THE DISPATCH.
BY COWARDIN & ELLYSON.
CASH—INVARIABLY IN ADVANCE.
The DAILY DISPATCH is delivered to subscribers at FIFTEEN CENTS per week, payable to the carrier weekly. Mailed at $6 per annum; $3 for six months; $1.50 for three months; 50c. for one month.
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Richmond Dispatch.

THURSDAY..............MAY 15, 1879.

THE CIRCULATION OF THE DISPATCH IS LARGER THAN THE COMBINED CIRCULATION OF ALL THE OTHER DAILY NEWSPAPERS OF THE CITY.

WEATHER REPORT.

INDICATIONS FOR TO-DAY.—For the Middle Atlantic States, stationary or falling barometer, slightly warmer southeast to southwest winds, clear or partly cloudy weather. For the South Atlantic States, stationary or falling barometer, southeast winds, slightly higher temperature, partly cloudy weather, and numerous rains.

THE WEATHER YESTERDAY was clear and warm. At night it was mild and pleasant.

THERMOMETER YESTERDAY: 6 A. M., 63; 9 A. M., 70; noon, 80; 3 P. M., 84; 6 P. M., 79; midnight, 70.
Mean temperature, 74½.

LOCAL MATTERS.

MRS. BRADLEY JOHNSON'S FETE.—One of the most novel and elegant entertainments ever given in this city was at the residence of General Bradley T. Johnson last evening. General Johnson, wishing to open his house to his friends once more before the family broke up preparatory to leaving the city, and Mrs. Johnson wishing to assist the children of Grace church, who are endeavoring to place the chancel-window in the church, they determined to receive their friends in this manner, and she dedicated to that charitable use all the rare exotics and other flowers of her green-house, which she has been years in collecting.

Seven rooms are open. Two are for refreshments, where one can get a charming supper at a reasonable price; one is for flowers, which is filled with the choicest plants of Mrs. Johnson's collection and cut-flowers contributed from the conservatories of her friends. A room is set apart for tobacco and all its forms and accessories—pipes—chibouks, nargiles, meerschaums, and Powhatans. Turkey, Germany, and Virginia have all contributed to adorn the divan and to make the smoker happy. A cigar fresh from Havana can be enjoyed on the turf in the grounds, fragrant with the odor of the May roses.

Another room is the bazaar, where elegant trifles, useful nicknacks, and grotesque toys are displayed in artistic order. And in another room the parlor is dedicated to a gold mine, where children can find every treasure that delights the hearts of the little ones.

The merchants of the city have vied with each other in their assistance, and Kessnich's Band tendered their last courtesy to the General and his wife in giving their services, which were gratefully received and highly appreciated by all.

The house and grounds were filled to a late hour with a merry throng, and we expect all who did not avail themselves last night of the opportunity will do so to-night to give the host and hostess a last handshake and their best wishes for health, happiness, and prosperity in their new-old home.

KILLED BY A STREET-SPRINKLER.—Mr. E. R. Stone, who was thrown from and run over by the street-sprinkler he was driving on Tuesday, died yesterday morning about 4 o'clock. He will be buried at 10 o'clock this morning from the Clay-Street Methodist church.

Mr. Stone had charge of the sprinkling in the neighborhood of Seventh and Grace streets, and it was in this vicinity that his horse became frightened and ran off down Seventh street from Grace. Near the side of Dr. McGuire's house, corner Seventh and Franklin streets, he was thrown from his seat and dragged some distance, his feet becoming entangled in the reins. One of the wheels then passed over him, inflicting terrible injuries, from the effect of which he died.

He lived at 307 west Marshall street, was about fifty-one years of age, and was the father of Mr. Dudley M. Stone, one of the drivers in the Fire Department—Steamer Company No. 5.

FIRE-ALARM STATION MOVED—NOT A FIRE.—In consequence of the recent fire at the Chesapeake and Ohio shops, at the extreme end of Seventeenth street, and of the difficulty in getting access to a fire-alarm station, General W. C. Wickham, vice-president, petitioned the Committee on Fire-Alarm and Police Telegraph to move Station 24 from the corner of Seventeenth and Washington streets to the vicinity of the shops. At the last meeting of the committee the subject was duly considered, and Superintendent Paynter requested to make the change. Yesterday the change was made, and the box is now located at the corner of Seventeenth and Lownes streets, or at the corner of the former paint-shop of the company.

At half-past 12 o'clock yesterday the work was completed, and after the usual signal, 8–2, was given, the box (2–4) was turned in and found to work well. The stationmen, however, at No. 2 Steamer's house, mistook the signal and went out with their apparatus nearly to the box.

THE OLD RESERVOIR.—Among the pleasant spots about the city, perhaps there is no place more charming or more generally resorted to by our citizens in the spring and summer evenings than the old reservoir. Visitors to the city are invariably struck with the air of beauty and cleanliness everything there presents, and not unfrequently express their admiration in unqualified terms. Above all, they speak of the gentlemanly courtesy and politeness of the superintendent, Mr. Lysander W. Rose. He certainly deserves their praise, for a more gallant and polite gentleman is hard to find. His attention and care, united with a display of his refined taste, make the grounds present an almost faultless appearance of beauty and luxuriance. This reservoir is certainly a charming spot, where the wearied citizen can enjoy the beauties of nature, fanned by cool, refreshing breezes.

STOP FISHING FOR BASS TO-DAY—ASTONISHING INCREASE IN FISH.—To-day (15th) closes the black bass and mill-pond chub season, and until the 1st of July to catch or have in possession subjects the party offending to a heavy fine. The black bass are breeding in very large numbers in the quiet nooks around the falls of the James, and the young are well advanced in size in many cases. As many as a dozen pair can be seen in favorable localities in a few hundred yards, in the present state of low and clear water, guarding their young or eggs.

HEBREW MEMORIAL CELEBRATION TO-DAY.—To accommodate the visitors to the Hebrew memorial ceremonies to-day Major A. W. Garber will run a line of omnibuses to the cemetery at intervals of fifteen minutes, starting from Ford's Hotel at 2 P. M. The Walker Light Guard (Company B), First Virginia regiment, will take part in the floral decorations.

A LITTLE BOY DROWNED.—Yesterday afternoon Walter Gunst, aged seven years, son of Henry Gunst, No. 1413 Main street, while fishing with two companions from the stone-work under the Fourteenth-street bridge where it crosses the dock, fell into the water and was drowned. The body was recovered.

CONFIRMATION SERVICES LAST NIGHT.—There was a very large congregation at old St. John's church last night to witness the solemn and impressive confirmation services, Bishop Whittle officiating. The class was an unusually large one, fifteen males and twenty-five females being confirmed.

WRIT REFUSED.

Decision of Judge Hughes in the Kinney Case.

A WRIT OF HABEAS CORPUS DENIED THE CONVICT KINNEY—INQUIRY WHETHER THE VIRGINIA LAWS IN RELATION TO INTERMARRIAGE OF WHITES AND BLACKS VIOLATE ANY PROVISION OF THE FEDERAL CONSTITUTION OR LAWS—PROBABILITY OF AN APPEAL.

In the case of Edmund Kinney, a negro man confined in the penitentiary for marrying a white woman in defiance of the laws of Virginia, and who applied for a writ of *habeas corpus*, Judge Hughes yesterday delivered the following opinion:

The question presented by this petition involves so seriously the relations of the Federal courts to the laws of the States, and their administration by State tribunals, that I shall be excused for giving a carefully-considered and pains-taking explanation of the grounds of my action in this matter. Leaving out of the text such words and clauses as have no application to the case, the following are the provisions of law relating to the jurisdiction of this Court on the question of awarding a writ of *habeas corpus* on this petition:

Section 753 of the Revised Statutes of the United States provides that the writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless (among other instances, of which this is not one) "where he is in custody in violation of the Constitution or a law of the United States."

Section 754 requires that the application for the writ shall be in writing, setting out the facts concerning the petitioner's detention, verified by affidavit; and section 755 authorizes the writ to issue "unless it appears from the petition itself that the applicant is not entitled thereto."

The writ, therefore, is not issued, as a matter of course. Whether it shall go out or not depends upon

THE FACTS PRESENTED

by the petition showing whether or not the petitioner's detention in jail is in violation of the Constitution or a law of the United States. If it appears from the petition itself that the Constitution or a law of the United States has not been violated in the petitioner's arrest and imprisonment, then, of course, the writ must not go out.

It must not be forgotten that the Federal courts are forbidden to issue the writ of *habeas corpus* in favor of prisoners in jail under conviction of State courts unless the petition makes a case of jurisdiction under section 753. I am to inquire whether the averments in this petition release me from that inhibition. I can imagine no subject on which the Federal courts ought to be more considerate in assuming an exceptional jurisdiction.

The petitioner here is a negro man; but the question of issuing the writ does not turn upon any provision of the Constitution relating particularly to race or color. It is only the fifteenth amendment which makes special mention of that subject—in providing that the right of a citizen of the United States *to vote* shall not be denied or abridged on account of race or color. No other provision relates particularly to the distinction of race of color. And as no question *of voting* is raised in this case, we have no concern with the fifteenth amendment.

THE QUESTION HERE

is one of marrying; and there is nothing in the national Constitution expressly forbidding a State from abridging the right of marrying, or indeed any right but that of *voting*, on account of race or color. No provision of the Constitution relating particularly to the colored man *as* such has been violated by the State of Virginia in the prosecution, conviction, and imprisonment of this petitioner.

If any constitutional provision has been violated at all it is only some general provision relating to the rights and privileges of citizens in general. It is contended that the first section of the fourteenth amendment has been thus violated. That section declares that "all persons born in the United States are citizens of the United States and of the State wherein they reside," and provides that "no State shall make or enforce any law which shall abridge the privileges of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws."

This section, after declaring that all persons born in the United States shall be citizens (1) of the United States and (2) of the State wherein they reside, goes on in the same sentence to provide that no State shall abridge the privileges of citizens of the United States, but does not go on to forbid a State from abridging the privileges of its own citizens. Leaving

THE MATTER OF ABRIDGING

the privileges of its own citizens as such to the discretion of each State, the section proceeds, in regard to the latter, only to provide that no State "shall deny to any person within its jurisdiction the equal protection of the laws."

Thus the fourteenth amendment itself classifies the privileges of citizens into those which they have as "citizens of the United States" and those which they have as "citizens of the State wherein they reside"; and this classification has been abundantly recognized, illustrated, and enforced by the Supreme Court of the United States in numerous decisions: Trustees of Dartmouth College *vs.* Woodward, 4 Wheaton, 629; Gibbons *vs.* Ogden, 9 Wheaton, 203; New York City *vs.* Miln, 11 Peters, 133; Scott *vs.* Sandford, 19 Howard, 404–'6 and 580; License-Tax Cases, 5 Wall., 471; Paul *vs.* Virginia, 8 Wall., 180; United States *vs.* Witt, 9 Wall., 41; The Slaughter-House Cases, 16 Wall., 36; United States *vs.* Reese *et al.*, 2 Otto, 214; and United States *vs.* Cruikshank *et al.*, 2 Otto, 542. See also Corfield *vs.* Corgell, 4 Wash. C. C., 371; United States *vs.* Petersburg Judges of Election, 1 Hughes, 505; and The Federalist, No. 45.

THE RIGHTS WHICH A PERSON HAS

as a citizen of a State are those which pertain to him as a member of society, and which would belong to him if his State were not a member of the American Union. Over these the States have the usual powers belonging to government; and these powers "extend to all objects which in the ordinary course of affairs concern the lives, liberties [privileges], and properties of the people, and the internal order, improvement, and prosperity of the State."—Federalist, No. 45. "The framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions adopted for internal government, and the instrument they have given us is not to be so construed."—Chief-Justice Marshall speaking especially of marriages in the Dartmouth-College case, 4 Wheaton, 629. Their powers extend, of course, to the control of the domestic relations of all classes of citizens of a State.

On the other hand, the rights which a person has as a citizen of the United States are such as he has by virtue of his State being a member of the American Union under the provisions of our national Constitution. For instance, a man is a citizen of a State by virtue of his being native and resident there; but if he migrates into another State he becomes at once a citizen there by operation of the provision of the Constitution of the United States making him a citizen there; and he needs no special naturalization, which but for the Constitution he would need, to become such a citizen. Again, if a citizen of Virginia is allowed by her laws to carry on a business by paying a certain tax, a citizen of Maryland who comes into Virginia and pays the tax is entitled, under the national Constitution, to carry on the same business in Virginia. The Virginian carries on the business here by right of his State citizenship; the Marylander carries it on here by right of his national citizenship.

In the

SLAUGHTER-HOUSE CASES

the Supreme Court of the United States had under review an act of the Legislature of Louisiana incorporating a company and conferring upon it the exclusive privilege of slaughtering animals within a defined area adjoining the city of New Orleans. Certain butchers of the vicinity, who were thus deprived of the privilege of exercising their trade in that area, assailed the charter as contrary to the provision of the fourteenth amendment of the national Contitution quoted above. But the Supreme Court held that the privilege of butchering animals was of the class belonging to persons as citizens of their State and not belonging to them as citizens of the United States. It therefore held that the legislative act abridging this right of the New Orleans butchers and confining it exclusively to a favored corporation did not violate the fourteenth amendment, or any law passed under it, and could not be the subject of relief by a Federal court, however unjust the State law.

In the light of this commentary, can it be intelligently contended that the

LAWS OF VIRGINIA RELATING TO MARRIAGE

are obnoxious to the fourteenth amendment?

The *ninth* section of chapter 104 of the Code of Virginia provides that "no man shall marry his mother, grandmother, stepmother, sister, daughter, grand-daughter, half-sister, aunt, son's widow, wife's daughter, or her grandmother or stepmother, brother's daughter or sister's daughter."

The *tenth* section of the same chapter provides that no woman shall marry within degrees correlative with those defined in the *ninth* section.

Among still other inhibitions of marriage the same Code, in the 1st section of chapter 105, provides that "all marriages between a white person and a negro, and all marriages which are prohibited by law on account of either of the parties having a former wife or husband then living, shall be absolutely void without any decree of divorce or other legal process."

THE PENAL PROVISIONS

are as follows:

"If any person marry in violation of the *ninth* or *tenth* section of chapter 104 of the Code he shall be confined in jail not more than six months, or fined not exceeding five hundred dollars, at the discretion of the jury."

"Any white person who shall intermarry with a negro, or any negro who shall intermarry with a white person, shall be confined in the penitentiary not less than two nor more than five years."—Criminal Revisal of 1878, chapter vii., sections 3 and 8.

It is clear that I am bound by the authorities which have been cited to treat the privilege of marrying as belonging to the class of rights which a person has as a member of society, and not to the class which he has by virtue of the State in which he resides, being a member of the American Union. If Virginia were in the mid ocean or on the antipodal continent her control over the rights and privileges of her citizens as members of society, including marriage, would be no more certainly than now unrestrained by any provision of the national Constitution. The right to enact as law any one of the three prohibitions of marriage which have been quoted from the Code as between her own citizens residing within her own territory is as clear as the right to make the other two. With the propriety,

POLICY, OR JUSTICE

of such laws a court of the United States has nothing to do. As individual citizens their judges might possibly question the policy of such a State law; but as judicial officers they can only inquire what is the law. The fourteenth amendment gives no power to Congress to interfere with the right of a State to regulate the domestic relations of its own citizens; and if a State enacts such laws as those which have been quoted, the Federal courts must respect them as they stand without inquiring into the reasons of them. However harsh a State law may be, they can only say with Ulpian, "*Hoc quidem perquam durum est, sed* ITA LEX SCRIPTA EST."

The clause of the fourteenth amendment under review makes a further distinction. After declaring that no State shall make any law which shall abridge the privileges of citizens of the United States it adds: "Nor deny to any person within its jurisdiction the equal protection of the laws."

Here is a distinction between citizens of the United States and "any persons," whether citizen or alien, residing or happening to be within the borders of a State. The declaratory clause forbids any abridgment of the rights of citizen of the United States; the remedial clause gives

EQUAL PROTECTION TO ALL

persons whatever while within a State's borders. The amendment does not provide that the *privileges* shall be equal, but it does provide that *protection* shall be equal. It establishes equality between all persons in their right to protection, but does not confer equality in the privileges they are to enjoy. It provides that whatever privileges the Constitution and laws of the United States confer upon a citizen as a citizen of the United States shall be enjoyed without abridgment; and it provides that all persons within a State, whether citizens of the United States or of the State, or aliens, shall be equally protected by the laws in whatever privileges, whether equal or not equal, they may have from the United States or from the State. However unequal their privileges respectively, yet a foreigner, a citizen of another American State, and a citizen of the State, shall have the benefit equally in the State of all remedial laws for the recovery of rights and of all legal safeguards ordained for the protection of life, liberty, and property.

I think it plain from this review that an

EQUALITY OF PRIVILEGES

is not enforced by the Constitution upon a State in respect to its domestic laws for the government of its own citizens as such while they are within its jurisdiction. But even if it did require an equality of privileges, I do not see any discrimination against either race in a provision of law forbidding any white or colored person from marrying another of the opposite color of the skin. If it forbids a colored person from marrying a white, it equally forbids a white person from marrying a colored. In its terms, and for all I know in its spirit, the law is a prohibition put upon both races alike and equally. In the present case the white party to the marriage is imprisoned as well as the colored.

I think it clear, therefore, that no provision of the fourteenth amendment has been violated by the State of Virginia in its prosecution of this petitioner. It would seem to follow from this conclusion that no act of Congress passed to enforce that amendment is violated; and I know of none that can be claimed to have been, unless it be section 1977 of the Revised Statutes, which provides that "all persons within the jurisdiction of the United States shall have the same right in every State to make and enforce contracts as is enjoyed by white citizens, and shall be subject to like punishments," &c.

AS TO PUNISHMENTS,

I have just shown that the penalty of the State law is denounced equally and alike upon the white and colored persons who contract the illegal marriage with each other. As to rights, this is a law for the enforcement of that clause of the fourteenth amendment which requires a State to give the equal protection of the laws to all persons within its borders. All are permitted to make and enforce contracts—not, indeed, any sort of contracts which they may see fit to make; *e. g.*, polygamous or incestuous contracts of marriage, or usurious contracts for money; but such contracts as are lawful. It is for a State and for Congress, each within its respective sphere of constitutional authority, to say what shall be lawful contracts; and it is only such as are legal that can be made and enforced within the State by "all persons within the jurisdiction of the United States," provided the State law does not abridge a right which a person has in his character of a citizen of the United States, of which marriage, as we have seen, is not one. The State may declare at will what contracts are and what are not legal within its jurisdiction; and section 1977 confers the right of enforcing only such contracts as are legal.

Congress has made no law for the States relating to marriage. It has not done so simply because it has no constitutional power to make laws affecting the

DOMESTIC RELATIONS

and regulating the social intercourse of the citizens of a State, which power belongs all the world over to the government of the local society. If it were to make such a law for the States, that law would be unconstitutional, and the Federal courts would not hesitate to declare it so. It is the State which is endowed with the sovereign power of making such laws; and therefore only those contracts of marriage that are legal under State laws can be enforced or enjoyed within the jurisdiction of the State.

All this has been said on the hypothesis that the contract of marriage is subject, like pecuniary contracts, to the operation of section 1977. But marriage is more than a contract. It may be entered into at the will of competent parties; but it cannot, as other contracts may, be released at their will. Nor can its terms be shaped at their will; it can be for so many years and then cease, for it must be "until death us do part"; it cannot be entered into with one or more of the opposite sex at pleasure, but must be with one only, for the joint lives; it cannot be confined in effect to a single territorial jurisdiction, but has the same effect all over the world, so far as permitted by the law of each State or nation. Bentham calls it

"A NOBLE CONTRACT,

the tie of society, and the basis of civilization."

It is plain therefore that marriage is not, in many of its qualities, of the class of contracts contemplated by section 1977 of the Revised Statutes. And in the Dartmouth College case, 4 Wheat., 629, it was held by the Supreme Court of the United States that the clause of article I., section 10, of the national Constitution, forbidding a State from passing any law impairing "the obligation of *contracts*," does not embrace marriage, it never having been intended to forbid a State Legislature to pass an act of divorce, or an act conferring power upon State courts to grant decrees of divorce—the Supreme Court being of opinion that the contracts contemplated by the clause were only such as relate to *property* or *pecuniary value*.—1 Minor's Insts., 275. Thus we see, from another point of view, that marriage is not one of the "privileges" in regard to which the national Constitution and Congress can restrict the power of the States.

It is clear on the whole that section 1977 is not violated by the marriage laws of Virginia, and I know of no other act of Congress that has been, considering the petitioner and his consort as citizens of Virginia, and treating their case as if their marriage had been entered into in this State.

But this marriage was not entered into here. The parties to it went to the District of Columbia for the purpose of contracting it, did there contract it, and returned to reside and cohabit together in this State.

Yet this is not the case of

CITIZENS OF ANOTHER STATE

lawfully married in that domicile and afterwards migrating thence in good faith into this State. If this petitioner had been a born citizen of the District of Columbia, and had there married a white woman in conformity to the laws of that jurisdiction, and had afterwards migrated with his wife into Virginia, and had been after becoming thus domiciled here prosecuted under that provision of the law of Virginia which has been quoted, and convicted and imprisoned, and had filed his petition here, praying for an inquiry into the cause of his detention in prison, the case presented would have been essentially different from that actually under consideration. Then the question would have been, whether such citizen of another State could claim here the protection of the second section of the fourth article of the national Constitution. This section declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

At first blush it would seem that this provision would give a citizen of the District of Columbia, lawfully married as a citizen there, and afterwards domiciliating here, the right to reside here under that marriage. But even in such a case the Supreme Court has decided otherwise. That such a citizen would have

A RIGHT OF TRANSIT

with his wife through Virginia, and of temporary stoppage, and of carrying on any business here not requiring residence, may be conceded; because there are privileges following a citizen of the United States as given by the section just quoted, and by the clause of the fourteenth amendment previously considered. But it is equally true that such a citizen could not, by becoming a citizen of Virginia, bring here the privilege of exercising as such a right legally enjoyed in the District, but not given here. In the case of Paul *vs.* Virginia, 8 Wall., 180, the Supreme Court of the United States held that "special privileges enjoyed by citizens in their own States are not secured in other States" by the provision of the fourth article of the Constitution, which has been quoted. Reviewing its decision in Bank of Augusta *vs.* Earle, 13 Pet., 586, the Court said that it was never intended by this provision to give to citizens from another State higher and greater privileges in any State than are enjoyed by citizens of that State; that it "was not intended by the provision to give to laws of one State any operation in other States; that they can have no such operation except by the permission, express or implied, of those States; and that the special privileges which they confer must be enjoyed at home, unless the assent of other States to their enjoyment therein be given (pp. 180–'81 of 8 Wallace).

The provision of the Constitution in question refers to the privileges given in

THE STATE INTO WHICH A CITIZEN GOES,

and not to those given in the State *from* which he comes. And so, even if this petitioner had been a citizen of another State, lawfully married there, and had come here, bringing his wife, intending to live here in a condition of matrimony forbidden by our laws, he could not claim the protection of the national Constitution or any law of Congress in thus violating our laws.

But the case of the petitioner is weaker than that just supposed. He and his consort were citizens of Virginia. They went abroad to be married in evasion of her laws, and they returned to cohabit here together in violation of them. The marriage certificate gives Virginia as the petitioner's residence, and his going to the District of Columbia was plainly an act *in fraudem legis domesticae*.

The question whether a marriage, illegal at home, and contracted in another place to which the parties had gone in intentional violation of the domestic law, should be treated as valid by the home State on their resuming residence within it, has been much discussed by

LEARNED JURISCONSULTS,

such as Burge, Huber, Savigne, Pothier, Lord Mansfield, Lord Campbell, Lord Cranworth, Story, Kent, Wharton, and others, whose opinions have been divided. But the question thus discussed has supposed the non-existence of positive law in the home State. It has been on the question whether the courts of the home State, in the absence of statutory law, should treat the marriage as valid in comity to the State where it was contracted, all writers conceding to the home State the power of adopting positive laws declaring such marriages illegal at will; for I think I do not go too far when I assert it as a principle now well settled that "a State may follow its citizens abroad and attach to acts done there the same consequences as if done at home on the return of the participants home; and that though the law of the place of a marriage may determine its forms and regularity, yet the law of the domicile of the parties must decide whether the contract is one which might be lawfully made"; and this unquestionably is the rule in regard to marriages polygamous, incestuous, and contrary to public policy. Our own Court of Appeals has so decided in Kinney *vs.* Commonwealth, 2 Virginia Law Journal, 632; following

THE ENGLISH HOUSE OF LORDS

in the case of Brook *vs.* Brook, 9 House of Lords Cases, 193. So, also, have the Supreme Courts of North Carolina, South Carolina, and Louisiana, in Williams *vs.* Oates, 5 Iredell, 538; State *vs.* Kennedy, 76 No. Car., 251; State *vs.* Ross, 77 Ibid. and Central Law Journal for April, 1877, and Dupre *vs.* Bonead, 10 La. Ann., 411. But the Supreme Court of Massachusetts in Medway *vs.* Needham, 16 Mass., 157, and that of Kentucky in Stevenson *vs.* Grey, 17 B. Monroe, 192, have decided contrariwise.

The question can no longer be treated as open, however, in Virginia, whose Legislature has recently, in the criminal revisal of March 14, 1878, chapter 7, section 3, declared that "If any person, resident in this State and within the degrees of relationship mentioned in the *ninth* and *tenth* sections of chapter 104 of the Code, or any white person and negro, shall go out of the State for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be as guilty, and be punished, as if the marriage had been in this State." Now, there are many illegal marriages other than those named in the foregoing penal section of which, though illegal here, Virginia takes no notice if contracted without her jurisdiction. The ordinary

"RUNAWAY MATCHES"

so frequent in this country, and those known as Gretna-Green marriages in England, are not placed in either country under the ban of annulling or penal statutes; but on the principle of inter-State comity are allowed to stand good. It is only marriages which are polygamous, incestuous, or contrary to public policy, which are made the subject of penal enactments such as that of the third section of chapter vii. of our criminal revision just given.

This petitioner is here, not as a citizen of the District of Columbia, to which he went to be married in evasion of the laws of Virginia, but as a citizen of Virginia, amenable to her laws. He is here in that character only, and has brought back no other right in regard to the marriage which he made abroad than he took away. He cannot bring the marriage privileges of a citizen of the District of Columbia any more than he could those of a citizen of Utah into Virginia in violation of her laws. It was competent for the State of Virginia, so far as there is anything in the Constitution and laws of the United States to prevent, to enact the law just quoted, under which the petitioner was convicted, and therefore his case is beyond relief from a Federal court.

I know it is claimed that the provision of the fourth article of the national Constitution, which requires each State "to give full faith and credit to the public acts, records, and judicial proceedings of the other States," has

AN IMPORTANT BEARING

upon the present case. I have already abundantly shown that it cannot have the effect of making the laws of one State the laws of another. It is doubtful whether the marriage certificate of a clergyman or magistrate is a "*public*" record in the meaning of this provision of the Constitution. The one exhibited with this petition is nothing but a private paper, having no certification, the names of the minister and of attesting witnesses all written in the same hand—a very crude document. But whether it be or not, the clause in question could only go to the extent of rendering indisputable the fact of the marriage and its legality in the place of contract. To give to public records "full faith and credit is to attribute to them positive and absolute verity, so that they cannot be contradicted or the truth of them denied any more than in the State where they originated."—Story on the Constitution, section 1310. "A court is bound to take judicial notice of the public records of another State."—Owings *vs.* Hull, 9 Pet., 627. "A judgment in one State is a judgment in another, only so far as to preclude inquiry as to the merits of the subject matter of the original judgment."—McElmogle *vs.* Cohen, 13 Pet., 312. So that a money judgment of a court in another State is not a judgment here, but only a *chose in action* requiring to be specially sued upon in this State. A public record certifying a marriage to have been legally contracted and valid there, though indisputable proof here of those two facts, yet does not convert the fact of validity there into validity here, contrary to the express local law.

IT HAS NEVER BEEN PRETENDED

that laws of a State can, by the acts of individuals, be subordinated within its own jurisdiction to the laws established by another State. A citizen of Virginia may go to the Federal District of Columbia, or to the Federal Territory of Utah, and be married there in conformity to local laws, and may remain there as a resident and citizen with impunity. But if his object in going was to evade the laws of Virginia, and if after marriage he return here and remain in a condition of matrimony forbidden by our laws, the certificate of his marriage in the District or Territory in conformity to its laws will have no other value here than as indisputable proof of the violation of our laws.

On the whole, I am of opinion that the law of Virginia under which the petitioner is detained in prison by the State does not violate the Constitution or any law of the United States, and that I have consequently

NO JURISDICTION

to grant the relief for which the petitioner prays. The writ of *habeas corpus* is denied.

It may be that it would not have been technically improper to have awarded the writ before the hearing, and to have had the petitioners produced in court, with the *mittimus* showing for the State the cause of his detention. But it seemed to me from the beginning that his petition did not itself make a case for his discharge; but that on his own showing he would have to be remanded, and in affectionate veneration for the dignity of our State I was unwilling by any avoidable positive act to bring into question the validity of her laws or the legality of her judicial proceedings.

A motion has been entered for a rehearing of the case when Chief-Justice Waite comes to the city, and if the judges divide it may then go up to the Supreme Court of the United States.

PERSONALS AND BRIEFS.—The Richmond Light Infantry Blues will join in the visit of the military to Hollywood on memorial-day.

Rev. Dr. J. William Jones has returned to the city from Atlanta.

Hon. John Ambler Smith is in the city.

The cases before the Police Court yesterday were all of a trifling character.

MISS HERNDON'S MATINEE SATURDAY.—Seats for the Herndon matinée Saturday are being sold at Wyatt's. The attendance will no doubt be worthy of the great artiste. It was not generally understood that there would be no performance last night, and a large number of our citizens were disappointed. She appears, however, Saturday.

COLORED BAPTISTS.

MEETING OF THE STATE CONVENTION AT EBENEZER CHURCH YESTERDAY—SERMONS DELIVERED—OFFICERS ELECTED—APPOINTMENT OF A LARGE NUMBER OF COMMITTEES.

The Virginia State Baptist Convention (colored) met yesterday morning at Ebenezer church, and was called to order by the President, Elder R. Wells. Prayer was offered by Elder J. W. Patterson.

The President's address was then read. A letter of welcome was next read, "making all feel at home," as the secretary tersely said in his minutes.

Under a suspension of the rules the following committees were appointed:

On Finance: James Gregory, N. P. Vandervall, and J. B. Lowe.

Finance Committee on Foreign Funds: A. Taylor, D. King, and J. H. Holmes.

On Permanent Organization: Elders W. H. Corbin, R. W. Wright, and S. W. Madder, M. T. Lewis, J. E. Brown, W. H. Brown, and Dr. John Brooks.

On Letters on New Churches: Elder W. J. Thompson, H. Jennurson, R. Spiller, J. Cross, W. G. Hasting, R. C. Brown, C. Oliver, John Jones, and M. Williams.

The following were appointed to assist the clerk in reading letters: J. Herndon, W. J. Barnett, J. E. Farrar, J. W. Patterson. The letters were then read.

Elder H. Johnson being absent, Elder J. Herndon was appointed to preach the missionary sermon.

OPENING SERMON.

The opening sermon was then preached by Elder L. A. Black. Elders F. Cook, H. Jennurson, and J. W. Patterson assisted in the services. The sermon was from Rom. xv., 29: "And I am sure that when I come unto you I shall come in the fullness of the blessing of the Gospel of Christ."

Elder W. H. Brooks was appointed to enroll the delegates.

Adjourned with prayer by Elder J. E. Brown.

AFTERNOON SESSION.

Religious exercises were conducted by Elders F. W. Morris and Robert Grigsby.

The Committee on Permanent Organization made the following report:

For President, Elder L. A. Black against Elder R. Wells; First Vice-President, Elder M. T. Lewis, of Charlottesville, against Elder John Jones, of Liberty; Second Vice-President, Elder R. Spiller, of Norfolk, against Elder F. W. Morris, of Lynchburg; for Secretary, Elder A. Binga, Jr., of Manchester, against Elder W. H. Brooks, of Richmond; for Corresponding Secretary, Elder J. E. Brown against Elder E. G. Corprew, of Portsmouth; for Treasurer, Elder F. Cook, of Alexandria, against Deacon J. E. Farrar, of Richmond.

J. Herndon and J. W. Patterson were elected tellers, and the following officers declared elected:

President: R. Wells, Richmond.
First Vice-President: John Jones, Liberty.
Second Vice-President: F. W. Morris, Lynchburg.
Recording Secretary: A. Binga, Jr., Manchester.
Corresponding Secretary: E. G. Corprew, Portsmouth.
Treasurer: J. E. Farrar, Richmond.

COMMITTEES.

The President appointed the following committees:

On Mission-Fields: J. W. Patterson, E. G. Corprew, A. A. Matthews, R. Lewis, F. Anthony, C. C. Figgins, J. E. Farrar.

On Missionaries: J. H. Hunt, J. A. Rather, James H. Fox, B. C. Collier, A. Forbes, T. Tabb, A. J. Cleveland, Joseph Carter, James Allen, J. R. Jemmerson.

On Schools: W. H. Brooks, W. Bassett, L. Branch, E. Ryals, C. Storers.

On Education: J. E. Jones, D. N. Vassar, M. Walker, E. Saunders, W. Harris, Spencer Green, R. F. Lancie, Sisters Barbara Harris, Rebecca White, and Kate Linear, and James Barns.

On Devotional Exercises: Pastors and deacons of Baptist churches of Richmond.

On Temperance: P. H. A. Braxton, J. R. Stokes, J. M. Land, J. E. Brown, and Sisters R. Henly, Lavinia Coleman, M. A. Stevens, M. J. Bates, M. E. Batts, Susan Gray, W. Cousias, B. L. Edwards, and Daniel Cross.

On Meeting of Convention: F. W. Morris, J. W. Pendleton, A. Ferganson, R. J. Jordan, F. Hackett, B. Jourdon, Sisters Caroline Washington, Lucy Lewis, Mary Ward, Rebecca Feuntain, and William Smith.

On Publication of Minutes: A. Binga, Jr., J. H. Holmes, W. H. Brooks, and J. E. Farrar.

On Resolutions: R. W. Wright, George Braxton, M. A. Williams, D. W. Wisher, F. Cook, J. W. Johnson, C. H. McDaniel, S. J. Fields, W. Boyd, J. Brooks, C. Oliver, M. Mann, and H. P. Weeden.

While the president was appointing the above committees remarks were made to the Convention by Revs. D. W. Wisher, W. B. Derrick, and J. E. Jones.

Adjourned, with prayer by Elder W. T. Lindsay.

At 8 o'clock the sermon on missions was delivered by Elder J. Herndon, of Charlottesville, to a crowded congregation.

THE THEATRE—CASTE.—A fair audience greeted the presentation of the comedy "Caste" at the Theatre last night by the New York Criterion Company. The *dramatis personæ* in the play, taken as a whole, rendered their parts very well.

Mr. Frank Roberts played Hon. George D'Alroy in a commendable, pleasing manner.

Mr. De Wolf Hopper as the aristocratic Captain Hawtree, rendered that character most acceptably.

The leading actress, and the fair lady who carried off the honors of the evening, was Miss Louise Sylvester as Polly Eccles. In all the girlish glee imaginable, together with her charming and attractive piquancy, she delighted the audience and won frequent applause.

Mr. Edward Francis as Sam. Gernidge (Polly's sweetheart), Miss Mary Davenport as Marquis De St. Maur, Miss Emma Pierce as Hester Eccles, Old Man Eccles as rendered by F. F. Mackay, and Dixon, by Mr. A. M. Jones, were all up to the standard.

The many witty remarks and sprightly acting of the cast seemed to greatly interest the audience, and frequently brought down the house with laughter. Oftentimes the acting was most affecting; but when the lighter faults of mankind, as portrayed in Caste, were required, the company seemed equally at home.

Freaks will be presented to-night, and we may add that something funnier than the allied circus is promised under the suggestive title. Nobody plays Freaks but the "Criterion," it is said, and if what the Truthful Jameses of the Boston and Philadelphia press say is to be taken for gospel, it is probable that nobody else can play it; for while it is mildly farcical in form it is difficult in character illustration. It is advertised as "A Screamer, in Four Acts"—not of Congress, however. Freaks may just hit the fancy and tickle the caprice of our play-goers.

MOZART MUSICALE.—The following attractive programme will be presented tonight: First, overture, "Merry Wives of Windsor" (Nicolai), orchestra; second, soprano solo, "Bright Star of Love" (Robandi), Mrs. Reinhardt; third, duo, piano and violin, Potpourri, "Carnaralisque" (C. V. Deberiot). Dr. Bartkowski and J. Reinhardt; fourth, "Stabat Mater" (Rossini), orchestra; fifth, soprano solo, "Judith" (Conoone), Mrs. Reinhardt; sixth, trio—violin, 'cello, and piano—Wolffe, Miss Thilow, Adolph Thilow, and C. W. Thilow; seventh, Potpourri, Traviata, (Verdi), orchestra.

THE DISPATCH
TERMS OF ADVERTISING.
CASH—INVARIABLY IN ADVANCE.
One square, one insertion........ $0 50
One square, two insertions........ 1 00
One square, three insertions........ 1 50
One square, six insertions........ 3 00
One square, twelve insertions........ 6 50
One square, one month........ 10 00
One square, two months........ 18 00
One square, three months........ 15 00

BROOKLAND MEETING.—There was a very large Conservative meeting in Brookland township yesterday, at which several addresses were made. A lively spat took place between E. R. Humphreys, independent candidate for commissioner of the revenue in the upper district, and County Superintendent J. N. Hopkins, during which Humphreys charged Hopkins with having defrauded him out of the nomination before the Conservative convention. This Mr. Hopkins stoutly denied (and his friends present substantiated what he said), and in his remarks used some very plain language.

Memorial-Day.

Editors Dispatch: What has the Hollywood Memorial Association determined to do in reference to admitting carriages to the cemetery-grounds on Memorial-day? S.

CUTICURA SOAP,
CUTICURA PASTE,
CUTICURA RESOLVENT,
just received at
POLK MILLER & CO'S.

THE BALCONY SCENE from Shakespeare's sublime tragedy of Romeo and Juliet at the HERNDON MATINEE SATURDAY. No extra charge for secured seats at Wyatt's.

WATER-COOLERS AND REFRIGERATORS that are needlessly wasteful in the consumption of ice are dear at any price. The true value of such articles lies in the non-conducting qualities of the material with which they are packed.

It pays to use MOUNTCASTLE & COFER'S "Excelsior" Water-Coolers and "Polar" Refrigerators, the only charcoal-packed ice-economizers on this market. Manufactured and sold only by MOUNTCASTLE & COFER, at 520 Broad street, Richmond, Va.

DROWSINESS, biliousness, pains and aches, and ague, HOP BITTERS always cures.

NEW STYLES—JUST OPENED.

IMPORTED SUITINGS,
FINEST GRADES,
$20, $22, $24, $25–$28.
Made in best manner.
Perfect fit guaranteed.
A. SAKS & CO., 1013 Main street.

IF YOUR HAIR IS COMING OUT, or turning gray, do not murmur over a misfortune you can so easily avert. AYER'S HAIR VIGOR will remove the cause of your grief by restoring your hair to its natural color, and therewith your good looks and good nature.

HERNDON,
AGNES HERNDON,
MISS AGNES HERNDON,
SATURDAY MATINEE.
Positively her only appearance in Richmond this season.

ALDERNEY BUTTER.

We are now receiving all of the FAMOUS ALDERNEY BUTTER from Dr. Bonnister's "OCEAN DAIRY," Auacha county, Va.

This butter is supplied by a herd of PURE ALDERNEY COWS.

The dairy is under the management of an expert of twelve years' experience in a famous northern creamery. It is made with unusual skill and nicety, neatly printed in pounds and half-pounds, and WILL BE RECEIVED REGULARLY THROUGHOUT THE YEAR IN REFRIGERATOR CANS.

We guarantee this butter to equal, if not surpass, any other "Gilt Edge" butter sold.

We are the exclusive agents.
R. T. ARCHER & CO.,
Northeast corner Eighth and Main streets.

CHEWING-TOBACCOS AND CIGARS of all grades. W. D. BLAIR & CO.

ALSACIAN BOWS, SILK AND LACE SCARFS, Linen Lawns, French Organdies, Buntings, Black Cashmeres, Black Alpacas, Crape Veil, Crape Collars, Ruffs and Rufflings, can now be had in great variety, and at low prices, at

LEVY BROTHERS',

who also are offering great bargains in

MATTING, OIL-CLOTHS, CARPETS, and

LADIES' LINEN SUITS.

MARICABO COFFEE, equal to Java, for sale by W. D. BLAIR & CO. at 18c. per pound.

SAVE MONEY by having your printing done at the DISPATCH PRINTING-HOUSE. Good work, low prices, and satisfaction guaranteed.

TEAS from 25c. per pound to the finest grades. W. D. BLAIR & CO.

M. ELLYSON & CO., advertising agents, insert advertisements in all of the newspapers of the United States at publishers' rates. Orders left at the *Dispatch* counting-room will receive prompt attention.

AUCTION SALES THIS DAY.

WELLINGTON GODDIN, 6 P. M., brick dwelling and large lot attached at the southeast corner of Monroe and Catherine streets.

CRUBBS & WILLIAMS, 5 P. M., trustee's sale of the large four-story brick dwelling No. 617 east Main street.

GODDIN, WARREN & CO., 5½ P. M., brick store with dwelling above at the southwest corner of Brook avenue and Leigh street, and small framed store in rear on Leigh street; also, brick house adjoining the above property.

J. THOMPSON BROWN, 5½ P. M., trustee's sale of a brick cottage on north Tenth street; also, a vacant lot in rear on Eleventh street.

ROBERT B. LYNE, 5½ P. M., brick tobacco factory, with splendid grounds attached.

JNO. E. LAUGHTON, JR., 10 A. M. and 5½ P. M. diamonds, gold and silver watches, gold jewelry, chains, &c.

WANTS.

WANTED, OCCUPANTS FOR TWO FRONT ROOMS, on second floor, with BOARD. Also, several TABLE-BOARDERS can be accommodated on liberal terms. No. 612 east Grace, corner Seventh street. my 15-4t*

WANTED, TWO YOUNG OR MIDDLE-AGED MEN—steady, sober men of energy, with $1,000 or $2,000 each—one as bookkeeper or assistant in a wholesale commission house, one to travel. Must some well recommended. Address, full name and residence, at once, BUSINESS, care *Dispatch* office. my 15-3t*

WANTED, TO RENT FURNISHED ROOMS (two chambers, dining-room, and kitchen, with use of parlor), or would rent a FURNISHED HOUSE. Address ROBERT EMMETT, *Dispatch* office. my 14-3t*

WANTED, BY A MIDDLE-AGED MAN, with several years' experience in selling goods in the country, a SITUATION in some business-house in the city. Would prefer grocery. Can draw in some custom. Salary not an object. Address C. B., *Dispatch* office. my 14-2t*

A MANUFACTURING COMPANY OF STAPLE ARTICLE WANT A GENERAL AGENT IN RICHMOND. Business permanent and pleasant. Worth from $2,000 to $5,000 a year. Address Post-Office Box 475, Yonkers, N. Y. my 14-2t

WANTED, A WHITE NURSE. Apply at 110 north Seventh street. my 14-2t

WANTED, A SERVANT TO DO GENERAL HOUSEWORK. Good wages. Apply at 1438 Main street. my 14-2t

WANTED, ONE SALESMAN FOR each State. Salary $75 to $100 per month and expenses. References required. LA BELLE MANUFACTURING COMPANY, Chicago. my 1-eod26t

WANTED, PURCHASERS FOR
75 tons BROWNSTUFF,
25 tons BRAN,
25 tons SHIPSTUFF,
500 bales PRIME HAY,
200,000 LARGE CYPRESS SHINGLES.
TRUMAN A. PARKER & CO.,
Lumber Dealers.
my 1-eod1m

WANTED, one salesman in each State to sell our goods. Salary, $1,000 a year. TRIUMPH MANUFACTURING COMPANY, 116 Monroe street, Chicago. my 8-1m

LOST, STRAYED, AND FOUND.

FOUND, A SUM OF MONEY, on Broad street. The loser can have it on proving property. Apply to A. FISKEN & CO., 303 Broad street. my 15-1t*

ESTRAY.—TAKEN UP IN MY WHEAT-FIELD, near Ham Cemetery, a LARGE PALE-RED-AND-BRINDLE COW; white belly and white spots, and one large teat. The owner will take her away and pay charges. WILLIAM A. ROBINSON. MAY 14, 1879. my 15-1t*

FOR RENT.

FURNISHED HOUSE OPPOSITE MONROE PARK FOR RENT for six months. Rent low. Apply at No. 5 Laurel street. my 14-2t*