Gazette of the United States.

PUBLISHED WEDNESDAYS AND SATURDAYS BY JOHN FENNO, No. 69, HIGH-STREET, BETWEEN SECOND AND THIRD STREETS, PHILADELPHIA.

[No. 32, of Vol. III.] WEDNESDAY, AUGUST 17, 1791. [Whole No. 240.]

PHILADELPHIA, AUGUST 17.

SUPREME COURT OF THE UNITED STATES.

WEDNESDAY, August 3d.
(CONCLUDED.)

JUDGE BLAIR said, that although it was true that the Writ of Error was a Writ of Right, upon which account Mr. Bradford had contended that its use was only to express the will of the plaintiff in error, to have the judgment re-examined, and that, therefore, it was not so material from what office it had issued, especially as the Judiciary Bill was silent as to that, yet the writ was an indispensible requisite; but a writ not issued in the legal mode should be considered as no writ. The question then was, whether having issued from the Clerk's Office of the Circuit Court, where the judgment sought to be redressed was rendered, it could be supported as valid? He admitted, that the direction that it should be *returnable* to the *Supreme Court* did not, *ex vi termini*, necessarily imply that it ought to issue from the Clerk's Office of *that Court*; because whatever may be the *popular* sense of the word 'returnable,' writs which in England issued from the Chancery, were, in a *legal* sense, said to be returnable into the King's Bench, or that Court where they were to be made use of. But that there being no such general and separate repository of writs in America, he took it to be the general practice to issue writs from the same Courts to which, in a strict sense, they were to be *returned*, and never to issue them, as in the present instance, from the Clerk's Office of the same Court whose judgment was sought to be corrected. He admitted, that as the law now stands, it would be attended, in some instances, with great inconvenience and hardship, to make it necessary for the plaintiff in error to apply for the writ at the seat of government of the United States, from which the Circuit Court, where the record remains, may be too remote, to permit him to lodge a copy of the writ there within ten days from the time of rendering the judgment; because, if not so lodged, it will not operate as a supersedeas to the judgment, and the recoverer may take out execution. It is true, that the plaintiff in error, without so lodging a copy, may go on with the Writ of Error, and if he should finally prevail, will be entitled to restitution; but still, to be exposed in the mean time to an execution, would at any time be a serious evil; and, in the now existing combination of circumstances in our country, peculiarly such. He thought, however, that this evil, whatever might be its magnitude, required legislative correction, rather than that the Court should, for the sake of avoiding it, establish an unusual, and very irregular practice. A future law may remove every hardship, by allowing, instead of ten days, such a length of time, for depositing a copy of the Writ of Error in the Clerk's Office, as may be proportioned to its distance from the seat of government. For these reasons he was against the motion, for a rule to be made upon the defendants in error, to rejoin.

JUDGE WILSON.

The determination of the question in this cause will be of importance not only to the parties immediately interested, but also to others: for it will probably have an influence upon the determination of future cases of the same or of a similar nature. It is therefore proper that, while I give my opinion, I should assign the reasons on which it is founded.

There are two modes of removing a decision from an inferior to a superior jurisdiction. One is by appeal, which is merely the act of the party. But it is not contended that the proceedings in the present cause, are or can be removed by an appeal. If they are before us at all, they must have come before us by a Writ of Error. This is admitted by the counsel for the plaintiff; and on this supposition we are applied to for the exercise of jurisdiction, by giving a rule on the defendant to plead to the assignment of errors. We are therefore led to the question—Is this such a Writ as will justify and authorise the court in exercising a revisionary jurisdiction over the decision and proceedings of the Circuit Court of the District of Rhode-Island?

A Writ is described, and very properly, to be a *mandatory** letter. A Writ of error, as well as other Writs, must partake of this mandatory quality. But how can a Court direct a mandatory letter to itself?

It was observed by the learned counsel for the plaintiff, that a writ of Error is a commission to revise proceedings. True. But it is described as a commission directed to a superior jurisdiction.† Besides, in considering this commission, we must view not only the jurisdiction to which it is directed, but likewise the authority from which it flows. Shall it flow from an inferior to a superior Court? This course would be unnatural: it would be the stream of authority inverted.

It was also mentioned by the learned counsel for the plaintiff in error, that, in the act of Congress, it is not *specified* from what Court the Writ of Error must issue. This is very true. But since it is not specified, we must form our opinion on general principles and usages. These, as we have just now seen, will lead us to the *superior* rather than to the *inferior* jurisdiction.

The 14th section of the act of Congress, however, seems to put the solution of the present beyond the possibility of a doubt. By that section the Courts of the United States "have power to issue "all Writs not specially provided for by statute, which may be "necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." Now, this is the Court which is to exercise jurisdiction—this is the Court to which application is made by the plaintiff himself, for the exercise of its jurisdiction in the present cause. This, therefore, is the Court, which, in the terms of the act, shall "have the power "to issue the Writ necessary for the exercise of that jurisdiction." The Court from which the Writ of Error is to issue, is not specially pointed out by statute. That Writ must therefore issue "agreeably to the principles and usages of law." Of those principles and usages, we have already seen the direction and the force. From these premises, the inference seems to be conclusive—that the Writ of Error must issue *from this Court*.

An inconvenience was suggested and pressed with much strength and ingenuity by the counsel for the plaintiff; that at a great distance from the seat of government—in Georgia, for instance, or Kentucky—it would be impossible, after the judgment complained of, to comply, in the limited time of ten days, with the conditions required by the act for rendering the Writ of Error a supersedeas to an execution. If this inconvenience should subsist in all the force which has been stated; it must be removed by *another* power. *We* act in the *judicial*, not in the *legislative* department.

The inconvenience may perhaps be mitigated by a method which I shall suggest; not, however, as a part of my opinion in the determination of the point before us. A Writ of Error may bear teste and may be obtained before the "giving of the judgment" in the Court below. This, in England, is the usual course of preventing and superseding execution.‡ Indeed this mode seems to be intimated by a clause in the Writ itself. "We command you, that, *if judgment be given*, then you send the record "and process,"‖ &c.

It is true that the expence of a Writ of Error obtained in this manner will be superfluous, if the party who apprehend a judgment against him, shall obtain one in his favor. This superfluous expence, however, can be the occasion of no very great hardship. I ate the expedient as calculated to mitigate the inconvenience complained of, but not as forming a ground of my opinion in the cause.§

My opinion is, that the proceedings of the Circuit Court for the district of Rhode-Island are not *judicially* before us; and that, for this reason, the motion of the counsel for the plaintiff cannot be sustained.

3 *Bl.* 273.
2 *Bac.* 187.
2 *Bac.* 199. *March* 140.
3 *Bl. app.* 21.

§Quere—*Would not the inconvenience here stated be removed wholly, by the Clerks of the several Circuit and District Courts, supplying themselves with blank Writs of Error, properly sealed and signed by the Clerk of the Supreme Court, and by having them ready for suitors, whenever wanted. In Pennsylvania, the Prothonotary of the Supreme Court distributes blank writs of certiorari and habeas corpus, through the several counties of the state, which are always at hand on the shortest notice, when requisite for the removal of a cause: so that if oppression or injustice is attempted by hurrying on a cause in the lower Courts, a removal by the opposite party affords an opportunity of obtaining more complete and perfect justice.*

JUDGE CUSHING.

The writ offered to the Court at present, by the counsel for the plaintiff, does not appear to me to be such a writ as will bring the proceedings of the Circuit Court of Rhode-Island, properly before this Court. By the act of Congress, it is true, that a Writ of Error may issue either from the Circuit Court, or from this. But by necessary implication, it seems, that when it is for the purpose of removing a cause from a Circuit, to this Court, the authority should be derived immediately from this court. I cannot believe that Congress designed, a Circuit Court should have power to remove its own proceedings to this Court; but that the authority for this end, should flow from the Court that was to exercise the controuling and revising power. If such, then, be the meaning of the National Legislature, it is not our province to alter or amend their acts, but to ground our opinions upon them. If inconveniences should arise, in carrying their laws into effect, with them lies the power of correcting the inconveniences, and not with us. As the writ before us, therefore, is not from this, but from the Circuit Court of Rhode-Island, I cannot think, that upon its authority, we can proceed to revise the judgment of that Court.

CHIEF JUSTICE JAY.

As the reasons already assigned, are fully explanatory of my opinion, it were needless to repeat them. I need only, therefore, suggest my concurrence with my brethren.

"The Court, therefore, refuse to grant the rule moved for yesterday in this cause, *being unanimously of opinion, that Writs of Error, to remove causes to this Court from inferior ones, can regularly issue only from the Clerk's Office of this Court.*"

EXTRACTS.—ON EDUCATION.

ONE of the first laws of Massachusetts provided, "That the Selectmen shall have a vigilant eye over parents, that they shall duly endeavor, by themselves, or others, to instruct their children in learning; and that if, after warning given by the Selectmen, any parent shall be negligent, he shall be *fined.*" Some think this law to have been rather arbitrary, but the reason the law-makers themselves assign will be satisfactory. They say, "lest the children should grow barbarous, rude and stubborn, and so prove pests, *instead of blessings to their country.*"

The learned and patriotic Dr. Price, in a late discourse, says, "Our first concern as lovers of our country, must be to enlighten it. Why are the nations of the world so patient under despotism? Is it not because they are kept in darkness and want of knowledge?—enlighten them, and you will elevate them."

Should the seminaries of learning be neglected by the Commonwealth, there can be no way to support them, but by enhancing the price of education. The rich men will then give *their* children an education, while the people in the middle walk of life, and the poor, will be denied the privilege of learning. The people will then be obliged to hold learning in contempt, to exclude from their public assemblies; or, the powers of government, and the offices will be held by the rich in exclusion of the others. The first alternative leads to a state of barbarism, the other leads to aristocracy and despotism.

There is in men a natural pride, and a natural envy. The wealthy are apt to hold the poor in contempt and the poor are apt to envy the opulence of the great. These tempers, however reprehensible they are, have their use in society; the first leads the wealthy to support government, the latter induces a spirit of equality, which prevents that government from rising to a state of despotism.

The heirs and education of the rich lead to aristocracy, and if they can have a monopoly of the learning of the country, there will be an end of democracy; the equality which is now the glory of our country, will never more be seen, and the calamity of America will blast the hopes of the patriotic part of the European world.

Parents are led by their fondness for their posterity, to try to give them an education: but they have but little interest in the business in comparison with what society has—Parents are soon removed from their tender connection with their children, but society remains forever, and must be happy or miserable, in proportion as knowledge and information are possessed by it.

Reasons for establishing public Schools, reported by the School Committee of the Town of Providence, August 1, 1789.

"1st. USEFUL knowledge generally diffused among the people, is the surest means of securing the rights of man, of promoting the public prosperity, and perpetuating the liberties of a country.

"2d. As civil community is a kind of joint tenancy, in respect to the gifts and abilities of individual members thereof, it seems not improper, that the disbursements necessary to qualify those individuals for usefulness, should be made from common funds.

"3d. Our lives and properties, in a free state, are so much in the power of our fellow-citizens, and the reciprocal advantages of daily intercourse are so much dependant on the information and integrity of our neighbours, that no wise man can feel himself indifferent to the progress of useful learning, civilization, and the preservation of morals, in the community where he resides.

"4th. The most reasonable object of getting wealth after our own wants are supplied, is to benefit those who need it; and it may with great propriety be demanded, in what way can those whose wealth is redundant, benefit their neighbours more certainly and permanently, than by furnishing to their children the means of qualifying them to become good and useful citizens, and of acquiring an honest livelihood?

"5th. In Schools established by public authority, and whose teachers are paid by the public, there will be reason to hope for a more faithful and impartial discharge of the duties of instruction, as well as of dicipline among the scholars, than can be expected when the masters are dependant on individuals for their support.

PETERSBURGH, March 29.

ON the 20th inst. we enjoyed a superb spectacle here; the regiment of horse guards defiled along the Imperial Castle, bearing to the fortress the trophies of Ismail, composed of nearly 500 horsetails, commanders staffs, maces, standards and colours.—It is said, that the better to perpetuate the remembrance of this important conquest, and the other advantages gained by Prince Potemkin over the enemies of the Christians; and in opposition to the Alcoran and Sword of Mahomet, our august Sovereign intends to present Prince Potemkin with a bible richly bound, and set with brilliants, together with a sabre of immense value.

PARIS, June 16.

Abstract of the latest Proceedings of the National Assembly, June 7th.

The Assembly referred to the committee of enquiry a letter, by which the directory of Gironde, gives notice of the fermentation excited at Bordeaux, by the establishment of a monarchical club, and of the manœuvres of the agents of the club, which obliged the directory to put a stop to their meeting.

June 8. Decreed—That persons in the public service shall enjoy the rights of active citizens, in the places where their duty calls them, tho they may not have resided there the year required in common cases.

Articles decreed to secure the independence of the LEGISLATIVE AUTHORITY.

1. Those concerned in attempts to prevent the re-union, or effect the dissolution of a primary or electing assembly, shall suffer death.

2. If troops of the line surround the place of sitting of the aforesaid assemblies. or procure admittance into the assembly, without being authorised or required by the assembly, the minister or commander who shall have signed the or-