The New Orleans Bee.

OFFICE 73 CHARTRES STREET. NEW ORLEANS, FRIDAY MORNING, DECEMBER 10, 1869. 43d YEAR—Vol. XLIII.—Whole—14 926

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—Nine cents copies, 10 cents.

The Semi-Weekly is published every Tuesday and Saturday. Subscription, $5 per annum, invariably in advance.

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Semi-Weekly Edition.

TERMS—PER YEAR.....$5

NEW ORLEANS:

FRIDAY MORNING, DEC. 10, 1869.

TRY GEORGE ALCES' CIGARS,

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

Amusements This Evening.

ACADEMY OF MUSIC—Benefit of Mr. H. F. Hawkins, "Secret of Success."

ST. CHARLES THEATRE.—Benefit of Mr. F. S. Chanfrau, "Kit," or The Arkansas Traveler.

VARIETIES THEATRE.—Opera Singers.

ATTEMPTS TO DESTROY THE SUPREME COURT.

Senator Sumner, of Massachusetts, and Senator Drake, of Missouri, have each introduced a bill, in the body of which they are members, intended to divest the Supreme Court of the United States of a portion of its jurisdiction. Sumner's bill is confined to divesting the court of all jurisdiction in *habeas corpus* cases, whether original or appellate. Drake's bill is particularly directed against the power of the court to pass upon the constitutionality of Congressional enactments.

We suspect both measures come too late, and for that reason as well as their very boldness, we believe that their authors are insincere and do not expect that such enactments as these will ever form part of the legislation of the country. When we say "too late" we do not mean that attempts like these, to destroy the dignity and power and usefulness of the Supreme Court, could at any time have been successful. We mean that there is now no occasion for them. The McCardle case is over of the way; the Yerger case may also be considered settled and the other cases in Texas arising under the Reconstruction laws will probably follow the fate of Yerger's case. It is not likely therefore that the Republican party would, for no immediate practical purpose, draw up itself the censure of the people, by destroying a tribunal in which the parties are so much interest as others and which, notwithstanding the weakness it has latterly displayed, yet enjoys to a considerable extent the confidence of the Bar and the people. There is a disposition to overlook the past if the lawyers would only stand up for the future, in the use of some one their power and their dignity.

We quote the bill of Mr. Drake reported as follows:

But enacted, that no court created by an act of Congress or judge thereof shall have power in any case to release or bail any act of a joint resolution of Congress passed in whole or in part for any supposed repugnancy between such act or joint resolution and the Constitution of the United States, or to issue any process or order to any officer of the United States or to any supposed agent of authority in the administration of the same, etc.

The Supreme Court of the United States was not created by any act of Congress. It was created by the Constitution, the same power which created Congress. They are equals of the same principal, equal in power and in dignity. Article three section one of that great law says:

The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The judicial Power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, etc.

This language it will be observed is plain and imperative and beyond the power of Congress to weaken or impair, as long as the court is true to its duty. It is also plain that it is beyond the wit of man to warp or to twist it from its meaning. And the court has decided on more than one occasion that it was not competent for Congress to effect its substantive jurisdictional power.

Neither, do we think, can it apply to the inferior courts of the United States, because the same articles of the Constitution, which vests the judicial power in the Supreme Court, couples with it that court, inferior courts. Thus: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

The power then is already vested in these inferior courts and all that Congress has to do is simply to establish them—that is, enact a law to establish them as *persons*—as *the judge Commissioner* is not optional with Congress to establish these courts. They must establish inferior courts, because the power of the Supreme Court is only appellate and revisory, and if there were no inferior courts, this appellate and revisory power would no longer be of any service to the people. It would be rendered useless. The power of the Supreme Court in the case of a state, establishing a court, is a limited power. Congress has the power to say in such State there shall be of how many judges these courts are to consist, what their salaries shall be, how many months in the year shall each sitting of the court continue, and provide for such other matters as may be necessary to carry into effect the provisions of the Article of the Constitution.

We quote from the bill:

Inasmuch as it cannot be an act of Congress or joint resolution of Congress passed in whole or in part for any supposed repugnancy between such act or joint resolution and the Constitution of the United States, it is only an act of Congress, which is in part for any supposed repugnancy between such act or joint resolution and the Constitution of the United States, it is only an act of Congress passed without authority in the Constitution of the same, etc.

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