effect that Alexander II, Czar of Russia, was killed on that day by a mob of Nihilists. He was in his carriage, surrounded by his guard, when attacked. A hand grenade was thrown and this falling in its object, he was attacked and cut to death. These are all the particulars we could learn, although we have unsuccessfully endeavored to obtain them by telegraph.

In Distress.
The schooner *George H. Bent*, Captain Hazilton, from New York to Port Royal with cargo of guano, put in at this port this morning leaking badly. The entire cargo will have to be discharged. The Captain has consigned his vessel to Messrs. Geo. Harriss & Co. The Nor. barque *Morvig*, Capt. Mathiesen, from Liverpool for this port with cargo of salt on January 18th, arrived here this morning with topmasts and sails gone. The vessel is consigned to Messrs. Heide & Co., and a survey has been ordered on her.

We advise our friends to call at Jacoby's for Household Hardware of every description. There you get the lowest prices.
Death on the Rail.
Saturday last Giddons Rhodes, Jr. colored, was accidentally killed near Dawson Landing, on the Cape Fear river, about 80 miles from this city. The deceased had been riding on the trucks of the timber cars on a railroad about 12 miles long, used by Mr. O. Y. Wilson of this city, for hauling timber to the river landing, when he lost his balance and fell off, the wheels passing over his head, killing him instantly. The engineer stopped the train as soon as possible and carried the corpse of the unfortunate man back to Dawson's.

Tragedy at Abbotsburg.
We regret to learn that Mr. J. W. McLeod, a prominent citizen of Abbotsburg, met with a sudden and tragic death at the above named place yesterday afternoon under the following circumstances; It seems that a car had been sent to Abbotsburg by the Railroad Company for McLeod to load with shingles and that on Saturday afternoon Mr. Dan Thompson, a hotel keeper in the village, endeavored to appropriate the car to his own use. To this Mr. McLeod objected and protested in a very mild way; an altercation ensued which resulted in Mr. McLeod's being knocked off the car by Thompson on the rails, his head striking and producing a fracture of the skull, from which the injured man died yesterday afternoon. The same report says the assailant Thompson fled to the woods and has not since been heard of.

Church Dedication.
The First Congregational Church, on Nun, between Sixth and Seventh streets, was dedicated on Saturday night. The Rev. J. B. Taylor read the Scriptures, Rev. C. Woodworth, Boston, preached the sermon and Rev. J. R. Wilson, D. D., said the dedicatory prayer. Mr. J. J. Howard Gregory, of Marblehead, Mass., the gentleman who had made such liberal donations *incognito*, accompanied by his wife, arrived in the city on Saturday, and was present at the services as were also Miss Annie E. Farrington, who gave the Communion table and Mrs. A. M. Woodman, who donates the pulpit. The pulpit chairs were a present from Deacon J. S. Holt's Sabbath school class, of the First Congregational Church, Lowell, Mass. Mr. S. B. Weston, of Nashua, N.H., was the master mason in charge of the trick work of the church. He taught some new ideas to the bricklayers in this city, which they think are a great improvement over the old ideas, and donated a part of his labor. Mr. Gregory delivered a congratulatory address after the sermon and expressed himself well pleased with the church.
Go to Jacoby's for Doors, Sash and Blinds, pure White Lead, Oils, Varnishes Window Glass, all sizes. All at the lowest prices.

THE MARKET MUDDLE.
Opinions Submitted to Mayor Fishblate by Hon. Geo. Davis, M. J. Devane, Messrs Russell & Ricard and Messrs McKee & Strange.

HON. GEO. DAVIS.
HON. S. H. FISHBLATE, Mayor.—Sir: I have very carefully considered the questions submitted to me by you in relation to the late acts regulating the sale of marketable articles in this and other cities, and respectfully report my conclusions.
Question 1. What are the effect and operation of these acts upon the sanitary powers and regulations of the city?
The language of the supplemental act is as follows:
"That section first of said act (the original act) shall not be construed to interfere with proper sanitary regulations adopted by the Mayor and Board of Aldermen of the cities of Wilmington, Tarboro and New Berne under the direction of the city physicians and Board of Health."
When a bill is passed through both houses of the Legislature within a few hours of a single morning's session, on the day of its first introduction, there is no time for an intelligent comparison of its provisions with the existing laws upon the same subject, and confusion is the inevitable result. Who are the persons meant by the term "the city physicians," who are to have an important influence in measures relating to the public health? Are they the resident physicians of the cities? And if so, all of them? Or only those qualified to be members of the Boards of Health? Or are they individual physicians in those cities supposed to be sufficiently indicated by that term? Whatever obscurity there may be in other respects, one thing at least is certain. This provision must have the same interpretation in all of the named cities. It cannot mean one thing in Wilmington and another and different thing in Tarboro and New Berne. If there was any person known to the law, or perhaps known in common parlance, in all of the three cities, as "the city physician," we might with some confidence conclude that they were the persons intended. But there is certainly no such office or title known to the law in any of these cities, and as far as I have been able to ascertain, none so known in common parlance. The act of 17th March, 1875, chap. 101, provides—
"That there shall be a Superintendent of Health for the city of Wilmington to be appointed by the Mayor of said city, &c." And by section 7 it is made his duty to see that the health ordinances of the Mayor and Aldermen are carried into execution. No where in the act is he called "physician," the requirement being that he "shall be a graduate of some of the schools of medicine in good standing." This act extends to Wilmington alone, and I have not been able to find any similar act for Tarboro or New Berne. The act of 14th March 1879, chap. 117, establishes a Board of Health in every county of the State, directs that it shall be composed of all physicians eligible in the State Medical Society, the Mayor of the county town, the Chairman of the County Commissioners and the City Surveyor, and that "from this number one physician shall be chosen by ballot to serve for two years with the title of Superintendent of Health." And to this officer important duties are assigned in regard to quarantine and health in all the cities and towns in the State. This latter act is certainly a repeal of the act of 1875 in some respects. Is it a total repeal? or have we now two Superintendents of Health, established by law for the city of Wilmington? And if so, which of them if either, is designated by this Supplemental act? Sanitary regulations are to be made "under the direction of the city Physicians and Boards of Health." The Superintendent of Health under the act of 1879 is necessarily, and under the act of 1875 very certainly, a member of the Board of Health. Is he to have a concurrent authority as city physician, distinct from and independent of his authority as a constituent member of the Board? Or in other words must he concur in every action of the Board, or can the majority of the Board overrule his vote? Are the words "under direction" to be construed in their plain and natural sense, as giving an overruling control, so that the Board of Aldermen must act at the bidding of the city physician and Board of Health without any discretion of their own? Or is "direction" to be softened by construction into "advice" or "recommendation," so as to leave them a discretion to act or not as they may see fit?

These are all questions which fairly and naturally arise out of the few words of this supplemental act, and in my judgment are questions so embarrassing that no opinion but that of the Supreme Court can settle them. After a careful study I can only give my best impressions as follows: "That the Superintendents of Health appointed by the County Boards are the city physicians meant, as they are the only physicians appointed by law for all the named cities. And that the Board of Aldermen have the power to adopt such, and only such, sanitary regulations as may be recommended to them by the Board of Health, which includes the Superintendent of Health, and that they are not bound to adopt any recommendations which do not meet their own approval. "Proper regulations," that is, as I understand it, not

"lawful" but "fit" regulations, are to be made "under the direction" of certain officials. Some check upon the city authorities was certainly meant, and that which I have intimated is the least that can be intended.
But this restriction of the powers of the Board of Aldermen is confined to such sanitary regulations as concern the sale of marketable articles as mentioned in the act. To that extent only did the original act interfere; and the supplemental act is simply an explanation and limitation of the other. In respect to all other sanitary regulations, the powers of the Board of Aldermen are unimpaired.
Question 2. What are the effects and operation of these acts on the police powers of the city?
I understand this question to refer to the authority of the Board of Aldermen over the streets and alleys.
Whatever injurious consequences might have resulted from the original act—and they would undoubtedly have been very great—its operation has been much modified and weakened by the supplemental act.
The full and complete jurisdiction of the municipal authorities over the streets and thoroughfares of the city is so necessary to the convenience, peace and welfare of the community that any limitation of it is apt to be injurious, and ought not to be enforced without a plain expression of the legislative will. The supplemental act having been avowedly passed to explain and limit the original act, we must look to that for a true understanding of the purpose of the Legislature. The preamble, with a frank exhibition of feeling, declares that the sole object of the original act was to enable vendors to sell certain enumerated articles on the streets, &c., "and not to be forced to sell the same from the stalls of the 'Wilmington Market House Company,' or any other Market House Company," &c. These purposes are not to be taken as distinct and independent but as correlative only. Vendors are not to be forced to sell at the stalls of any company. That is the primary object. And to secure that they are privileged to sell on the streets and alleys; and the Board of Aldermen are prohibited from interfering to prevent them from so selling. That is the intent declared, and we are not at liberty to infer any other. But the privilege is not to be extended beyond what is necessary to secure the protection granted; and this right of selling on the streets, like every other right of private citizens, must be held in subordination to the paramount interest of the public. Thus, every citizen has a right to fish in the navigable waters of the State; but the public have the paramount right of navigation. And if, in the proper exercise of this paramount right, the seine of the fisherman is destroyed, the law gives him no redress. Jackson vs. Keeling, 1 Jones, 299. So where a railroad bridge, built under the authority of a charter from the Legislature, obstructed the passage of a steamboat, and the owner of the boat tore down enough of the bridge to enable the boat to pass, he was held to be justifiable in so doing. State vs. Parrot 71 N. C., 311. "The public are not only entitled to free passage along the street, but are entitled to a free passage over any portion of it they may choose to take, and no person has a right, unreasonably or unnecessarily, to impair that right. The right to load or unload carriages in a highway is one of the rights incident to it, but it is entirely subordinate to the right of passage, and must be so exercised as not unreasonably to impair or abridge this superior right." Wood on Nuisance sec. 262.
"No man has a right, for any purpose, to persist in keeping up a continuous blockade of any part of the street, either under the plea of necessity or otherwise, for public rights and the public convenience are paramount to the necessity of trade or individual convenience. Ibid sec. 261.
And so Lord Ellenborough, in Rex vs. Cross, 3 Camp 224, which was an indictment for allowing stage coaches to remain an unreasonable time in the public highway in London: "A stage coach may set down or take up passengers in the street, this being necessary for public convenience, but it must be done in a reasonable time, and private premises must be provided for the coach to stand while waiting between one journey and the commencement of another. No one can make a stable yard of the King's highway."
These authorities will give a fair idea of the relative rights of the public and of individuals in the streets of a city.
The Legislature, so far from intending to impair this paramount right of the public, has declared another intent quite consistent with it. And the farmer or fisherman has no more right than any other person unreasonably to obstruct or abridge this public right of passage over the streets, and every part of them. And I am of the opinion that the power of the Board of Aldermen to abate and punish nuisances of obstruction remains in full force, notwithstanding the recent acts.
But there is one particular in which these acts, even as thus understood, are likely to operate injuriously. The punishment imposed by them goes to the extreme limit of a Justice's jurisdiction. While there is a discretion as to the mode of punishment there is none as to the extent; and in every case there must be a fine of \$50, or an imprisonment for thirty days. The chief value of the city's power to deal with nuisances in the streets, and especially those of obstruct-

tions, consists in its ability to give summary and efficient relief to the suffering public, without awaiting the slow process of the law. Now, what is an unlawful obstruction of a street in the pursuit of a lawful business, is often a very difficult question to decide. Take a single illustration. A merchant has a right to place his goods in the street, and to keep them there for a reasonable time, for the purpose of removing them into his store or warehouse. If he suffers them to remain an unreasonable time he commits a nuisance. Wood, sec. 285. And I suppose it to be a very mild construction of these acts to assume that they give to the farmer, fisherman, &c., no greater privilege than the merchant has. Now what is a reasonable time, is a question of law, Biles vs. Holmes 11 Ire. 16—and in all except extreme cases, a question so nice and difficult that experienced lawyers cannot decide it, because it depends upon the discretion of the judge under all the circumstances of each particular case. Municipal ordinances do not execute themselves. They require personal intervention. And the officers of the city, who are not lawyers, in proceeding to abate a nuisance, or arrest the offender must decide this difficult question for themselves, and decide it at the risk of thirty days imprisonment if they fail in their judgment, however fair and honest their motives and conduct may be. And this is only one of many instances which may continually happen. It is not unreasonable to apprehend that a misconception of the true character and effect of these acts may cause conflicts between the city authorities and the protected classes to become more frequent in the future than they have been in the past. And, with such a risk before them, the city officers may not venture to interfere until the nuisance has become glaring and intolerable, or may leave the offenders altogether to the tardy condemnation of the general law.

MESSRS D. J. DEVANE, RUSSELL & RICARD AND McRAE & STRANGE.
WILMINGTON, March 12th, 1881.
Hon. S. H. Fishblate, Mayor.—We have read the opinion of Mr. Geo. Davis, with whom we have been associated by you, and have carefully examined the questions submitted to him in the matter of the ordinances and laws concerning the Wilmington Market House Company, and herewith submit to you the conclusion which we have reached:
Question 1st. Are the acts known as the act for the better protection of Farmers and Fishermen ratified 5th March, 1881, and the act supplemental thereto ratified the 7th of March, 1881, constitutional?
These acts are not public laws of the State, operating upon all the towns and cities of the State, but they are private acts, relating only to the cities of Wilmington and Newbern and the town of Tarboro. There is a public law embracing all the cities and towns in the State, defining the corporate privileges, and attaching certain powers to their municipal officers, and among other powers "They may establish and regulate their markets and prescribe at what place within the corporation shall be sold marketable things. They may also pass laws for abating or preventing nuisances of any kind," and they are charged with the proper care and management of the streets. Battle's Revisal, chap. 111 sec. 17, 18, 19.
These acts except out of this public general law, if they have any effect, the towns of Wilmington, Newbern and Tarboro by certain restrictions on the officials of these towns, as to certain powers and business, and being made exception of particular local communities, only they are necessarily local private acts.
The city of Wilmington, by charter original and amendments to be found among the private laws of the State, so published by authority of successive Legislatures, possesses similar privileges and powers as those above set forth, and these acts being restrictions of those charter powers and not declared by the Legislature to be public laws are but amendments of these private charters and like the charters are necessarily private acts.
If we are correct in the supposition that these two acts are private acts then it is evident that they have passed in conflict with art. 2nd. sec. 12 of the constitution which provides that "The General Assembly shall not pass any private law unless it shall be made to appear thirty days' notice of application to pass such a law shall have been given."
Unquestionably this is a mandatory requirement, addressed to the Legislature in positive form. The language could not have been more exacting. Now, has this mandate been disposed of by the ratification of these acts so as to require the courts to presume a notice against the fact that there was none?
The journals are undoubtedly competent evidence that the notice of the intended application for the act which the constitution requires had not been given, if it so affirmatively appears from the journals.
If the journals are silent, there might be a presumption that the notice had appeared, but we think such presumption would be open to rebuttal by proper proof. Applying these principles to our case we reach these conclusions:
1st. As to the act of 5th of March, we do not know how the journals appear, but at most there is only a presumption of such notice, for we all know as a fact

that no such notice has been given.
2nd. As to the supplemental bill of March 7th, it manifestly appears on the journals, that this act has passed without its being made to appear that the required notice has been given, and if the act be a private act, it is manifestly unconstitutional.
It so appears on the journals because it is a supplement to a bill which had passed only two days previous, and this supplement passed all its three readings in both Houses on one day. Now, unless the author and draftsman of this supplemental bill had the foresight to see that the original bill would pass and would be defective and would need a supplement, and so gave the 30 days' notice, it is impossible this notice could have been given as appears on the journal.
But the supplemental bill is plainly unconstitutional in another aspect.
The 14th section of article 2nd declares that no law shall be passed "to allow the counties, cities or towns to impose any tax upon the people, unless the bill has passed three several times in each House on three different days."
This bill passed three readings in each House all in one day. Does it allow the city to impose a tax?
The first section of the bill declares that the act of the 5th of March "shall not be construed to exempt dealers in such articles from the usual license tax to said cities and towns."
The 14th section of the original bill had declared that it shall be unlawful for the Board of Aldermen to impose or collect any tax on or for the sale of fresh meats &c., on any of the streets or alleys or from wagons, carts, shop or stores. In so far as language can exempt from taxation and destroy the power of the Board to impose it the language of this act allows this exemption.
This act went into operation on the 5th of March and stood as a Rule of Law from that date.
The act supplemental, it is true, is a declaratory act, and assumes to declare how the former act shall be construed. But every well read lawyer knows, unless his judgment is warped by some bias or haste or want of deliberation, that no declaratory or other act can expound the meaning of a former law. The exposition of an act is a judicial attribute and not legislative and the only effect of the supplemental bill is to declare the law from the date of its ratification. The Supreme Court of New York said of such declaratory acts in a leading case: "If they give interpretation to former acts, so as to give a new meaning, they establish a new rule, and are to have the same effect as other newly created statutes." But as exposition of former acts for the government of the Courts, they would be taking cognizance of judicial questions.
This rule is accepted law by all standard authorities.
So that the original bill is to be interpreted from its terms and is not to be interpreted by any declaration in the supplemental act of how it shall be construed.
And inasmuch as the original act took away the power from the Board to impose these taxes, the effect of the supplemental act was simply to restore from its ratification the power which had been taken away.
In other words, this supplemental act allows to the Board to impose taxes, a power that it did not have at the passage of this bill assuming the original bill to be constitutional, and to allow this constitutionality it required to pass three readings on three different days, whereas it appears on the journals as above stated to have passed all in one day and so violates the constitution and is void; and so if the original bill is constitutional its provisions have not been effected by the supplemental bill so far as this power of taxation is concerned.
Again this legislation, both the original and the supplemental act, directly affects the contract heretofore made by the Board with the Wilmington Market Company and the supplemental act asserts the intention to impair it and that will raise in the courts of the U. S. the federal question of the power of the Legislature to enact these laws under the constitution of the U. S., and we are free to say that assuming the validity of this contract there can not be a doubt that these acts are in violation of the constitution of the U. S.
On the several matters argued by Mr. Davis in his opinion, we concur with him for the reasons which he has stated.
On the whole matter, we are of the opinion that the grave and important questions involved ought to be solved, and the rights of all parties in interest ought to be ascertained, and to this end we recommend that the Board of Aldermen should proceed, under proper advice, to take such steps as will make test cases for the decision of the Courts by friendly litigation.
D. J. DEVANE,
RUSSELL & RICARD,
McRAE & STRANGE.

The Treasurer of Cornelius Hannett Council, No 231, of the Royal Arcanum, paid to Mrs. Newman to-day the benefit of her husband, Mr. Philip Newman, in that Order, amounting to (\$3,000) three thousand dollars. This makes the fourth benefit that has been paid by this Order to beneficiaries in this city.
You can now buy Improved Heating and Cook Stoves at factory prices at Jacoby's.

PLEASE NOTICE.
We will be glad to receive communications from our friends on any and all subjects of general interest but
The name of the writer must always be furnished to the Editor.
Communications must be written on only one side of the paper.
Personalities must be avoided.
And it is especially and particularly understood that the Editor does not always endorse the views of correspondents, unless so stated in the editorial column.