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CALL TO KANSAS.

BY LUCY LARCOM.

Yeoman strong, hither throng!
Nature's honest men,
We will make the wilderness
Bud and bloom again.
Bring the sickle, speed the plough,
Turn the ready soil!
Freedom is the noblest pay
For the true man's toil.
Ho! brothers! come, brothers!
Hasten all with me,
We'll sing upon the Kansas plains
A song of liberty!

Father, haste! o'er the waste,
Lies a pleasant land,
There your fireside altar-stones,
Fixed in truth shall stand.
There your sons, brave and good,
Shall to freemen grow,
Clad in triple mail of Right,
Wrong to overthrow.
Ho! brothers! come brothers!
Hasten all with me,
We'll sing upon the Kansas plains
A song of Liberty.

Mother, come! here's a home
In the waiting West,
Bring the seeds of love and peace,
You who sow them best.
Faithful hearts, holy prayers,
Keep from taint the air,
Soil a mother's tears have wet,
Golden crops shall bear.
Come, mother! fond mother,
List! we call to thee,
We'll sing upon the Kansas plains
A song of Liberty.

Brother brave, stem the wave!
Firm the prairies tread!
Up the dark Missouri-flood
Be your canvas spread.
Sister true, join us too,
Where the Kansas flows,
Let the northern lily bloom
With the southern rose.
Brave brother, true sister,
List! we call to thee,
We'll sing upon the Kansas plains
A song of Liberty.

One and all, hear our call
Echo through the land!
Aid us, with the willing heart
And the strong right hand!
Feed the spark the Pilgrims struck
On old Plymouth Rock!
To the watch-fires of the free
Millions glad shall flock.
Ho! brothers! come, brothers!
Hasten all with me,
We'll sing upon the Kansas plains
A song of Liberty.

OPINION OF JUSTICE SMITH.

In the matter of the petition of John Rycraft for a writ of Habeas Corpus and to be discharged from imprisonment; and in the matter of Sherman M. Booth.

The facts of these two cases are essentially the same, and, so far as the observations which I feel called upon to make, may be uttered, they will be regarded as applying to both, and therefore, for the sake of convenience, reference will be made to the petition of Rycraft only.

On the application of Sherman M. Booth, at the last term of this Court, for a writ of habeas corpus, no copy of the indictment was presented, but only a copy of the warrant upon which he had been arrested, which recited merely that he had been indicted under the Act of Congress of 1850, for aiding the escape of one Joshua Glover, &c. This was an ordinary bench warrant, to bring in a defendant to answer to an indictment found in the United States District Court, and it appeared to us we ought not, (and, indeed, without an inspection of the indictment we could not,) interfere with the regular action of that Court, but were bound to presume that if the indictment, when at the proper time it should be brought up for examination, failed to present a case of which that Court had jurisdiction, or charged no offense at all, the Court in which it was formed would so decide, and that all such questions were preliminarily within the proper scope of the power of that Court. But now the case is different; all those questions have been properly urged, and without avail; and the petitioner comes before us and shows, by the return of the officer, that he has been pressed on to a conviction and sentenced to imprisonment, and is now actually imprisoned, within this State, and that the sole authority therefor is a transcript of the record of such conviction.

The first, the fundamental question which the case presents, is: Has this Court the power to inquire into the legality of the authority by which the prisoner is held?

It seems to me that the solution of this question is to be found in a few simple, elementary propositions, which require little or no proof or argument to sustain them.

It is the duty of government to protect and secure the rights of the citizen, among which is the right to liberty.

This duty of the government is to be measured only by the extent of the individual right, and it is bound to provide means adequate to the end in view.

If the government be complex, the means may be distributed and the obligations of duty divided, but not so as to fall short of the object to be accomplished.

Ours is a complex system, with distributed powers to all of its parts, but all its parts constituting an entire sovereignty, and so of course in duty bound as a whole to furnish complete protection.

Whatever powers and duties are not delegated or assigned to one department or branch of the, entire sovereignty, must remain in the other.

If the one be made up of delegated and the other of reserved powers, the duties assigned to the former can only be coëxtensive with the powers delegated, and the duties of the latter must be commensurate with the powers reserved, and those powers adequate to every emergency, not within the scope of the former.

The Federal Government is one of delegated powers, the State Government one of reservrd powers. The former competent to act only within its prescribed boundary; the latter exercising all the functions of sovereignty which have not been delegated to the former.

The power to protect and guard the individual liberty of the citizen, is one of the powers reserved to the States. It was never granted to the Federal Government, (except in a very few prescribed cases which have no bearing upon the present inquiry,) has never been claimed for it, but always conceded to the States.

If, therefore, it is the duty of the State to guard the individual liberty of its citizens, it must necessarily have the right and the power to inquire into any authority by which that liberty is attempted to be taken away. But the power to inquire includes the power to decide. The right to demand by what authority such imprisonment is attempted, implies the obligation of the person imprisoning to respond. The right to demand such authority on the one hand, implies on the other the duty to exhibit it.

Again the States have delegated to the Federal Government the power to imprison its citizens, in certain cases, but in none other. So far, then as that Government acts upon th power thus delegated, the States c not interfere to protect its citize but in every other case, they not o have the power, but it is their sole duty to interpose their authority. s the power by which the Federal ernment can imprison, is a dele power, it is bound to show, in ry case where it imprisons, that it ting upon some power delegat It must be "nominated in the bo

The Constitution of the ited States is the deed of grant, essed by written charter, of all the wers delegated to the Federal Gov ent. The States severally retain se of sovereignty limited only by local Constitutions prescribed by people of each.

Therefore, to me it is n, that when the Federal Gove nt attempts to act in a giv se, it is bound to exhibit a cas thin its prescribed powers; for, it otherwise, it would involve sumption of inherent powers, an scend its charter.

As the States ted, and the Federal Governm k power, the latter is at all answerable to the former, and m equired to exhibit the deed by t claims to do, or refuses to p any given act, when so requir the primary original authority.

In the Constitut red the United States sound polic by which the corporation of a fi d, might be Government, thus be enabled to such in fact, and all of the cre- act upon individ ignties. This ative constituen lished by the could only be epartment, su- creation of a j nt within its preme and i whose process prescribed s citizen. But should extend element of sov- in giving up, arefully guarded ereignty, the with provisions it, hedged ed were impas- which it w be its *extent* in sable. Th selected, whose words mos ely be mistaken, import co was supposed no and beyo venturesome mind would rush. "The judicial power shall *extend* to all cases in law and equity, arising under this Constitution, the laws and treaties made, or which shall be made under their authority," &c. The words "*extend to*" might, perhaps, upon the theory of liberal construction, be held to be exclusive in their import, were it not for another provision of that instrument which will presently be noticed. But the very selection of the words "extend to," when we consider the extreme caution observed by the members of the convention which framed the Constitution, ought to admonish us against a rash assumption of exclusive jurisdiction. That which merely extends to a particular subject, or class of subjects, can not, upon any legitimate mode of interpretation, be considered as comprising the whole of such class to the exclusion of every other power. Several powers may extend to a given class of subjects; but one can comprehend them all. The extension of a power to a subject, by no means merges it exclusively within such power.

But we are relieved from the necessity of criticism upon these words, by another provision of the same instrument, in the following words:

"This Constitution and the *laws of the United States made in pursuance thereof*, and all treaties made, or which shall be made under the authorities of the United States, shall be the supreme law of the land; *and the Judges of every State shall be bound thereby.*"

Here is a distinct recognition of the power and duty of State Judges to decide upon and to conform to all the requirements of the Federal Constitution, and the "laws made in pursuance thereof." If the terms "extend to," in a former provision, were intended to be exclusive, and to vest sole and ultimate power in the Federal Courts and Judges, why should the obligation of construction obedience, and conformity be imposed upon State Judges?

Why are the Constitution and the laws of the United States "made in pursuance thereof," made the law of every State, and the State Judges bound thereby, unless those subjects were addressed to the judicial mind and conscience of those officers? And why that careful phrase when addressed to State Judges, "*the laws of the United States made in pursuance thereof*," unless those officers were required to determine whether whether or not the laws of the United States were made in pursuance thereof?

It seems to me that here is an express recognition of the judicial power of the States, extending to all laws of the United States, and requisition of obedience on the part of State Judges to all the laws of the United States, provided they are made in pursuance of the Constitution of the United States.

This view is strongly fortified by the historical fact that various attempts were made to create and establish one ultimate, sole tribunal which should finally decide upon all questions which might arise in the course of Federal and State Administration, in regard to the exercise or claim of delegated powers in the Federal Government on the one hand, or reserved powers in the States on the other.

But the project was found to be impracticable in the then posture of affairs, and the attempt was abandoned; the Convention preferring rather to incur the hazard of collision, trusting to the good sense, patriotism, and forbearance of the two Governments, and the people, to meet and provide for such emergencies as there might arise, than to create one sole, ultimate tribunal, which might either abstract from and destroy the efficiency of the one, or absorb all the powers of the other; leave the one a mere league, or the other mere dependent colonies of a consolidated Government, accordingly as direction or bias might chance to be given it by temporary exigencies incident to the commencement of a new and untried system.

It is clear, therefore, that the Federal Government can only operate within the prescribed sphere marked out by the Constitution of the United States; that, that Government is at all times answerable to the States, so far as to bring their action within the charter: that the judicial power of the Union is as much circumscribed by the Constitution as every other department of the Federal Government: that an Act of Congress without the Constitutional sphere, would be no law: that a judicial determination without the Constitutional sphere, would be no judgment, sentence, or decree; that of the acts of Congress the State Judiciary are bound to judge, whenever they are brought before it, so as to ascertain whether such acts are made in pursuance "*of that Constitution*," because that judiciary "*is bound thereby.*"

The States never yielded to the Federal Government the guardianship of the liberties of their people. In a few carefully specified instances, they delegated to the Federal Government the power to punish, and so far, and so far only, withdrew their protection. In all else they reserved the power and continued the obligation and duty upon themselves to secure the rights of their citizens, declared to be inalienable, viz.: "life, liberty, and the pursuit of happiness."

It will readily be conceded that the provision which the people have made in their government, for the protection of these rights in them individually, is found in the Judicial department. That is the arm of sovereignty which they invoke when these rights are individually invaded. Every citizen has a right to appeal to the fundamental character of both sovereignties to which he is subject, to test the validity of the authority by which his right to liberty is denied. It follows, therefore, that the power which he has a right to invoke in his behalf, must profess the right to inquire into the conformity with the authority set up over his natural rights, with the fundamental law. As a State Judiciary is the only power to which the guardianship of individual liberty is intrusted, it follows that it must have the right to inquire into such conformity.

It would seem obvious that this power to inquire has never been surrendered by the States. It is reserved to them and the people thereof. Hence it is original in the States. If original, then be appropriate means and instrumentalities incident to its exercise, are alike reserved and original. Among such instrumentalities, the writ of habeas corpus is espedially recognized in the Constitution, and a positive exhibition upon the power of Congress to interfere with its scope and functions, except in specified cases, is carefully inserted. As if it were not enough to restrict the Federal Government to the specifically delegated powers, but to render the power of the States more conspicuous, certain, and efficacious, for the protection of individual liberty, all power on the part of Congress, to suspend even, is expressly denied.

Therefore, so far as the proceeding under this writ is concerned, it is original, and, from the necessity of the case, the jurisdiction of it is original in the State; and, as Congress cannot suspend its benefits, it cannot abridge the power and jurisdiction of the State judiciary; it follows that it can grant to no one exemption from the obligation of obedience to its mandates. And it as clearly follows that every individual within the State, no matter by what authority he may claim to act, is bound to obey the writs. [illegible] because no power on earth can absolve him from his obligation of obedience.

It is sometimes said, that this writ is in the nature of a writ of error, to review the proceedings of an inferior court or magistrate. This is sometimes true. But without stopping here to inquire, whether for the purposes of this writ, the inferior United States Courts be, or be not inferior to State authority, as regards the office of the writ in a proceeding like this, it can hardly partake of the nature of a writ of error. Every sovereign power has a right to inquire into the condition of its subjects, and the authority or causes of their imprisonment. This writ is the appropriate means of this inquiry. When the State uses it to inquire whether the citizen is imprisoned by virtue of a power which it has delegated to another Government, it does not bring the proceedings of that Government into review; it only seeks to inquire whether the case falls within its own reserved powers. If within the scope of the former, it yields to the paramount authority which it has helped to rest. If not, it disposes of the subject matter according to its own forms of procedure.

The obligations of the State and Federal Governments are herein perceived to be mutual and reciprocal. The one to abstain from interference, whenever it perceives the subject matter to be within the attached jurisdiction of the other, and that other to show that the authority which it claims to exercise is within the powers delegated, and which it may rightfully exercise. There is little danger of troublesome collision so long as each shall be willing to measure its functions by the standard created by the ultimate source of all power. But if, to avoid collision, an absolute unquestioning submission on the one hand is requisite, and on the other a perfect immunity to claim and usurp all power, and to be the sole and ultimate judge of the validity of its own claims, then collision is the preferable alternative, because collision invokes the arbitrament of the ultimate source of all power, the people themselves, whose judgments and decrees are made and pronounced by the peaceful and constitutional masses, which they had the wisdom and foresight to provide in the organization of the Government. Collisions of this kind are by no means new in this Government. They have occurred from time to time, as the supposed exigencies of the country have called into exercise new powers, or seemed to require the adoption of new measures. But such collisions have all along our history found their appropriate remedy, in the awakening of inquiry, in a recurrence to primary and fundameutal principles, and in a return to the constitutional sphere. And so it will ever be, until one or the other shall rashly or madly rush on to extremities in defiance of constitutional remedies.

The State Judges and Courts are as much bound to support the Constitution and laws of the United States, as are the Federal Courts and Judges. I cannot yield to the assumption that the former will be less mindful of their oaths and obligations than the latter, though I can readily perceive why the State Judges may be naturally more mindful of the exact line of demarkation between delegated and reserved powers, because they are under the additional obligation to support the Constitution and rights of the States.

If these views be correct, how stands the present case? It is clearly our duty to grant this writ, to inquire into the cause of the prisoners' capture and detention. The return of the respondent sets out such cause. Our next duty is to inquire into this return, in order to ascertain whether the prisoner is held by any legal authority. It will be conceded that the only rightful authority by which he can be imprisoned must be exercised either by the Government of this State, or by that of the United States. No other earthly power can rightfully interfere with his right to liberty. But it is conceded that he is not held by the authority of this State. The next step in the inquiry is to ascertain whether he is held by any constitutional authority of the Federal Government. Whatever such authority may be, to be of any validity whatever, it must clearly appear to be within the powers delegated by the Constitution and the laws of the United States made in pursuance thereof. Any other power attempted to be exercised by any department of the Federal Government would be a manifest usurpation, and of no binding validity. The National Convention that framed the Constitution was exceedingly cautious about conferring criminal jurisdiction upon the Federal Government; so much so, that an enumeration of the crimes for which punishment could be provided was carefully made. Congress has, however, provided for the definition and [illegible] of numerous other crim- punishm[illegible] necessarily incidents and offenses, as ne[illegible] for the Assis[illegible] dent to the due execution of powers expressly granted. But all agree that the Federal Courts can exercise no criminal jurisdiction, except in cases specifically prescribed by act of Congress.

Every act of Congress must be conformable to the Constitution, that is, either the exercise of some power expressly granted, or necessary to the execution of some express power.

I have on another occasion attempted to show that the act of Congress, approved September 18, 1850, commonly called the Fugitive Slave Act, was not within the Constitutional power of Congress. I have no time now to enlarge upon the views there presented. But I may be permitted to say, that after careful research, and much reflection, I have not been able to perceive any reason to recede from the positions then taken, but on the contrary, it is clear to my mind, that the contrary doctrine is dangerous to the sovereignty and independence of the States, destructive to the peace and harmony of the Union, and ultimately subversive of the very end and aim contemplated by that enactment. I cannot discharge my duty without affirming the conclusions to which I then arrived. I cannot hang my conscience upon the suggestions or opinions dictated by the consciences of others. They must judge and act for themselves. So must I. I must be faithful to my trust, as others, doubtless, are to theirs. But believing, as I do, that Congress had no power to pass the act of 1850, that the duties and obligations declared by the Constitution in that respect, by the 3d clause of Sec. 2, of act 4 of the Constitution, were imposed upon the States, and all power in relation thereto, reserved to the States and the people, I am compelled to hold that the act is unconstitutional and void, and can confer no authority upon the Federal Courts.

This doctrine goes to the jurisdiction of the Court which attempted to try and sentence this petitioner, which jurisdiction is always subject to inquiry and decision in any other Court in which its proceeding may come in question, collaterally or otherwise. This is true of Courts of general jurisdiction, and much more is it true in regard to the jurisdiction of Courts of inferior special and limited jurisdiction.

The 2nd clause of the 9th section of the 1st article of the Constitution of the United States provides: "The privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it." The insertion of this clause in the Constitution, clearly indicates the extreme caution which was exercised by the members of the National Convention, and also the apprehension which they felt lest the power of the States might prove too much for that of the Federal Government. While, on the one hand, they obviously intended to leave to the State Governments the jurisdiction and control of this high prerogative writ, in all ordinary circumstances, and on all ordinary occasions, on the other they granted to Congress the power to suspend its privileges whenever they should manifest an open rebellion against the Federal authority, or an invasion of the national or state territory. The suspension of the privileges of the writ, here referred to, could not be held as applying only to the power of the United States Courts to issue it, because such power could be made to extend to but few cases, and, more palpably, because it could hardly be conceived that the national Judiciary would ever be found disposed to use the writ in aid of the subversion of the very authority upon the existence of which their own functions depended. Hence it is apparent that the inhibition and the exceptions therefrom have reference to the State functionaries, and the clause must be regarded as restrictive upon the power of Congress to interfere with the authority of the State Judges to issue, hear and determine the writ.

This clause, then, may be regarded in two aspects, the one as an express reservation to the States of the power and jurisdiction over the writ of habeas corpus in all cases whatsoever, except in cases of rebellion or invasion; when the public safety might require its suspension, and in such cases, as an absolute grant of power to the Congress to suspend its privileges. But these cases must be declared by Congress before any suspension can be ordered. All this goes to show that the framers of the Constitution not only re[illegible] Congress the general [illegible] con- the writ [illegible] recognized in the absolute by Mr. [illegible] absolute control of [illegible], but by the provisions cited, [illegible] absolutely required obedience to it, on all occasions, and by all persons and functionaries, whether State or Federal, unless Congress should declare the existence of the emergencies wherein it might and should suspend its privileges.

In view of this remarkable provision of the Constitution, it is not a little surprising that a claim is lately set up in behalf of Federal Officers, even of the lowest grade, of entire immunity from any obligation to regard the writ when emanating from State authority, and that jurisdiction of this writ is pertly questioned by inferior ministerial officers, even when issued from the highest judicial tribunal of a sovereign State. However regardless a people may be of encroachments upon the power to which alone they have confided their liberties, it would seem that such pretensions, from such sources, could hardly fail to invite inquiry in regard not only to the rights of sovereignty originally reserved, but in regard to what yet remain, not yet frittered away by thoughtless acquiescence on the one hand, or voluntary surrender on the other.

But it seems to me unnecessary to pursue this subject further. The whole tenor and scope of the Federal Constitution, indicate most clearly that the State Judges, and indeed all State officers, are essential to its maintenance and support, and accordingly the very last clause in the instrument requires such officers to be bound by oath or affirmation to support it. Yet the course of reasoning sometimes resorted to, in order to oust the State Judiciary of jurisdiction of a constitutional question, is based upon the assumption that State Judges must necessarily be reckless of such obligation, and that fidelity to official duty is only to be expected from Federal officers. But this assumption goes too far. It is a weapon with a double edge. The same hypothesis presupposes that Federal Judges are utterly unmindful of the restrictions which the Constitution imposes upon Federal power, and that they are willing, for the sake of "uniformity," to admin-