

# The McArthur Democrat.

NO NORTH, NO SOUTH, UNDER THE CONSTITUTION, BUT A SACRED MAINTENANCE OF THAT INSTRUMENT AND THE UNION.

VOL. 11.

M'ARTHUR, VINTON COUNTY, OHIO, APRIL 16, 1863.

NO. 35.

**The McArthur Democrat.**  
 PUBLISHED EVERY THURSDAY BY  
**E. A. & W. E. BRATTON,**  
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 House, No. 10 Stairs.

**TERMS, CASH.**  
 The Democrat will be sent one year for One  
 Dollar; Six Months for Fifty Cents; Three  
 Months for Twenty-five Cents.  
 All papers will be discontinued at the  
 expiration of the time paid for.

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 One square one insertion, \$0.75  
 Each additional insertion, 50  
 Cards one year, 5.00  
 Notice of appointments of Administrators,  
 Guardians and Executors, 1.50  
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 Advertisements for legal notices must  
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 A liberal deduction will be made yearly  
 for advertising.  
 The advertisements must be accompanied with  
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 as we have no agents.

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We are prepared to execute with neatness,  
 dispatch and at prices that defy competition,  
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- BOOKS,
  - PAMPHLETS,
  - HAND BILLS,
  - SHOW BILLS,
  - POSTERS,
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  - LABELS, &c., &c.
- Give us a trial and we will convince that we can  
 do all the printing cheaper for you than any  
 other establishment in this section of country.

**E. A. Bratton,**  
 ATTORNEY AT LAW, McArthur, O., will  
 prosecute in Vinton and adjoining counties  
 N. E. SHELTON, B. F. BENNETT,  
 Columbus, Ohio, Managers.

**Whigham & Hewitt,**  
 ATTORNEYS AT LAW, McArthur, Vinton  
 Co., Ohio, will practice in Vinton and ad-  
 jacent Counties. Prompt attention will  
 be given to all business orders, and to their care.  
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 February 20th, 1862.

**HOTELS.**

**CLINTON HOUSE,**  
**SCOTT & POLLARD,**  
 PROPRIETORS,  
 FORMERLY OF FLEMING HOUSE, WHEELING, VA.  
 Jan. 22, '62—1 yr  
 Chillicothe, Ohio.

**Heurie House,**  
**JAMES WATSON,** Proprietor, Third  
 Street, near Main, Cincinnati, Ohio.  
 One Dollar per day.

**WIGGINS HOUSE,**  
**R. MONTGOMERY & SON,** Proprietors,  
 205 Front St., Portsmouth.

**MARIETTA AND CINCINNATI**  
**R. & O. R. R.**

Trains run as follows:

| GOING EAST.  |                |             |
|--------------|----------------|-------------|
| LEAVE.       | ACCOMMODATION. | DAY MAIL.   |
| Cincinnati,  | 3 20 P. M.     | 9 03 A. M.  |
| Blanchester, | 5 33 P. M.     | 10 51 A. M. |
| Greenfield,  | 7 35 P. M.     | 12 23 A. M. |
| Chillicothe, | 8 43 P. M.     | 1 33 P. M.  |
| Hamden,      | ARRIVE.        | 3 11 P. M.  |
| Zaleski,     |                | 3 43 P. M.  |
| Athens,      |                | 4 43 P. M.  |
| Marietta,    |                | 7 09 P. M.  |
| Parkesburg,  |                | 7 30 P. M.  |
| ARRIVE.      |                | ARRIVE.     |

  

| GOING WEST.  |                |             |
|--------------|----------------|-------------|
| LEAVE.       | ACCOMMODATION. | DAY MAIL.   |
| Parkesburg,  |                | 7 05 A. M.  |
| Marietta,    |                | 7 20 A. M.  |
| Blanchester, |                | 8 40 A. M.  |
| Zaleski,     |                | 10 41 A. M. |
| Hamden,      |                | 11 15 A. M. |
| Chillicothe, | 5 00 A. M.     | 1 00 P. M.  |
| Greenfield,  | 6 12 A. M.     | 2 03 P. M.  |
| Blanchester, | 8 13 A. M.     | 3 37 P. M.  |
| Cincinnati,  | 10 15 A. M.    | 5 35 P. M.  |
| ARRIVE.      | ARRIVE.        | ARRIVE.     |

**JOHN DURAND,** Sup't.  
 Dec 4th 1862.—1 yr.

**CHANGE OF TIME.**  
**SCIOTO AND HOCKING VALLEY**  
**RAILROAD.**

**SUMMER ARRANGEMENT.**  
 On and after Monday, April 13th, 1863, trains  
 will run as follows:  
**Goings North**—Mail Train leaves Portsmouth  
 at 7:00 A. M.; arrives at Hamden at 10:15 P. M.  
 making close connections with through trains to  
 Marietta and Cincinnati Railroad for all points  
 East and West. Accommodation Train leaves  
 Portsmouth at 1:30 P. M.; arrives at Hamden at 5  
 30 P. M.  
**Goings South**—Accommodation Train leaves  
 Hamden at 6:15 A. M.; arrives at Portsmouth  
 at 10:20 A. M. Mail Train leaves Hamden at 2:  
 P. M.; arrives at Portsmouth at 6:00 P. M.  
 Through Tickets for Marietta, Chillicothe  
 Cincinnati and Columbus can be procured at  
 Ticket Offices at reduced rates.  
**J. W. WEBB,** Receiver

**Poetry.**  
**BATTLE OF PITTSBURG LANDING.**  
 BY JOSHUA HAGLE.

We seemed to have sunk into quiet repose,  
 Not dreaming that danger was nigh,  
 As the fifth day of April was waning to a close,  
 So calm and serene was the sky.

But, hark! on the fifth, what means all this noise?  
 This hurried confusion in camp?  
 The cry was repeated, "Fall in, ye brave boys,  
 And drive back our foes to the swamps!"

The fight now already in earnest began,  
 Extending along our whole line (stand,  
 So great were their numbers our men could not  
 And hence we fell back in quick time.

At length by sunrise was completed, were taken  
 Our tents and our camp; we were driven  
 Under the guns we knew very well;  
 We felt well assured we'd never be forsaken,  
 Though proudly the rebels did yell.

At length we recovered from the shock first re-  
 Our tents and the ground for a stand;  
 And brought the proud foe to a stand;  
 The foe ones in battle by fresh ones relieved—  
 We formed then an unbroken band.

The conflict grew fiercer, each fought with his  
 The ground was all strewn with the slain;  
 The battle increased, and only at night  
 Was stopped by the falling of rain.

There weary and hungry all night did we lay  
 Awaiting the coming of dawn;  
 Our minds wandered off to our friends far away  
 Who slept on their pillows of down.

Our eyes knew no sleep, our limbs knew no rest,  
 Our hopes almost gone to the wind;  
 As the night wore away we felt we were blast-  
 Reinforcements already had seen.

Quite early again the conflict began,  
 By fresh troops arriving on each side—  
 The battle grew fiercer as men fought with men,  
 And thousands fell dead on each side.

From morning to noon the stars seemed to dim;  
 Still on them our batteries did play;  
 Our men most exhausted, not eating a mouthful,  
 Aligned the great traitors gave way.

At length the great traitors gave way,  
 Our troops now stronger did obtain;  
 For nearly two days the conflict had lasted,  
 And the great rebel Johnson was slain.

In haste we pressed them as they fled,  
 The rebels now gave up the fight;  
 Our whistles sounding how they they grew  
 By having two days and one night.

**Important Law Decision in**  
**Dr. Olds' Kidnapping**  
**Case by Lincoln, Stanton,**  
**Tod & Co.**

The Petition sets forth that on the 29th day of December, 1862, Elson B. Olds, of the county of Fairfield, appeared before W. L. Rigby, Esq., an acting justice of the peace in and for said county, and made his certain affidavit that said petitioner, William Scott and James Goodell, on the 12th day of August, 1862, at the said county of Fairfield, in and upon the said Elson B. Olds, did then and there unlawfully make an assault, and unlawfully arrested and imprisoned him, the said Elson B. Olds, with the intention of having him, the said Olds, unlawfully carried out of the State of Ohio. That upon said affidavit, so made as aforesaid, the said justice of the Peace then and there issued his certain warrant, and had said petitioner brought before him to make answer to said charge of kidnapping; and that such proceedings were had therein that said Justice of the Peace ordered and required said petitioner to give bond in the sum of \$1,000 conditioned for his appearance at the then next term of the Court of Common Pleas in and for said county of Fairfield, to answer to said charge of kidnapping. The petition further alleges that said assault and arrest, and imprisonment, and carrying out of the State of said Olds, were acts done during the time and continuance of the present rebellion; and that said acts were done by and under color of authority of the President of the United States, and under a warrant of the War Department, commanding the said William Scott, to proceed and arrest said Olds, and deliver him to the commandant of Fort Lafayette, New York. That in pursuance of a direction in said warrant contained, David Tod, Governor of the State of Ohio, ordered and required said petitioner, then being a military officer in the actual service of the State of Ohio, subordinate and subject to the command of said Gov. Tod, as Commander-in-Chief of the military and naval forces of said State, but subject to the order and command of the President of the United States, to aid and assist the said William Scott in the execution of said warrant, in the arrest and carrying out of the State of said Olds, as aforesaid; and that all and whatsoever acts of said petitioner,

complained of against him, were done by him by virtue, and under color of, the authority derived from, and exercised under, the President of the United States, in manner aforesaid; whereupon said petitioner prayed that said prosecution so pending against him as aforesaid might be removed for trial to the next Circuit Court of the United States, to be holden in the Southern District of Ohio, in accordance with the provisions of the act of Congress, approved March 3, 1863, entitled "An act relating to habeas corpus and regulating judicial proceedings in certain cases."

The warrant exhibited with the petition, is in the following words:  
**"WAR DEPARTMENT, WASHINGTON,**  
**TOD CITY, August 2, 1862.**  
**"Sir:—Proceed, with one assistant,** by first train, to the place of residence in the State of Ohio, of Elson B. Olds; and deliver him to the commandant at Fort Lafayette, New York, permitting no communication with him, except by yourself and your subordinates charged with his arrest and safe keeping; and, if you think fit, by his family in your presence.—Examine all papers, private or otherwise, found in the office or residence of Olds, or on his person, and bring with you to this Department all that may amount of a reasonable or suspicious nature. If you think any other and will be necessary, call on Gov. Tod, at Columbus, who will be requested to give you such information and aid as you may think needful. In executing this order be prompt, discreet, quietly; and when executed, make full report of your doings according to this Department.  
**C. P. WALCOTT,**  
 Assistant Secy of War."  
**Wm. H. Sewer,** Washington, D. C.

The 5th section of the act of Congress, approved March 3, 1863, and under which this petition is filed, reads as follows: "That if any suit or prosecution, civil or criminal, has been or shall be commenced in any State Court, against any officer, civil or military, or against any other person, for any arrest or imprisonment made, or other trespass or wrong done, or committed, or any act omitted to be done, at any time during the present rebellion, by virtue or under color derived from or exercised by or under the President of the United States, or any act of Congress, and the defendant shall, at the time of entering his appearance in such Court, or if such a person shall have been entered before the passage of this act, then at the next session of the Court in which such suit or prosecution is pending, file a petition, stating the facts and verified by affidavit, for the removal of the cases for trial at the next Circuit Court of the United States, to be holden in the district where the suit is pending, and offer good and sufficient surety for his filing in such Court, on the first day of its session, copies of such process and other proceedings against him, and also for his appearing in such Court and entering special bail in the case, if special bail was originally required therein, it shall be the duty of the State Court to accept the surety and proceed no further in the cause or prosecution." &c.

The case was argued by H. H. HENKES, Esq., for the petitioner, and by Hon. C. D. MARTIN and T. H. SLOAN, Esq., Prosecuting Attorney for the State.

VAN TRAMP, JUDGE—This is a petition filed under and by virtue of the provisions of an Act of Congress, approved March 3, 1863, entitled "An act relating to habeas corpus and regulating judicial proceedings in certain cases." The questions involved are of vast and solemn importance and significance, whether looked at in behalf the powers of the President of the United States as sought to be established by this law; or of the rights of the citizens of the States, and the sovereign powers of the States themselves. If this law, to the extent in which it seeks to establish the executive powers of the nation, is authorized by the Constitution of the United States, and if Congress has not exceeded the just powers granted to them by that instrument, in the enactment of its provisions; then, no matter what may be the consequences to the individual citizen, or its effect on the sovereignty of the States as integral portions of the federal government; it is my imperative duty, from which I am not disposed to shrink, so to declare it—

But it, on the other hand, I feel a judicial conviction, beyond a reasonable or disturbing doubt, that this law is not warranted by any of the provisions of the federal constitution, and that Congress thereby has, without such constitutional authority, sought to interfere improperly with the local criminal law of a State; it is equally my solemn duty so to declare it.

It has been said in the argument by counsel that this Court cannot look into any thing in the determination of this question, beyond the facts alleged in the petition, the provisions of the law of Congress upon which that petition is based, and the warrant issued by the Secretary of War ordering the arrest of Elson B. Olds and his imprisonment in Fort Lafayette. In this narrow view of the subject, I do not entirely concur with the counsel; although I acknowledge the investigation should not, and can not, be extended much beyond the limits. To test the constitutionality of this law, and this is the main question before us, several other things are to be taken into consideration: the Constitution of the State of Ohio, the State original law upon our statute books under and by virtue of that Constitution, the constitution of the United States, and it may be the constitutional powers of the President, so far as they are sought to be declared by this act of March 3, 1863.

Counsel has also said, and very truly, that the question involved in this application is simply one of jurisdiction between this Court and the Circuit Court of the United States. The announcement is merely the statement of the legal fact; but it is no solution of the constitutional principle required to be passed upon. Because it will not, I apprehend, be denied, that as grave and direct a question of constitutional power may arise upon a question of the jurisdiction of the forum, quite as readily as upon any other proposition in the whole range of constitutional law.

Counsel for the petitioner has cited the Judiciary Act of 1789, as bearing upon the question now before the Court by way of construction, upon the theory of some analogy supposed to exist; but the analogy subsisting between a law giving civil jurisdiction by virtue of the 1st and 24 sections of the 31 article of the Constitution of the United States, and that conferring criminal jurisdiction, seeking to oust the State courts of their jurisdiction over the local criminal law of a State, cannot be considered of very great force or pertinence.—The statutes, alluded to, of 1815 and 1816, in relation to the public revenues, are entitled to more consideration. But what is the clear distinction arising upon the law now under consideration and these several other federal statutes cited in the argument of counsel for the petitioner, when taken in connection with the acknowledged facts of the case at bar? It is this, that in the cases under those statutes of 1815 and 1833, the corpus delicti complained of, and sought to be enforced in the State Courts, grew out of an attempt to enforce the provisions of a law of Congress, by the proper officers, whose official duty it was to carry those provisions into execution within the State where the conflict of jurisdiction arose, and as to which law there was no serious question as to its constitutionality, being laws for the collection of the public maritime revenues of the United States. The law of March 3, 1815, was "an act further to provide for the collection of duties on imports and tonnage." The law of March 2, 1833, was "an act further to provide for the collection of the duties on imports." The case of *Wetherbees vs. Johnson, & others*, 10 Mass. Rep. 412, cited by the counsel, arose under the law of 1815; and even in that case the constitutionality of the law was brought in question; but the Court very properly held that the law was warranted by the Constitution of the United States. The defendant, Johnson, was inspector of customs for the district of Boston and Charlestown, and in the State Court plead that fact in jurisdiction of the alleged trespass in taking and carrying away certain goods and chattels of the plaintiff, liable to be seized under the law of Congress. Trial was had upon the issue, and judgment rendered for the plaintiff for the value of the goods thus seized. Afterwards, and at the same term, Johnson filed his claim for an appeal, under said statute, from said judgment to the Circuit Court of the United States, then, next to be holden within the District of Massa-

chusetts. PARKER, C. J., said:—"Among other things referred, by the Constitution of the United States, to the judiciary power of the nation, are all cases in law and equity, arising under the Constitution and laws of the United States. If an action be brought by a citizen of any State, against another citizen of the same State, the courts of the United States have not original jurisdiction, but the action must be brought in the State courts. But as the defendant in such suit may, in the act complained of, have been in the execution of some law of the United States; Congress may by law provide, that the suit shall be removed to the national courts, when the defendant shall make it appear that his case is a proper subject of their jurisdiction."

It will be observed that the Chief Justice puts the right of the petitioner to a transfer of Jurisdiction upon the distinct ground that the act complained of in the original prosecution in the State Court, was committed by the proper officer in the execution of some law of the United States. In such case the Court held that Congress may by law provide, that the suit shall be removed to the federal courts, when the petitioner shall make it appear that his case is a proper subject of their jurisdiction. But how is it in the case at bar? It is very clear that the corpus delicti did not grow out of an attempt, by a proper officer, to carry into execution a law of the Congress of the United States, not even the provisions of this act of March 3, 1863; but arose in the execution of a mere order of the President, authorized by no law of congress, and which order came and was in direct conflict with the constitution of the State of Ohio, and of a law existing in pursuance thereof. Now what is the legal status of the crime made by this petitioner to remove his case into the circuit court of the United States? It is, in my opinion, nothing more or less than an attempt to transfer the criminal jurisdiction of the State courts into that of the federal tribunals. If such be the scope and effect of this act of March 31, 1863, or if such could be the result of its proper application to the facts in the case at bar, then I have no hesitation in pronouncing it unconstitutional.

Might not congress as clearly repeal or abolish a State law creating an offence, and forbidden by the federal constitution, as to dictate to such State the mode or place of trial of such offense? Would they not have the same power to measure and fix the punishment of crime under a State law, or to enact a code of evidence or practice, for its prosecution, as to enact the forum for its trial? It is clear to my mind, that the sovereign legislative power of a State has just as exclusive jurisdiction over the forum, as they have the exclusive constitutional power to declare what shall be the crime itself. And if the congress of the United States have no constitutional power to modify, abolish, or repeal the law of a State, creating the crime, it is a logical deduction, in my opinion, from which there is no escape, that they are equally powerless in changing the forum of trial of such crime; unless the wrong act charged grows out of the execution of, or is connected at the time with some law of the United States. In such case, there exists a concurrent jurisdiction over the subject, and of the two, the inferior must yield to the superior jurisdiction, upon a question of undisputed sovereignty, and where a demand is made for a transfer of the jurisdiction. Such were the cases which arose under the acts of congress of 1815 and 1833. The alleged wrongful acts done, were committed under and by virtue of the authority of these laws. Whether the acts done by the inspectors and collectors of the customs, were trespasses or not, depended upon the validity of the laws which they were in the act of executing. It was when such a state of things as this occurred, that congress declared, in and by those statutes, that the defendants should have a right to the transfer of the cases brought against them in the State courts, to the paramount jurisdiction of Worcester vs. the State of Georgia, 5 Peter's Rep. 515, has any application to the question raised upon this petition in the case at bar. That was a case where a State law by the Legislature of Georgia, was in clear violation of treaties made between the United States and the Cherokee nation of Indians, in which they were

recognized as a sovereign and independent nation, and in which the United States guaranteed that the Cherokee should be authorized to govern themselves, and all persons who had settled within their territory, free from any right of Legislative interference by the several States composing the United States, in reference to acts done within their own territory. The State of Georgia, therefore, had no more power to pass a criminal law to operate in the territory thus recognized by the sovereignty of the United States, than they had to pass a law to operate in the territory of her sister States.

It is by no means clear to my mind that this law now under consideration, covers or includes the case at bar.—It certainly does not use very apt or precise language to reach it. Counsel for the State alluded to certain proposed and rejected amendments to the law, to show the motives operating upon the legislative mind in its passage. Courts, in the interpretation of laws, cannot look into or scan the motives which induced their enactment, unless they tend to a proper sustenance of the law itself. I think the true interpretation, according to the legal canons of construction to be put upon the word "authority," as used in the 5th section of this act, is a proper, legal and Constitutional authority. It is not to be presumed, judicially at least, that the legislature intended so startling a proposition as to make the mere private will of the President, the simple violation of the individual, a law by which the liberty of the citizen is to be regulated and controlled, in despite of the clear and explicit guarantees of the Constitution in that behalf. If this is a proper interpretation of this law, then it is clear to my apprehension that the case at bar does not fall within its provisions. Some doubts might also be entertained as to whether the retroactive provisions of this law, so far as it applies to criminal prosecutions, are to be sustained as valid and obligatory. To that extent it is an *ex post facto* law; and if sought to be applied to or against the petitioner, would likely be pronounced unconstitutional and void. Whether this is a proposition of mutual right, as between the State and the petitioner, is a point never raised or decided within my recollection. There is another most remarkable want of mutuality in this law, even in cases of civil jurisdiction as between individuals, that, in my opinion, makes it void. In a civil suit between A and B, for damages, B at any time after entering his appearance to the action, upon filing his petition in the State Court, stating that in the act complained of, he acted under color of authority derived from the President, may have the case transferred to the Circuit Court of the United States; and yet A has no such right under this law, until after judgment shall have been rendered in the action pending in the State Court. But apart from those questions of doubt, what are the facts and legal questions in the case at bar, which render this law unconstitutional, if intended to be applied to such a case? The plain statement of the case is this: The Constitution of the State of Ohio provides that "no person shall be transported out of the State for any offense committed within the same." A law of the State makes it a crime to "kidnap or forcibly or fraudulently carry off or decoy out of this State any white person or persons." This provision in our State Constitution, and this statute in pursuance thereof is the supreme law of the case at bar, and of the present motion of the petitioner, unless there is some provision in the constitution of the United States which overcomes and subordinates the State constitution upon the very question of the forcible or fraudulent transportation of a citizen from one State into another. A careful examination of the provisions of the national constitution satisfies my mind there is no such antagonism. On the contrary, the two constitutions are in clear and express harmony with each other upon this subject. If this is so, then the order of the President, under date of Aug. 2, 1862, for the forcible transportation of Olds into the State of New York was unconstitutional, and therefore utterly null and void, and the petitioner at the bar can claim no protection under it. If I am right in this construction of the national and state constitutions, *in pari materia* then it also follows as an inevitable conclusion, that this law of Congress