WASHINGTON.

BEN WADE AT THE CAPITAL.

His Advocacy of Cuban Recognition.

Important Decision in the Yerger Case.

The Supreme Court Claims Jurisdiction.

WASHINGTON, Oct. 25, 1869.

Decision of the Supreme Court in the Yerger Case.

The decision of Chief Justice Chase in the Supreme Court to-day, declaring that the Court has jurisdiction in the Yerger case, has created considerable excitement in the national capital. This case is one in which Yerger, it is alleged, openly murdered a United States military officer, was tried by a military commission, found guilty of murder and sentenced to death, which finding and sentence were approved by the President, but execution suspended by the President's order. This decision is likely to call for further action on the part of Congress. The reconstruction law of 1867 admitted the legitimacy of trials by military commissions in States under martial government. But fearing the probable course of the Supreme Court in the case of McCardle in connection with a revenue bill, which raised a great commotion among the democrats at the time, Congress added a clause which repealed so much of the act to establish judicial courts in the United States, approved 1789, as authorized an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court on appeals which had been or might be thereafter taken. This action of Congress had the desired effect. The Yerger case, however, came up on an appeal from the Circuit Court, asking for a writ of habeas corpus to be served upon General Ames releasing Yerger from military custody. Under a law of 1785 the appellate jurisdiction extends from any tribunal, whether military or civil. The radicals are extremely exercised over this decision, and declare that its immediate effect will be to inaugurate a scene of riot and bloodshed in the States of Mississippi and Texas which there will be no power to control or check. They declare that this action of the Supreme Court will result in the defeat of Davis in Texas and Alcorn in Mississippi; that the rebel element will be in a condition with impunity to shoot down any republican voter and thus by intimidation and wanton bloodshed completely control the exercise of the elective franchise. This will require the utmost vigilance on the part of military commanders, which will inevitably lead to a conflict between the authorities. One prominent radical this evening declared that the Supreme Court, instead of being the strong right arm of the government, was a paralyzed member which embarrassed the entire machinery of the constitution. That it has perpetuated treason, protected rebels in their persons and in their property. This decision is looked upon as the most important since the Dred Scott case, involving the recent issues which Congress set up in its legislation affecting the rebellious States. The decision has brought down a shower of radical wrath upon the Chief Justice, and these expressions even go so far as to involve a prospective case of impeachment upon the grounds that the Chief Justice has been systematically perverting his high office to political aims. It is probable that some effort will be made to stave off the elections in Mississippi and Texas until Congress can have an opportunity to take further legislation.

The President to Attend a Wedding.

The President and Mrs. Grant will leave here at noon to-morrow for Philadelphia to attend the wedding of the daughter of Bishop Simpson, who is to be married in that city on Wednesday. They will return on Thursday evening or Friday morning.

Visitors to the President.

Among those who had interviews with the President to-day were General Harney, Senator Cole, Oliver Ames, President of the Union Pacific Railroad; E. H. Rollins, E. L. Perkins, Secretary of New Mexico, and others.

Payment of the November Interest.

The Secretary of the Treasury has authorized the payment at once, and without rebate, the interest due November 1, both on registered and coupon bonds.

The Mississippi Election.

The following officers, now unassigned to regiments, are assigned to duty in connection with the registration and election in Mississippi:—Captain Francis W. Weir, First Lieutenants John Pullard, John P. Walker, Ephraim Williams and A. E. Niles.

Ben Wade's Views Upon the Cuban Question—Necessity for Recognition.

Bluff Old Ben Wade is in town, and though he is no longer a Senator he takes as deep an interest in public affairs as if he were President. Now, as of old, Mr. Wade is open and fearless in expressing his opinions upon all questions before the country. He thinks it about time that the administration took some decided action with regard to Cuba. "Out West," says Wade, "we are all in favor of recognizing Cuba, and that without waiting to know whether old Spain likes it or not." Mr. Wade does not find any fault with President Grant and Secretary Fish for enforcing the neutrality laws, but he insists that it is not a question relating to the neutrality laws. The only point, in his opinion, to be considered is whether the revolution in Cuba has attained such proportions as to warrant the belief that a majority of the Cuban people are in favor of it, and whether the Cubans have a *de facto* government, with a reasonable prospect of sustaining themselves? Mr. Wade believes that these points have been settled to the satisfaction of everybody by a year's existence of the Cuban revolution and by the manifest inability of the Spaniards to put it down. The first thing for the administration to do is to acknowledge the Cubans, and the question of the neutrality laws will regulate itself. Old Ben has no idea of waiting for Spain to acknowledge the independence of the Cubans. He says Spain has never recognized the independence of any of the South American republics that threw off her yoke, and it is not probable she will act differently in the case of Cuba. In the case of the South American republics the United States did not wait for Spain, but, acting on the principle stated above, merely waiting to ascertain that they had a *de facto* government and then recognized and treated with them. Mr. Wade and several Senators who are now here are of opinion that Congress will certainly take action with regard to Cuba.

War Between the Sioux and Pawnee Indians.

Governor Burbank, of Dacotah Territory, in a letter received this morning at the Indian Bureau, states that recently a number of young Sioux braves left the Whitestone Agency for the purpose of avenging the death of one of their warriors slain by the Pawnees, and that they had returned from the raid 'with six scalps." It is not stated whether these were Indian or white men's scalps. It is supposed they were Pawnee scalps, as the latter had organized a party and made pursuit, chasing the Sioux to the west side of the Missouri river.

War Office Clerks Going Home to Vote.

General Sherman, as Secretary of War, issued an order this afternoon allowing to the employés of his department who desire to go to New York to vote a week, commencing next Thursday.

The Colored Belle Scandal.

An impression has gained ground here that the young diplomat referred to in my despatch the other night as having made himself famous by taking a colored belle to the theatre in this city belongs to the French legation. In justice to that legation it should be stated that such is not the fact. The young diplomat is a Frenchman, it is true, but was attached to another legation and a near relative of its head. The Minister whose relative has thus made himself famous is a gentleman of the highest respectability and regrets the scandalous affair deeply.

The Tonnage Dues Case.

On Saturday I sent you a brief paragraph about a new point raised in regard to one of the cases brought against the Corporation of Washington to recover back fees paid to harbor masters, with interest and cost of suit. The question was argued before Justice T. K. Plant, of this city, who to-day rendered a decision which explains all the points involved, and which are of great importance to shipowners in New York and elsewhere. The following is the decision of Justice Plant:—

This suit was brought to recover the sum of four dollars, money received for tonnage dues. The Attorney for the corporation, D. E. Cahill, claimed that the most of the account was barred by the statute of limitation, and cites "Parsons on Contracts," and furthermore claimed that the money was said to the harbor master without protest by the captains or masters of paid vessels, and that it was for the plaintiff to prove that if the money was received by the harbor master that he had ever paid the money over to the corporation; and again, that no force was used, but that the money was paid without threats being made by the collector. R. S. Davis, attorney for the plaintiff, in closing the case stated that under the act of the corporation appointing a harbor master it is made his duty to collect the tax, and in case of any captain or owner refusing to pay the tax said master, captain or other person shall, for each and every offence, severally forfeit and pay a sum not less than thirty dollars nor more than fifty dollars, to be recovered, &c.; also quotes Chitty, on contracts. In regard to the plea of limitation Mr. Davis quoted the cases of Sherwood vs. Sutton, 5 Mason, 143; Conyers vs. Kinans, 4 Georgia, 208; Turnpike Corporation vs. Field, 3 Massachusetts. I have carefully read all the authorities quoted by both attorneys, and have also read the act of the Corporation of Washington, approved December 28, 1863. I am satisfied from the evidence of Mr. William H. Barnes that the money was paid under protest, and that the harbor master did threaten to collect the fees by legal process, as by said act of December 28, 1863, ordered to do, and that the money was paid to avoid the detention of the vessel. I do not believe that the statute of limitation acts as a bar to the recovery of money in cases like the one now in question until the end of three years from said act having been declared by the Supreme Court to be illegal and unconstitutional. In regard to the defendant's plea that the plaintiff must prove that the money was paid to the corporation by the harbor master it is my opinion that it is optional with the aggrieved party to sue either the agent or principal, and I do not believe the plaintiff has anything to do with the uses to which the money is put; that is a matter resting entirely with the corporation. In view of all the facts, as above stated, I give judgment for plaintiff for the amount (four dollars) claimed, on interest from date, with costs of suit.

Judgeship of the Fourth United States Judicial District.

Mr. William J. Albert, of Baltimore, and Messrs. Archibald Stirling and Benjamin Deford called upon the President to-day in relation to the filling of the original vacancy in one of the judgeships of the Fourth United States Judicial circuits of Maryland. The new law provides for nine judges. Mr. Albert and his friends suggested the name of Judge M. Lenox Bond for the position. The President spoke favorably of Judge Bond's fitness for the position. Attorney General Hoar is also understood to be in favor of Bond's appointment.

Evasion of Duties on Iron and Steel.

Mr. S. M. Felton and Major Henry McAllister, Jr., of Philadelphia, secretary of the American Iron and Steel Association, had an interview with Secretary Boutwell this morning in reference to the under valuation of foreign steel and the partial evasion of the duty on iron and steel rails. Mr. Boutwell stated that he was engaged in a thorough investigation of the subject, to which his attention had previously been called, and it was his intention to carry out the law in letter and spirit.

Fair of the Maryland Agricultural Society.

A committee from Baltimore, representing the Maryland Agricultural Society, and a committee representing the Maryland Institute for the Promotion of the Agricultural Arts, called on President Grant to-day and tendered to him an invitation to attend the inaugural exercises of the revival of their State Agricultural Society on Tuesday and Wednesday next. The President thanked the committee for their courtesy, but stated he would be unable to avail himself of the invitation.

Serious Illness of Governor Pratt, of Maryland.

Despatches received here to-night state that ex-Governor Pratt, of Maryland, is alarmingly ill. Governor Pratt was elected Governor of Maryland in 1844, on the ticket with Henry Clay, and in 1848 succeeded Reverdy Johnson in the Senate, who was appointed Attorney General in Taylor's Cabinet, and served eight years as United States Senator. Governor Pratt's influence in Southern Maryland was very great, and in his death Maryland will lose one of her most distinguished and useful sons.

Consul General for the British East Indies.

George Butler, a nephew of General Butler, has been appointed Consul General to the British East Indies. Mr. Butler has for some time been connected with the press of New York, and has been here for the last week.

A Long Term.

Judge Fisher to-day sentenced a colored youth, seventeen or twenty years old, to thirty years' imprisonment in the Albany Penitentiary for an outrage committed on a small child, also colored.

Yellow Fever in British Honduras.

The Vice Commercial Agent at Belize, British Honduras, under date of September 16, reports symptoms of yellow fever then prevailing. The disease so far is not epidemic. The deaths are few and are confined to the non-acclimated.

Personal.

Colonel William G. Moore, formerly private secretary of ex-President Johnson, after spending a few days here returns to-morrow to his field of duty out West as paymaster in the army.

UNITED STATES SUPREME COURT.

The Yerger Case—Appellate Jurisdiction of the Supreme Court—Authority to Issue Writs of Habeas Corpus—Opinion by Chief Justice Chase.

WASHINGTON, Oct. 25, 1869.

No. 17 (original). *In the matter of Edward M. Yerger, Petition for Habeas Corpus and Certiorari.*—Opinion of the court by Chief Justice Chase. Upon the prayer of the petitioner addressed to the Circuit Court of the United States for the Southern district of Mississippi, a writ of habeas corpus was directed to certain military officers holding the petitioner in custody, commanding them to produce his body and abide the orders of the court. In obedience to this writ the prisoner was brought into court by Major General R. S. Granger, who made his return in due form, certifying the cause of detention to be that the petitioner had been arrested and was held for trial upon a charge of murder, by a military commission under the act of Congress of the 2d of March, 1867, to provide for the more efficient government of the rebel States. Upon this return the petitioner was ordered into the custody of the Marshal and the Court proceeded to hear argument. It was admitted that the petitioner was a private citizen of the State of Mississippi, that he was being tried by the military commission without a jury and without presentment or indictment by a Grand Jury, and that he was not and never had been connected with the army or navy of the United States or with the militia, in active service, in time of war or invasion. Upon this case the Circuit Court adjudged that the imprisonment of the petitioner was lawful, and passed an order that the writ of habeas corpus be dismissed and that the prisoner be remanded to the custody of the military officer by whom he had been brought into court, to be held and detained for the purpose and to answer to the charge set forth in the return. To obtain the reversal of this order and relief from imprisonment the petitioner now asks for a writ of certiorari to bring here for review the proceedings of the Circuit Court and for a writ of habeas corpus to be issued under the authority of this court to the officer to whose custody he was remanded, upon the suggestion of the Attorney General made in view of the importance of the questions which will probably arise if the case is brought to a hearing. We have heard the preliminary argument upon the jurisdiction of the court to issue the writ prayed for, and have carefully considered the reasonings which have been addressed to us. This argument, by the direction of the court, was confined to the single point of jurisdiction, and I am now to state the conclusions to which we have come. The general question of jurisdiction in this case resolves itself necessarily in two narrow questions:—First—Has the court jurisdiction in a case like the present to inquire into the cause of detention alleged to be unlawful, and to give relief if the detention be found to be in fact unlawful by the writ of habeas corpus under the Judiciary act of 1789? Second—If, under that act, the court possessed this jurisdiction, has it been taken away by the second section of the act of March 27, 1868 (15 United States Statutes, 44), repealing so much of the act of February 5, 1867 (United States Statutes, 85) as authorizes appeals from Circuit Courts to the Supreme Court? Neither of these questions is new here. The first has on several occasions received very full consideration and very deliberate judgment. A cause so important as that which now invokes the action of the court seems, however, to justify a reconsideration of the grounds upon which its jurisdiction has been hitherto maintained. The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defence of personal freedom. In England, after a long struggle, it was formally guaranteed by the famous Habeas Corpus act of May 29, 1679 (3 British Statutes at Large, 3—Hallam's Constitutional History, 19), for the better securing of the liberty of the subject, which, as Blackstone says, "is frequently considered as another Magna Charta." (3 Blackstone's Commentaries, 135.) It was brought to America by the colonists and claimed as among the immemorial rights descended to them from their ancestors. Naturally, therefore, when the Confederated Colonies became the United States, and the formation of a common government engaged their deliberations in conventions, this great writ found permanent sanction in the constitution. That sanction is in these words:—

> The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

The terms of this provision necessarily imply judicial action. In England all the higher courts were open to applicants for the writ, and it is hardly supposable that under the new government, founded on more liberal ideas and principles, any court would be intentionally closed to them. We find accordingly, that the first Congress under the constitution, after defining, by various sections of the act of September 24, 1789, the jurisdiction of the District courts, the Circuit courts and the Supreme Court in other cases, proceeded, in the fourteenth section to enact "that all the before mentioned courts of the United States shall have power to issue writs of scire facias, habeas corpus and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law." (1 U. S. Statutes, 81.) In the same section it was further provided that

> Either of the justices of the Supreme Court, as well as the judges of the District courts, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment, provided that writs of habeas corpus shall in no case extend to prisoners in jail unless they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify.

That this Court is one of the courts to which the power to issue writs of habeas corpus is expressly given by the terms of this section has never been questioned. It would have been, indeed, a remarkable anomaly if this court, ordained by the constitution for the exercise in the United States of the most important powers in civil cases of all the highest courts of England, had been denied, under a constitution which absolutely prohibits the suspension of the writ, except under extraordinary exigencies, that power in cases of alleged unlawful restraint which the habeas corpus act of Charles II. expressly declared those courts to possess. But the power vested in this Court is in an important particular unlike that possessed by the English courts. The jurisdiction of this Court is conferred by the constitution and is appellate; whereas, that of the English courts, though declared and defined by statutes is derived from the common law, and is original. The judicial power of the United States extends to all cases in law and equity arising under the constitution, the laws of the United States and treaties made under their authority, and to large classes of cases determined by the character of the parties or the nature of the controversy. That part of this judicial power vested in this Court is defined by the constitution in these words:—

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

If the question were a new one it would perhaps deserve inquiry whether Congress might not, under the power to make exceptions from this appellate jurisdiction, extend the original jurisdiction to other cases than those expressly enumerated in the constitution, and especially in view of the constitutional guarantee of the writ of habeas corpus, to cases arising upon petition for that writ. But in the case of Marbury vs. Madison (1 Cr., 137) it was determined, upon full consideration, that the power to issue writs of mandamus given this court by the thirteenth section of the Judiciary act is, under the constitution, an appellate jurisdiction, to be used only in the revision of judicial decisions. And this judgment has ever since been accepted as fixing the construction of this part of the constitution. It was pronounced in 1803. In 1807 the same construction was given to the provision of the fourteenth section relating to the writ of habeas corpus in the case of Ballman and Swartwout (4 Cr., 100). The power to issue the writ had been previously exercised in Hamilton's case, 1795 (3 Cr., 448), and in Burford's case (4—1806), in neither of which does the distinction between appellate and original jurisdiction appear to have been made. In the case of Ballman and Swartwout, however, the point was brought distinctly before the court, the nature of the jurisdiction was carefully examined and it was declared to be appellate. The question then determined has not since been drawn into controversy. The doctrine of the constitution and of the cases thus far may be summed up in these propositions:—

First—The original jurisdiction of this Court cannot be extended by Congress to any other cases than those expressly defined by the constitution.

Second—The appellate jurisdiction of this Court conferred by the constitution extends to all other cases within the judicial power of the United States.

Third—This appellate jurisdiction is subject to such exceptions and must be exercised under such regulations as Congress in the exercise of its discretion has made or may see fit to make.

Fourth—Congress not only has not excepted writs of habeas corpus and mandamus from this appellate jurisdiction, but has expressly provided for the exercise of this jurisdiction by means of these writs.

We come, then, to consider the first great question made in the case now before us. We shall assume, upon the authority of the decisions referred to, what we should hold were the question now for the first time presented to us, that in a proper case this court, under the act of 1789 and under all the subsequent acts giving jurisdiction in cases of habeas corpus, may, in the exercise of its appellate power, revise the decisions of the inferior courts of the United States and relieve from unlawful imprisonment authorized by them, except in cases within some limitation of the jurisdiction by Congress. It remains to inquire whether the case before us is a proper one for such interpretation; is it within any such limitation? In other words, can this court inquire into the lawfulness of the detention and relieve from it, if found unlawful when the detention complained of is not by civil authority under a commitment made by an inferior court for trial in a civil court, but by military officers for trial before a military tribunal? After an examination into the cause of detention by the inferior court, resulting in an order remanding the prisoner to custody, it was insisted in argument that to bring a case within the appellate jurisdiction of this court in the sense requisite to enable it to award the writ of habeas corpus under the Judiciary act, it is necessary that the commitment should appear to have been by a tribunal whose decisions are subject to revision by this court. This proposition seems to assert not only that the decision to be revised upon habeas corpus must have been made by a court of the United States subject to the ordinary appellate jurisdiction of this court, but that having been so made it must have resulted in an order of commitment to civil authority subject to the control of the court making it. The first branch of this proposition has certainly some support in Metzer's case (15 How. 176), in which it was held that an order of commitment made by a district judge at chambers cannot be revised here by habeas corpus. This case, as was observed by Mr. Justice Nelson in Kaine's case, 14 Howard, 103, stands alone, and it may admit of question whether it can be entirely reconciled with the proposition, which we regard as established upon principle and authority, that the appellate jurisdiction by habeas corpus extends to all cases of commitment by the judicial authority of the United States not excepted from it by Congress. But it is unnecessary to enter upon this inquiry here. The action which we are asked to revise was that of a tribunal whose decisions are subject to revision by this court in ordinary modes. We need consider, therefore, only the second branch of the proposition, namely, that the action of the inferior court must have resulted in a commitment for trial in a civil court, and the inference drawn from it that no relief can be had here by habeas corpus from imprisonment under military authority, to which the petitioner may have been remanded by such a court. This proposition, certainly, is not supported by authority. In Kaine's case all the judges except one asserted, directly or indirectly, the jurisdiction of this court to give relief in a case where the detention was by order of a United States Commissioner. The lawfulness of the detention had been examined by the Circuit Court for the Southern district of New York upon a writ of habeas corpus, and the court has dismissed the writ and remanded the prisoner to custody. In this court relief was denied on the merits, but the jurisdiction was questioned by one judge only, and it is difficult to find any substantial grounds upon which jurisdiction in that case can be affirmed and denied in this. In Wells' case, 18 How. 308, the petitioner was confined in the penitentiary under a sentence of death, commuted by the President into a sentence of imprisonment for life. He obtained a writ of habeas corpus from the Circuit Court of the District of Columbia, was brought before that court and was remanded to custody. He then sued out a writ of habeas corpus from this court and his case was fully considered here. No objection seems to have been taken in argument to the jurisdiction, though there, as here, it was evident that the actual imprisonment at the time of the petition for the writ, was not under the direction of the court by whose order the prisoner was remanded, but by a different and distinct authority. In the case of Wells, however, Mr. Justice Curtis again dissented, and on the point of jurisdiction Mr. Justice Campbell concurred with him. The other judges, though they except one, were of opinion that the relief asked must be denied, agreed in maintaining the jurisdiction of the Court. Judge Curtis, who regarded the question as left undetermined in Kaine's case, admitted that the jurisdiction was asserted in this, and stated the ground of judgment affirming jurisdiction to be that "as the Circuit Court has had the prisoner before it and has remanded him, this court by a writ of habeas corpus may examine that decision and see whether it be erroneous or not." Since this judgment was pronounced the jurisdiction in cases similar to that now before the court has not hitherto been questioned. We have carefully considered the argument against it made in this case and are satisfied that the doctrine heretofore maintained is sound. The great and leading intent of the constitution and the law must be kept constantly in view upon the examination of every question of construction; that intent in respect to the writ of habeas corpus is manifest. It is that every citizen may be protected by judicial action from unlawful imprisonment. To this end, as has been shown, the act of 1879 provided that every court of the United States should have power to issue the writ. The jurisdiction thus given by law to the Circuit and District Courts is original; that given by the constitution and the law to this court is appellate, given in general terms. It must necessarily extend to all cases to which the judicial power of the United States extends other than those expressly excepted. As limited by the act of 1789, it did not extend to cases of imprisonment after conviction, under sentence of competent tribunals, nor to any prisoners in jail, unless in custody under or by color of the authority of the United States, or committed for trial before some court of the United States, or required to be brought into court to testify. But this limitation has been gradually narrowed and the benefits of the writ have been extended—first, in 1833 (4 U. S. Statute, 643), to prisoners confined under any authority, whether State or national, for any act done or committed in pursuance of a law of the United States or of any order, process or decree of any judge or court of the United States. Then, in 1842 (5 U. S. Statute, 539), to prisoners being subjects or citizens of foreign States in custody under national or State authority for acts done or omitted by or under color of foreign authority and alleged to be valid under the law of nations. And finally, in 1867 (14 United States Statutes, 385), to all cases where any person may be restrained of liberty in violation of the constitution, or of any treaty or law of the United States.

This brief statement shows how the general spirit and genius of our institutions have tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States; and the tendency, except in one recent instance, has been constant and uniform, and it is in the light of it that we must determine the true meaning of the constitution and the law in respect to the appellate jurisdiction of this Court. We are not at liberty to except from it any cases not plainly excepted by law, and we think it sufficiently appears from what has been said that no exception to this jurisdiction embraces such a case as that now before the Court. On the contrary, the case is one of those expressly declared not to be excepted from the general grant of jurisdiction; for it is a case of imprisonment alleged to be unlawful and to be under color of authority of the United States. It seems to be a necessary consequence that if the appellate jurisdiction by habeas corpus extends to any case it extends to this. It is unimportant in what custody the prisoner may be if it is a custody to which he has been remanded by the order from an inferior court of the United States.

It is proper to add that we are not aware of anything in any act of Congress, except the act of 1868, which indicates any intention to withhold appellate jurisdiction in habeas corpus cases from this Court, or to abridge the jurisdiction derived from the constitution and defined by the act of 1789. We agree that Congress may withhold or abridge it; for it is given subject to exception and regulation by Congress. But it is too plain for argument that the denial to this Court of appellate jurisdiction in this class of cases must greatly weaken the efficiency of the writ, deprive the citizens in many cases of its benefits and seriously hinder the establishment of that uniformity in decisions upon questions of personal rights which can only be attained through appellate jurisdiction exercised upon the decisions of courts of original jurisdiction. In the particular class of cases of which that before the Court is an example, where the custody to which the prisoner is that of some authority other than that of the remanding court. It is evident that the imprisoned citizen, however unlawful his imprisonment may be, in fact is wholly without remedy, unless it be found in the appellate jurisdiction of this Court. These considerations forbid any constructions giving to doubtful words the effect of witholding or abridging this jurisdiction. They would strongly persuade against the denial of the jurisdiction, even were the reasons for offering it less cogent than they are. We are obliged to hold, therefore, that in all cases where a Circuit Court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, this Court, in the exercise of its appellate jurisdiction, may, by the writ of habeas corpus, aided by the writ of certiorari, revise the decisions of the Circuit Court, and if it be found unwarranted by law, release the prisoner from the unlawful restraint to which he has been remanded.

This conclusion brings us to the inquiry whether the second section of the act of March 27, 1868, takes away or affects the appellate jurisdiction of this court under the constitution and the acts of Congress prior to 1867? We have already expressed in McCardie's case our opinion that it was. But the point was not very carefully considered (7 Wells, 551.) The circumstances under which the act of 1868 was passed were peculiar. On the 5th of February, 1867, Congress passed an act, to which reference has already been made, extending the original jurisdiction by habeas corpus of the District and Circuit Courts, and of the several judges of these courts, to all cases of restraint of liberty in violation of the constitution, treaties or laws of the United States. This act authorized appeals to this court from judgments of the Circuit Court, but did not repeal any previous act conferring jurisdiction by habeas corpus unless by implication. Under this act one McCardle, alleging unlawful restraint of military force, petitioned the Circuit Court for the Southern district of Mississippi for the writ of habeas corpus. The writ was issued and a return was made, and upon hearing it the Court decided that the restraint was lawful and remanded him to custody. McCardle prayed an appeal under the act to this court, which was allowed and perfected. A motion to dismiss the appeal was made here and denied. The case was then argued at the bar, and the argument having been concluded on the 9th of March, 1869, was taken under advisement by the Court. While the cause was thus held, and before the Court had time to consider the decision proper to be made, the repealing act, under consideration, was introduced into Congress. The act was carried through both houses, sent to the President, returned with his objections, repassed by the constitutional majority in each house, and became a law on the 27th of March, within eighteen days after the conclusion of the argument. The effect of the act was to oust the court of its jurisdiction of the particular case then before it on appeal, and it is not to be doubted that such was the effect intended. Nor will it be questioned that legislation of this character is unusual and hardly to be justified, except upon some imperious public exigency. It was doubtless within the constitutional discretion of Congress to determine whether such an exigency existed, but it is not to be presumed that an act passed under such circumstances was intended to have any further effect than that plainly apparent from its terms. It is quite clear that the words of the act reach not only all appeals pending, but all future appeals to this court under the act of 1867, but they appear to be limited to appeals taken under that act. The words of the repealing section are:—

> That so much of the act approved February 5, 1867, as authorizes an appeal from the judgment of the Circuit Court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court on appeals which have been or may be hereafter taken, be and the same is hereby repealed.

These words are not of doubtful interpretation. They repeal only so much of the act of 1867 as authorizes appeals or the exercise of appellate jurisdiction by this court. They affect only appeals and appellate jurisdiction authorized by that act. They do not purport to touch the appellate jurisdiction conferred by the constitution or by excepting from it any cases not excepted by the act of 1789. They reach no act except the act of 1867. It has been suggested, however, that the act of 1789, so far as it provided for the issuing of writs of habeas corpus of this court, was already repealed by the act of 1867. We have already observed that there are no repealing words in that act. If it repealed the act of 1789 it did so by implication, and any implication which would give to it this effect upon the act of 1789 would give it the same effect upon the acts of 1833 and 1842. If one was repealed all were repealed. Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy, and never, we think, when the former act can stand together with the new act. No doubt the exercise of appellate jurisdiction, under the act of 1789, was less convenient than under the act of 1867. But the provision of a new and more convenient mode of its exercise does not necessarily take away the old; and that this effect was not intended is indicated by the fact that the authority conferred by the new act is expressly declared to be "in addition" to the authority conferred by the former acts. Addition is not substitution. The appeal given by this act of 1867 extended, indeed, the cases within the former acts, and the act by its grant of additional authority so enlarged the jurisdiction by habeas corpus that it seemed, as was observed in the McArdle case, "impossible to widen it." But this effect does not take from the act its character of an additional grant of jurisdiction and make it operate as a repeal of jurisdiction heretofore allowed. One conclusion is that none of the acts prior to 1867, authorizing this court to exercise appellate jurisdiction by means of the writ of habeas corpus, were repealed by the act of that year, and that the repealing section of the act of 1868 is limited in terms and must be limited in effect to the appellate jurisdiction authorized by the act of 1867. We could come to no other conclusion without holding that the whole appellate jurisdiction of this court in cases of habeas corpus conferred by the constitution recognized by law and exercised from the foundation of the government heretofore has been taken away without the expression of such intent and by mere implication through the operation of the acts of 1867 and 1868. The suggestion made at the bar that the provision of the act of 1789 relating to the jurisdiction of this court by habeas corpus if repealed by the effect of the act of 1867 was revised by the repeal of the repealing act has not escaped our consideration. We are inclined to think that such would be the effect of the act of 1868; but having come to the conclusion that the act of 1789 was not repealed by the act of 1867, it is not necessary to express an opinion on that point. The argument having been confined by direction of the Court to the question of jurisdiction, this opinion is limited to that question. The jurisdiction of the court to issue the writ prayed for is affirmed.

Associate Justice Swayne was understood to remark that he had been requested to say for Associate Justice Miller, who was absent, that the latter dissented from the opinion.

Waring Versus the Mayor, &c., of Mobile—Corporation Taxes on Sales.

No. 128.—Moses Waring vs. The Mayor, &c., of Mobile.—Error to the Supreme Court of Alabama.—The plaintiff in error is a merchant of Mobile and claims to be an importer of salt into that port. He claims that the city, under authority of the State law, seeks to impose upon him a tax and a penalty for its non-payment on sales, which he alleges is illegal, because in conflict with that clause of the constitution of the United States which prohibits a State from levying any duties on imports and exports. It appears that the salt is brought from Liverpool by merchant ships as ballast and is laden on account of the shipowners. These ships being unable to come up to the wharves of Mobile discharge their salt by means of lighters down the bay, alleged to be beyond the limits of the port, and the plaintiff in error owns boats of this character and receives the cargoes of salt in the original packages, which he brings up to the city, formally paying the duties thereon, and proceeds to sell to the trade as importer. It was shown, however, that before the cargoes were discharged upon the plaintiff in error's lighters the shipowners made the necessary deposit in gold to secure the federal imports, in accordance with the laws of the United States. The action was brought to restrain the collection of the tax complained of and to enjoin the exaction of the penalty claimed for non-payment. The Chancellor granted the injunction, but the Supreme Court of the State reversed that decree and dismissed the complaint. A writ of error was then taken to this court. The cause was recently argued and now decided, Mr. Justice Clifford delivering the opinion of the court. It is held that under the laws of the United States regulating imports, and under the circumstances of the case, as stated above, the plaintiff in error was not the importer of the salt, but the mere purchaser from the importer; and the fact that he sold in unbroken packages did not exempt him from State taxation. He had not partaken of any of the risks of the voyage, but was a mere purchaser of goods to arrive. The owners of the ship on whose account the salt was laden, and who had complied with the laws in the matter of discharging by lighters, were to be deemed the importers. The judgment below was affirmed.

The Lockwood-Morey Patent Case.

No. 140.—Lockwood, Complainant, vs. Morey et al.—Appeal from the Circuit Court for the District of Massachusetts.—The complainant in this case was the assignee of a patent upon reissue for a syringe, denominated the "Enema syringe," which, it is alleged, has been infringed by the appellants. The answer was that the original patentees were the first inventors, as the principle claimed had been long in use prior to the patent, and the question of priority was the chief matter for determination, to be ascertained from volumes of evidence and a large number of exhibits in the case, the latter being syringes of earlier make than the one covered by the complainant's patent. The judgment below was for the complainant, and the cause thence came here. Mr. Justice Nelson now delivered the opinion of the court, affirming the decree entered below, holding that it sufficiently appears that the patentees were the original inventors, and that the appellants had been guilty of the infringement alleged.

Maguire vs. Tyler—Motion to Reform Judgment.

No. 107.—*Maguire vs. Tyler et al.*—This is the motion to reform the judgment in the cause commenced on Friday last and concluded to-day. General Ewing appeared and read the brief which had been prepared by his father, Thomas Ewing, Sr., and which he was elaborating at the time of his paralytic attack. Judge Curtis concluded the argument.

No. 175.—*Patterson vs. De La Rouse.*—The argument of this cause, before stated, was continued.

TROTTING AT THE FASHION COURSE.

Two trotting matches came off yesterday afternoon at the Fashion Course, the first being for $1,000, mile heats, best three in five, in harness, between Budd Doble's chestnut gelding Dot and John Chambers' chestnut stallion Hickory Jack; and the second between Mr. Scanlon's chestnut mare Louise and Mr. Paulding's chestnut stallion Burger, mile heats, best three in five, in harness. Dot won the first race, four finely contested heats being trotted before its conclusion. Hickory Jack was the favorite before the start at three to two, but after winning the first heat Dot became the favorite and continued so to the end, except for a few moments after the conclusion of the second heat, which was won by Hickory Jack. Dot was the favorite after the third heat at one hundred to ten, and won the race very cleverly.

The second trot was won by Louise, who won only the third heat, however, Burger taking the first and second; but he was so used up after the third heat that his owner concluded to withdraw him from the contest, believing that he had no chance of winning the race. He was the favorite before the start at three to one, with few takers. Very little money was won or lost on this match, the speculators not seeming to fancy it.

The track was in excellent condition, the weather charming and the attendance satisfactory. But to the details:—

THE FIRST TROT.

First Heat.—Hickory Jack won the pole. He was the favorite at three to two. At the start they were very even, but Jack soon broke after leaving the stand. He, however, retained the pole, and the horses went around the turn as if yoked together. At the quarter pole Hickory Jack had his head in front in thirty-eight seconds. The contest down the backstretch was extremely interesting, Hickory Jack drawing away inch by inch, and at the half-mile pole he was one length ahead. Time, 1:16. On the lower turn Jack drew away a little further, and showed daylight, which he held into the homestretch. When the horses got into straight work on the stretch Dot made play and gained rapidly on Jack, and about midway up was very close to him. Jack then left his feet and Dot took the lead, but Hickory Jack trotted so fast afterwards that Dot only won the heat by a neck. Time, 2:35.

Second Heat.—Dot was the favorite at one hundred to forty before the start. The horses had a very even send-off, and they went to the turn on equal terms. Dot was a neck ahead at the quarter pole in thirty-eight seconds. Going down the backstretch the race was close until near the half-mile pole, when Hickory Jack broke up and lost two lengths. The half-mile pole was passed by Dot in 1:15½. Hickory Jack then began shutting up the daylight, and he closed gradually around the Flushing end, coming on the homestretch at Dot's wheel. A very exciting struggle ensued on the homestretch, and after a desperate struggle Hickory Jack won the heat by a short neck in 2:33¾. The result of this heat made a change in the betting for a short time, and Hickory Jack resumed his old position as favorite, selling at nearly three to two over his adversary.

Third Heat.—Dot was the favorite before starting, notwithstanding that Jack had the call at nearly three to two when the poolseller began business at the close of the previous heat. The horses had a very even start and went head and head around the turn. At the quarter pole Hickory Jack led by a neck, in thirty-eight seconds. Going down the backstretch Dot faltered, having become a little entangled, and fell off two lengths; but he soon straightened himself again, and quickly shut up the daylight at the half-mile pole, which was passed in 1:14¾. Dot trotted very fast around the Flushing end and quickly showed in front. He came into the homestretch half a length in front of Jack, and after a hard struggle, which lasted all the way up, he carried Jack to a break near the finish and won the heat by two lengths in 2:32½.

Fourth Heat.—John Cudney was taken from behind Hickory Jack and John Murphy substituted in his place. The start was a very even one, but Dot took the lead on the turn, and he increased his advantage to a length at the quarter pole, which he passed in thirty-eight and a quarter seconds. Going down the backstretch Hickory Jack closed up a trifle, but he fell off again to Dot's wheel at the half-mile pole. Time, 1:16¾. On the Flushing end Hickory Jack broke up and fell off a length, Dot coming into the homestretch two lengths clear. Hickory Jack broke once more on the homestretch, and Dot came home a winner of the heat and race by three lengths, in 2:34. The following is a

SUMMARY.

FASHION COURSE, Oct 25.—Match, $1,000; mile heats, best three in five, in harness.

B. Doble named ch. g. Dot	1	2	1	1
J. Cudney named ch. h. Hickory Jack	2	1	2	2

TIME.

	Quarter.	Half.	Mile.
First heat	38	1:16	2:35
Second heat	38	1:15½	2:33¾
Third heat	38	1:14¾	2:32½
Fourth heat	38¼	1:16¾	2:34

THE SECOND TROT.

First Heat.—Louise won the pole. She had an advantage of nearly a length at the start, but broke up soon afterwards, and Burger took the lead by two lengths, which he carried to the quarter pole in thirty-seven and three quarter seconds. The stallion kept the lead down the backstretch, and was two lengths ahead at the half-mile pole in 1:15½. Burger trotted steadily along, while Louise made several skips, and on the homestretch made a bad break. The stallion came home a winner by nearly three lengths in 2:34.

Second Heat.—There was no betting on the race. The horses had a very good start, Louise having slightly the advantage on the lead, but the stallion soon showed in front on the turn, and led one length and a half to the quarter pole in forty seconds. There was no change in the positions of the horses to the half-mile pole, which was passed in 1:18. Going around the Flushing end Louise made a skip or two, but did not lose by the changes of gait. Burger broke at the three-quarter pole, when Louise collared him and they entered the straight head and head. The stallion beat the mare home after a hard struggle by about one length in 2:37¼.

Third Heat.—Louise had the best of the start, but Burger soon took the lead away from her, and going around the turn one length in front, passed the quarter pole that distance ahead in thirty-nine seconds. Going down the backstretch Burger broke and ran until he was two lengths ahead at the half-mile pole in 1:18. Louise, however, passed him before he recovered, and, coming on with the lead, was one length in front at the three-quarter pole. Burger broke on the homestretch badly, and Louise won the heat by six lengths in 2:38¾. Burger was then withdrawn. The following is a

SUMMARY.

SAME DAY.—Match $500, mile heats, best three in five, in harness.

J. Murphy named ch. m. Louise	2	2	1
J. Paulding named ch. h. Burger	1	1	dr

TIME.

	Quarter.	Half.	Mile.
First heat	37¾	1:15½	2:34
Second heat	40	1:18	2:37¼
Third heat	39	1:18	2:38¾

PROSPECT PARK FAIR GROUNDS.

A Public Day—Trotting of Members' Horses—Hatfield's Black Mare Kate, and Bates' Team Dan and Toby, the Winners.

As bright and bracing a day as ever shone on autumnal foliage, gorgeous in variegated tints, greeted 500 visitors at the Prospect Park Fair Grounds yesterday, invited by the Trotting Committee of the Association to witness two races—one for single horses that never beat three minutes in public, and the other for double teams known to be owned by members of the club at least one month previous to entry. The prizes offered for the first race were a blanket and hood, and for the second a gold medal to first team and robe for the second. Each race was to wagons, best three in five. The track was in splendid condition, and, with the charming sunshine blending deliciously with an exhilarating atmosphere, good time was expected, and, fortunately, developed.

THE FIRST TROT.

Out of a field of twelve entries eight came to the stand but only seven started. The chestnut gelding Dick was withdrawn at the last moment, owing to the unfavorable position in which he was placed by the judges. The brown gelding Mocking Bird, gray mare Belle, bay gelding Billy, and brown gelding John I. were also drawn. The spotted gelding Flatbush Boy was the favorite almost even against the field before the start, but the black mare Kate, who has a good turn of speed, won the race in three straight heats.

First Heat.—After four attempts Nelly got away with the lead, Harry second, Kate third, Gipsey fourth, and the balance in a bunch to the rear. Around the turn Harry went to the front, Kate second and Nelly third, the rest as before. The quarter pole was reached—Harry two lengths ahead—in thirty-nine and three-quarter seconds, Kate second, one length in advance of Fisher Girl, the rest in their usual places. From this Kate trotted well, passing all shortly, reaching the half-mile pole in 1:20, Harry second, Fisher Girl third and the balance following at some distance. Homeward Kate increased the gap to seven lengths, passing under the string that stretch the winner, Fisher Girl, who had secured second place, one length ahead of Harry, Nelly fourth, Willie fifth, Gipsey and Flatbush Boy distanced. Time, 2:44.

Second Heat.—Kate got the best of the send-off, Harry second, Nelly third, Fisher Girl fourth and the balance together. At the quarter pole, passed in 41½, Kate was two lengths ahead of Willie, who had gone up to second place on a pretty burst of speed, Harry third, one length the best of Fisher Girl, who was two lengths in advance of Nelly. At the half-mile pole Willie broke badly and run from that position almost home. Kate followed the gelding, passing it in 1:21¾, Harry third, Fisher Girl Fourth and Nelly last. On the homestretch and to the string Kate was two lengths ahead, Harry second, Nelly third, Fisher Girl fourth and Willie distanced for "running." Time, 2:45.

Third Heat.—The field now contained all four contestants. Kate won it quite easily, passing under the string eight lengths to the front, Harry second, Fisher Girl third, and Nellie fourth. Time, 2:42. The following is a

SUMMARY.

PROSPECT PARK FAIR GROUNDS, October 25.—Prizes, a blanket and hood for horses owned by members of the club that have not beaten three minutes in public; mile heats, best three in five to wagons:—

Mr. Hatfield entered blk. m. Kate	1	1	1
Mr. Bush entered b. g. Harry	3	3	2
Mr. Rogers entered b. m. Fisher Girl	2	2	3
Mr. W. Mundell entered g. m. Nelly	4	4	4
Mr. Willis entered b. g. Willie	5	dis.	
Mr. Talmadge entered spot g. Flatbush Boy	dis.		
Mr. Jones entered b. m. Gipsey	dis.		
Mr. Van Brunt entered ch. g. Dick	dr.		
Owner entered br. g. Mocking Bird	dr.		
Owner entered g. m. Belle	dr.		
Owner entered b. g. Billy	dr.		
Owner entered br. g. John I.	dr.		

TIME.

	Quarter.	Half.	Three-quarters.	Mile.
First heat	39¾	1:20	2:01¾	2:44
Second head	41½	1:21¾	2:04½	2:45
Third heat	40¼	1:19¾	2:01	2:42

THE SECOND TROT.

The race for double teams had three entries—Mr. Bates' brown gelding Dan and chestnut gelding Toby; Messrs. Smith, Gould, Martin & Co.'s brown gelding Drift and chestnut mare Idol, and George Hall's team, Samson and Annie. It was won by the former.

Drift and Idol were the favorites. In the first heat their opponents, Dan and Toby, came under the string four lengths in advance. In the second heat, splendidly contested, they passed home by a neck only. The third heat was a dead one. The fourth heat and the race were won by Dan and Toby. The following is a

SUMMARY.

SAME DAY.—Medal and a lap robe, for double teams known to be owned by members of the club one month previous to entry. Mile heats, best three in five, to wagons.

Mr. Bates entered br. g. Dan and ch. g. Toby	1	1	0	1
Messrs. Smith, Gould, Martin & Co. entered br. g. Drift and ch. m. Idol	2	2	0	2

TIME.

	Quarter.	Half.	Three-quarters.	Mile.
First heat	44	1:26½	2:07	2:50¼
Second heat	43¼	1:26	2:07	2:48½
Third heat	42¾	1:25	2:04½	2:45
Fourth heat	47½	1:30	2:12	2:52

The prizes were exhibited from the stand by the judges, and found to be of value and exquisite workmanship.

JEROME PARK RACES.

Pool Selling Last Evening.

The unfortunate postponement of the steeple chase because of the unfavorable state of the weather operated last evening to prevent the usual lively interest generally taken in the sale of pools. Many had already invested, and most of the money floating about in sporting circles was consequently absorbed beforehand. The following exhibits the condition of the betting market:—

SALES BY DR. UNDERWOOD—JOCKEY CLUB ROOMS, TWENTY-FIRST STREET AND BROADWAY.

Steeple Chase, $1,000.

Mitchell	$50	100	200
Bohannon	40	80	160
Eminence	20	25	105
Lobelia	20	25	100
McDaniel	15	30	110
Zigzag	12	32	90

Selling Sweepstakes, $600.

Connolly	$25	100	200
Sleety	10	45	95
Weldon	6	25	60
Ouida	6	25	55
Rapture	5	20	45
B. Doone	4	15	35
Tycora	5	20	40
Spotted	3	12	23

BY MR. JOHNSON, TWENTY-EIGHTH STREET AND BROADWAY.

Steeple Chase.

Mitchell	$200	120	100
Bohannon	188	100	90
Zigzag	68	56	40
Field	92	44	60

Mile Heat Race.

Lancaster	$150	150	150
Lizzie Rogers	90	85	87
Cottrill	75	72	72
Field	54	50	50

Handicap, One and Three-quarter Mile.

Cottrill	$150	150	260
Metairie	90	90	164
Sanford	48	54	120
Field	108	63	188

THE SUEZ CANAL.

Visit of the Emperor of Austria to the Inauguration.

By mail from Europe we learn that the Emperor Francis Joseph, on his way to the Suez Canal inauguration, will leave Pesth for Rootschook by steamer. From Rootschook he will go by rail to Varna, where the Austrian squadron, under command of Vice Admiral Tegethoff, will await his arrival. The Emperor will go on board of the steam frigate Elizabeth. The stay at Constantinople will be five or six days, during which time the imperial guest will live in the Sultan's own palace. Although very anxious to visit Jerusalem, much will depend upon the time he can spare. At Alexandria it is surmised that the Empress of the French will meet him, and that they will jointly proceed to the ceremonies. On his return the Emperor of Austria will stop at Athens and pass a day with King George, from whence he will proceed home via Brindisi and Ancona. In passing through Italy it is officially announced that he will have an interview with King Victor Emanuel. The imperial suite will consist of the Minister of State, Count von Beust; M. de Hofman, one of the chief officers of the Ministry of Foreign Affairs; Count Taaffe, President of the Cisleithan Ministry, and probably Count Andrassy, President of the Hungarian Ministry.