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THE NATIONAL REPUBLICAN

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PATENT OFFICE NOTICES.

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, Nov. 21, 1866.

On the petition of James E. A. Gibbs, of "Steel's Tavern," Virginia, praying for the extension of a patent granted to him the 21st day of February, 1860, for an improvement in Design for a Sewing Machine, for seven years from the expiration of said patent, which takes place on the 21st day of February, 1867.

It is ordered that the said petition be heard at the Patent Office, on MONDAY, the 11th day of February next, at 12 o'clock, m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *Intelligencer*, Washington, D. C., and in the *Spectator*, Staunton, Virginia, once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. de13-law3w

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, December 7, 1866.

On the petition of William Coleman and Stephen G. Freeman, of Providence, R. I., praying for the extension of a patent granted to them on the 15th day of March, 1853, for an improvement in supporting the topping-lift and peak-halyard block of sail vessels, for seven years from the expiration of said patent, which takes place on the 15th day of March, 1867.

It is ordered that the said petition be heard at the Patent Office on MONDAY, the 25th day of February next, at 12 o'clock m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *Intelligencer*, Washington, D. C., and in the *Journal*, Providence, R. I., once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. de13-w3w

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, Oct. 10, 1866.

On the petition of Pinckney Frost, of Springfield, Vermont, praying for the extension of a patent granted to him the 11th day of January, 1853, and reissued the 8th day of February, 1856, for an improvement in Scythe Fastenings, for seven years from the expiration of said patent, which takes place on the 11th day of January, 1867.

It is ordered that the said petition be heard at the Patent Office on MONDAY, the 24th day of December next, at 12 o'clock m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *Intelligencer*, Washington, D. C., and in the *Vermont Journal*, Windsor, Vermont, once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. oc18-w3w

DEPARTMENT OF THE INTERIOR
United States Patent Office,
Washington November 19, 1866.

On the petition of William Smith, of New York, N. Y., praying for the extension of a patent granted to him the 5th day of April, 1853, for an improvement in Weaving Corded Fabrics, for seven years from the expiration of said patent, which takes place on the 5th day of April, 1867.

It is ordered that the said petition be heard at the Patent Office on MONDAY, the 18th day of March next, at 12 o'clock, m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *Intelligencer*, Washington, D. C., and in the *Times*, New York, N. Y., once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. no26-law3w

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, Nov. 23, 1866.

On the petition of Robert Waddell, of Liverpool, Kingdom of Great Britain, praying for the extension of a patent granted to him on the 5th day of June, 1854, antedated to April 27, 1853, and dated in England the 2d of ..., 1853, for an improvement in Balancing Slide Valves of Steam Engines, for seven years from the expiration of said patent, which takes place on the 27th day of April, 1867.

It is ordered that the said petition be heard at the Patent Office on MONDAY, the 18th day of February next, at 12 o'clock m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *Intelligencer*, Washington, D. C., and in the *Times*, New York, New York, once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. de5-w3w

DEPARTMENT OF THE INTERIOR,
United States Patent Office,
Washington, Oct. 29, 1866.

On the petition of Harvey March, of Lebanon, New Hampshire, praying for the extension of a patent granted to him the 14th day of June, 1853, for an improvement in Hoop Heads, for seven years from the expiration of said patent, which takes place on the 14th day of June, 1867.

It is ordered that the said petition be heard at the Patent Office on MONDAY, the 20th day of May next, at 12 o'clock m.; and all persons are notified to appear and show cause, if any they have, why said petition ought not to be granted.

Persons opposing the extension are required to file in the Patent Office their objections, specially set forth in writing, at least *twenty* days before the day of hearing; all testimony filed by either party, to be used at the said hearing, must be taken and transmitted in accordance with the rules of the office, which will be furnished on application.

Depositions and other papers, relied upon as testimony, must be filed in the office *twenty* days before the day of hearing; the arguments, if any, within *ten* days after filing the testimony.

Ordered, also, that this notice be published in the Republican and the *National Intelligencer*, Washington, D. C., and in the *Granite State Free Press*, Lebanon, New Hampshire, once a week for three successive weeks; the first of said publications to be at least sixty days previous to the day of hearing.

T. C. THEAKER,
Commissioner of Patents.

P. S.—Editors of the above papers will please copy, and send their bills to the Patent Office with a paper containing this notice. no7-law3w

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SUPREME COURT

HIGHLY IMPORTANT DECISION

The Principles Underlying our Government Clearly set Forth.

No. 350.—December Term, 1865.

Ex parte: In matter of Lambdin P. Milligan, petitioner. On a certificate of division of opinion between the Judges of the Circuit Court of the United States for the District of Indiana.

Mr. Justice Davis delivered the opinion of the Court:

On the 10th day of May, 1865, Lambdin P. Milligan presented a petition to the Circuit of the United States for the district of Indiana, to be discharged from an alleged unlawful imprisonment. The case made by the petition is this: Milligan is a citizen of the United States; has lived for twenty years in Indiana; and, at the time of the grievances complained of, was not, and never had been in the military or naval service of the United States. On the 5th day of October, 1864, while at home, he was arrested by order of Gen. Alvin P. Hovey, commanding the military district of Indiana; and has ever since been kept in close confinement.

On the 21st day of October, 1864, he was brought before a military commission, convened at Indianapolis by order of Gen. Hovey, tried on certain charges and specifications; found guilty, and sentenced to be hanged; and the sentence ordered to be executed on Friday, the 19th day of May, 1865.

On the 2d day of January, 1865, after the proceedings of the military commission were at an end, the Circuit Court of the United States for Indiana met at Indianapolis and empanneled a grand jury, who were charged to inquire whether the laws of the United States had been violated; and, if so, to make presentments. The court adjourned on the 27th day of January, having, prior thereto, discharged from further service the grand jury, who did not find any bill of indictment or make any presentment against Milligan for any offence whatever; and, in fact, since his imprisonment, no bill of indictment has been found or presentment made against him by any grand jury of the United States.

Milligan insists that said military commission had no jurisdiction to try him upon the charges preferred, or upon any charges whatever; because he was a citizen of the United States and the State of Indiana, and had not been, since the commencement of the late rebellion, a resident of any of the States whose citizens were arrayed against the Government, and that the right of trial by jury was guaranteed to him by the Constitution of the United States.

The prayer of the petition was, that under the act of Congress, approved March 3, 1863, entitled "An act relating to *habeas corpus* and regulating judicial proceedings in certain cases," he may be brought before the court, and either turned over to the proper civil tribunal to be proceeded against according to the law of the land or discharged from custody altogether.

With the petition were filed the order for the commission, the charges and specifications, the findings of the court, with the order of the War Department reciting that the sentence was approved by the President of the United States, and directing that it be carried into execution without delay. The petition was presented and filed in open court by the counsel for Milligan; at the same time the District Attorney of the United States for Indiana appeared, and, by the agreement of counsel, the application was submitted to the court. The opinions of the Judges of the Circuit Court were opposed on three questions which are certified to the Supreme Court—

1st. "On the facts stated in said petition and exhibits, ought a writ of *habeas corpus* to be issued?"

2d. "On the facts stated in said petition and exhibits, ought the said Lambdin P. Milligan to be discharged from custody as in said petition prayed?"

3d. "Whether, upon the facts stated in said petition and exhibits the military commission mentioned therein had jurisdiction legally to try and sentence said Milligan in manner and form as in said petition and exhibits is stated?"

The importance of the main question presented by this record cannot be overstated; for it involves the very framework of the Government and the fundamental principles of American liberty.

During the late wicked rebellion, the temper of the times did not allow that calmness in deliberation and discussion so necessary to a correct conclusion of a purely judicial question. *Then*, considerations of safety were mingled with the exercise of power; and feelings and interests prevailed which are happily terminated. *Now* that the public safety is assured, this question, as well as all others, can be discussed and decided without passion or the admixture of any element not required to form a legal judgment. We approach the investigation of this case, fully sensible of the magnitude of the inquiry and the necessity of full and cautious deliberation. But we are met with a preliminary objection. It is insisted that the Circuit Court of Indiana had no authority to certify these questions; and that we are without jurisdiction to hear and determine them. The sixth section of the "Act to amend the judicial system of the United States," approved April 29, 1802, declares "that whenever any question shall occur before a circuit court upon which the opinions of the judges shall be opposed, the point, upon which the disagreement shall happen, shall, during the same term, upon the request of either party or their counsel, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court at their next session to be held thereafter; and shall by the said court be finally decided: And the decision of the Supreme Court and their order in the premises shall be remitted to the circuit court and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits." * * * *

It is under this provision of law that a circuit court has authority to certify any question to the Supreme Court for adjudication. The inquiry, therefore, is, whether the case of Milligan is brought within its terms. It was admitted at the bar that the circuit court had jurisdiction to entertain the application for the writ of *habeas corpus* and to hear and determine it; and it could not be denied, for the power is expressly given in the 14th section of the judiciary act of 1789, as well as in the later act of 1863. Chief Justice Marshall, in Bollman's case, (4 Cranch,) construed this branch of the judiciary act to authorise the courts as well as the judges to issue the writ for the purpose of inquiring into the cause of the commitment; and this construction has never been departed from. But it is maintained with earnestness and ability that a certificate of division of opinion can occur only in a *cause*; and that the proceeding by a party moving for a writ of *habeas corpus* does not become a cause *until after the writ has been issued and a return made.*

Independently of the provisions of the act of Congress of March 3, 1863, relating to *habeas corpus*, on which the petitioner bases his claim for relief, and which we will presently consider, can this position be sustained?

It is true, that it is usual for a court on application for a writ of *habeas corpus*, to issue the writ and on the return to dispose of the case; but the court can elect to waive the issuing of the writ and consider whether, upon the facts presented in the petition, the prisoner, if brought before it, could be discharged. One of the very points on which the case of Tobias Watkins, reported in 3 Peters, turned, was whether, if the writ was issued, the petitioner would be remanded upon the case which he had made.

The Chief Justice, in delivering the opinion of the court, said: "The cause of imprisonment is shown as fully by the petitioner as it could appear on the return of the writ; consequently the writ ought not to be awarded if the court is satisfied that the prisoner would be remanded to prison."

The judges of the Circuit Court of Indiana were, therefore, warranted by an express decision of this court in refusing the writ, if satisfied that the prisoner, on his own showing, was rightfully detained; but it is contended if they differed about the lawfulness of the imprisonment, and could render no judgment, the prisoner is remediless, and cannot have the disputed question certified under the act of 1802. His remedy is complete by writ of error or appeal, if the court renders a final judgment refusing to discharge him; but if he should be so unfortunate as to be placed in the predicament of having the court divided on the question whether he should live or die, he is hopeless and without remedy. He wishes the vital question settled, not by a single judge at his chambers, but by the highest tribunal known to the Constitution; and yet the privilege is denied him, because the circuit court consists of two judges instead of one. Such a result was not in the contemplation of the Legislature of 1802; and the language used by it cannot be construed to mean any such thing. The cause under consideration was introduced to further the ends of justice, by obtaining a speedy settlement of important questions where the judges might be opposed in opinion.

The act of 1802 so changed the judicial system that the circuit court, instead of three, was composed of two judges; and, without this provision or a kindred one, if the judges differed, the difference would remain, the question be unsettled, and justice denied. The decisions of this court upon the provisions of this section have been numerous. In United States vs. Daniel, (6 Wheaton,) the court, in holding that a division of the judges on a motion for a new trial could not be certified, say: "That the question must be one which arises in a cause depending before the court relative to a proceeding belonging to the cause." Testing Milligan's case by this rule of law, is it not apparent that it is rightfully here; and that we are compelled to answer the questions on which the judges below were opposed in opinion? If, in the sense of the law, the proceeding for the writ of *habeas corpus* was the "*cause*" of the party applying for it, then it is evident that the "cause" was pending before the court, and that the questions certified arose out of it, belonged to it, and were matters of right and not of discretion.

But it is argued that the proceeding does not ripen into a cause until there are two parties to it. This we deny. It was the *cause* of Milligan when the petition was presented to the circuit court. It would have been the *cause* of both parties if the court had issued the writ and brought those who held Milligan in custody before it. Webster defines the word "cause" thus: "A suit or action in court; any legal process which a party institutes to obtain his demand, or by which he seeks his right, or supposed right"—and he says, "this is a legal, scriptural and popular use of the word, coinciding nearly with case, from *cado*, and action, from *ago*, to urge and drive."

In any legal sense action, suit and cause are convertible terms. Milligan supposed he had a right to test the validity of his trial and sentence; and the proceeding which he set in operation for that purpose was his "cause" or "suit." It was the only one by which he could recover his liberty. He was powerless to do more; he could neither instruct the judges nor control their action, and should not suffer because, without fault of his, they were unable to render a judgment. But the true meaning to the term "suit" has been given by this court. One of the questions in Weston vs. City Council of Charleston (2 Peters) was, whether a writ of prohibition was a suit; and Chief Justice Marshall says: "The term is certainly a comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him." Certainly Milligan pursued the only remedy which the law afforded him.

Again, in Cohens vs. Virginia (6 Wheaton) he says: "In law language a suit is the prosecution of some demand in a court of justice." Also, "To commence a suit is to demand something by the institution of process in a court of justice; and to prosecute the suit is to continue that demand." When Milligan demanded his release by the proceeding relating to *habeas corpus* he commenced a suit; and he has since prosecuted it in all the ways known to the law. One of the questions in Holmes vs. Jennison (14 Peters) was, whether under the 25th section of the judiciary act a proceeding for a writ of *habeas corpus* was a "suit." Chief Justice Taney held that "if a party is unlawfully imprisoned the writ of *habeas corpus* is his appropriate legal remedy. It is his suit in court to recover his liberty." There was much diversity of opinion on another ground of jurisdiction; but on this, that in the sense of the 25th section of the judiciary act, the proceeding by *habeas corpus* was a suit, was not controverted by any except Baldwin, Justice, and he thought that "suit" and "cause" as used in the section mean the same thing.

The court do not say that a return must be made and the parties appear and begin to try the case before it is a suit. When the petition is filed and the writ prayed for it is a *suit*—the suit of the party making the application. If it is a suit under the 25th section of the judiciary act when the proceedings are begun, it is by all the analogies of the law, equally a suit under the 6th section of the act of 1802.

But it is argued that there must be *two* parties to the suit, because the point is to be stated upon the request of "either party or their counsel." Such a literal and technical construction would defeat the very purpose the legislature had in view, which was to enable any party to bring the case here, when the point in controversy was a matter of right and not of discretion; and the words "either party," in order to prevent a failure of justice, must be construed as words of *enlargement* and not of *restriction*. Although this case is here *ex parte*, it was not considered by the court below without notice having been given to the party supposed to have an interest in the detention of the prisoner. The statements of the record show that this is not only a fair, but conclusive inference. When the counsel for Milligan presented to the court the petition for the writ of *habeas corpus*, Mr. Hanna, the District Attorney for Indiana, also appeared; and, by agreement, the application was submitted to the court, who took the case under advisement, and on the next day announced their inability to agree, and made the certificate. It is clear that Mr. Hanna did not represent the petitioner, and why is his appearance entered? It admits of no other solution than this—that he was informed of the application, and appeared on behalf of the Government to contest it. The Government was the prosecutor of Milligan, who claimed that his imprisonment was illegal; and sought, in the only way he could, to recover his liberty. The case was a grave one; and the court, unquestionably, directed that the law officer of the Government should be informed of it. He very properly appeared, and, as the facts were uncontroverted and the difficulty was in the application of the law, there was no useful purpose to be obtained in issuing the writ. The cause was, therefore, submitted to the court for their consideration and determination. But Milligan claimed his discharge from custody by virtue of the act of Congress "relating to *habeas corpus* and regulating judicial proceedings in certain cases," approved March 3, 1863. Did that act confer jurisdiction on the Circuit Court of Indiana to hear this case? In interpreting a law, the motives which must have operated with the Legislature in passing it are proper to be considered. This law was passed in a time of great national peril, when our heritage of free government was in danger. An armed rebellion against the national authority, of greater proportions than history affords an example, was raging; and the public safety required that the privilege of the writ of *habeas corpus* should be suspended. The President had practically suspended it, and detained suspected persons in custody without trial; but his authority to do this was questioned. It was claimed that Congress alone could exercise this power; and that the Legislature, and not the President, should judge of the political considerations on which the right to suspend it rested. The privilege of this great writ had never before been withheld from the citizen; and, as the exigence of the times demanded immediate action, it was of the highest importance that the lawfulness of the suspension should be fully established. It was under these circumstances, which were such as to arrest the attention of the country, that this law was passed. The President was authorized by it to suspend the privilege of the writ of *habeas corpus* whenever, in his judgment, the public safety required; and he did, by proclamation, bearing date the 15th of September, 1863, reciting among other things the authority of this statute, suspend it. The suspension of the writ does not authorize the arrest of any one, but simply denies to one arrested the privilege of this writ in order to obtain his liberty.

It is proper, therefore, to inquire under what circumstances the courts could rightfully refuse to grant this writ, and when the citizen was at liberty to invoke its aid.

The second and third sections of the law are explicit on these points. The language used is plain and direct, and the meaning of the Congress cannot be mistaken. The public safety demanded, if the President thought proper to arrest a suspected person, that he should not be required to give the cause of his detention on return to a writ of *habeas corpus*. But it was not contemplated that such person should be detained in custody beyond a certain fixed period; unless certain judicial proceedings known to the common law, were commenced against him. The Secretaries of State and War were directed to furnish to the judges of the courts of the United States a list of the names of all parties, not prisoners of war, resident in their respective jurisdictions, who then were or afterwards should be held in custody by the authority of the President, and who were citizens of States in which the administration of the laws in the Federal tribunals was unimpaired. After the list was furnished, if a grand jury of the district convened and adjourned and did not indict or present one of the persons thus named, he was entitled to his discharge; and it was the duty of the judge of the court to order him brought before him to be discharged, if he desired it. The refusal or omission to furnish the list could not operate to the injury of any one who was not indicted or presented by the grand jury; for, if twenty days had elapsed from the time of his arrest and the termination of the session of the grand jury, he was equally entitled to his discharge as if the list were furnished; and any credible person, on petition verified by affidavit, could obtain the judge's order for that purpose.

Milligan, in his application to be released from imprisonment, averred the existence of every fact necessary under the terms of this law to give the Circuit Court of Indiana jurisdiction. If he was detained in custody by the order of the President, otherwise than as a prisoner of war; if he was a citizen of Indiana and had never been in the military or naval service, and the grand jury of the district had met, after he had been arrested, for a period of twenty days, and adjourned without taking any proceedings against him, *then* the court had the right to entertain his petition and determine the lawfulness of his imprisonment. Because the word "court" is not found in the body of the second section, is was argued at the bar, that the application should have been made to the judge of the court, and not to the court itself; but *this is not so*, for power is expressly conferred in the last proviso of the section on the court equally with a judge of it to discharge from imprisonment. It was the manifest design of Congress to secure a certain remedy by which any one, deprived of liberty, could obtain it, if there was a judicial failure to find cause of offence against him. Courts are not always in session, and can adjourn on the discharge of the grand jury; and before those who are in confinement could take proper steps to procure their liberation. To provide for this contingency, authority was given to the judges out of court to grant relief to any party, who could show, that, under the law, he should be no longer restrained of his liberty. It was insisted that Milligan's case was defective, because it did not state that the list was furnished to the judges; and, therefore, it was impossible to say under which section of the act it was presented.

It is not easy to see how this omission could affect the question of jurisdiction. Milligan could not know that the list was furnished unless the judges volunteered to tell him; for the law did not require that any record should be made of it or anybody but the judges informed of it. Why aver the fact, when the truth of the matter was apparent to the court without an averment? How can Milligan be harmed by the absence of the averment, when he states that he was under arrest for more than sixty days before the court and grand jury, which should have considered his case, met at Indianapolis? It is apparent, therefore, that under the *habeas corpus* act of 1863 the Circuit Court of Indiana had complete jurisdiction to adjudicate upon this case, and, if the judges could not agree on questions vital to the progress of the cause, they had the authority, (as we have shown in a previous part of this opinion,) and it was their duty to certify those questions of disagreement to this court for final decision. It was argued that a final decision on the questions presented ought not to be made, because the parties who were directly concerned in the arrest and detention of Milligan, were not before the court; and their rights might be prejudiced by the answer which should be given to those questions. But this court cannot know what return will be made to the writ of *habeas corpus* when issued; and it is very clear that no one is concluded upon any question that may be raised to that return. In the sense of the law of 1802, which authorized a certificate of division, a final decision means *final* upon the points certified: final upon the court below, so that it is estopped from any adverse ruling in all the subsequent proceedings of the cause. But it is said that this case is ended, as the presumption is that Milligan was hanged in pursuance of the order of the President. Although we have no judicial information on the subject, yet the inference is that he is alive; for otherwise learned counsel would not appear for him and urge this court to decide his case.

It can never be in this country of written constitution and laws, with a judicial department to interpret them, that any chief magistrate would be so far forgetful of his duty as to order the execution of a man who denied the jurisdiction that tried and convicted him, *after* his case was before Federal judges with power to decide it, who, being unable to agree on the grave questions involved, had, according to known law, sent it to the Supreme Court of the United States for decision. But even the suggestion is injurious to the Executive, and we dismiss it from further consideration. There is, therefore, nothing to hinder this court from an investigation of the merits of this controversy.

The controlling question in the case is this: Upon the *facts* stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it *jurisdiction* legally to try and sentence him? Milligan, not a resident of one of the rebellious States, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the *legal* power and authority to try and punish this man? No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people, for it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. The power of punishment is, alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggle to preserve liberty and to relieve those in civil life from military trials. The founders of our Government were familiar with the history of that struggle; and secured in a written Constitution every right which the people had wrested from power during a contest of ages. By that Constitution and the laws authorized by it, this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct to leave room for misconstruction or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution which says, "That the trial of all crimes, except in case of impeachment, shall be by jury;" and in the fourth, fifth, and sixth articles of the amendments. The fourth proclaims the right to be secure in person and effects against unreasonable search and seizure; and directs that a judicial warrant shall not issue "without proof of probable cause supported by oath or affirmation." The fifth declares "that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger, nor be deprived of life, liberty, or property without due process of law." And the sixth guarantees the right of trial by jury in such manner and with such regulations that with upright judges, impartial juries, and an able bar, the innocent will be saved and the guilty punished. It is in these words: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence." These securities for personal liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption, it encountered severe opposition; and but for the belief that it would be so amended as to embrace them, it would never have been ratified.

Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of men could not evade them, are *now*, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of Government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the Government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

Have any of the rights guaranteed by the Constitution been violated in the case of Milligan? and if so, what are they? Every trial involves the exercise of judicial power; and from what source did the military commission that tried him derive their authority? Certainly no part of the judicial power of the country was conferred on them, because the Constitution expressly vests it "in one supreme court and such inferior courts as the Congress may from time to time ordain and establish," and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President; because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make the laws; and there is "no unwritten criminal code to which resort can be had as a source of jurisdiction." But it is said that the jurisdiction is complete under the "laws and usages of war." It can serve no useful purpose to inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be applied to citizens in States which have upheld the authority of the Government, and where the courts are open and their process unobstructed. This court has judicial knowledge that in Indiana the Federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances; and no usages of war could sanction a military trial there for any offence whatever of a citizen in civil life, in nowise connected with the military service. Congress could grant no such power; and, to the honor of our national legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress, and not composed of judges appointed during good behavior. Why was he not delivered to the Circuit Court of Indiana to be proceeded against according to law?

No reason of necessity could be urged against it, because Congress had declared penalties against the offences charged, provided for their punishment, and directed that court to hear and determine them. And soon after this military tribunal was ended, the circuit court met, peacefully transacted its business and adjourned. It needed no bayonets to protect it, and required no military aid to execute its judgments. It was held in a State eminently distinguished for patriotism, by judges commissioned during the rebellion, who were provided with juries, upright, intelligent, and selected by a marshal appointed by the President. The Government had no right to conclude that Milligan, if guilty, would not receive in that court merited punishment; for its records disclose that it was constantly engaged in the trial of similar offences, and was never interrupted in its administration of criminal justice. If it was dangerous in the distracted condition of affairs to leave Milligan unrestrained of his liberty, because he "conspired against the Government, afforded aid and comfort to rebels, and incited the people to insurrection," the *law* said arrest him, confine him closely, render him powerless to do further mischief; and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done the Constitution would have been vindicated, the law of 1863 enforced, and the securities for personal liberty preserved and defended.

Another guarantee of freedom was broken when Milligan was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was fortified in the organic law against the power of attack. It is *now* assailed; but, if ideas can be expressed in words, and language has any meaning, *this right*—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the army, or navy, or militia in actual service. The sixth amendment affirms that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," language broad enough to embrace all persons and cases; but the fifth, recognizing the necessity of an indictment, or presentment, before any one can be held to answer for high crimes, "*excepts* cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger;" and the framers of the Constitution, doubtless, meant to limit the right of trial by jury, in the sixth amendment, to those persons who were subject to indictment or presentment in the fifth.

The discipline, necessary to the efficiency of the army and navy, required other and swifter modes of trial than are furnished by the common law courts; and, in pursuance of the power conferred by the Constitution, Congress has declared the kinds of trial, and the manner in which they shall be conducted, for offences committed while the party is in the military or naval service. Every one, connected with these branches of the public service, is amenable to the jurisdiction which Congress has created for their government, and while thus serving, surrenders his right to be tried by the civil courts. *All other persons*, citizens of States where the courts are open, if charged with crime, are guaranteed the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administration of criminal justice; it is not held by sufferance, and cannot be frittered away on any plea of State or political necessity. When peace prevails, and the authority of the Government is undisputed, there is no difficulty of preserving the safeguards of liberty; for the ordinary modes of trial are never neglected, and no one wishes it otherwise; but if society is disturbed by civil commotion—if the passions of men are aroused and the restraints of law weakened, if not disregarded—these safeguards need, and should receive, the watchful care of those entrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired, the blessings of liberty, consecrated by the sacrifices of the revolution.

It is claimed that martial law covers with its broad mantle the proceedings of the military commission. The proposition is this: That in a time of war the commander of an armed force (if in his opinion the exigencies of the country demand it, and of which he is to judge,) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of *his will*; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States. If this position is sound, to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules.

The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of and superior to the civil power"—the attempt to do which by the King of Great Britain was deemed by our fathers such an offence, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable; and in the conflict, one or the other must perish.

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and, if this right is conceded and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust imposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell, and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this and other equally weighty reasons they secured the inheritance they had fought to maintain, by incorporating in a written constitution, the safeguards which *time* had proved were essential to its preservation. Not one of these safeguards can the President or Congress or the judiciary disturb, except the one concerning the writ of *habeas corpus*.

It is essential to the safety of every Government that, in a great crisis, like the one we have just passed through, there should be a power somewhere of suspending the writ of *habeas corpus*. In every war there are men of previously good character wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies, and their influence may lead to dangerous combinations. In the emergency of the times an immediate public investigation according to law may not be possible, and yet the peril to the country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the government, if it should see fit in the exercise of a proper discretion to make arrests, should not be required to produce the persons arrested in answer to a writ of *habeas corpus*. The Constitution goes no further. It does not say after a writ of *habeas corpus* is denied a citizen, that he shall be tried otherwise than by the course of the common law; if it had intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right, and left the rest to remain forever inviolable. But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true it could be well said that a country preserved at the sacrifice of all the cardinal principles of liberty is not worth the cost of preservation. Happily, it is not so.

It will be borne in mind that *this is not a question* of the power to proclaim martial law when war exists in a community, and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army, can impose on States in rebellion to cripple their resources and quell the insurrection. The jurisdiction claimed is much more extensive. The necessities of the service, during the late rebellion, required that the loyal States should be placed within the limits of certain military districts and commanders appointed in them; and, it is urged, that this, in a military sense, constituted them the theatre of military operations; and, as in this case, Indiana had been and was again threatened with invasion by the enemy, the occasion was furnished to establish martial law. The conclusion does not follow from the premises. If armies were collected in Indiana they were to be employed in another locality, where the laws were obstructed and the national authority disputed. On *her* soil there was no hostile foot; if once invaded, *that* invasion *was* at an end, and with it all pretext for martial law. Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present, the invasion real, such as effectually closes the courts and deposes the civil administration.

It is difficult to see how the *safety* of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them, until the Government was prepared for their trial, when the courts were open and ready to try them. It was as easy to protect witnesses before a civil as a military tribunal; and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law.

It follows, from what has been said on this subject, that there are occasions when martial rule can be properly applied. If in foreign invasion or civil war the courts are actually closed, and it is impossible to administer criminal justice according to law, *then*, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority, thus overthrown, to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for if *this government* is continued, *after* the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war. Because during the late rebellion it could have been enforced in Virginia, where the national authority was overturned and the courts driven out, it does not follow that it should obtain in Indiana, where that authority was never disputed, and justice was always administered. And so in the case of a foreign invasion, martial rule may become a necessity in one State, when in another it would be "mere lawless violence." We are not without precedents in English and American history illustrating our views of this question; but it is hardly necessary to make particular reference to them.

From the first year of the reign of Edward the Third, when the Parliament of England reversed the attainder of the Earl of Lancaster, because he could have been tried by the courts of the realm, and declared, "that in time of peace no man ought to be adjudged to death for treason or any other offence without being arraigned and held to answer, and that regularly when the king's courts are open it is a time of peace in judgment of law," down to the present day, martial law, as claimed in this case, has been condemned by all respectable English jurists as contrary to the fundamental laws of the land, and subversive of the liberty of the subject.

During the present century an instructive debate on this question occurred in Parliament, occasioned by the trial and conviction by court-martial, at Demarara, of the Rev. John Smith, a missionary to the negroes, on the alleged ground of aiding and abetting a formidable rebellion in that colony. Those eminent statesmen, Lord Brougham and Sir James Macintosh, participated in that debate, and denounced the trial as illegal; because it did not appear that the courts of law in Demarara could not try offences, and that "when the laws can act every other mode of punishing supposed crimes is itself an enormous crime."

So sensitive were our revolutionary fathers on this subject, although Boston was almost in a state of siege, when Gen. Gage issued his proclamation of martial law, they spoke of it as an "attempt to supercede the course of the common law, and instead thereof to publish and order the use of martial law." The Virginia Assembly also denounced a similar measure on the part of Gov. Dunmore "as an assumed power, which the King himself cannot exercise; because it annuls the law of the land and introduces the most execrable of all systems, martial law."

In some parts of the country, during the war of 1812, our officers made arbitrary arrests and, by military tribunals, tried citizens, who were not in the military service. These arrests and trials, when brought to the notice of the courts, were uniformly condemned as illegal. The cases of Smith vs. Shaw, and McConnell vs. Hampton, (reported in 12 Johnson) are illustrations, which we cite, not only for the principles they determine, but on account of the distinguished jurists concerned in the decisions, one of whom for many years occupied a seat on this bench.

It is contended that Luther vs. Borden, decided by this court, is an authority for the claim of martial law advanced in this case. The decision is misapprehended. *That case* grew out of the attempt in Rhode Island to supersede the old colonial government by a revolutionary proceeding. Rhode Island until that period had no other form of local government than the charter granted by King Charles II., in 1663, and as that limited the right of suffrage, and did not provide for its own amendment, many citizens became dissatisfied because the legislature would not afford the relief in their power; and without the authority of law formed a new and independent constitution, and proceeded to assert its authority by force of arms. The old government resisted this; and as the rebellion was formidable, called out the militia to subdue it, and passed an act declaring martial law.

Borden, in the military service of the *old* government, broke open the house of Luther, who supported the *new*, in order to arrest him. Luther brought suit against Borden; and the question was, whether, under the constitution and laws of the State, Borden was justified. This court held that a State "may use its military power to put down an armed insurrection too strong to be controlled by the civil authority;" and if the legislature of Rhode Island thought the peril so great as to require the use of its military forces and the declaration of martial law, there was no ground on which *this court* could question its authority; and as Borden acted under military orders of the charter government, which had been recognized by the political power of the country, and was upheld by the State judiciary, he was justified in breaking into and entering Luther's house. This is the extent of the decision. There was no question in issue about the power of declaring martial law under the Federal Constitution, and the court did not consider it necessary even to inquire "to what extent nor under what circumstances that power may be exercised by a State."

We do not deem it important to examine further the adjudged cases; and shall, therefore, conclude without any additional reference to authorities. To the third question, then, on which the judges below were opposed in opinion, an answer in the negative must be returned.

It is proper to say, although Milligan's trial and conviction by a military commission was illegal, yet, if guilty of the crimes imputed to him, and his guilt had been ascertained by an established court and impartial jury, he deserved severe punishment. Open resistance to the measures deemed necessary to subdue a great rebellion, by those who enjoy the protection of Government, and have not the excuse even of prejudice of section to plead in their favor, is wicked; but that resistance becomes an *enormous crime* when it assumes the form of a secret political organization, armed to oppose the laws, and seeks by stealthy means to introduce the enemies of the country into peaceful communities, *there* to light the torch of civil war, and *thus* overthrow the power of the United States. Conspiracies like these, at such a juncture, are extremely perilous, and those concerned in them are dangerous enemies to their country, and should receive the heaviest penalties of the law, as an example to deter others from similar criminal conduct. It is said the severity of the laws caused them; but Congress was obliged to enact severe laws to meet the crisis, and as our highest civil duty is to serve our country when in danger, the late war has proved that rigorous laws, when necessary, will be cheerfully obeyed by a patriotic people, struggling to preserve the rich blessings of a free government.

The two remaining questions in this case must be answered in the affirmative. The suspension of the privilege of the writ of *habeas corpus* does not suspend the writ itself. The writ issues as a matter of course, and on the return made to it the court decides whether the party applying is denied the right of proceeding any further with it.

If the military trial of Milligan was contrary to law, then he was entitled, on the facts stated in his petition, to be discharged from custody by the terms of the act of Congress of March 3d, 1863. The provisions of this law having been considered in a previous part of *this* opinion, we will not restate the views there presented. Milligan avers he was a citizen of Indiana, not in the military or naval service, and was detained in close confinement, by order of the President, from the 5th day of October, 1864, until the 2d day of January, 1865, when the Circuit Court for the district of Indiana, with a grand jury, convened in session at Indianapolis; and *afterwards*, on the 27th day of the same month, adjourned without finding an indictment or presentment against him. If these averments were true, (and their truth is conceded for the purposes of this case,) the court was required to liberate him on taking certain oaths prescribed by the law, and entering into recognizance for his good behavior. But it is insisted that Milligan was a prisoner of war, and, therefore, excluded from the privileges of the statute. It is not easy to see how he can be treated as a prisoner of war, when he lived in Indiana for the past twenty years; was arrested there, and had not been, during the late troubles, a resident of any of the States in rebellion. If, in Indiana, he conspired with bad men to assist the enemy, he is punishable for it in the courts of Indiana; but, when tried for the offence, he cannot plead the rights of war, for he was not engaged in legal acts of hostility against the Government, and only such persons when captured, are prisoners of war. If he cannot enjoy the immunities attaching to the character of a prisoner of war, how can he be subject to their pains and penalties?

This case, as well as the kindred cases of Bowles and Horsey, were disposed of at the last term, and the proper orders were entered of record. There is, therefore, no additional entry required.

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PROPOSALS FOR COPPER.

Navy Department,
Bureau of Construction and Repair,
December 19, 1866.

Sealed proposals to furnish 400,000 pounds of Ingot Copper, one half "Lake," best quality, will be received at this Bureau until 1 o'clock p. m., of January 3, 1867, at which time the proposals will be opened.

The proposals must be addressed to the "*Chief of the Bureau of Construction and Repair, Navy Department, Washington*," and be endorsed "*Proposals for Copper*," that they may be distinguished from other business letters and must be made in compliance with the "*Instructions to bidders making offers for supplies to the Navy Department*," which can be obtained from the Commandant's Office at any Navy Yard, or from the Purchasing Paymaster at any Naval Station, or from this Bureau.

The copper to be subject to the necessary test and inspection of the proper officer of the Washington Navy Yard, where the whole quantity is to be delivered; 150,000 pounds to be delivered on or before the 1st February, and the remainder on or before the 1st April, 1867. de22-2awtw

FRESH BEEF AND VEGETABLES.

Navy Department,
Bureau of Provisions and Clothing,
December 18, 1866.

Sealed proposals, endorsed "Proposals for Fresh Beef and Vegetables," will be received at this Bureau until 2 o'clock, p. m., on the third day of January, 1867, for the supply of 100,000 pounds of FRESH BEEF and 100,000 pounds of FRESH VEGETABLES, at the PHILADELPHIA NAVY YARD AND STATION, as required.

The Beef and Vegetables must be of good quality, and the best the market affords and each article must be offered for by the pound. The Beef to be in equal proportions, fore and hind quarters.

Bonds, with approved security, will be required in one half the estimated amount of the contract, and twenty per cent. in addition will be withheld from the amount of each payment to be made, as collateral security for the due performance of the contract, which will on no account be paid until it is fully complied with.

Every offer made must be accompanied by a written guaranty, signed by one or more responsible persons, that the bidder or bidders will, if his or their bid be accepted, enter into an obligation within five days, with good and sufficient sureties, to furnish the articles proposed.

No proposal will be considered unless accompanied by such guaranty, and by satisfactory evidence that the bidder is a regular dealer in the articles proposed for, and has the license required by act of Congress.

The Department reserves the right to reject any proposal not considered advantageous to the Government.

It is to be understood that in case the stipulated quantity of either articles shall be delivered, leaving a balance due on the other article, the contract may be considered as completed in full, at the option of the Department. de22-1t

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ONCE MORE IN RUNNING ORDER.

The damage caused by the late fire has been so far repaired that business will be resumed

THIS MORNING, (WEDNESDAY, October 4th,)

When, as formerly, the rule will be strictly enforced throughout the establishment,

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Mr. G. takes this opportunity to thank his numerous friends and customers for past kindness, and to say it shall be his constant aim to continue to merit the very liberal encouragement heretofore extended to him. oc4-dtf