LEGAL INTELLIGENCE.

Civil Rights in Maryland.

COMPETENCY OF COLORED WITNESSES—CONFLICT BETWEEN FEDERAL AND STATE LAWS—UNITED STATES LAWS PARAMOUNT—CIVIL RIGHTS BILL SUSTAINED.

A very important decision has recently been rendered by Judge Bowie, Chief Justice of the Court of Appeals of Maryland, bearing upon the application of the Civil Rights bill to the laws of this State. The facts of the case, as we are informed by a correspondent, are that Dr. A. H. Somers, of Rockville, Montgomery county, on the 22d of June, committed an unprovoked assault upon a poor, unoffending, and peaceable colored man in the streets of Rockville, beating him very severely.

This colored man's wife, on the day following the assault, sued out a warrant before B. Monday, Esq., a justice of the peace in Rockville, against Somers, on which he was arrested and arraigned before the magistrate. George Peter, Esq., a prominent Democratic lawyer, was employed by Dr. Somers as his counsel, and argued that the warrant was illegal under the laws of Maryland, no negro or mulatto, Mr. Peter contending, being a competent witness against a white person. Justice Monday decided that that law had been abrogated and superseded, and was null and void, under the law recently passed by Congress known as the Civil Rights bill.

In accordance with this decision the Justice required Mr. Somers to give bail in the sum of $800 for his appearance before the Circuit Court of Montgomery county. Somers refused to furnish bail, and Justice Monday committed him to jail, whereupon his counsel, Mr. Peter, appealed to Chief Justice Bowie (he being at home at the time) for the writ of *habeas corpus*, which his Honor refused to grant, giving a written opinion sustaining the action of Justice Monday, and maintaining the constitutionality of the Civil Rights bill, so far as it relates to the question in dispute.

As the opinion of Chief Justice Bowie is of much importance to all persons in the State, we give it in full below, as follows:—

A. H. Somers, Montgomery county, Md., 24 July, 1866.

Petition for Habeas Corpus—

The return shows the petitioner is detained upon a warrant issued by a justice of the peace upon information of a negro charging the prisoner with an assault with intent to kill. The prisoner claims his discharge upon the ground that the warrant was issued without authority of law, the informer being incompetent to testify in any matters in which a white person is concerned.

The code enacts, "no negro or mulatto, whether free or slave, and no Indian, shall be admitted in any matter depending in any court or before any justice of the peace, where any white person is concerned."

This is substantially the provision of the act of 1717, ch. 13, which is prefaced with a preamble, declaring it might be of dangerous consequences to admit and allow as evidences in law, in any courts of record, or before any magistrate, any negro or mulatto, slave or free, or any Indian, slave or free, native of this or the neighboring provinces.

Marriage and cohabitation between the white and negro races were punished by the same act under severe penalties, subjecting the offenders to slavery for life or years.

The constitutional power of the State to pass such laws however their wisdom or policy may have been doubted, has never been questioned. This legislation commenced with the colony, has been continued since it became a state, and is, as we have seen, incorporated in the body of the code of Public General Laws. Such was the policy of the State for nearly two hundred years.

The Convention of 1864 by the twenty-fourth article of the Declaration of Rights, declared "that hereafter in this state there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor, as slaves, are hereby declared free." A new policy was thus inaugurated, the General Assembly of 1865, in pursuance of the principles enunciated in the Declaration of Rights, repealed act 66, of the code of Public General Laws, entitled "Negroes," under which were codified the laws relating to 'slaves,' "manumission," 'immigration,' "vagrancies," "tumultuous assemblages," "incendiary publications," "navigation of vessels by negroes," "licenses to keep door or gun," "dealings with free negroes," "contracts or hire by free 'negroes,' and petitions for freedom," thereby repealing the disability previously existing, and placing negroes and mulattoes under the same laws with white persons in those particulars.

On the 30 of February, 1866, the General Assembly of Maryland ratified and confirmed the thirteenth article of the Constitution of the United States, which is in these words:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Prior to the adoption of this amendment to the Federal Constitution Congress (as its language implies) had no power to legislate on the subject of slavery in the States.

The question now occurs, what is the character and extent of the power conferred? Does it give exclusive or concurrent jurisdiction to Congress over the colored population? or express or implied authority to pass the act entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication."

The 1st branch of the amendment is identical in language and sense with the ordinance of 1787, and the 24th act of the Declaration of Rights of this state.

The second section is a modification of the 18th paragraph of section 8 of article 1 of the Federal Constitution, giving Congress "power to make all laws which shall be *necessary and proper* for carrying into execution the foregoing powers," which super-addition an eminent commentator has said, was only declaratory of a truth which would have resulted by necessity and necessary implication.

The constitutional power of Congress would have been the same, without them, as the power to do a thing included all necessary and proper means. The word "people" qualifying the specific grant of the enumerated powers, in the section above cited, is said to be at once admonitory and directory. "It requires that the means should be *bona fide* appropriated to the end." (2 story on the Cons. 253)

The Constitution being the paramount law of the land, all laws to the contrary previously existing, or which might thereafter be passed, would be null and void. By its own force upon the adoption of the 13th article by three-fourths of the States in the Union the institution of slavery was extinguished, annulled, and abolished. Hence the 2d section of the 13th article is not to be construed as meaning that Congress shall do what the Constitution itself had already done, but might use other means *bona fide* appropriate to the end. Thus the 5th section of the 1st act of the Constitution negatively conferred on Congress the power of prohibiting the slave trade after the year 1808. Immediately thereafter this power was exercised by the enactment of severe penal laws making it ultimately piracy, punishable with death.

Acts of Congress may be constitutional and unconstitutional, valid in part and void in part.

Neither the question of citizenship, suffrage nor right to office is involved in the question before us. Competency as a witness is wholly distinct from the civil. All persons capable of understanding the obligation of an oath, and believing in a future state of rewards and punishments are, at common law, competent as witnesses, without regard to citizenship, domicil, or color. Nor are the reserved rights of the State or the people necessarily involved; the construction of an express grant of power is the subject of investigation. It is not a question of *expediency* so much as of the *existence* of the power in Congress to remove the incapacity of negroes, and render them competent to testify in State Courts. The language of the amendment is plain and emphatic:—"Congress shall have power to *enforce* this article by appropriate legislation."

The construction given to the words "necessary and proper" used in the 8th section of the 1st article of the Constitution is familiar to those acquainted with the financial history of the country. They were held to include not only those means without which the grant would be nugatory, but to extend to those which were "needful," "useful," "conducive to the end." Washington, Hamilton, Marshall, Congress and the judiciary generally adopted this view, and although in later times the idea of the 1st and 2d of the United States which was founded on this theory was abandoned, the interpretation itself remains as a part of the constitutional law of the country.

This construction of the Constitution seems to have been adopted by the framers of the amendment. They have not used the word "necessary" but substituted "appropriate" the synonym of "proper." The definitions define "appropriate" as meaning "fit," "adapted," "suitable," "proper." (*Webster and Worcester.*) When we recall the learned and protracted controversy as to the true construction of the word "necessary" in the original Constitution and the different policies and parties based on its interpretation, the omission in the present amendment is significant of the intention of its framers to confer a power unfettered by that term to mean no more than indispensable legislation, but such as was suitable to the end in view.

Since the adoption of the amendment or in anticipation of it, many of the late slaveholding States have, by local legislation, removed the incapacity of negroes as witnesses either to all or particular cases. I am creditably informed that Alabama, South Carolina, Florida, Mississippi, North Carolina, Georgia, and West Virginia, have made them competent in all cases in which their rights of person or property are concerned. The action of these States is the strongest evidence of the "appropriate" character of such legislation. Consistency as a witness though not in one sense necessary to freedom, is suitable and proper to its enjoyment. It is not possible for a man to be a free agent unless that capacity is imparted to him. All his motions are restrained, his actions confined unless a certain consciousness of safety arising from his ability to appeal to the law for protection from violence and wrong at each him. He is too often by being under the ban of the law as an incompetent witness. He is legally deaf and dumb as to all that passes around him. Society itself suffers from such segregation as much as the individual; for where such a case exists they become the ready instruments of mischief in the hands of the vicious and malicious.

Congress having a concurrent power whenever it exercises such power the States cannot enter upon the same ground and provide in the same objects. Two distinct wills cannot at the same time be exercised in relation to the same subject effectually, and at the same time be compatible with each other (1 *Kent Com's., Sec.* 15, p. 426.)

Where there is a conflict between rights under the law of a local Government and a law of Congress, the State law must yield to that which is supreme and paramount (Chew vs. State 2 Gill 29). I have confined myself, in the consideration of the act of Congress above referred to, to the single question of its effect upon the competency of colored persons as witnesses. Aware that there are many and serious objections to its constitutionality upon other points, *yet it is no clear and unconstitutional* in the *particular* in question. I am bound by the usages and decisions of the highest courts to assume that Congress has not violated its constitutional obligations. Judicial subordination, public order and domestic tranquility require that this principle should be scrupulously observed. Constitutions are not of every man's private interpretation.

The presumption must always be in favor of the validity of law, if the contrary is not clearly demonstrated. It must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication. Not being able to perceive clearly and unequivocally a breach of the Federal Constitution in the act of Congress entitled "An act to protect all persons in their civil rights," etc., in making negroes competent to testify, without expressing any opinion on other sections of the law, I must overrule the motion to quash the warrant, and remand the prisoner to the custody of the officer.

RICHARD J. BOWIE,
Chief Justice of the Court of Appeals of Maryland.
—*Baltimore Sun.*

Important to National Banks.

As there seems to be some misapprehension among National Banks concerning the proper method of making their returns, the following letter from the Treasurer of the United States may be of great interest:—

TREASURY OF THE UNITED STATES, DIVISION OF NATIONAL BANKS, WASHINGTON, July 7, 1866.—Sir:—I have received yours of the 3d instant. You say "there is a difference of opinion in regard to one feature of our statements among National Banks in this section, which does not seem to be met by any of your published decisions. It is connected with the 'deposit' item. We make the amount by adding the amount due ordinary deposits to that received from collections on account of other banks, and deduct the amount of overdrafts and that sent to and due from other banks (on which, of course, *they* pay the tax). In other words, we deduct the amount due *from* other banks from that due *to* them, and add this to the balance of deposit account (deposit less overdrafts").

That there has been no published decision of this office in regard to the above manner of making returns, is simply owing to the fact that it has not hitherto been supposed that any bank would claim to be allowed to deduct from its deposits the amount of its overdrafts or the sums due from other banks, virtually overdrafts. The deposits shown by the books of your bank are the deposits to be returned for payment of duty, without any deduction, whether of amounts due from other banks or of individual overdrafts, which are really loans illegitimately and improperly made, opposed to all principles of good banking, and against which there should be the most strict regulations.

The $20,000 mentioned by you as received from the Metropolitan Bank as a "call loan," and credited to said bank, is a deposit upon which duty should be paid, even though the amount has been left by you with *the same bank* subject to your draft. The deduction as an offset of a like amount due from said bank would not be proper.

The check received by you from the Albany Bank, and forwarded to the Saugerties Bank for collection, having been credited by you to the Albany Bank, must be returned by you as a deposit, so long as it may remain with you, and it would not be proper to enter as an offset to this deposit the amount you have charged to the Saugerties Bank on account of said collection.

Very respectfully,
F. E. SPINNER, Treasurer.

H. H. REYNOLDS, Cashier State N. Y. National Bank, Kingston, N. Y.