THE OBERLIN HABEAS CORPUS.

DECISION OF THE OHIO SUPREME COURT.

From The Columbus State Journal, May 31.

The decision of the Supreme Court, in the application for a discharge of Bushnell and Langston, convicted of a violation of the Fugitive Slave act, at the recent term of the United States District Court for the Northern District of Ohio, was announced yesterday afternoon, all the Judges being present. The decision of a majority of the Court—namely, Chief-Justice Swan, and Judges Scott and Peck—was against the prayer of the relators, Judges Brinkerhoff and Sutliff dissented from the majority of the Court.

Whatever may be the conflicting popular opinions upon the decision rendered by a majority of the Court, the people of Ohio will doubtless regard it as the deliberate judgment of the highest tribunal of the State, and will respect it accordingly.

We give below a synopsis of Judge Swan's opinion. We had hoped to have given the opinion entire in this issue of our paper, but it was retained by Judge Swan for revision. The synopsis, however, presents the main points:

JUDGE SWAN'S OPINION.

Judg Swan, Scott and Peck held:

I. That the provisions of art. 4, section 2, of the Constitution of the United States: "No person held to "service or labor in one State under the laws thereof, "escaping into another, shall, in consequence of any "law or regulation therein, be discharged from such "service or labor, but shall be delivered up on claim "of the party to whom such service or labor may be "due," guarantees to the owner of an escaped slave the right of reclamation.

II. That a citizen who knowingly and intentionally interferes with, for the purpose of rescue or rescues from the owners, an escaped slave, is guilty of a violation of the Constitution of the United States, whether the acts of 1793 and 1850, commonly called the Fugitive Slave laws, are unconstitutional or not.

III. That the question in this case is not whether the Fugitive Slave act of 1850 is unconstitutional in respect to the appointment and powers of commissioners, the allowance of a writ of habeas corpus, the mode of reclamation, &c., but whether Congress has any power to pass any law whatever, however just and proper in its provisions, for the reclamation of slaves, or to protect the owner of an escaped slave from interference when duly asserting his constitutional rights of reclamation.

IV. That Congress, from the earliest period of the Government, has, by legislative penalties, vindicated the Constitutional right of the owner of slaves against unlawful interference.

V. That such legislation was adopted in 1793 by the IId Congress elected under the Constitution, composed of many of the members of the Convention who framed the Constitution; has, from that day to this, been acquiesced in by all departments of the Government, National and State; and the legislative power of Congress on this subject has been *recognized* by the General Assembly of the State of Ohio in their statutes; by the Supreme Court of the United States, and by the Supreme Courts of Massachusetts, New-York, Pennsylvania, Indiana, Illinois, California, by the Supreme Court of Ohio on the circuit, and, indeed, by the Supreme Courts of every State in the Union where the question has been made, and has never been denied by the Supreme Court of any State—the Courts of Wisconsin, notwithstanding the popular impression, not forming an exception.

VI. The right to rescue escaped slaves from their owners being denied to all citizens of the United States by the Constitution; Congress having prohibited it and enforced the prohibition by penalties; the Supreme Court of the United States and Courts of the Free States having recognized and acquiesced in such legislative prohibition and punishment, if the question is not thus put beyond the reach of the private personal views of Judges; and if they possess judicial discretion or power to overrule on the authority of their individual opinions this unbroken current of decisions, and this acquiescence of the States of the Union, and change the settled interpretation of the Constitution of the United States; then there is no limit, and no restraint upon Judges making at any time, and under any circumstances, their own individual opinions, the arbitrary interpreters of the Constitution.

VII. Whatever differences of opinion may now exist in the public mind, as to the power of Congress to punish rescues as provided in the acts of 1793 and 1850, no such vital blow is given either to constitutional rights or State sovereignty by Congress thus enacting a law to punish a violation of the Constitution of the United States as to demand of this Court the organization of resistance. If, after more than sixty years of acquiescence by all departments of the National and State Governments, in the power of Congress to provide for the punishment of rescuers of escaped slaves, that power is to be disregarded and all laws which may be passed by Congress on this subject from henceforth are to be persistently resisted and nullified, the work of revolution should not be begun by the conservators of the public peace.

Judge Scott orally assented to the foregoing, as embodying his views, especially in its conclusions; although he intimated that he would, in a written opinion, modify some of the details.

Judge Peck delivered an elaborate written opinion, coinciding with Judges Swan and Scott, comprising a review of the decisions of the Courts, and particularly of the State Courts, upon the questions involved in the case, and treating the whole matter as a *res adjudicata*.

Judge Sutliff also read a dissenting opinion, taking the ground that, according to the established rules of construction, no authority for Congress to pass the Fugitive Act could be found in the Constitution.

Judge Brinkerhoff also dissented from the majority of the Court, in a forcible opinion, which we give below.

JUDGE BRINKERHOFF'S OPINION.

Judge Brinkerhoff said—Since the close of the argument of these cases—Sunday, and a visit to my family intervening—I have not had time to do more than hastily to sketch a brief outline of my opinion on the questions they present. This I give, and I may and may not, as leisure or inclination may prompt, commit them to paper, with the reasons on which they rest, more fully and in detail hereafter.

I. Under the advice of the District-Attorney of the United States, the indictments under which the relators were convicted are appended to, and form a part of, the return to these writs. The question whether they charge a crime or not is, therefore, before us. Both indictments are fatally defective, in this, to wit, that neither of them aver that John was held to service or labor in the State of Kentucky "*under the laws thereof.*" 2d section, 4th article, Constitution United States.

1. This defect is not a mere error or irregularity. If it were, so far as this point is concerned, we should be obliged to remand the prisoners; for the writ of habeas corpus cannot be made to perform the functions of a writ of error. But 2d. This defect is an illegality. The averment omitted is of the essence of the crime; without the fact omitted to be averred, there is no crime; for it is no crime to rescue from custody a person held to service or labor in another State otherwise than "under the laws thereof." If there was no crime charged in the indictment, the judgment of the District Court of the United States under which the relators are held, is *coram non judice* and void; they are illegally restrained of their liberty, and they ought to be discharged.

II. 1. The indictment against Bushnell contains but one count, which charges the rescue of John from the custody of an agent of the claimant of his labor and service in Kentucky—John having been arrested and held in custody without warrant or any color of legal process.

It appears, then, on the face of the record which is made a part of the return to this writ, that here was a person domiciled or sojourning in Ohio, a free State, and therefore presumed in law to be a free man, "unlawfully seized" and "deprived of his liberty," not "without due process of law," but without the pretense or color of any process whatever. This arrest and custody was in direct contravention of the Fourth and fifth articles of the amendments to the Constitution of the United States. The rescue of a person thus "unreasonably seized" and "deprived of his liberty without due process of law" cannot be a crime; and any statute or judicial procedure which attempts to make or treat it as a crime, is unconstitutional and void.

2. The indictment against Langston has two counts; the first of which is entirely similar to that against Bushnell; and the second of which alleges a similar rescue of John while arrested and held in custody under a warrant issued by a Commissioner of the Circuit Court of the United States, authorized by act of Congress to issue such warrant, and, under the authority thereof, to arrest, hold, and remove the person described therein to a foreign jurisdiction as a slave.

The acts of Congress referred to clearly attempt to confer on these Commissioners the powers and functions of a court; to hear and determine questions of law and of fact; and to clothe their findings and determinations with that conclusive authority which belongs only to judicial action. And the issue of the warrant mentioned in the indictment was a judicial act.

These provisions of the acts of Congress referred to, and all warrants issued under them, are unconstitutional and void, for the following reasons:

These Commissioners are appointed by the Circuit Courts of the United States only; hold their office at the will of such Courts, and are paid by fees. Whereas, by the express provisions of the Constitution of the United States, (Art. 2, Sec. 2, and Art. 3, Sec. 1,) the judicial functionaries of the United States must be appointed by the President, by and with the advice and consent of the Senate, hold their offices during good behavior, and receive a fixed compensation which may not be diminished during their continuance in office.

The warrant of such a commissioner, therefore, is a nullity; it could afford no authority to hold John in custody; and to rescue him from such illegal custody could not, by the law of the land, be a crime; and therefore the imprisonment of Langston by way of punishment of such pretended crime, is an illegal restraint of his liberty, and he too ought therefore to be discharged.

III. These relators ought to be discharged, because they have been indicted and convicted under an act of Congress upon a subject matter in reference to which Congress has, under the Constitution of the United States, no legislative power whatever.

As to the correctness of this proposition, there does not rest on my mind the shadow or glimmer of a doubt.

The Federal Government is one of limited powers; and all powers not expressly granted to it, or necessary to carry into effect such as are expressly granted to it by the terms of the Constitution, are reserved to the States or the people. Amendments, Art. 10.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." Art. 4, Sec. 2.

This is the only clause of the Constitution from which anybody pretends to derive, or in which anybody pretends to find a grant of power to Congress to legislate on the subject of the rendition of fugitives from labor. I can find in it no such grant. The first part of it simply prohibits State legislation hostile to the rendition of fugitives from labor. Such fugitive shall not be discharged "in consequence of any law or regulation" of the State into which he shall escape, "but shall be delivered up." By whom? By Congress? By the Federal authorities? *There are no such words*, and no such idea is hinted at. This is evident from an inspection of the whole of the preceding portion of this article.

ART. 4. SEC. 1. "Full faith and credit shall be given "in each State to the public acts, records, and judicial "proceedings of every other State. *And the Congress "may by general laws prescribe the manner in which "such acts, records and proceedings shall be proved, "and the effect thereof.*" Here, in the first place, is a compact between the States respectively—an agreement of the several States to and with each other, that the "public acts, records and judicial proceedings," of each shall have "full faith and credit" given to them in all. Had this section closed here, would any one claim that it embraced any grant of legislative power to Congress? I think not. But the framers of the Constitution thought that Congress ought to have the power "to prescribe the manner in "which such acts, records and proceedings should be "proved, and the effect thereof;" and hence they gave the power in express terms. When they intended a grant of power to Congress, and not a mere contract stipulation by, or injunction of duty upon the States, *they say so*, and leave us no room for cavil on the subject. But let us go on.

SEC. 2. "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several States."

"A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

That these clauses of section two are mere articles of compact between the States, dependent on the good faith of the States alone for their fulfillment, I suppose no one will dispute. They do not confer upon Congress any power whatsoever to enforce their observance. Then follows the last clause of section two, in respect to fugitives from labor or service, first quoted. And this, like all the other preceding clauses of this article, except the first, is destitute of any grant of power, or even allusion to Congress or the Federal Government. Now, if a grant of power to Congress was here intended, why this silence? If the framers of the Constitution intended a grant of power to Congress in this clause, why did they not say so, as they did say in the first section, in respect to "public acts, "records and judicial proceedings?"

It seems to me that no rational answer can be given to this question, except by a denial of such intentions. *Expressio unius exclusio alterius*, is a legal maxim as old as the common law. The express mention of one thing implies the exclusion of things not mentioned. It is the dictate of reason and common-sense. It is a maxim which applies alike in the interpretation of contracts, statutes, and constitutions. Its application was never more obviously proper than to the question before us; and when applied, it seems to me to bring with it a force little short of mathematical demonstration.

Thus far I have reasoned as if we were ignorant of the history of the Constitution. But a glance at that history confirms the conclusions to which we are brought by the ordinary rules of interpretation, and makes "assurances doubly sure."

The Articles of Confederation under which the struggle for independence was carried through, and for which the present Constitution of the United States is a substitute, contained *nothing but* articles of compact. The fulfillment of its obligations was dependent upon the faith of the States alone. The Congress could make requisitions, but had no power to enforce them.

Again: Certain provisions of the ordinance of 1787, for the government of the territory north-west of the Ohio River, were in express terms declared to be "articles of compact."

Now, every one of the clauses of the fourth article of the Constitution above quoted were borrowed and transferred, with but slight verbal alterations, from the Articles of Confederation and the Ordinance of 1787—the first three from the former, and the last from the latter—with this exception only, that to the first of these clauses was added a grant of power to Congress to prescribe the manner of proof and effect of public acts, records and judicial proceedings. Here, then, we have certain articles of compact—admitted or declared to be such, and nothing more—borrowed and transferred from one instrument to another, with no intimation of any change of their character as articles of compact, except in a single instance where the change is expressly declared. The inference seems to me to be irresistible, that, except so far as the change is expressly declared, they remained, after the transfer, the same as they were before—articles of compact, and nothing else.

I conclude, therefore, that the States are bound, in fulfillment of their plighted faith, and through the medium of *their* laws, legislation and functionaries, to deliver up the fugitive from service or labor, on claim of the party to whom such service or labor may be due under the laws of another State from which the fugitive has fled. But the Federal Government has nothing to do with the subject, and its interference is sheer usurpation of a power not granted, but reserved.

But, it is said, the question is settled, and our argument comes too late. I deny that it is settled.

The federal legislature has usurped a power not granted by the Constitution, and a federal judiciary has, through the medium of reasonings lame, halting, contradictory, and of far-fetched implications, derived from unwarranted assumptions and false history, sanctioned the usurpation. I deny that the decisions of a usurping party in favor of the validity of its own assumptions, can settle any thing. It is true that the courts and legislatures of several of the states have decided in the same way; but they have been decisions of acquiescence rather than of original and independent inquiry. The fact that such jurists as Hornblower, Walworth and Webster thought on this subject as I think, shows that the question is not settled. The fact that a majority of my brethren, as I understand them, admit that if this were a new question they would be with me, and that they yield the strong leanings of their own minds to the force of the rule of *res adjudicata* alone, proves that this question is not settled. The truth is, it is not till recently that the mass of intelligent and inquiring mind in this country has been brought to bear upon this question. It required the enactment and enforcement of the Fugitive Slave act of 1850, overriding the most sacred and fundamental guaranties of the Constitution, and disregarding in its provisions even the decencies of legislation, as if for the very purpose of irritation and humiliation, and the fine and imprisonment under it of *white* men for the exercise of the instinctive virtues of humanity, to awaken general inquiry. That inquiry is now going forward. And so surely as the matured conviction of the mass of intelligent mind in this country must ultimately control the operations of Government in all its departments, so surely is this question not settled. When it is settled right, then it will be settled, and not till then.

But, cotemporaneous construction is appealed to. I admit its weight, and its title to respectful consideration. But cotemporaneous construction speaks with a divided voice. It is true Congress, as early as 1793, legislated for the return of fugitives from labor. But nearly if not quite every one of the old States had also legislated on the same subject in fulfillment of what they deemed a matter of constitutional obligation resting on them. And such legislation on the part of the States, old and new, continued until the Supreme Court of the United States, in the Prigg case, as late as 1842 (16 Peters, 539), assumed for the Federal Government exclusive authority over the subject. And those who appealed to cotemporaneous construction should themselves respect it. From the foundation of the Government until within the last ten years, Congress claimed and exercised, without question, full and complete legislative power over the Territories of the United States; and as early as 1828, in American Insurance Company agt. Canters (1 Peters, 546), the Supreme Court of the United States, Chief Justice Marshall delivering its opinion, unanimously decided that in the Territories Congress rightfully exercises the "combined powers of the General and of a State Government." Yet in the recent case of Dred Scott agt. Sandford (19 Howard, 393) all this is overturned and disregarded, and the whole past theory and practice of the Government in this respect attempted to be revolutionized by force of a judicial *ipse dixit*. We are thus invited by that Court back to the consideration of first principles; and neither it nor those who rely on its authority have a right to complain if we accept the invitation.

I know of no way other than through the action of the State Governments, in which the reserved rights and powers of the States can be preserved, and the guaranties of individual liberty be vindicated. The history of this country, brief as it is, already shows that the Federal judiciary is never behind the other departments of that Government, and often foremost, in the assumption of non-granted powers. And let it be finally yielded that the Federal Government is, in the last resort, the authoritative judge of the extent of its own powers, and the reservations and limitations of the Constitution which the framers of that instrument so jealously endeavored firmly to fix and guard will soon be, if they are not already, obliterated; and that government, the sole possessor of the only means of revenue in the employment of which the people can be kept ignorant of the extent of their own burdens, and with its overshadowing patronage, attracting to its support the ambitious by means of its honors, and the mercenary through the medium of its emoluments, will speedily become, if it be not already, practically omnipotent.

These were my opinions, freely declared, for years before I had the honor of a seat on this bench; and, having learned nothing during the pendency of these cases to change, but much to confirm them, I know no reason why I should hesitate to avow them now.

I give my voice in favor of the discharge of the relators.

THE BOSTON BANQUET TO MORPHY.

A banquet was given at the Revere House on Tuesday evening, by the Boston Chess Club, in honor of Mr. Paul Morphy. One hundred and forty gentlemen sat at the tables, and among the guests of the evening were Chief-Justice Shaw of the Supreme Court of Massachusetts, ex-Judge Thomas, President Walker, ex-President Sparks, and Profs. Agassiz, Longfellow, Peirce, Lowell, Parker and Huntington of Harvard University, Senator Wilson, Mayor Lincoln, the Rev. T. Starr King, Mr. James T. Fields, Mr. E. P. Whipple and Mr. Josiah Quincy, jr. The Germania Band furnished music for the occasion. The company were seated about 7 o'clock, and grace was said by Prof. Huntington. Dr. O. W. Holmes presided, and opened the feast of reason with a speech, in which he took occasion to enumerate the triumphs of the New World over the Old. He concluded by proposing the health of Paul Morphy, the world's Chess Champion.

His peaceful battles have helped to achieve a new revolution; his youthful triumphs have added a new clause to the Declaration of American Independence.

Dr. Holmes's speech was received with most enthusiastic applause throughout, and at its conclusion the whole company rose and gave nine cheers for Mr. Morphy, and the band played "Hail Columbia."

SPEECH OF MR. MORPHY.

Mr. Morphy rose and said: I sincerely thank you, and to one and all I tender my warm and heartfelt acknowledgments for the honor bestowed upon me. I am unprepared properly to respond, and I must be allowed to say, trite as I know the remark to be, that I rise under peculiar embarrassments and with unaffected diffidence. I see before and around me an intellectual aristocracy, such as I have never before witnessed; men whose great and well-deserved celebrity is enrolled on the lists of fame, whose literary and scientific achievements form part and parcel of their country's history. In such illustrious presence it is not for me to speak. I can only tender the Committee, along with my thanks for the cordial welcome extended me on my arrival in Boston, the expression of my sincere acknowledgments for the pleasure and honor of being surrounded by company so distinguished. You have spoken, Sir, of the game of Chess. I took occasion in New-York to express my views on that subject, and will not weary and detain you by repeating them here. I would only say once more, that Chess can never form the object of life. It is at best a relaxation from more serious pursuits. As such, and as a discipline for the mind, I believe it to be worthy of all commendation; and I think you will agree with me when I say that the substitution of the chess-board for the card-table would go far toward improving the morals of our people. [Applause.] I will not detain you, gentlemen, by any protracted remarks. I thank you most sincerely, Mr. President, for the kind and highly flattering manner in which you have given my health, and the gentlemen assembled for the equally flattering manner in which they have been pleased to receive it. I would beg leave to propose in conclusion,

"The Literary and Scientific Men of whom Boston is so justly proud—The stars of first magnitude that adorn the intellectual firmament of the country." [Great applause, and long-continued cheers for Mr. Morphy.]

Mr. Edward Everett was prevented from attending by an engagement to deliver his celebrated lecture (which seems to wear well, like its great subject) on the character of Washington; but sent a letter complimenting Mr. Morphy upon his "modesty." To the toast

The Judiciary of the Commonwealth—Its learning and probity are not better known nor more honored in Boston than in New-Orleans. Our guest, master of chess, is yet a student of a more complex science. He will be greeted to-night by words of welcome from the lips whose words of wisdom have long been stereotyped into law.

Chief-Justice Shaw responded.

CHIEF-JUSTICE SHAW'S SPEECH.

He said, in addressing the Chair, that the President and all the gentlemen present had probably heard the story of the eminent statesman who, although educated a practical printer, was elected to the Senate of the United States. At a dinner given by the craft in Washington, this Senator was the most prominent invited guest. His health being proposed, he adjusted his spectacles, produced a MS. of considerable size, and proceeded. Sir, most unexpectedly called upon as I am (Judge Shaw himself produced a roll of MS. at this point, and his remarks were interrupted by loud laughter and applause)—. Judge Shaw continued that it had long been his practice in his avocation to make use of notes. He found it convenient to put down his propositions with accuracy and precision. In this case he had been recommended to be prepared with a fair copy of the *impromptu sentiments* he expected to offer [applause], so that they might proceed to press as speedily as convenient. With this preface he would ask the indulgence of the company for reading the manuscript in his hand.

There needs no preparation, he continued, to answer with the heartiest thanks to the sentiment which has thus been phrased in the kindliest manner to express in honor to that department of the social system to which it has been my duty and my happiness to be attached during a great portion of my mature life. I beg leave, therefore, with the sincerest gratitude, to express my thanks in behalf of myself and my associates, to this very intelligent and discriminating company, for the respect and attention which you have thus manifested for the judiciary. The social system without a judiciary entitled to respect and confidence would be indeed a most defective system; and if those who are intrusted with the high power of administering justice can so conduct themselves, in matters affecting the highest interests, as to command the approbation of the wise and good, and win the respect and affection of those among whom they live, it will ever be their highest reward. Sir, this is a reward worthy of the ambition and desire of every upright and honorable man, and an adequate compensation for the toil to which it may subject them.

Here, perhaps, Mr. President, I ought to stop; my duty is done. But as it is sometimes said by grave debating bodies, as I am on my legs, I may fitly make some allusion to the purpose for which we have met here to do honor to one who has attained to highest preeminence in a noble intellectual pursuit, for I can assign no lower rank to the skillful game of chess. [Applause.]

But perhaps I am asked what has that to do with the law, with the science of jurisprudence? Perhaps, in external appearance, there is little resemblance between the game of chess and the conduct of a suit at law; but, in principle, may we not perceive strong analogies? A keen, discriminating power and sagacity, great forecast, great clearness, firmness and steadiness of purpose, coolness and self-possession, fertility of invention; if I have any notion of the science of chess, all these are requisite to high success [applause], and nearly all who have experience will bear me witness that, in the conduct of a closely-contested suit, all these higher qualities of intellect are in constant demand. In the one case, as in the other, an apparently bold sally or well-planned attack may be checked and turned by the unobserved position of some paltry pawn, or the erratic leap of some kingly knight. [Applause.] A wary advocate, like a skillful player, will be cautious how he puts within reach of his adversary a weapon that may be turned against himself.

The speaker here illustrated his position by a "case in point," in the way of a familiar legal anecdote which created much amusement. He said it might not be out of place here to mention—especially if, as he had heard it whispered, our distinguished guest has it in contemplation to turn his powers to the study of the law—that a very serious writer on the subject of Jurisprudence has soberly recommended to the student the study of geometry as the best preparation for the important accomplishment of examining and cross examining witnesses. This seems strange! What connection has the examination of witnesses with this department of mathematics? Much, very much, in principle. The keen-sighted advocate, with thorough preparation, with the sagacity and forecast that sees the end from the beginning, has his case distinctly mapped out before him, in which, with his mind's eye, he takes notice of every line and curve, every angle and point, and with a tenacity of memory which would almost enable him to play the game with his back to the table, suffers no part to escape till he has filled up every point in his programme. Such figures and forms the study of geometry enables him to frame on the retina of his mind's eye, and hold them steadily till he has transferred the clear and full images in their exact lines and just proportions to the minds of those whom he seeks to impress. The powers of forecast thus earnestly carried out, notwithstanding all the attempts of an adversary to divert or baffle it, are almost equally efficacious in the suit at law and the game of chess. In some cases, it is equally necessary for the sagacious advocate to know how to practice a masterly inactivity, and even to prevent an attack when he is wasting his forces in unavailing efforts.

The speaker here cited another case with equal appositeness with the former, and then continued:

But, Mr. President, there are other high mental qualities, alike necessary to the skillful game and to the well-conducted cause. Indeed, every high intellectual power is essential in its turn—memory, to know what has been done; sagacity and forethought, to see what ought to be done; promptness, to act when action is necessary; but, on the other hand, caution, deliberation, and even doubt, when further consideration may throw new light, so as never to make a move or take a step, until the player or the advocate is satisfied that it is the best which the game will admit of.

One of the most eminent jurists who ever graced the woolsack was proverbially a doubter. So often was this repeated by himself that Lord Eldon almost acquired the title of the "Great Doubter." Sometimes when a legal proposition was submitted to him, he would say—"I have been in doubt upon that question twenty years;" but yet this very hesitation gave great force to his opinions when he did form them. When he held the balance of justice, till one scale fairly preponderated, no decisions ever carried a greater weight of authority. As illustrating this characteristic of the eminent Chancellor, and as a graphic allusion to some of the most distinguished practitioners of the chancery bar at the early part of the present century, permit me to repeat a *jeu d'esprit* circulated at the period:

"Mr. Leach made a speech,
Impressive, clear and strong;
Mr. Hart, on the other part,
Was tedious, dull and long.
Mr. Parker, made that darker
Which was dark enough without;
Mr. Bell spoke so well
That the Chancellor said, 'I doubt.'"

Mr. President, continued the speaker, I hope I am not telling tales out of school, or uttering secrets which disparage the profession; these are but the facetiæ, the small change which passes current among the members of the bench in the hours of relaxation, the glitter and sparkle of which may perhaps show off to advantage the unfading brilliancy and solid worth of the ingots, indicative of the intrinsic worth of jurisprudence.

No consideration of mere amusement could induce me to disparage the excellence of an honorable and noble profession. Noble and honorble I may well call it, when I consider the high ends to which its aim is devoted—the peace of society, the security of life, liberty and property, the enjoyment of every social right; honorable, also, may I call it, when the trust is committed to honorable and highminded men of integrity, learning and talent, impressed above all things with an ever-abiding sense of duty; honorable, because it calls forth, invigorates and displays the highest powers of the human mind.

Mr. President, I hope I may not be misunderstood or be supposed arrogant by claiming honor for myself; nothing could be further from my thought. I am now putting off the harness and not putting it on. My task is nearly accomplished. I speak, therefore, as one having no other interest in the subject but to declare the truth.

Again alluding to the intimation that our illustrious guest has it in contemplation to turn his attention to the law, the speaker said: Let us unite in the ardent hope that in that event the same high intellectual powers which have enabled him to surpass all competitors in the intellectual game of chess may elevate him to the highest place of eminence in the halls of jurisprudence.

The speaker closed with the following sentiment:

Memory and Judgment, Rapidity of Thought and Promptness of Action—The loftiest powers of the human intellect—alike necessary to the surpassing chess-player and the eminent advocate. [Applause.]

The next toast was as follows:

Harvard University—The culture of the intellect is her duty, and the laurels of her pupils are her pride. The presence of her President assures us that, though she is not the foster mother of our guest, Harvard neither forgets his fame nor underrates his genius.

President Walker of Harvard University responded as follows:

Mr. President: In accepting an invitation to this dinner, I am afraid that I have incurred obligations unwittingly which I cannot fulfill; and although I cannot make an after-dinner speech, I can thank you for the honorable mention of the college in the sentiment which has been read, and for the kind manner in which it has been received. More than this, I confess to a weakness, if it is a weakness, to having made it part of my patriotism to exult in the triumphs of the great American chess-player, without an equal or a rival in the world. And I have exulted in them the more because they are purely intellectual triumphs, not in yachting, nor yet in ingenious contrivances for saving labor or making money, though these things are good in their way. From the beginning to the ending they are of the intellect. From these I gain a lesson of encouragement, that we can compete successfully with other nations in the development of our material resources. It is high time that we should begin to compete with them intellectually, not in one way but in all ways, especially as there are contests which draw nations together and make them respect each other. Our colleges must not fail to do their part in this work. Neither must they neglect to honor it wherever it done by others. I suppose it is to some such view of the subject and to my connection with the University to which I am indebted for the honor of being present here; but, Mr. President, there is also another reason which I hope I may state without giving offense to the presiding officer, or to any others that it may concern. In looking around I see that the college is represented here in full. The Committee have invited a great many professors, and they have even gone so far as to place one in the chair. It seems to me to have occurred to them as a prudent step to send for the President to look after them. [Laughter.] I accept the responsibility. [Renewed laughter.] And having done so, you will allow me to take my seat, and do my appropriate duty, making room for those whose duty it is to speak. [Laughter and applause.]

The next toast was as follows:

The Literature of America—It borrows light from every branch of knowledge and every exercise of thought. It sends a representative whose name and fame are parcel of its history; whose wide culture and catholic regard can be indifferent to no intellectual success.

To this Prof. Jared Sparks responded. He said he was aware of no special reason for his being invited to participate in this festival, but he was not the less gratified to be present. He was gratified to meet so many gentlemen assembled to do honor to one who had honored his country by his intellectual labors abroad. The sentiment which had been read had something to say about Literature, and, as far as he could judge, he was expected to say something of the bearing of chess upon the promotion of literature.

He knew nothing whatever about chess, not even the first move. As for literature, he supposed he might say a little more than that, but not a great deal. [Laughter.] As near as he could judge, however, chess was wholly an intellectual exercise, and the more the mind was cultivated by exercise, the better qualified would it be for displaying itself in the literature of the country. After an allusion to Franklin's Essay on the Morals of Chess, Mr. Sparks concluded with a humorous reference to the popular nomenclature of the pieces of chess, which appeared to indicate a taste for monarchical institutions.

The next toast was as follows:

The great Student of Nature, who reads the secrets of creation through its closely-folded strata, and reconstructs its organisms from their slightest vestiges; he who carries the checkered face of nature in his brain, and reads the combinations of her mighty game, knows how to honor the triumphs of intellect in the realm of pure abstractions, as well as in the splendid generalizations of Linnæus, and Cuvier, and Humboldt.

As Prof. Agassiz rose to respond, the company greeted him with tumultuous cheers. He said:

Mr. President and Gentlemen: From the manner in which I am called upon it would seem that I am expected to make some comparison between the animal kingdom and matters of chess; but I do not think it would be hardly fair to compare those vermin which you meet everywhere on the earth to "pawns," or to speak disrespectfully of the "bishops," which run sideways in every direction, like crabs, or to compare the "knights" to those devil's-darning-needles, which go about cutting capers and landing nobody knows where [laughter], or rising from these lower pieces to the higher figures on the board (the king and queen) to say that Mr. Morphy, who is the king, par excellence, of the chess-board, has never entered into a match in which he has been mated. Laughter and applause.]

But I do not mean to play or to say anything funny, because it is not in my way. [Laughter.] To be serious, I am happy to say, if you believe that in behalf of science I have some right to speak, that we owe Mr. Morphy a demonstration that the world has not yet given, and for which all thinking men must be thankful. When we generalize, combining isolated facts in a general proposition, it is generally considered a fancy, a theory, worth very little, because nobody sees from what premises it is derived. But the one who generalizes can show to the whole world in what way a great player turns his back to the world, and keeps in his mind the whole game. [Applause.] This is what we philosophers have been aiming to show, and what Mr. Morphy has done in chess. Therefore, I say to-day that it is not an insignificant fact that the Professors of Harvard, and their worthy President, and all those who hold intellectual culture high, have been willing and anxious to come and do honor to so respectable a guest. [Applause.]

The next toast was as follows:

Dane Law School—Itself the head of the legal seminaries in America; it has a Chief Justice of its own. The law which his lectures expound is not purer than the example of his judicial life. Among his pupils, we cannot help hoping that he may yet number the young victor whom his presence honors to-night.

Prof. Joel Parker responded. He commenced by a playful allusion to the load of responsibility which had been taken by the President of the University for all the shortcomings of his Professors, and to the couplet quoted by the Chief Justice, declaring that

"Mr. Parker made darker
That which was dark enough before."

He then declared his disbelief in any legal warrant for giving the name of "Dane" to the Cambridge Law School. Mr. Nathan Dane founded a professorship, the results of which had given more treatises on law to the world than any other modern institute; yet the school was founded by the exertions of Prof. Stearns a dozen years before the foundation of the Dane Professorship.

Mr. Parker then spoke of the high position of the school, and from that point turned to the probable consideration which had prompted a call upon him to speak on this occasion. It was not the place to wreathe upon the brow of a champion before whom Staunton fell back upon his previous engagements, and who was by other champions courteously honored, but to welcome the victor to a new field of labor. "Sir," said he, addressing Mr. Morphy, "welcome, thrice welcome, to a course of study which will tax all your faculties, great as you will prove them to be. I bid you welcome to a field of labor where the condition of success has been said to be that you must 'live like a hermit and work like a horse;' but I do it with no fear that you will be deterred from entering upon it by the conditions. I bid you welcome to the new controversies and new contests, where right is to be vindicated and wrongs are to be redressed, and where you will meet at the same time adversaries as you have done before—the difference being that they will be playing at the same game, and will move the same pieces. I bid you welcome to a profession which, to mention no others, Curran and Erskine have adorned, and in which Pinckney and Webster have won their most enduring fame. If the thing were possible, I would wish for you a success which shall eclipse the fame which you have already attained." [Loud applause.]

To the next toast—

Chess, the Music of Mathematics—Kindred qualities of intellect are necessary to greatness in either—

Prof. Benj. Pierce was called upon to respond, and was received with cheers. He said that it was entirely anti-republican for a democrat to submit to the will of an autocrat; yet in all his intercourse with the presiding officer, in college days and since, he had found him an autocrat by virtue of his brilliant sallies of wit, his strong brain, his brave heart, and his swift speech. He would have preferred that the subject should be power of intellect, which he could not separate in his mind from the manifest destiny of America, in which he believed. He proceeded to instances in which American minds had vanquished those of the whole world in regard to scientific matters. He spoke of sciences and arts as occupations, and of games as diversions. But while a small portion of the race are devoted to science or art, all must have diversion. He had started with two passions—chess and mathematics, and he had found that in order to make mathematics his occupation he must abandon chess as a diversion—his diversion must be in another field. In the times of Greece, the conic sections had no meaning to the physical universe. They were merely a diversion. It was not till Kepler came that they were a reality. A time may come when we shall find that there is really a chess-board in the stars, and that their arrangements can only be understood by him who shall have studied the theory of form which is exhibited. He closed by expressing the thought that the game of chess, as developed by its champion, is, in a double sense, a transcendental branch of the Science of Morphology.

The Rev. T. Starr King, Senator Wilson, the Hon. Josiah Quincy, jr., Prof. Huntington, Mayor Lincoln, Mr. Charles Hale of *The Boston Advertiser*, and Dr. J. B. Upham spoke, and Prof. Lowell and Mr. James T. Fields read poems.

THE TURF.

RACES AND MATCHES TO COME.

FLORA TEMPLE MATCHED AGAIN.

&c., &c., &c.

Sporting men were surprised yesterday by the announcement that another horse had already been found to contend with Flora Temple, so soon after her victory over Ethan Allen in the astounding time of 2:25 to wagons. Two matches were made on Tuesday evening between Flora and the mare Princess, both to wagons, one three miles and repeat, the other two miles and repeat. The time for these interesting contests has not been fixed upon, but is to be determined to-day.

Princess was formerly owned in Chicago, where she was kept for the purpose of breeding, and had two colts. She was subsequently sold and taken to California, where she was quite successful. Her original name was Topsy. She has won a good deal of money on the track at New-Orleans. Great confidence is felt in the sagacity of her owner, and it is thought that he would not match her without knowing precisely what she could do. On this account people are afraid, at present, to risk money even on Flora Temple against her.

There was a good deal of exultation yesterday over the Vermont men at the defeat of Ethan Allen, the day previous. It was said that they were now obliged to leave some of their money here, even against their will. When Ethan and Flora were first brought up in front of the Judges' stand, it was observed that Hiram Woodruff, the driver of Ethan, and in whose hands Flora first won her renown—took off his cap and made a low, polite bow, to the mare. Hiram was spoken to about this yesterday, and he replied: "Yes, I did it, because I made up my mind years ago "that she was the Mistress of the World." He has had no occasion yet to change that opinion.

The handicap advertised for yesterday on the Eclipse Course was postponed on account of the weather to Friday next, at 1 o'clock. We are assured by Mr. Purdy that seven horses are sure to start, among them the imported English filly, Fleeting Moments. On the same day two other races take place on this Course; in one of them the famous Virginia horses Two Bits and Glencona, and the Tennessee horse Bill Cheatham are to run. The jockeys will all be dressed in white-topped boots and breeches after the English fashion.

The accommodations for visitors are ample and very convenient. Previous experience justifies us in cautioning the public against buying tickets of the Long Island Railroad Company, to go and return, without some more responsible guaranty than that of the Company that they will not be compelled to walk back.

DESTRUCTION OF A JERSEY CITY FERRY-BOAT BY FIRE.—About 3¼ o'clock Wednesday morning a dense smoke was discovered issuing from the Jersey City ferry-boat John S. Darcy, which had been laid up at 8½ o'clock on Tuesday night in the slip leading from the railroad depot. The flames soon burst out and spread rapidly over the boat. The alarm was given, and the Jersey City Fire Department were soon on the ground, and worked manfully to subdue the flames. The fire, however, extended to the ferry-slip on both sides, and from thence the whole end of the railroad depot, which at that end is built of wood, was enveloped in flames. The firemen then directed their efforts toward saving the depot, and soon succeeded in getting the flames under.

The fire had gained such headway that they were unable to save the boat, which continued to burn some three hours, and is almost an entire loss. The John S. Darcy was built about two years since, at a cost of $16,000, and had just been thoroughly overhauled and refitted, at a heavy outlay, and cannot be replaced at a much less cost than $50,000 at the present time. The fire originated in the fire-room below, but from what cause is unknown. She was to have gone on duty at 6 a. m., but the fires had not yet been kindled under the boilers. The Company had an insurance of $10,000 on the boat, $5,000 of which was in the Mutual of New-York, and $5,000 in the Jersey City Insurance Company.

The depot was damaged to the extent of $5,000 and is insured for $10,000 in New-York companies. Had the fire got the better of the firemen an extensive conflagration would have been the result. The hulk of the burned boat has been towed out on the flats.

—The Hon. Thomas Corwin has been elected one of the delegates to the Ohio Republican State Convention.

AN OVERLAND J