

MEMPHIS APPEAL.

ALBERT PIKE & CO.

Vera Atque Honesta Dicere.

TEST OATHS, AND THE FRANCHISE LAW OF TENNESSEE.

No freeman, Magna Charta said, shall be taken, or imprisoned, or disseized of his freehold, or of his liberties or free customs, or, unless by the lawful judgment of his peers, or by the law of the land.

On which Lord Coke says: "Of his liberties or free customs, that is, of such franchises and freedoms and free customs as belong to him by his free birthright."

By the 5th amendment to the Constitution of the United States, no man can be deprived of life, liberty or property, without due process of law.

By the Constitution of Tennessee, no free man can be "disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed, or deprived of his life, liberty or property," but by the judgment of his peers or by the law of the land.

It has never been doubted, since the case of Ashby vs. White, decided in the Court of Queen's Bench, in the second year of Anne, and afterwards reversed in the House of Lords, that an action lies against the Sheriff or other officer holding an election, by a person entitled to vote, and whose vote is refused.

Three Judges--Gould, Poyas and Powell--decided against the right of the plaintiff to his action, chiefly on the ground that the House of Commons had the exclusive right to determine whether the party whose vote was refused, had the right to vote for Member of a Borough.

Lord Holt maintained the plaintiff's right to his action; and the House of Lords sustained his opinion. He said: "It is a little thing, to have the privilege of giving my vote, in the election of a person in whose power my life, estate and liberty lie, is obstructed."

Now it is plain that the want of this privilege to vote for a Parliament-man, and sure every one that has that great privilege has a right in it; and if so, of necessary consequence he has an action to vindicate and maintain that right."

He styled it "so transcendental a right, and said that the freemen of England had too considerable an estate in this right, to have it only lodged in a body politic."

The case in the House of Lords, in error, Trevor, Ch. J., and Price and three Lords concurred with the three Judges (Queen's Bench); and the rest of the Judges and five Lords with Chief Justice Holt.

The case in the House of Lords may be found in the second volume of "The History and Proceedings of the House of Lords," published in 1742, commencing at page 74. The report of the Committee, which was adopted, said: "That plaintiff in this case hath a privilege and a franchise, and the defendants have disturbed him in the enjoyment thereof, in the most essential part, which is the right of voting."

And again: "There is no other provision made for the plaintiff, who is highly injured in his right, but by bringing his action in the courts of law, that have power to determine of men's lives, liberties and properties. . . . If an elector be a cottager, he is a freeman of England, and has that great privilege belonging to him, to be represented in Parliament."

"Every Englishman is entitled to reputation for the injuries done to his rights and franchises, in an ordinary and common method of justice, where the jury who try, and the witnesses who give evidence, are to be upon their oaths. Magna Charta, cap. 29, is very explicit. No freeman shall be disseized of his freehold, or liberties, or free customs, unless by the lawful judgment of his peers, or by the law of the land."

The second resolution of the Lords, in giving judgment, declared "that the asserting that a person having a right to give his vote at an election, and being hindered so to do by the officer, who ought to take the same, is without remedy for such wrong by the ordinary course of law, is destructive of the PROPERTY of the subject," etc.

At page 139 of the same volume will be found the "Humble Representation" of the Lords to the Queen, upon occasion of the commitment to Newgate of five Burgesses of Aylesbury, who had brought separate actions like that of Ashby, against the Sheriff. The House of Commons declared their intention to take action to be in contempt of its jurisdiction, and in breach of its privileges; and the Lords remonstrated on the ground that "the consequences of such proceedings would prove fatal to the property and liberties of the people of England."

They also said: "The right of election is a legal interest, incident to the freehold, or founded upon custom, or the royal patents of our Majesty's royal ancestors, or upon particular acts of Parliament, and must be tried and determined like other legal interests."

The point of law was settled by the judgment of that Court, which is allowed to be the last resort, and this will continue to be the law, till it is altered by the legislative authority. . . . The point of law is judicially settled; and yet the House of Commons take upon them to punish men by imprisonment, for endeavoring to have the benefit of what is so established by law."

The highest authority in England thus settled, in 1704, one hundred and sixty-four years ago, that the right of a freeman to vote for members of Parliament was a franchise and privilege, of transcendental value, in which the elector had an interest and estate, and the denial thereof gave him a right of action, in case of other legal interests. And so the law has ever since been settled, in America as well as England.

But Mr. J. B. Henderson, now cast out from the Radical church because he had some remnant of a conscience, and could not swear that the President was guilty of a high crime and misdemeanor for endeavoring to prevent the utter overthrow of the Constitution, said, in the case of Cummings, to the Supreme Court:

"Public officers have always been taken away from the incumbents, by the severest act of the people, without consulting the incumbents, without informing them, and without hearing them in their defence, and yet nobody ever supposed this to be a punishment of the incumbents. It is not a punishment, because it deprives them of no property whatever. The public, it is true, has given them a trust, but the public has created that trust for their own purpose, and the public can

BY TELEGRAPH.

Night Dispatches.

CHICAGO.

CHICAGO, August 20.--A fire broke out early this morning in a frame tenement, 178 North Sangamon street, resulting in the death of Mrs. Koby, an invalid.

CENTRAL CITY, August 20.--The Col. Steamer Montross, from Boston, was run into Cape Ann by the schooner Stanberry. Ten of the crew of the latter got on board of the steamer, and three remained on the Stanberry, which it is supposed sunk.

PHILADELPHIA, August 20.--Brooks was appropriated by Congress to the Sixth Army Corps, for a monument at Fort Mifflin, on the Schuylkill river, with a figure of Maj. Gen. Sedgwick. It has just been discovered that Chas. Calton, President of Allegheny Rolling Mills, has absconded, leaving an indebtedness of \$200,000 to \$1,000,000.

NEW YORK, August 20.--The mail car attached to the western train that left here last night by the Central Railroad of New Jersey, took fire near Bethlehem, Pa., and the contents were badly injured. Three hundred bags of mail were lost, including several copies of newspapers. The debris has been returned here.

PITTSBURG, August 20.--E. Lanier died in Allegheny yesterday afternoon, under circumstances which led to the belief that he was poisoned. A post mortem examination will be held. The fact of waiting one hundred consecutive hours, now being attempted by Miss and Kester for a purse of \$500, is still in progress, the parties having agreed to remain in jail until they have expressed themselves contented of accomplishing the feat.

SAN FRANCISCO, August 20.--A singular tidal phenomenon occurred at San Pedro, South California, a series of waves commenced flowing upon the coast, causing the tide to rise three or four feet above the ordinary height, followed by flowing some distance below the low water mark. The rise and fall occurred every half hour for several hours, creating considerable alarm among the inhabitants thereabouts. This incident is attributed by some to marine disturbances, causing the bottom of the sea to rise and fall, thus impelling it towards the coast.

MONTGOMERY, August 20.--The following is the Democratic Electoral ticket nominated by the State Convention: State at Large, George Goldthwaite of Montgomery; and Peter M. Dixon of Madison; First District, W. H. Frazer of Dallas; Second District, W. G. Saxe of Montgomery; alternate J. C. Moore of Coffee; Third District, Henderson of Talladega; alternate F. S. Ferguson of Macon; Fourth District, J. B. Lewis of Shelby; alternate J. G. Jolly of Greenfield; Fifth District, J. C. Crooks of Calhoun; alternate W. A. Richardson of Wilcox; alternate A. H. McAlister of Lauderdale; alternate J. C. Hains of Lawrence.

The Democratic State Convention nominated their Electoral ticket and adjourned. A mass-meeting was held to-day, and a torchlight procession takes place this evening.

MASSACHUSETTS, BOSTON, August 20.--A cordial reception was given the Chinese Embassy by the citizens and city authorities on their arrival here to-day. Mayor Eliot received them in an appropriate speech, which was responded to by Burlingame. The escort from the city of Lynn consisted of four companies of militia, amounting to about 170 men. The Embassy will hold a public levee in Faneuil Hall to-morrow at noon, and will entertain a grand banquet at St. James Hotel to-morrow.

The examination of Dr. Charles P. Powers on charge of causing the death of Mrs. Mary Abby Bowen by malpractice, on the 20th inst., resulted in his being committed to prison to await trial, in default of \$10,000.

The Chinese Embassy gave a reception this evening to the members of the city government and a large number of citizens at the Parker House.

ST. LOUIS, August 20.--A dispatch from Hays City, Kansas, says the body of Bill Comstock, a famous scout, has just been brought in. He was murdered yesterday by the Indians near here. His companions were rescued within a few days. He was a man of about 40 years of age, and was a member of the 10th Cavalry. The military and volunteers are in that pursuit. Several children have been abandoned and found in the woods. Six women have been carried away captives. With the extensive preparations now organized against the Indians, it is thought there will be no more trouble in Kansas. The hostile tribes are Cheyennes and Arapahoes.

Gen. Wadsworth and his son James F. Wadsworth arrived here yesterday and left for the place of their destination. Gen. Harney also left yesterday for Omaha and the Indian country, on business connected with the Indian Peace Commissioners.

WASHINGTON, August 20.--Dispatches received from Lieut.-Gen. Sherman, dated Fort Leavenworth, state that troubles on the Saline and Solomon rivers are acts of violence against settlers by dog soldiers and Cheyennes; the former cause of trouble is supposed to have grown out of the recent fight between the Cheyennes and Pawnees; the latter getting worsted, are supposed to have attacked all settlers for revenge. Sheridan had sent plenty of troops, and gone in person to the place of hostilities. By direction of the Secretary of War, Maj.-Gen. A. Baird, Assistant Inspector General, will report in person to Maj.-Gen. Meade for assignment to duty as Inspector General of the Department of the South.

Secretary Browning has received an affidavit from the President of the Western Pacific Railroad, announcing an additional section of twenty miles of the road, extending 700 miles west of Omaha, has been completed. The Government will report in person to Maj.-Gen. Meade for assignment to duty as Inspector General of the Department of the South.

The New York Democratic State Convention meets at Albany on the 3d of September, to nominate candidates for State offices. Mayor Hoffman and Senator Murphy are the prominent candidates for the nomination for Governor.

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