National Republican.

WASHINGTON, D. C., WEDNESDAY MORNING, JUNE 16, 1875. NO. 174.

THE TRIUMPH OF TWEED.

HABEAS CORPUS OUR MAGNA CHARTA.

A ROLAND FOR TILDEN'S OLIVER.

NO MOBILIZATION OF SENTENCES

THE PRISONER MUST BE DISCHARGED

Opinion of the Court of Appeals—Unanimity of the Judges—The Powers of the Inferior Courts Exhausted Upon the Expiration of the First Term and the Payment of the First Fine—Preparations for Re-Arrest of Tweed.

ALBANY, June 15.—In the Court of Appeals this morning Judges Allen and Rapetto read opinions for the reversal of the judgment of the Supreme Court in the Tweed case, and orders of the Oyer and Terminer, and for the prisoner's discharge. All concur. Judge Miller concurs in the result. Judge Grover was absent. The case was that of the people ex rel. Wm. Tweed, plaintiff in error, vs. Joseph L. Lipscomb, defendant in error: Allen, justice.

OPINION OF THE COURT.

The question of greatest importance which is to be considered *in limine*, is that upon which the jurisdiction of the court to consider other questions presented depends, relates to the office and effect of the writ of *habeas corpus* under our system of jurisprudence and the statutes of the States regulating proceedings under it. Relief from illegal imprisonment by means of this remedial writ is not the creature of any statute. The history of the writ is lost in antiquity. It was in use before Magna Charta, and came to us as a part of our inheritance from the mother country, and exists as a part of the common law of the State.

It is intended and well adapted to effect the great object secured in England by Magna Charta, and it is made part of our Constitution that no person shall be deprived of his liberty "without due process of law." Wherever the nature and applicability of the writ have been attacked or impunged it has been defined and its vigor and efficiency reasserted as the

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The statutes which have been passed in England from the time of Charles the Second and in this State from the time of its organization have not been intended to detract from its force but rather to add to its efficiency, and they have been intended to prevent the writ being rendered inoperative by increasing the facilities for procuring it. Enlarging the class of officers having jurisdiction in respect of it, improving penalties for resistance to obey it, and providing for a speedy return and a prompt trial and discharge of the person if not held according to the law of the land.

The earlier statutes of this State did not profess to deal with or regulate the common law jurisdiction over this writ which existed in the Supreme Court and Court of Chancery, but had respect only to the jurisdiction conferred by statute upon and exercised by judicial officers out of court. The revised statutes regulate the exercise of this jurisdiction as well by courts as magistrates, and provide for its exercise in vacation, but in term time. This writ cannot be abrogated, or its efficiency curtailed by legislative action, and cases within relief afforded by it at common law cannot, until people voluntarily surrender the right to this greatest of all writs by an amendment of organic law, be placed beyond reach of remedial action. The privilege of the writ cannot be even temporarily suspended, except for safety of the State, in cases of rebellion or incursion. (Constitution, art. 1, sec. 4.) The fact that illegal imprisonment afforded by this writ, as it was known and used at common law, is placed beyond the pale of legislative discretion, except that it may be suspended when public safety requires it in either of the emergencies named in the Constitution.

The provision of the Constitution is a transcript of a former constitution of the State, and it cannot be intended that the framers of the revised statutes by which the practice of the courts in term time was placed on a footing of regulations as that which had from the first been prescribed for officers upon whom power had been conferred from time to time by statute designed to interfere with principle or impair the exercise of jurisdiction, or lessen the value, the efficiency or importance of the writ itself, which in respect of the jurisdiction of the Supreme Court and Court of Chancery was intended to be left untouched. Bringing procedure in term time, as well as in vacation, within the same general rules removes all doubt that the intent was that every court and officer having power to grant the writ of *habeas corpus*, and to pass upon the legality of imprisonment, has and may exercise in the form prescribed by law.

ALL THE POWER EXERCISED AT COMMON LAW

by the Court of King's Bench in England and the Supreme Court of this State as to corresponding tribunals with us. There is no occasion to be alarmed or to be frightened out of our propriety lest by reason of a number of magistrates to whom this great power is conferred the judgments of Superior Courts will be nullified and judicial proceedings rendered nugatory, so far as they interfere with personal liberty. The power has existed in the mother country for more than three quarters of a century. The laws and judgments of courts have been executed without unseeming interruption by means of this writ of liberty, and although it has been for a quarter of a century since the distinguished executive of this State called the attention of the legislature to the very danger now invoked as the reason for no controlling the statute as to contract jurisdiction of this writ, the legislature did not participate in the fears expressed and suffered the statutes to remain in that form by which the liberty of citizens would be the largest protected.

It is no new feature in law that inferior magistrates may, when thereunto called, sit in judgment upon the jurisdiction of the highest courts when the process or judgment came collaterally before them. Trespass will lie for property seized, or for the imprisonment of a person by virtue of a void judgment of the highest court of State if it had not jurisdiction of the person, or to give the judgment, and a justice of the peace must pass upon the jurisdiction of the action which chances to be before him for trial. It matters not what the general powers and jurisdiction of a court may be, if it act without authority in the particular case, its judgment and orders are mere nullities, void, void, void