

Habeas Corpus before Judge Perkins of the Supreme Court.

HERMAN vs. THE STATE.

OPINION OF THE JUDGE. Herman was arrested upon a charge of having violated the liquor act of 1855. He obtained a writ of Habeas Corpus, pursuant to which he was brought before the court by the sheriff of this county.

His counsel moves for his discharge on the ground that said liquor act is unconstitutional and void. The case is submitted upon the arguments heretofore filed in the Supreme Court in the case of Kates.

We regret that this question has been thus presented to us. We had hoped that these applications would have been made at an earlier period. The Supreme Court had decided upon the validity of the law in question.

But the legislature, acting, as we think, within the constitution, has conferred upon the citizen the right of suing out a writ of Habeas Corpus, and the judges severally of the Supreme Court the right has exercised in this case, and it is not for us, upon slight pretext, to shrink from the discharge of the duty, there, as it is, indeed, but believe in the propriety of the discharge, and we have come on both sides conceded in argument that the record presents the question of the validity of the law, which is alleged to be the prohibitory liquor act of 1855, and that question will, therefore, without inquiry upon the point, be confined to the law, and we will not be confined to the law, we approach it with all the caution and solicitude its nature is calculated to inspire and that demand of careful investigation its importance demands, feeling that the consequences of the judgment we are about to give will not be confined to the operation to this case alone. Preliminary to the discussion of the main question involved, however, the course of argument of counsel requires that we should state the facts of the case, setting forth the duty this court has to perform in the present case, viz: simply declaring the constitutionality or unconstitutionality of the law, with an assignment of the reasons upon which the declaration is based.

It will not be for us to inquire whether the law is good or bad, in the abstract, unless the fact, as it might turn out to be, should become of some consequence in determining a doubtful point on the main question. It is not, therefore, because the duty of courts is to declare the constitutionality or unconstitutionality of the law, with an assignment of the reasons upon which the declaration is based.

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With these remarks, we proceed to the examination of the feature of the liquor act of 1855 now especially presented to the court. We shall not spend time upon the inquiry whether, on the day it was passed, it was in violation of the constitution, or whether it has since become so, but we shall inquire whether it is in violation of the constitution, or whether it has since become so, but we shall inquire whether it is in violation of the constitution, or whether it has since become so.

It is the first section of the act that no person shall manufacture, keep for sale, or sell any "ale, porter, malt beer, cider, wine, &c." The second section permits the manufacture and sale of cider and wine under certain restrictions, by any and all of the citizens of the State.

Other sections permit the manufacture of whiskey, ale, &c., by persons licensed for the purpose, so far as may be necessary to supply whatever demand certain persons, called county agents, may make upon the government. These agents are authorized to sell medicinal, mechanical and sacramental uses, and to other, and may procure their licenses of licensed manufacturers, but are not required to do so, and, as a matter of fact, do not obtain them, in most cases, from above. They are authorized to sell medicinal, mechanical and sacramental uses, and to other, and may procure their licenses of licensed manufacturers, but are not required to do so, and, as a matter of fact, do not obtain them, in most cases, from above.

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The question now presents itself. Secondly, Could the legislature of this State enact the prohibitory liquor law under consideration?

Few, if any, judicial decisions will be found to aid us in investigating this question, as no such law, in a country possessing a judiciary as constituted in 1776, limiting the legislative powers, has till of late, been enacted. Some twelve hundred years ago, Mahomet made such a law a part of his religious creed in opposition to the Jewish and Christian systems, which recommended the moderate, but forbade the excessive use of intoxicating liquors. This Law of Mahomet, Koran, pp. 25 and 183 was perhaps the first prohibitory act, but it does not appear to have been adopted by civilized nations till its late revival in some shape or form, in one or more of our sister States. Hence, it has not often, if at all, as to this point passed under judicial consideration.

A number of European writers on natural, public, and political law, are cited by counsel on behalf of the State, to show the extent of legislative power, but these writers, respectable, able, and instructive upon some subjects as they are admitted to be, are not authority here on this point. They are dangerous, and, in fact, are cited by counsel on behalf of the State, to show the extent of legislative power, but these writers, respectable, able, and instructive upon some subjects as they are admitted to be, are not authority here on this point.

Indeed, the discovery of the great doctrine of rights in the people against the government had not been made when our writers have referred to the opinions of these writers as described, could adopt the maxim quoted by counsel, that the safety of the people is the supreme law, and act upon that being so, the sole judges of what their safety is, are the people themselves, in so far as they are able to judge, and it is not for us to inquire whether the law is good or bad, in the abstract, unless the fact, as it might turn out to be, should become of some consequence in determining a doubtful point on the main question.

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the dictates of one's own conscience, though perhaps Massachusetts, in the days of Roger Williams, did do it. It cannot so declare the practice of teaching schools, though perhaps Virginia might have done so in 1674, when I thank God Berkeley wrote from that colony: "I know God there are no free schools nor printing, and I hope we shall not have these hundred years for learning, has brought disobedience and heresy and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both." It cannot so declare the holding of political meetings and making speeches, the bearing of arms, publishing of newspapers, &c., &c., however, injurious to the public the legislature might deem such practice to be; and why? Because the constitution forbids such declaration and punishment, and permits the people to use these practices. So with property; the legislature cannot interfere with it further, at all events, than the constitution permits. In short, the legislature cannot forbid and punish the doing of that which the constitution permits, and cannot take from the citizen that which the constitution says he shall have and enjoy. If it can, then we think all we admit that the constitution is worthless, the liberties of the people a dream, and our government as despotic as any on earth.

And we may remark that the legislature can add nothing to its power over things by declaring them nuisances. A public nuisance is that which is noxious, offensive to all the people who may come in contact with it; and the offensive quality is in the thing itself, or the particular manner of its use, and is neither increased nor diminished by a legislative declaration. What the legislature has a right by the constitution to prohibit and punish, it can not do without the aid of those instruments, viz: the courts of the State. To illustrate: the legislature has power, perhaps unlimited, over the public highways. It provides for opening, repairing, and vacating them. They are not the private property of the citizen. The legislature, therefore, may declare what shall be permitted, and what removed, whether they be, in fact, nuisances or not. So with Congress, in relation to the national highways for commerce. These are public for purposes of navigation, and are perhaps, completely under the legislative power. So the legislature, when the practice was to license houses for the exclusive retail of spirituous liquors, that is, the sale of them in particular quantities at particular places, could impose conditions upon which the license should be granted, and could make the violation of the conditions cause of forfeiture, whether it was such as rendered the retailing house a nuisance or not, and whether it was so denominated or not.

But the legislature cannot declare the path from my house to my barn nor any obstruction I may place in it a nuisance, and order it discontinued; nor can it declare my store room and stock of goods a nuisance, prohibit my selling them, and order them destroyed, because such acts would invade private property which the constitution protects. Still the fact may be that the path and the store room are nuisances which I have no right to maintain; for while I have the right to use my own property, still I must not use it to injure others. So, all trades, practices, and property, may, by the manner, time, or place of use, become nuisances in fact, in quality, and subject, consequently, to forfeiture and abatement: for example, slaughter-houses in cities, or some descriptions of retailing houses; and this the legislature may have enquired into, and, if the fact of nuisance be found, to have the forfeiture and abatement adjudged and executed. And it is the province of the judiciary to conduct enquiry, and declare the fact, or deny it, as the truth may turn out to be. Many things, by such proceedings, have already become established nuisances at common law. By this mode, when a party loses his trade or property, he does so because of his own fault, and this according to the judgment of his peers, and the provision of the general law of the land, and not by the tyranny of the legislature whose enactment may not be the law of the land. So numerous cases collected on this point in the 1st Chapter of Blackwell on Tax Titles.

In accordance with this doctrine we find that the criminal code of this State has never contained the general provision that any person who erected or maintained a nuisance should be fined, &c. &c. that the nuisance might be abated; 2 R. S. p. 428, 429. Sec's 8 and 9—a provision that submits it to the country, to wit, a jury under the charge of the Court, to decide the fate of the nuisance. This provision the courts have been daily enforcing against various noxious subjects; and if the breweries and casks of liquor are a nuisance, why have they not been prosecuted and abated also? What was the need of this special law upon the subject? We have assumed thus far upon this branch of the case, that the constitution protects private property and pursuits, and the use of private property by way of beverage as well as medicine. It may be necessary, at this day, to demonstrate the fact.

The first section of the first article declares, that all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. Under our constitution, then, we all have some natural rights that have not been surrendered, and which government cannot deprive us of, unless we shall first forfeit them by our crimes, and to secure to us the enjoyment of these rights is the great end and aim of the constitution itself. It thus appears that rights existed anterior to the constitution—that we did not derive them from it, but established it to secure to us the enjoyment of them; and it here becomes important to ascertain with some degree of precision what these rights, natural rights, are.

Chancellor Kent, following Blackstone, says, vol. 2, p. 1. The absolute (or natural) rights of individuals may be resolved into the right of personal security, the right of personal liberty, and the right to acquire and enjoy property; not some property or one kind of property, but, at least, whatsoever the society, or organizing government recognizes as property. How much does this right embrace, how far does it extend? It undoubtedly extends to pursuing the trades of manufacturing, buying and selling, and to the

practice of usings. These acts are but means of acquiring and enjoying, and are absolutely incidental to them. What we may ask, is the right of property worth, strip of the right of producing and using it? The right of property is equal, and is not to be obstructed by the free exercise of the means of production. It is a right of the proprietor to the enjoyment of his land, says Polit. Economy, 133.

Mr. Arrow Smith v. Burlington, 4 MeLean on p. 497, it is said: "A freeman may buy and sell at his pleasure. This right is not from society but from nature. The master gave it up. It would be amusing to see a man hunting through our law books for authority to make a bargain." To the same effect Lord Coke 2 Inst. 47. Rutherford's Institutes, p. 20. This great natural right of using our liberty in pursuing trade and business for the acquisition of property, and of pursuing our happiness in using it, though not secure in Europe from the invasions of omnipotent parliaments, or executives, is secured to us by our constitution. For, in addition to the first section which we have quoted, and aside from the fact that the very purpose of establishing the constitution was such security, by Section 1st, it is declared that we shall be secure in our persons, houses, papers and effects from unreasonable search and seizure. By section 21 we have the right to devote our labor to our own advantage and to keep our property or its value for our own use, so they cannot be taken from us without being paid for. And by Section 12 it is declared that every man, for injury done to him in his person, property or reputation, shall have remedy by due course of law. These sections fairly construed, will protect the citizen in the use of his industrial faculties, and in the enjoyment of his acquisitions. This doctrine is not new in this court. In Doe v. Douglas, 8 Black, 10, in speaking of the limitations in our constitution upon the legislative power, it is said, they restrain the legislature from passing a law impairing the obligation of a contract, from the performance of a judicial act, and from any flagrant violation of the right of private property. This latter restriction we think, clearly contained in the 1st and 24th sections of the 1st article of our constitution of 1816.

We lay down this proposition, then applicable to the present case: that the right of liberty and pursuing happiness secured by the constitution, embraces the right of each *compos mentis* individual, of selecting what he will eat and drink, in short, his beverages, so far as he may be capable of producing them, or they may be within his reach; and that the legislature cannot take away by direct enactment, if the constitution does not secure this right to the people, it secures nothing of value. If the people are subject to be controlled by the legislature in the matter of their beverages, so they are to their articles of dress and in their sleeping and waking. And if the people are incompetent to select their own beverages, they are also incompetent to determine anything in relation to their living, and should at once be placed in a state of pupillage to a set of government summary officers; ergo—upon the dignity of human nature should cease, and the doctrine of the competency of the people for self government be declared a rhetorical flourish. If the government can prohibit any practice it pleases, it can prohibit the drinking of cold water. Can it do that? If not, why not? If we are right in this, that the constitution restrains the legislature from passing a law regulating the diet of the people, a summary law, for that under consideration is such, no matter whether its object be moral or economy, or both; then the legislature cannot prohibit the manufacture and sale for use as a beverage of ale, porter, beer, &c., and cannot declare those manufactured, kept for sale and sold for that purpose a nuisance, if such is the use to which those articles are put by the people. It all resolves itself into this, as in the case of printing, worshiping God, &c. If this constitution does protect the people in their right, the legislature may prohibit; if it does, the constitution furnishes the protection. If it does not in this particular, it does, as we have said, to nothing of importance, and tea, coffee, tobacco, corn, bread, ham and eggs may next be placed under the ban. The very extent to which a concession of the power in this case would carry its exercise show it cannot exist. We are confirmed in this view when we consider that at the adoption of our present constitution, there were in the State fifty breweries and distilleries, in which a half a million of dollars was invested five hundred men employed; which furnished a market annually for two million bushels of grain, and turned out manufactured products to the value of a million of dollars, which were consumed by our people to a great extent as a beverage. With these facts existing, the question of incorporating into the constitution the prohibitory principle was repeatedly brought before the constitutional convention, and uniformly rejected—Debate in the convention, vol. 2, p. 1434 and others. We are further strengthened in this opinion when we notice, as we will as matter of general knowledge, the universality of the use of these articles as a beverage. It shows the judgment of mankind as to their value. This use may be traced in several parts of the ancient world. Pliny, the naturalist states that in his time it was in general use amongst all the several nations who inhabited the western part of Europe; and according to him, it was not confined to the northern countries whose climate not permit the successful cultivation of the grape. He mentions that the inhabitants of Egypt and Spain used a kind of ale; and says that, though it was differently named in different countries, it was universally the same liquor. See P. Nat. Hist., lib. 14, c. 22. Herodotus, who wrote five hundred years before Pliny, tells us that the Egyptians used a liquor made of barley (277). Dion Cassius alludes to a similar beverage among the people inhabiting the shores of the Adriatic. Lib. 49 De Pannonis. Tacitus states that the ancient Germans, for their drink, used a liquor brewed of other grain, and fermented it so as to make it resemble wine. Tacitus de mor

Gen., c. 23. Ale was also the favorite liquor of the Anglo Saxons and Danes. If the accounts given by Isidorus and Orosius of the method of making ale among the ancient Britons be correct, it is evident that it did not essentially differ from our modern brewing. They say that the grain is steeped in water and made to germinate; it is then dried and ground; after which it is infused in a certain quantity of water, which is afterwards fermented.

In Biblical history we are told that the vine, a plant which bears clusters of grapes out of which wine is pressed, so abounds in Palestine that almost every family had a vineyard. Solomon, every to be the wisest man, had extensive vineyards which he leased to tenants. Song 8—12; and Daniel in his 104th psalm, in speaking of the greatness, power of God, says, verse 14 and 15, "He causeth grass to grow for the cattle, and herb for the service of man, and wine that maketh glad the heart of man, and oil to make his face shine, and bread to strengthen man's heart."

It thus appears, if the inspired writer is entitled to credit, that man was made to laugh as well as weep, and that these stimulating beverages were created by the Almighty expressly to promote his social hilarity and enjoyment. And for this purpose hath the world ever used them, they have ever given, in the language of another passage of scripture, strong drink to him that was weary and wine to those of heavy heart. The first miracle done by our Savior, that at Cana of Galilee, the place where he dwelt in his youth and where he met his followers after his resurrection, was to supply this article to increase the festivities of a joyous occasion; that he used it himself is evident from the fact that he was called by his enemies a wine bibber, and he paid it the distinguished honor of being the eternal memorial of his death and man's redemption.

From Dr. Bow's compendium of the census of 1850, p. 182, we learn that at that date there were in the United States 1217 distilleries and breweries, with a capital of \$8,507,574, consuming some 19,000,000 bushels of grain and applications 1294 tons of hops and 61,675 hogsheads of molasses, and producing some 83,000,000 gallons of liquor.

By the National Encyclopedia, vol. 12, p. 924, we are informed that for the year ending January 5, 1850, there were imported into Great Britain and Ireland 7,970,067 gallons of wine, 6,940,780 of brandy, and 5,123,128 of rum, and that there were manufactured in that kingdom, 25,000,000 gallons.

In the 6th vol. of the same work, p. 328, it is said: The vine is one of the most important objects of cultivation in France—Wine is the common beverage of the people of France, and yet Professor Silliman, of Yale College, on the 17th of April 1851, then at Chateau, writes, vol. 1, p. 185, in his visit to Europe: "In traveling more than 400 miles through the rural districts of France, we have seen only a quiet, industrious population, peaceable in their habits, and as far as we had intercourse with them courteous and kind in their manners. We have seen no ruffians, no broil or tumult—have observed no one who was not decently clad, or who appeared to be ill fed. We are told, however, that the French peasantry live upon very small supplies of food, and in their houses are satisfied with very humble accommodations. Except in Paris, we have seen no instance of apparent suffering, and few even there; nor have we seen a single individual intoxicated or without shoes and stockings."

We have thus shown, from what we will take notice of historically, that the use of liquor, as a beverage, and article of trade and commerce, is so universal that they cannot be pronounced a nuisance. The world does not so regard them, and will not till the Bible is discarded and an overwhelming change in public sentiment, if not in man's nature, wrought. And who, as we have asked before, is to force the people to discontinue the use of beverages?

Counsel say the maxim that you shall not use your own as not to injure another justifies such a law by the legislature, but the maxim is misapplied; for it contemplates the free use, by the owner, of his property but with such care as not to trespass upon his neighbor; while this prohibitory law forbids the owner to use his own in any manner, as a beverage. It is based on the principle that a man shall not use at all for enjoyment what his neighbor may abuse, a doctrine that would, if enforced by law in general practice, annihilate society, make canocho of all men or drive them into the cells of the Monks and bring the human race to an end, or continue it under the direction of licensed county agents.

Such, however, is not the principle upon which the Almighty governs the world. He made man a free agent, and to give him opportunity to exercise his will to be virtuous or vicious as he should choose, he placed evil as well as good before him, he put the apple into the garden of Eden, and left upon man the responsibility of his choice, made it a moral question and left it so. He enacted as to that a moral, not a physical prohibition. He could have easily enacted a physical prohibitory law by declaring the fatal apple a nuisance and removing it, or by declaring the serpent a nuisance and removing it. He did not. His purpose was otherwise, and he has since declared that the serpent and wheat shall grow together to the end of the world. Man cannot, by prohibitory law, be robbed of his free agency. See Milton's Arcopagitica or speech for Liberty of unlicensed printing, works vol. 1, p. 166.

But notwithstanding the enactment cannot prohibit it, can, by legislative or constitutional limits, so regulate the use of intoxicating beverages as to prevent most of the abuses to which they may be subject. We do not say that it can; for under our system of government, formed in a confidence in man's capacity to direct his own conduct, designed to allow to each individual the largest liberty consistent with the welfare of the whole, and to subject the private affairs of the citizen to the least possible government interference, some excesses will occur, and must be tolerated, subject only to such punishment as may be in-

flicted. This itself will be preventive in its influence. The happiness enjoyed in the exercise of general reasonably regulated liberty by all overbalances the evil of occasional individual excess. "Order" must not be made to "reign" here as once at Warsaw, by the annihilation of all freedom of action, crushing out, instead, the spirit itself of liberty. With us, in the language of the then illustrious Burke when defending the revolting American Colonies, something must be partitioned to the spirit of liberty.

What regulations of the liquor business would be constitutional, it is not for us to indicate in advance; but those which the legislature may from time to time prescribe can be brought by the citizen to the constitutional test before the judiciary, and it will devolve upon that department to decide upon their consistency with the organic law; in fact, the question of power of usurpation, between the people and the people's representatives; and in doing this so far as it may devolve upon us, we shall cheerfully throw every doubt in favor of the latter and of stringent regulations. Such is the constitution of our government. Max v. The State, 4 Ind., 342.—Thomas v. The Board of Commissioners of Clay County, 5 Ind., 557. Greenacres Township v. Black, 5 Ind., 557. Lerner v. The Trustees of Albion, 5 Hill 121. Dunham v. The Trustees of Richer, 5 Cowen, 462. Colter v. Doty, 5 Ohio Rep., 393.

It is like the case of laws for the collection of debts. The constitution prohibits the passage of an act impairing the obligation of a contract; yet the legislature may regulate the remedy upon contracts, but must regulate within such limits as not substantially to impair the obligation of the contract itself.—Gantley's Lessee v. Ewing, 3 How., U. S. Rep., 707.

Regulations within constitutional limits, we have no doubt, if efficiently enforced, will accomplish, as we have said, nearly all that can reasonably be desired. The legislature, we will add, may not doubtfully require the forfeiture of such particular portions of liquor as shall be kept for use in violation of proper regulations, as in the case of gun powder stored in a populous city, and this forfeiture will be adjudged by the judiciary, see Colter v. Doty Supra; but neither the gun powder, nor liquor in the State, accompanied by the prohibition of the further manufacture and use of the article, can be forfeited on account of the improper use of a given quantity, because the forfeiture of neither of the articles is a nuisance. It is not pretended to be so as to gun powder, and we think we have shown it is not so as to liquor.

It is doubtless competent for the legislature to establish proper police regulations to prevent the introducing of foreign goods, &c., for there is a palpable difference between excluding a foreign and expelling a citizen paper.—The constitutional convention thought it might have power to prohibit the ingress of foreign, while it might not to compel the egress of resident negroes.

So by such regulations, may the introduction of nuisances be prevented, for there is a wide difference between assenting to declare that a given thing is a nuisance, and the prohibiting of the introduction of what is conceded, or shall turn out to be a nuisance.

And, in fact, the restrictions in the constitution upon the legislative power may operate for the benefit of those living under, and in some sense a party to its provisions, and not for that of strangers. It will not be denied that but for the constitution and laws of the United States which impose the restriction upon an independent sovereign, might exclude from her borders all foreign liquors, whether nuisances or not, unless indeed, the doctrine upon which Great Britain was defended in *formis*, trade with China at the crown's mouth be correct, that in this day of Christian civilization, it is the duty of all nations to admit universal reciprocal trade and commerce, a doctrine, not yet, we think incorporated into the code of international law.

And it would not follow that, because the State might prohibit the introduction of foreign wheat she could, therefore, prohibit the cultivation of it within the State by her own citizens. The right of the State to prevent the introduction of foreign objects does not depend upon the fact of their being nuisances, or offensive otherwise; but she does it, when not restrained by the constitution or laws of the United States, in the exercise of her sovereign will.

This, however, is a topic involving questions of power between the State and Federal Governments which we do not intend discussing in the present opinion. We limit ourselves here to the question of the power of the legislature over the property and pursuits of the citizen under the State constitution. The restrictions which we have examined upon the legislative power of the State were inserted in the constitution to protect the minority from the oppression of the majority, and all from the usurpation of the legislature, the members of which under our plurality system of elections, may be returned by a minority of the people. They should, therefore, be faithfully maintained. They are the main safe guards to the persons and property of the State. It is easy to see that when the people are suffering under losses from depreciated bank paper, a feeling might be aroused that would, under our plurality system, return a majority to the legislature, which would declare all banks a nuisance, confiscate their paper and the buildings from which it issues.

So with alcohols, when repealed whole sale markets are perpetrated by some of them. And, in Great Britain and France, we have examples of the confiscation of the property of the churches even; which, here, the same constitution that protects the dealer in beer would render safe from invasion by the legislative power. In our opinion for the reasons given above, the liquor act of 1855 is void.—Let the prisoner be discharged.

THE POLAR REGIONS. There undoubtedly exists a very different state of things around the North Pole from what has generally been supposed.—Capt. Smyth ascertained that the Arctic fowl migrated north to winter, and asserted that north of a certain ice field was open water. These circumstances he used as evidence in support of his theory of the earth being convex or hollow.

Recent discoveries consequent upon the search of Sir John Franklin, and the observations of other Navigators, confirm Smyth's statement as to the Arctic fowl going north to winter, and prove his suggestions correct as to an open circumpolar sea. But no one, to our knowledge, has ventured any speculations as to the cause of such an anomaly. We should consider it perfectly reasonable to suppose that the higher the latitude the more intense the cold, until it reached the Pole, and there would undoubtedly be the case, if there were no cause to counteract and produce a different effect.

Late discoveries prove that after passing over the ice field, (or zone, as I shall call it,) northward the ice field gradually loses its firmness, until it becomes unsafe to venture further, and the explorer finds it necessary to return; but his experienced eye can determine from unmistakable evidence in the atmosphere, that still further north is open sea. After carefully considering the evidence in the case, I am of the opinion that the statement of the existence of an open sea around the North Pole, is correct. And if correct, why? I find that a current sets south through every strait or channel leading from the north, frequently carrying immense fields of ice into more southern waters, where they are dissolved. To account for this I suppose that in the Polar Region there is an extremely deep sea with an upward current of comparatively high temperature, which so modified the atmosphere above it, as to render it not only comfortable but delightful place for Arctic animals and fowl to winter in; and islands there, may be clothed in green during the year.

The bottom of this sea I suppose to be heated by the internal heat of the earth, which causes the water to rise from the same principle that heated air ascends from the earth, or hot water rises in boiling.—Air when heated becomes rarified, ascends, colder and heavier air taking its place; this will be the case so long as the heat is sufficient to rarify one part of the atmosphere more than another; such is also the case with water, when heated it expands, and becoming lighter in proportion to its bulk than cold water, ascends, and cold water takes its place. Now we will apply this principle to the circumpolar sea; supposing its bottom or lower strata of water to be raised in temperature above that of the waters of circumpolar seas, it would arise, and under current from those seas coming in to supply its place, would produce a continual upward current, bringing up such a temperature as to modify the atmosphere covering this sea; the water coming to the surface naturally flows southerly from the polar center, until it becomes chilled and ceases to keep up the temperature of the atmosphere in the same ratio that it loses its own heat, until it begins to freeze as it flows along and forms an icy zone equidistant from the pole.

The short summer in that region would little toward dissolving the ice which would accumulate during the long winter if there were nothing to keep the temperature of the water above freezing point. It seems to have been denied by Creative Wisdom so to arrange this (hiberose) suppose almost useless) region as to benefit man; for here, so doubt, within this icy zone is a magazine whence whal and fish issue in great abundance, passing out under the bridge of ice into places and along shores inhabited or frequented by man.

It is not improbable that an opening may sometime occur in the ice sufficient for the ingress of vessels; such an opening, however, from discoveries already made would be of rare occurrence, and if an entrance were effected in this way an age might pass before another would occur favorable to their egress; but by dint of perseverance I have no doubt but a communication across this zone of ice will be effected in some way.

S. P. G.

A "Fast" Child. Children have sometimes a peculiar way of saying things very subversive of gravity in the old folks.

Mr. Fredrick Fitzgerald Smith had a luxurious growth of whiskers. The lower part of his countenance was entirely enveloped in hair from ear to ear. The pilous vegetation stood out in large, matted, tangled and curly magnificent masses all over his jaws and chin. Indeed, it was commonly reported that he had taken a premium on it at a fair held by the society for ameliorating the condition of the Jews, and encouraging the growth of the hair.

Nature, if too profuse in her gift in one direction, is very apt to correct the redundancy by a compensative deficiency in another. So it happened with Mr. Fredrick Fitzgerald Smith. All over the upper part of his head above his ears was very curly.—But per contra: "He had no hair on the top of his head, in the place where the hair ought to grow."

Mr. Smith lodged one night and breakfasted at the house of Mr. John Simpkins, his friend. Mr. Simpkins had, like every parent who has children, a very smart little girl. It is surprising how many smart children there are now days. At the breakfast table young Miss, Arabella Simpkins could not take her eyes for one moment from the patriarchal countenance of Mr. Sni h. "Arabella, love, don't be so rude," nudged Mrs. Simpkins, primly, "Arabella at your toast," frowned Mr. Simpkins, scoldingly. "But Arabella kept staring at Mr. Fredrick Fitzgerald Smith. "Betsy remove this naughty girl from the table," cried Mr. Simpkins, in a rage. "I don't want to go, ma, I don't!" squallied the smart Arabella. "I want to look at that man a little longer. Don't you see, ma, he has got his head wrong side up!" The young lady was living and doing well at last accounts, but it is difficult to conceive how she can survive.—*Con. Commercial.*

What is sleep?