The New Orleans Bee.

OFFICE 73 CHARTRES STREET. | NEW ORLEANS, THURSDAY MORNING, NOVEMBER 25, 1869. | 43d YEAR—Vol. XLIII.—Whole—14,914.

THE NEW ORLEANS DAILY BEE

DUFOUR & LIMET, PUBLISHERS,

No. 73 Chartres Street.

TERMS OF THE BEE:

Terms of Subscription—Daily, per annum, in advance, $16; half-yearly, $8; quarterly, $4.

Price of the paper—Single copies, 10 cents.

The Semi-Weekly is published every Tuesday and Saturday. Subscription, $8 per annum, invariably in advance.

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Semi-Weekly Edition.

TERMS—PER YEAR.....$5

NEW ORLEANS:

THURSDAY MORNING, NOV. 25, 1869.

185.....Rampart Street.....185

Amusements This Evening.

OPERA HOUSE—Donizetti's grand opera, "La Favorita."

ST. CHARLES THEATRE.—"The Orange Girl" and "Stage Struck Tailor."

VARIETIES THEATRE—"Still Waters Run Deep."

ACADEMY OF MUSIC—"The Field of the Cloth of Gold."

AN UNGRACIOUS TASK.

The Baltimore *Sun*, one of the most valued of our exchanges, in a late issue contains an exhibitation of the present position of the Yerger case, before the Supreme Court of the United States. The *Sun* adds a protest against the insinuation indulged in so generally by the press throughout the country, that the Court is deferring action in the matter for the purpose of giving Congress an opportunity to curtail the jurisdiction of the Court.

We hardly see wherein lies the reason of this protest. It seems to us not to be unjust, as we propose to show by citing the Court's own words and actions

When the McCardle case came up before the Supreme Court, its jurisdiction over the case of a citizen deprived of his liberty by military officers of the United States, without lawful warrant or under authority of the Reconstruction acts, was not derived from any law enacted by Congress since the war ended, but from the Constitution itself and the Judiciary act of 1789. We shall not assume too much when we say that the Reconstruction acts when tested by the Constitution are null and void and deserve nobody's respect, so far, at all events, as the military imprisonment of citizens is concerned. We base this assertion upon the general opinions of the legal profession and upon intimations from the court found in their opinions in other cases, and chiefly upon the broad doctrines laid down in what is known as the Milligan decision. Is a true Milligan was a citizen of Indiana, but the dicta of the court in that case cannot be reconciled with the application of a different rule to citizens elsewhere. A citizen of Mississippi or Texas is subject to the same laws, and entitled to the same protection as a citizen of Indiana.

When Chief Justice Chase, by way of apology for the wrytched truckling of the court, says, as he does in the decision affirming its jurisdiction in the Yerger case, that the court held that of McCardle under advisement for eighteen days, and that Congress then deprived it of jurisdiction by repealing a certain law, Judge Chase confesses that the court waited purposely for this action of Congress. The proceeding by *habeas corpus* issued all its virtue by delay. N Judge sees in one hour to determine upon the validity of an imprisonment. N man is fit to practice law, and of course no man is fit to perform judicial duties who is unable to decide *instanter* in a *habeas corpus* case. The law is too simple to need any study or justify hesitation. We say, therefore, there is reason for believing that the court waited for Congress to repeal a law which was evidencing McCardle's case. It is true McCardle's counsel blundered in basing their proceedings on the Reconstruction acts, but the Court might have and ought to have disregarded this blunder and *ex officio* entertained jurisdiction of the case, by virtue of their constitutional authority and the law of 1789. *The Court* had no right to blunder and we are warranted in believing did not blunder but understood their knowledge, and intentionally and with an unworthy subservience to the law-making power.

We say the Court was false to its constitutional duty. This is the opinion of every sound lawyer in the land. The Court is not less censurable in giving its countenance to the compromise announced to have been entered into between the President and Yerger's counsel, as to the disposition of Yerger's case. He is either lawful or unlawful imprisonment, and every citizen of the United States has an interest in the determination of that question.

It is related by historians that when King James the Sixth of Scotland, commanded the Judges of the Supreme Court of that country (called the Court of Session) to give a certain judgment in his favor against one of his subjects, he received from them a rebuke which has made his memory odious and their names immortal. The story is thus related:

"The King having appeared in person in open court and signified his wish to the Judges the President, Sir Alexander Seton, rose and said: 'My liege, it is my part to speak first in this court, of which your Highness has made me the King. We are all your Majesty's subjects, bound and ready to obey you from the heart; and, with all devotion, to serve you with our lives and conscientious judgments, in matter of law, in which we are sworn to judge according to our conscience and the statutes of the realm. Your Majesty may, indeed, command us to the contrary, which God forbid, and every honest man on this bench will refuse compliance, rather than violate his conscience or resign and not our office.' An hour of the King's wrath, the then most and observed, that it had been spoken in the city, to His Majesty's great shame, and their's who were his Judges, that they dared not do justice to all classes, for were compelled to decide as the King commanded—*a foul imposition, to which the lie should that dare to question*; for the world would soon discover a unanimous opinion against the crown! King James in vain threatened and remonstrated. The Judges, with only two dissentient voices, pronounced a decision in favor of Mr. Bruce and the Baffled monarch had to leave the court muttering revenge and raging marvelously."

A rebuke similar to this was uttered by President Seguier, of the Royal Court of France when urged by the King to render a certain decision in favor of his Majesty. Said the Chancellor: "The Court read des arrêts et not des services."

What an opportunity Chief Justice Chase and his colleagues have lost to administer a stunning rebuke to these haughty and tyrannical Radical leaders who undertake so arbitrarily to dictate the laws and frighten the judges—a rebuke which, if it terminated the existence of the Court, would at all events be a fitting close to the history of an illustrious tribunal!

It is a most ungracious task to accuse the Supreme Judges of infidelity to their trust, but the whole country feels humiliated by their deferential attitude towards a co-ordinate department of the Government, when the Constitution which created both, makes the Court independent of the other branches.

Will the Baltimore *Sun* deny the accusation we have made? We challenge a reply.

THE OPERA—Tonight that justly admired and very popular opera of Donizetti, "La Favorite," will be performed at this establishment, with Miss Zinda and Messrs Michot and Dupuestre in the leading characters

VALUABLE AND CONVENIENT.—"BROWN'S BRONCHIAL TROCHES" are widely known as an admirable remedy for Bronchitis, Hoarseness, Coughs and other affections of the Throat and Lungs. They are of great value for the purposes for which they are designed, which they are usually and promptly effective, the ingredients are beautiful in quality, and many times be used with perfect safety.—*Boston Recorder.*

SAILING OF THE PERIT.—The steamship Petit, Capt. J F Morrill, sailed last evening for Belize Honduras, with a good freight and the following list of passengers:

Mr A Lock, wife and 2 children, Miss Sibyle Fulweiler, Mr Broadnax 2 children, Miss M Black, Mr O Wood, Mr A Mollie, wife, Mr A May, Raymond Dr John Seely wife and 6 children Frank Saelly and wife.

HOW THE BOSTONIANS REGARD RESUMPTION.—The Philadelphia *Age* says:

As the rumors that the Supreme Court of the United States will render a decision adverse to the constitutionality of the legal tender act thickens and begin to assume a consistent shape, the alarmists are beginning to draw gloomy pictures of the evils that will follow upon such a course of action. But the Boston *Post*, so far upon the topmost wave of hysterics, they distinct to come down to the lower depths of legitimate contradiction. As the descent must be made sooner or later, they may as well make up their minds to come down gracefully. But it is not to the discussion of the question that we object to the contrary, we admire to see open and sincere opponents. The matter is, we think, carried too far, however, when papers that claim respectability, such as the Boston *Advertiser*, use such language as the following as to the probable repeal of the provisions of the act:

"We are by no means behind hand in reverence for the Constitution. But even supposing it to be a course for eight years has been in violation of it, that the life and sustenance of a whole people should thus be suspended by a sudden resolution to a technical rule seems to be a conclusion not tightly to be accepted."

"We have been the envie of a paper currency, proved upon us for eight years, but now a gold legal tender act should be pronounced unconstitutional the *Advertiser* will be compelled to set out in its sight. The paper currency could only goes to show how readily the New England mind rushes into a repudiation of the Constitution, when it interferes with the selfish interest of that section.

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