MEMPHIS APPEAL.

ALBERT PIKE & CO.

Vera Atque Honesta Dicere.

TEST OATHS, AND THE FRANCHISE LAW OF TENNESSEE.

NO. 3.

In the case of *Cummings vs. The State of Missouri*, 4 *Wallace*, 277, the Supreme Court of the United States was called upon to determine whether an act of the Legislature of Missouri was constitutional, which required citizens to swear that they had not been engaged in, or given aid and comfort to, or sympathized with, the Rebellion, before they should be allowed to vote, or to hold any of certain offices, or to preach the Gospel.

Father Cummings was a Catholic Priest, indicted and convicted for having preached without first having taken the required oath.

The argument of his counsel in the Supreme Court was thus re-stated:

"He is punished by deprivation of his profession, for an act not punishable when it was committed, and by a legislative instead of a judicial proceeding. If this is held to be constitutional because it is not done directly, but indirectly, through the tender and refusal of an oath, so contrived as to imply, if declined, a confession of having committed the act, then the prohibition" [of the Constitution against passing any bill of attainder] "may be evaded at pleasure. You cannot imagine an instance of oppression, that the Constitution was designed to prevent, which may not be effected by this means. Suppose the case of a man tried for treason and acquitted by a jury. The Legislature may nevertheless enact that if the person acquitted by a jury does not take an oath that he is innocent, he shall be deprived of political or civil rights or privileges. Suppose that the Legislature of New York were to pass an act disqualifying from preaching the Gospel, or healing the sick, or practising at the bar, all who during the last year were 'connected with any organization inimical' to the administration of the State government. Such an act would of course be adjudged inconsistent with the Federal Constitution. But suppose, instead of passing the law in this form, it should be in the form of requiring an oath from every person desiring to preach the Gospel, or to heal the sick, or practice at the bar, that he had not been connected with such an organization, would that make the case any better? You can punish in two ways: you can charge with the alleged crime, and proving it, punish for it; or you can require the party to purge himself on oath, and if he refuses, punish him by exclusion from a right, privilege or employment."

The counsel insisted:

That it is a *punishment*, to deprive a man of a right or privilege, political or civil, on account of the commission of an offence, or because he refuses to swear that he has not committed a particular offence.

They insisted that the Missouri Act violated the provision of the Constitution which prohibits the passing of "bills of attainder." Much of their argument was directed against that provision of the act which punished *sympathy* with the rebels. Leaving that on one side, we adopt their argument to this effect: That the phrase "bill of attainder" was intended to include "every legislative act which inflicts punishment without a judicial trial;" that if the offence is less than felony, the act is usually called a bill of pains and penalties; that it makes no difference that this result of punishment without trial is effected by means of an oath or its tender and refusal; there being, at least, only this difference, that these means are more odious than the other; that the legal result must be the same, for it is a maxim that what cannot be done directly cannot be done by indirection; that the constitutional prohibition was intended to protect every man's right against that kind of legislation which seeks to inflict a penalty without a trial; and that it does not help this kind of legislation, that its taking effect is made to depend on the neglect or refusal to take a prescribed oath; nor would it help it to declare that the omission to take the oath should be deemed a confession of guilt.

One of the counsel referred to the fact that an act prescribing a test-oath was passed in New York soon after the Revolution, and that Alexander Hamilton said, in regard to it:

"A share of the sovereignty of the State which is exercised by the citizens at large in voting at the elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist, as a free people, and it will certainly therefore never be admitted that less ceremony ought to be used in divesting any citizen of that right, than in depriving him of his property. Such a doctrine would ill suit the principles of the Revolution which taught the inhabitants of this country to risk their lives and fortunes in asserting their liberty, or, in other words, their right to a share in the Government."

He further said:

"These men inculcate revenge, cruelty, persecution, and perfidy. The spirit of whigism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial and conviction of some crime declared by antecedent laws, repudiates equally the punishment of the citizen by arbitrary acts of the Legislature, as by the lawless combinations of unauthorized individuals; while these men are the advocates for expelling a large number of their fellow-citizens, unheard, untried, or, if they cannot effect this they are for disfranchising them in the face of the Constitution, without the judgment of their peers, and contrary to the law of the land. . . Nothing is more common than for a free people, in times of heat and violence to gratify momentary passions by letting into the government principles and precedents, which afterwards prove fatal to themselves. Of this kind is the doctrine of *disfranchisement, disqualification* and *punishments* by acts of the Legislature. The dangerous consequences of this power are manifest. If the Legislature can disfranchise any number of citizens at pleasure, by general descriptions, it may soon confine all the voters to a small number of partisans, and establish an aristocracy or an oligarchy. If it may banish at discretion all those whom particular circumstances render obnoxious, without *hearing* or *trial*, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. *The name of liberty applied to such a government would be a mockery of common sense.* . . THE PEOPLE ARE SURE TO BE LOSERS IN THE EVENT, WHENEVER THEY SUFFER A DEPARTURE FROM THE RULES OF GENERAL AND EQUAL JUSTICE, OR FROM THE TRUE PRINCIPLES OF UNIVERSAL LIBERTY."

And he made a remark which has an especial application to the present state of affairs and the temper of men in this country. He said:

"There is a bigotry in politics, as well as in religion, equally pernicious to both. The zealots of either description are ignorant of the advantage of a spirit of toleration. It is remarkable, though not extraordinary, that those characters throughout the States, who have been principally instrumental in the Revolution, are the most opposed to persecuting measures."

So it is, to-day, not the men who were from the beginning true to the Union, and opposed to secession, and who in camp and field, in the bivouac and the imminent deadly breach maintained their faith, from the day when the first gun shotted by Secession was fired against the old flag that waved over Fort Sumter,—it is not the true soldiers of the Republic, who favor the continued disfranchisement of their late antagonists, whose gallantry made their own glory and renown, but the men who at the beginning encouraged secession, to afterwards play the part of Judas, the Butlers and the Logans, the Stokeses and Hamiltons: it is the *escrocs* and chevaliers d' industrie of politics, who live by others' undoing, and fatten on the misfortunes of the country; it is the offal and lees of humanity that the currents of war and reconstruction have deposited upon the South.

The counsel who in the Supreme Court prostituted such abilities as they had to the maintenance of an infamous and iniquitous law, insisted that each State had the exclusive right "to determine the qualification of voters and officeholders, and the terms and conditions upon which members of the political body might exercise their various callings and pursuits within its jurisdiction."

They insisted that the Missouri act was not in the nature of a Bill of Attainder or of pains and penalties; but merely regulated the municipal affairs of the State, determining who should be voters and hold office, etc.

One of the counsel said, "It has been decided that bills of pains and penalties, which inflict a milder degree of punishment, are included within 'bills of attainder,' which refer to capital offences. It has been said by an accurate writer (Woodeson) that in cases of bills of attainder, 'the Legislature assumes judicial magistracy, weighing the enormity of the charge, and the proof adduced in support of it, and then deciding the political necessity and moral fitness of the penal judgment."

One would suppose that no more accurate definition of the nature of the acts of Congress and of the Legislatures of Missouri and Tennessee, prescribing test-oaths, could be invented. By them the Legislature surely "assumes judicial magistracy;" "weighs the enormity of the charge," and "decides the political necessity and moral fitness of the penal judgment," which disfranchises him who will not swear that he is not guilty. That it does not also "weigh the proof adduced in support" of the charge, only makes the law more odious and infamous; for when Parliament, each House of which *was* a Court, and *could* exercise judicial powers, examined the charge and heard the proof, before convicting and attainting, there was at least the semblance, and perhaps generally the reality of substantial justice.

But, the counsel said, Woodeson declares that bills of attainder, "instead of being general, are levelled against the particular delinquent; instead of being permanent, they expire, as to their chief and positive effects, with the occasion."

Therefore, the counsel said, the provisions of the Missouri act do not fall within the definition. "*To be obnoxious as Bills of Attainder, the provisions must operate against some particular delinquents*, or A SPECIFIED CLASS OF DELINQUENTS, AND NOT AGAINST THE WHOLE COMMUNITY." When the ass wears the lion's hide, the ears always stick out. Was not the Missouri act aimed against "a specified class of delinquents," those who had been parties to, or had aided, or had sympathized with the rebellion?

"They must not be *permanent* laws," said Senator Henderson, who was of counsel against the Constitution and the principles of English liberty, "operating as a rule to control the conduct of the whole community, but must expire upon the infliction of punishment on the individual or individuals *named*."

If an act of a Legislature provides that no person who will not swear that he has never been guilty of profane swearing, or that he has never been drunk, or that he has never bet money on a prohibited game of cards, shall vote or preach or teach, is this any the less a bill of pains and penalties, because no parties are *named*? Does it "operate as a rule to control the conduct of the whole community," in the language of the nonsense of Henderson, because it applies to any one and every one who may have done that which he is required to swear that he never has done?

It never was necessary that the persons to be attainted should be named in the bill. As counsel stated, "The attainder passed the eighteenth year of Henry VII, against the Earl of Kildare and others, enacted that 'all such persons which be, or heretofore have been, comforters, abettors, partakers, confederates, or adherents, unto the said late Earl, etc., in his or their false and traitorous acts and purposes, shall in like wise stand and be attainted, adjudged and convicted, of high treason.'"

Mr. Henderson said, "Before these provisions can be called bills of attainder, it must appear that they criminate the defendant, etc., and that they assume to pronounce the punishment for that act. The law itself must assume to convict him. If any means be left by which the defendant can escape the punishment prescribed in the act, the act cannot be a bill of attainder; for a bill of attainder assumes the guilt and punishes the offender, whatever he may do to escape. If the act in question applies as well to the entire community as to him, and operates upon all alike, only prescribing an oath, which may or may not be taken by him and others, as a condition of a future privilege, it is in no sense a bill of attainder."

That is the sort of stuff, the pitiful babble, which is imposed on the world for argument, to sustain a cause which counsel *ought* to have been ashamed to endeavor to maintain. How does an act operate on a whole community, on all alike, when it affects only the few who cannot take the prescribed oath? If a bill of attainder assumes the guilt and punishes the offender, whatever he may do to escape, is that not exactly what the act prescribing the test-oath does? If one *can* take the oath, he is no offender. If he cannot, (and no offender can), he is punished, whatever he may do to escape, unless he will perjure himself, and so incur a far heavier penalty. The oath is not prescribed in order that the innocent may take it, but that the guilty may be unable and refuse to take it, and so be convicted by legislative mandate of the imputed crime, and punished by disfranchisement.

But, the counsel said, it is no *punishment* to disfranchise, or to disqualify a man to practice his profession. For *punishment* is that only which deprives one of life, liberty or property. "These are *natural* rights, and to take them away is what we properly call *punishment*. All *other* rights are conventional, and may at any time be *resumed* by the public, in the most summary way, without any regard to due process of law."

We have already seen what Alexander Hamilton, "this great lawyer," whose opinion the Court in concluding quoted at full length, said as to the right of voting. Let us see what is the judicial opinion of English judges as to its nature and value.

BY TELEGRAPH.

Night Dispatches.

CINCINNATI.

CINCINNATI, August 19.—The Democratic Convention of the Third Ohio District nominated Hon. C. L. Vallandigham for Congress on the third ballot.

MAINE.

PORTLAND, August 19.—Hon. G. H. Pendleton passed through here to-day on his way to Bangor.

Hon. E. Storrs, of Illinois, and Gen. McDowell are here.

LOUISVILLE.

LOUISVILLE, August 19.—A base ball match was played this afternoon at Cedar Hill Park between the Union Club, of Morrisiana, N. Y., and the Louisville Club, of this city, resulting in an easy victory for the former. The score stood: Union Club, 59; Louisville, 11.

NASHVILLE.

NASHVILLE, August 19.—The meeting of the Teachers' National Association to-day was deeply interesting. The address of welcome was made by Hon. Neil Brown of this city, and responded to by Hon. J. M. Gregory, President of the Association.

A report on the study of the classics in college was read by President Andrews of Marietta College, Ohio; and to-night Mr. Gregory made an entertaining oration on the subject of education.

Much interest is manifested in the meetings by the citizens.

MASSACHUSETTS.

WORCESTER, August 19.—The Chinese Embassy arrived here on the p.m. Express train, and were met at the depot by a committee from Boston, the City Council, and a numerous crowd. Gov. Bullock complimented them.

The cattle disease has broken out in Canada.

BOSTON, August 19.—Hon. George H. Pendleton arrived in town late yesterday. At night he was serenaded by the National Democratic Club; he returned thanks in a few remarks, during which he said he was on his way to the State of Maine to take part in the political campaign there. A large assemblage was present.

SPRINGFIELD, Aug. 19.—The Chinese Embassy arrived here from Albany at 2 p.m. and proceeded, after a brief stay, to Worcester, where they will spend the night. The Embassy leave Worcester for Boston to-morrow morning.

Six prisoners escaped from jail at Northampton yesterday.

PHILADELPHIA.

PHILADELPHIA, August 19.—It was reported this afternoon that Mr. Cabot, connected with an Iron establishment in this city, had proved a defaulter to the amount of $60,000.

Thad. Stevens' will has been admitted to probate; it is an autograph document and contains the following requests: To the Juvenile Library Association of Caledonia county Academy, at Peachem, of $1000. To the Trustees of the Graveyard in same town, the burial place of his parents, $500. Various sums are given as legacies to his housekeeper and relatives. Of the residue of his estate, amounting to about $50,000, $2,000 is to be expended by his trustees in erecting in Lancaster, conditionally, or in Columbia, suitable buildings for an Orphan Asylum, for indigent orphans, without distinction of race or color.

The will is dated July 30, 1867, and names O. J. Dickey and Edward McPherson, Executors and Trustees.

A codicil gives his Baptist brethren $1000, conditionally, and $1000 to the college at Gettysburg.

WASHINGTON.

WASHINGTON, August 19.—It has been rumored that the United States Government intends establishing a protectorate over Mexico. This is pronounced in responsible quarters as unfounded. Policy will be the same as heretofore towards that Republic.

The work of removing the Agricultural Department to the new building in South Washington is progressing quite rapidly. The library and laboratory have already been removed, and by next week the Commissioner and most of the officers of the department will be located in their new quarters.

Chief Justice Chase has returned to Washington from Parkersburg.

Gen. Rawlings has sufficiently recovered from his late attack to be out. He was at army headquarters to-day.

The appointment of supervisors is still pending, none having been made. Commissioner Rollins intends sending nominations for the remaining districts very shortly.

Among the visitors at the White House to-day were Gens. Hancock and Rousseau. Both had interviews with the President.

The fire department has been reorganized by fire commissioners, and is now composed of whites altogether, the blacks who were employed on the coming in of the present city administration having been dismissed.

FOREIGN.

AMSTERDAM, August 19.—Representatives of France, England, Holland, Belgium and Prussia are now assembled at Hague, for the purpose of holding a conference looking to the equalization of duties on foreign sugar.

VIENNA, August 19.—Apprehensions are entertained that the recent attempt against Turkish authority in Belgravia will be renewed. Accounts from that quarter represents the country as in an unsettled condition, and though the insurrectionary bands have disappeared or been dispersed, the indications are that secret preparations of a formidable character are being made for a more extensive outbreak. The attention of the Austrian Government has been called to this state of affairs by the unusual quantity of arms ordered from the other side of the Danube, and an order has been issued prohibiting the exportation of arms or ammunition from Austrian territory into the Danubian principalities.

LONDON, August 19.—Soon after the arrival of the American yacht Sapphire off Cowes, her captain issued a challenge to the yachtmen of England for a race. The challenge was immediately accepted by the following yachts: Olive, Cambria, Ounara and Candor. The race, which will be for a sweepstakes of £20, will occur on Friday, the 21st inst. The yachts will start from Cowes and go around the Isle of Wight to the westward and through Saloah to the place of starting. Distance, 75 to 80 miles.

ST. LOUIS.

ST. LOUIS, August 19.—The Democrats of the First Congressional District, in Convention here this morning, nominated Erastus Wells for Congress. He received one more vote than John Hogan. The nomination was subsequently made unanimous.

The latest advices from Kansas are that the Indians have left Solomon valley, and quiet is restored. Most of the settlers who were driven away were returning to their homes.

Adj.-Gen. Weafee reports eight persons buried, three missing and five wounded. This is probably less than half the actual casualties—at least twenty persons having been killed.

Gen. Sully reports that two daughters of Aaron Bell were recovered from the Indians.

About two hundred settlers are left destitute, having been stripped of provisions, clothing, bedding and everything else the Indians could carry away or destroy. Appeals have been made to citizens of Leavenworth and other places to aid the sufferers.

An Omaha dispatch says that the chief Quartermaster of the Department of the Platte, has received orders for the immediate construction of extensive military barracks upon the Government reservation three miles north of the city.

The Union Pacific Railroad is now completed within ninety miles of Green river.

It is reported that considerable difficulty exists at Green River City between the settlers and the agents of the Union Pacific Railroad, the former claiming the right of the land by occupancy.

The Republicans of the Eighth District in this State, in convention at Macon yesterday, nominated John F. Benjamin for re-election to Congress by acclamation.

COUNTY EXPENSES.

Editors Memphis Appeal:

The report of the Grand Jury of the Criminal Court of this city shows a fearful record for the Board of County Commissioners. Let me give only an item or two, for their masters, the thieves who make the laws, know the law as our people had it arranged before the present bogus so-called Legislature began to devise the ways and means of stealing from the people by creating places for favorites, and providing subsistence for thieves. I say, before these things were done, the Magistrates of the county looked after the income and outlay of the county, and now let us see at what cost. Then Magistrates held four terms per annum; at which each Justice was allowed $2 per day. Say there were thirty Justices in the county, and that every Justice would attend each quarter session in the year, and each day of every term, and that the terms would last three days. This would give each Justice $2 per day for twelve days in the year, and with thirty Justices, would make in the year an outlay on the part of the county for salary to public servants to superintend the county affairs, just $720. Now how is it? The Justices are relieved of that duty, and it is assigned to five Commissioners, at the following salaries:

President Lewis	$3,000 00
Associate White	2,500 00
" Hale	2,500 00
" Merriman	2,500 00
" Louis	2,500 00
Making	$13,000 00
Salary of Justices	720 00
Difference	$12,280 00

We pay this last sum just to reward the partizans of Brownlow as a mere bonus to aid in the enslavement of ourselves. That is $13,000 for having a thing badly done which we might have well done for $720. The members of the Commissioners' Court, except poor old Hack, are cribbed up in the city. They have little or no acquaintance in the country, and are liable, even if they were honest, to be constantly imposed upon by dishonest claims from the country. Let me state one instance, just to illustrate. Up in the northeast part of the county, during some of the late heavy rains, a large log floated against a small bridge and lodged. When the water went down, a countryman cut the log in three or four places, so that it floated off. The work was really worth about three dollars. He presented his bill to Blewis' Court and got fifty dollars. Had there been a member of the Court from that vicinity, as there would have been under the old system, the whole truth would have been known and the man paid for his labor just what it was worth. I state this fact to show the liability of the people to be fleeced, even at the hands of an honest Court. C.

Southern Settlers in Honduras.

A correspondent of the New Orleans *Crescent* writes from Belize, British Honduras, August 31:

"Quite a number of Americans have settled in this colony. Their settlements are in different localities—several along this (Belize) river, one at Lake Manatee, one at Mullins river, one at Victoria, one at Middle river and one at Toledo—and most of the people are in good health and cheered by prospects of good crops. Of course there are a few exceptions to this.

"All having been ignorant of the country when they made selections, different degrees of success or failure must be expected in this as in all other countries, as well as of health.

"The culture of sugar is now eliciting more general and careful attention than hitherto, when it was only pursued by the untutored Yucatanese with the most primitive and inefficient appliances, who however succeeded much better, in proportion, than many empirics who attempted it upon a grander scale.

"The repeated failure of those induced recourse to that skill which by Herculean labor and pushing enterprise and knowledge extorted from the uncongenial climate and soil of Louisiana a crop of half a million of hogsheads of sugar (or as they are termed here, tierces), per annum, and led to the engagement of several of her former planters as managers.

"The most prominent example of their success as yet is at Regalia Estate, owned by Antonio Mathe, Esq., which is under the management of Col. S. McCutcheon, who commenced boiling in May, and in about fifty-six working days made near half a million pounds of concrete sugar, and will continue rolling for a month or six weeks yet.

"Adjacent to Regalia are three other sugar plantations with splendid crops of cane in a luxuriant growth, and machinery to take them off. On one of them are twelve thousand coffee trees of the second year's growth, which are well filled with the fruit or bean, and about fourteen thousand plantain trees, which shade the coffee. These estates would be a good investment for practical sugar planters who have experience and capital.

"Higher up on the Sittee river, and adjacent to Regalia, is the new estate of J. A. de Braam, Esq., who has since last summer made a clearing of about three hundred acres, erected a saw mill, with shingle machine attached, and he saws the mahogany, yemery and pine timber, of which he has an abundance, which make good lumber, and thereof is erecting a substantial and permanent house for his employees and laborers. It is his intention to build a light railroad all over the estate and through the fields, and by the use of his locomotive, avoid the necessity for mules and oxen in the corn fields. It is his intention to have a very large plantation.

"Beyond Mr. de Braam's, his cousin, Mr. Leclerc, from Holland, who, I understand, was formerly a sugar planter in the Island of Java, is opening a plantation, and has about one hundred acres of land cleared, and has just commenced erecting quarters for his laborers.

"These estates give evidence of what may be done even in a new and wilderness country. Here are at least one thousand acres of cleared land, a large portion of which is covered with cane, plantains and coffee, where three years since stood the gloomy primeval forest. Under all the disadvantages with which it commenced Regalia will yield this year near eight hundred thousand pounds of sugar, which bids fair to be more than trebled next year."

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REV. W. A. SMITH, D.D., (Late President Randolph Macon College, Va.)
REV. STUART ROBINSON, D.D., Louisville, Ky.

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DR. J. H. CLOPTON, of Huntsville, Ala., may be consulted at the Commercial Hotel, No. 30, for a few days. Refers to one of the oldest physicians of the city. Patients are not confined to their beds. Cured without the KNIFE. au20 1w

A Card.

NEW ORLEANS, August 11, 1868.

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Railroad ticket full fare going, free ticket to return—good until October 1, 1868.

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Tickets, 50 cents. au18 3t

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1868 1868

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Appeal Job Office.

Bill Heads,
Bill Heads,
Bill Heads,

Dray Tickets,
Dray Tickets
Dray Tickets,

Shipping Tags,
Shipping Tags,
Shipping Tags,

Bills Lading,
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Bills Lading,

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Reduced Prices

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Income for first Ten Months, : : 161,883 46

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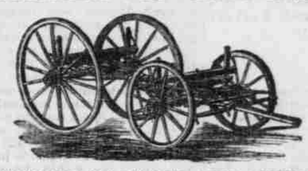

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T. A. NELSON, F. M. WHITE, } Vice-Presidents. CHAS. T. PATTERSON, Ass't Secretary.

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Surplus, : : : : : : 102,742 06

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60 barrels High Wines.

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