The Pittsburgh Gazette.
SATURDAY, FEBRUARY 1, 1868.

JUSTICE AT LAST.

Yesterday, at Philadelphia, the Supreme Court of Pennsylvania, all the Judges concurring, made a decision restoring to the Connellsville Railroad Company all its rights and franchises, which were unjustly and corruptly taken from it by the Legislature. This decision makes substantially an end of all controversy in this case. It is true, the matter is depending, on another form, before the Supreme Court of the United States, on an appeal taken from the judgment of the Circuit Court at Williamsport, which was that the act repealing the charter was unconstitutional and void; but it cannot be doubtful what the ultimate decision of that Court will be. The opinion of the Circuit Court will be sustained. But, if the decision of the Circuit Court shall be set aside, that result will be of no consequence. The decision of the Supreme Court of this State practically closes out the whole matter; that is, it restores the charter beyond all peradventure.

This is a subject in which this city has a great stake. Our people have been abused and calumniated because they felt they were outraged, and spoke and acted in accordance with that conviction. Justice has been long in coming—long, as measured by their impatience—and they hail it with the heartier satisfaction.

What adds to the gratification is the circumstance that the decision was unanimous. Not one of the Judges entertained the idea that reason or excuse for the repealing act ever existed.

It is fair to infer that, under this decision, the work on the road will be resumed and pushed to completion with the least possible delay.

THE ERIE CANAL COMPANY.

Mr. W. Milnor Roberts, consulting engineer of this company, made, on the 23d ult., a report to the President and managers thereof, relative to the original construction, present condition, and feasibility of enlargement of the canal, which has since been published in pamphlet form. He makes the length of the canal 136½ miles, divided into three sections; from Beaver to head of New Castle pool, 31 miles; from head of New Castle pool to Connecting Lake, 60 miles, and from Connecting Lake to Lake Erie, 45½ miles. The supply of water for the proposed enlarged capacity of the line he regards as abundant; and he estimates the cost of the enterprise at $1,687,734.34. As this computation was made upon the scale of prices existing some little time ago, it may be taken for granted a considerable less sum would now suffice.

In Erie county much interest is felt relative to this matter; as, also, generally along the line of the canal. Indeed, at the election last autumn it entered as a prominent element into the contest for State Senator.

It is now proposed to ask the Legislature to extend its credit to aid in the enlargement. If we are correctly informed, the plan is to get the State to issue its bonds for the amount required, taking a mortgage on the canal as security. The intention is, we believe, to bring a bill before the Legislature, to this end, during the current session.

According to the Report of the Inspectors of the Western Penitentiary, it now contains 486 criminal inmates—the largest number ever reached. During the year 115 were discharged; thirty-four were pardoned; five escaped, and two died; so that the whole number of prisoners for the year was 640. As the prison has only 318 cells, it is apparent that two-thirds of the number contain two prisoners instead of one, as the laws direct. Of course, this makes the solitary system, of which so much boasting has been heard, a nullity. We are not sorry for that, for we have no faith in the system, and think the sooner it shall be got rid of the better. But it ought to be superseded by some other definite system, not by what is in opposition to all systems. Members of the present Legislature ought earnestly to consider this matter. The Inspectors cannot refuse to receive prisoners duly committed; and, receiving them, they cannot retain them in custody in the manner commanded by law. The effectual remedy ought to be provided for this condition of affairs.

The Sheriff of Luzerne county had levied on and advertised for sale all the property and franchises of the Union Canal Company. One portion of this property was acquired last year, the price paid being $1,750,000. The property of this Company, situated in Wayne county, was sold some weeks ago, the Delaware and Hudson Canal Company becoming the purchaser, as it doubtless will be of the property located in Luzerne county. Indeed, it is quite probable the Union Coal Company was organized for the express purpose of being sold out; its property and franchises thus falling into the possession of the Delaware and Hudson Canal Company.

This will work an augmentation of its privileges which it could hardly have obtained from the Legislature.

The Marine Hospital of Erie, Pa., was incorporated by the last Legislature, and was granted three hundred acres of land owned by the State, as a first appropriation. It is now proposed to enter into contract for the erection of suitable buildings for hospital purposes on a site containing one hundred acres, in the city of Erie, a part of the State land grant. Yesterday, William King, Esq., of that city, and Mr. E. R. Porter, architect of Buffalo, N. Y., arrived here for the purpose of visiting and inspecting Dixmont Hospital, preparatory to adopting a plan for the proposed new buildings. They will visit that institution to-day and we feel sure will be favorably impressed with its general convenience, beauty and arrangement.

We yesterday mentioned that one of the Judges of the Supreme Court of the United States had publicly and courtely boasted that the body of which he is a member would upset the Reconstruction Policy of Congress. Both his matter and manner demonstrated what we have heretofore affirmed, that Judges are as completely politicians, as editors or members of Congress, and can as little be trusted to decide impartially where questions dividing political organizations are involved. On motion of Mr. Schofield this reported trade has been referred to the Judiciary Committee for investigation. If the published statement shall be sustained, that Judge should speedily to be impeached and deposed.

The Baltimore and Ohio Railroad Company, which is the actual owner of the Pittsburgh, and Connellsville Railroad, have a surplus of near two millions of dollars. Under the most discouraging circumstances it has refused to divest itself of this property, even upon conditions assuring the completion of the connection as speedily as possible after the settlement of the legal impediments. It is, consequently, reasonable to infer, since the restoration of the charter by the Supreme Court, that work on the unfinished portion of the line will be resumed upon the incoming of spring, and that the whole will be pushed to completion at the earliest practicable moment.

Erie is without a Board of Trade. A city of so much importance, and destined to all such a high place, to be without the necessary auxiliary of a Chamber of Commerce is like a ship without a rudder.

PITTSBURGH WEEKLY GAZETTE.
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CITY TIME.

In the "Life of Sam Slick," it is told how that Yankee pedler, when he found it impossible by ordinary means, to induce a farmer to buy one of his Connecticut clocks, would ask permission to leave it until his return on his "circuit."

This device, it appears, seldom failed to secure a customer; for the family which had once given it a place on the kitchen mantle, finding it grow a necessity of life, paid the clock maker his own price, rather than see the Connecticut treasure depart on the returning wagon.

Our "City Time" seems to be those conveniences, which we did not know was needed, till we tried it, and whose value would only be felt, if we were exposed to the chance of its loss. A year or two ago we used to look in at the watchmaker's occasionally to make sure our time was right (or wrong) within a few minutes; but to-morrow, when a single stroke on the Court House bell sends the hour to every one, our citizens will give Mr. Reed an unconscious testimony to their dependence on his accuracy, by the simultaneous comparison of several hundred time keepers with his, whose verdict every one takes as final.

We are thus accustomed to refer through the telegraph to our standard clock, by which we set our watches. But what is the clock set by? Ever to this question can show nothing new to the scientific reader, but may interest some who would reply "by the sun," as a matter of course; and, in fact, the idea that the sun keeps time of unimpeachable uniformity, seems common enough even among people of good general education, to excuse us for assuring any one who so supposes that if he have a watch of ordinary excellence he may be sure that it keeps more regular time than the sun does.

It is true enough that we can deduce the time by computation, when we know the sun's error, but this method does not give the most accurate results, and the reader who cares to know the process of finding the time, from which, at second hand, we daily set our watches and regulate our appointments, should endeavor to obtain admittance (not usually an easy matter) to some of the larger observatories of the country, where the original data are obtained on which is formed the Nautical Almanac by which the local time is calculated in all the principal cities.

We shall find such observatories, furnished with means to obtain the time to a small fraction of a second, in one or every large city of the Northern and Middle States, except Pittsburgh; and an hour in one will probably give the visitor some new ideas of the remoteness of the causes which may effect his personal comfort, and of the conditions of a struggle carried on by man against the imperfection of his own senses.

Who would suppose that the practical wants of life would create a demand for accuracy in the knowledge of the time, which would treat a single second of error as an unpardonably gross mistake? Yet an error of a considerable part of a mile in a vessel's reckoning is in some cases caused by such *second* that the chronometer is wrong, and considering that the shipping of the country depends on this little instrument and its companion, the Nautical Almanac, the reader may be less surprised to hear that to obtain the time so that resulting predictions shall not be one-tenth of a second in error, is an object important enough to cause this Government to support a large observatory and a corps of Astronomers at the public cost.

If we suppose ourselves visiting such an observatory this evening, to see how the time is found; we shall pass by many other instruments to view the "transit," here, a powerful telescope, mounted between two tall and very massive piers, each formed of a single block of granite. The instrument is in all its parts a example of the extremest accuracy which mechanical skill can reach. Were one of the steel axles on which it turns, for instance, one ten-thousandth of an inch larger than the other, a perceptible error would exist in each observation. Now, "one ten-thousandth of an inch" is here to be understood, not as a figure of speech, but quite literally; and accordingly, we shall be told that these axles have been turned with a diamond, since the imperceptible waste of the finest ordinary lathe-tool, would interfere with the result.

The piers are carefully wrapped in "jackets" to prevent sudden change of temperature, and yet under the delicate tests furnished by the observations themselves, are found to alter in height from day to day, and to vary forward and back, by quantities utterly inensible to our unaided senses.

We shall see little of this, at an evening visit. The room is dark; there is probably no conversation, and certainly no fire, although the temperature is far below freezing, and the observer, who is lying on his back upon a sort of handcar, with nothing between him and the sky, must have a cold time of it. There is a continuous opening in front and above him, through which the January winds enter freely; whatever around is not stone and brick is brass and iron, and there is not even the-ticking of a clock to break the silence.

In a few moments we hear a series of raps which seem to come from the observer, who now rolls himself and his car back on a little railway which runs under the telescope, and we may, if we please, examine it. Noticing that it points exactly South, so that the sun will be seen just as it crosses the meridian we look in.

We shall see nothing but a glare of yellow light, across which stretch five vertical wires, the middle one representing the meridian, while to the left glitters the star, which has just crossed and which is flickering as though about to go out, and seems retreating toward the East with startling rapidity.

The raps were made by the observer as it crossed the wires, and leaving him to resume his monotonous labor, we pass to a distant room, well lighted and warmed, where electricity is carrying the result of his watchings.

Here ticks, with slow distinctness, the Sidereal clock, the ultimate effort of the horologist's art. It has little peculiar in its exterior except a dial divided into twenty four hours and a flash of light, which moves from the end of the pendulum at every swing.

Near by, with lively clicking, a brass cylinder turns, by separate mechanism, once a minute. It is covered with paper, on which a pen traces an endless line as the cylinder turns beneath, while at every flash from the pendulum the pen is twitched aside, as if by an invisible hand, and instantly recovers itself, leaving the line thus broken at regular intervals, each of which corresponds to a second of the clock.

While we look, the observer at the other end of the building has seen a star approaching the wires, and now, though we cannot hear his distant raps on the telegraph key, we see their effect on the paper before us, on which the pen makes a mark as the key is struck, and then another, and another, till five are recorded. These signal the time when the star passed the five wires in the transit, the middle one marking the moment of its passage across the meridian; and if we stop the mechanism, and remove the paper, we shall find recorded there the hour, the minute, the second, and the fraction of a second, when the star crossed.

Certain allowances made, the interval between the star's passages from day to day is invariable, and if the clock records too early a time for its transit, the clock is slow, always supposing that the telescope is pointed truly. After all the multiplication of delicate mechanism, however, it must be plain that if the telescope points in the least to the East or West of South, the time recorded will not be that of the star's crossing the true meridian, and consequently will not be right, so that any imperfection in the instrument or adjustments will affect the result.

The peculiar accuracy attained is due less to the beautiful mechanism than to the forecast of the astrohomer himself. The striking peculiarity of the whole process now comes into view.

The astronomer knows that *some* error lies in each part of the best instrument, and in its most careful adjustment, which will vitiate the result, he seeks, if it be not allowed for. He will not assume then, for example, that those diamond turned axles are equal; *absolutely* equal; he knows they are not; but he will know by how many hundred thousandths of an inch they differ, and calculate by how much that minute difference has diverted his telescope from its true plane.

Thus, that imperfection which we all agree theoretically to exist in the most perfect human work, here appears as a sensible fact, is hunted down, and has its effect allowed for by mathematical computations which adapt themselves to every varying forms of error until a final result is reached correct to a few hundredths of a second of time.

We cannot without difficulty, conceive of any accuracy so great that the sum of ten separate mistakes should make a total of error, less than the time which elapses between the ticks of a clock and each separate error, be a measurable quantity; yet this result is exceeded.

It is not easy to realize, either that such a struggle against the limitation which nature seems to set our scanses, should be called for by the common affairs of life; yet it is so, and we might point out many very important results dependent upon it.

To confine ourselves to one: It is the cause of a difference in the market price of every imported article that navigation is incomparably safer since science has given the seaman the means of knowing at all times his position on the ocean, and this knowledge is due to such labor as we have described. The Nautical Almanac of England and America, calculated from these observatories, have lowered the rates of marine insurance throughout the maritime world, and directly reduced the cost of every English pile used in our workshops, and every French silk worn by our ladies; and every pepper-corn of spice sold by our grocers. The last, yet scarcely least, without them we should no longer be able to rely on our "City Time."

POLITICAL ITEMS.

—Hon. W. L. Sharkey, E. M. Yerger and A. H. Handy, have been appointed delegates from Mississippi to the Democratic National Convention.

—A Republican State Convention is called in Ohio for March 4th, to nominate State officers and appoint delegates to the National Convention.

—R. M. Lyttle and N. C. Wilson, Esqs., have been elected delegates to the Republican State Convention, from the Huntingdon, Juniata and Mifflin representative district, with instructions to support Gen. Grant for President, Gen. Curtin for Vice President, Gen. Hartranft for Auditor General, and General Campbell as their choice for Governor General.

—Senator Dixon expresses a fear of the Democrats losing the next election in Connecticut. He says that there are a large amount of bonds held by wealthy Democrats all over the State, and that the Democratic party in the West is determined to commit the party to pay the bonds in greenbacks, and on that, he says, they will base all hope in all of the New England States.

—We learn from the Philadelphia *Ledger* that the Pennsylvania Railroad Company have conveyed all the line of canals from Colombia to Hollidysburg to the Pennsylvania Canal Company. The consideration money expressed in the deed is $2,820,000. One of the objects of this movement, we understand, is the enlargement of the canal by a special company, and one of the good results hoped for is the greater and more certain facilities for the accommodation of the heavy tonnage from the various coal regions that now find outlet by way of the Pennsylvania Railroad.

—The Washington correspondent of the Philadelphia *Inquirer* says that a Conservative Senator who recently called upon President Johnson found him in a very peaceable disposition, with not the slightest indications of any warlike tendencies, except upon General Grant, whom he charged with considerable warmth as having sold out to the Radicals. He says he has concluded to allow Stanton to serve out the rest of the term, but he is determined he shall have no more power or duty than is conferred upon him by statute. He says he would like to put some one else in the War Department, but he has been assured that were he to send an angel into the Senate for confirmation they would quickly throw the name back marked "rejected," and so he does not wish to give them any more chances to offer him an insult.

It is astonishing what sudden conviction and repentance has been wrought in the minds of members of the Legislature by the decision of the Supreme Court in the case of the Connellsville Railroad! By a unanimous vote both Houses have consented to do a plain act of justice which it is probable neither would have done at all, if their rivals would have hindered the consummation. Since the doing of wrong in this special thing can no longer be made profitable, many members are stirred with an irresistible impulse towards honesty!

It has been maintained by certain individuals on the eastern side of the State that the restoration of the Connellsville charter, and the consequent construction of a direct line of railroad between Pittsburgh and Baltimore, would damage Philadelphia and the Pennsylvania Railroad. The stock market at Philadelphia, which ought to be taken as a safe criterion in the case, tells a different story. The shares of the Pennsylvania Railroad Company have decidedly advanced in price since the decision of the Supreme Court.

—Mount Vesuvius, (says a special dated Naples, Italy, Jan. 20th,) which has continued in eruption with greater or less intensity since its occurrence in the past year, has culminated in an unusual and very fatal catastrophe. On the 24th the side of Mount Vesuvius lying right opposite to the gate of Castello Neuoka, one of the fortifications of Naples, situated between the Royal Palace and the sea, fell, tumbling outward, detaching portions of several houses, built in the vicinity, and overwhelming carriages and other conveyances passing on the highway at the moment. The scene is melancholy and full of ruin. The road running in the neighborhood of the volcano is filled with rocks and earth, which had just formed a part of the mountain. This extraordinary event has also been attended with considerable loss of life, but the number killed has not been ascertained.

—It is stated the Congressional Ways and Means Committee has decided not to reduce the tax on whisky.

POWERS OF THE SUPREME COURT.

Speech of Hon. Thomas Williams, of Pennsylvania.

In the House of Representatives, January 13, 1868, on the Bill Declaring What Shall Constitute a Quorum of the Supreme Court, and to Regulate the Jurisdiction Thereof.

Mr. Williams, of Pennsylvania. The object of the amendment reported by the committee to the Senate bill is to preserve this Government in its original spirit, and protect its people in the enjoyment of the rights intended to be secured to them by its fundamental law, by protecting that law as well against the encroachments of the States as from the ambition or infirmities of its accredited expounders, acting through the more insidious and alarming process of judicial construction, which is so often but another name for judicial legislation.

The purpose of the amendment just offered by me, which is no other than a copy of the bill that, under a feeling of profound alarm for the tranquility of the nation and the preservation of the just balances of the Constitution, was introduced by me into the last Congress, and again renewed and referred upon the inauguration of the present one, is to make that protection sure by exercising the highest security that the authority of Congress can demand and the nature of the circumstances will admit.

To this end it provides that not less than a full bench shall sit in judgment upon the will of the people as declared through their Representatives, and that nothing short of the concentaneous assent of the favored few, holding their places by appointment of the Executive, shall nullify that, will, by breaking the scepter of the law giver, and striking his ordinances dead at his feet.

The amendment of the committee, while it accepts and incorporates the principle enunciated in my bill, and so far challenges my approval, reduces the security provided for by it by compromising on a two-third vote, which, under the present constitution of the Supreme Court, would add one more judge to the number required to undo the work of Congress, and give, perhaps, a new law to the people; and in this, I think, falls short of the security which the safety of our life and the high requirements of public duty.

The difference, then, is only one of measure or degree—a mere question of more or less—between the highest possible security and an inferior or lower one. And here, I think, I may be allowed to express the conviction that the legislator, holding, as he does, a public trust, and not caeling upon his own counsel for his conscientious convictions, is under no absolute discretion, no choice, indeed, but to take the higher and superior, of assuming the need of the occasion demands it. He cannot, in my judgment, demand too much; his only question is what is within the range of the possible. What, in other interests—perhaps the life—of a nation are involved, I take it to be his clear duty to waive no security, but to

"Take assurance double sure,
And take a bond of fate."

The point once admitted, as it is here, that we need more than any more than a majority, the whole question is surrendered. If we may exact two-thirds, why not three-fourths, or four-fifths, or, if the case shall say, if we may do this, that the lowest security which the country shall enjoy shall be that of the unanimity of the jury box? If that is practicable, why not insist upon it?

To these questions there can be but one answer except that it would be impertinent, unexpected and unnecessary. But is this so? Let us examine.

It is not certainly reasonable to infer that the legislaturers of perhaps two hundred representative men, of the size of the nation, drawn mainly from the legal profession, and possessing a large portion of its wisdom and experience, are to be overruled by a little conclave of some seven or eight men, who, if not of some seven or eight men, who, if not wiser or better than themselves, the oracle whose not is claimed to be equal to the sums of all—shall give out the unanimous utterance, the wisdom of that common law which was claimed by our ancestors as their birth-right, as much a part of the liberty, life and property, even of the humblest citizen, shall not be taken away without the unanimous consent of the jury of his peers. Or, if it shall say that the life of a great State, the liberties of a great people, are not entitled to equal protection, and that the life or live men out of the one constituted—nay, even a bare majority of those four or five—shall determine in the last resort, the extent of it—my appeal shall be, not to the charter of freedom; in defiance of the sense of the millions who, under it, have grown from the humblest colonial dependency to the most powerful and most well-to-do people on the earth.

I did not regard it as unlikely that the proposition, which I had the honor to introduce into the House early in a year ago, would startle the profession at first sight as an alarming innovation, and I was prepared that this expectation should be in part disappointed. It could scarcely in the nature of things be otherwise. Living, as I do, in a community, and in a State where there is a great reverence for precedents, and, so often—I may say so properly—fall as statesmen, from being overbalanced by the lesser, original, and previous spirit of a Mansfield, are always averse to untried ways, and are ready to denounce the innovation, if it be not even so much as to say it goes to matter of substance and beyond any mere question of form, as a pernicious and dangerous innovation. It is, perhaps, that there is no case where unanimity of assent is the measure or effect of a covenant or a law, and taking their position there, maintain that the thing is unprecedented, or because there is no precedent to warrant it.

And yet if the law, as claimed by its professors, is what it is, and if what is not reason is not law, it will be found, on the application of this test, that the requiring of unanimity to constitute a law is not in conflict with that idea. Whatever weight considerations of mere convenience may be entitled to in ordinary cases upon questions of merely private right be between man and man, it cannot certainly be affirmed that there is any thing unreasonable in the proposition that unanimity of opinion shall be required where the tribunal is a small one, and it is sought to overthrow the judgment of the ages, speaking through another and greater organ, on a matter that concerns the well-being of the people of the State. The lawyer who cherishes the old and favorite hypothesis, that what we every day realize to be the most uncertain of all things is always absolutely certain, cannot very consistently complain that the meager priesthood, which constitutes at the mirror of an oracle that claims to be infallible, should be expected to give out no divided responses, and scatter no ambiguous utterances among the worshippers, but, on the contrary, on all vital questions at least, should blend all its outgivings into one sublime chorus of universal harmony. In matters of faith, where the infallibility is the rule, such consentaneity is indispensable. If the successors of the fisherman, along with the triple crown had worn a triple head, the prestige of infallibility must soon have disappeared. With seven or eight heads the faith must necessarily have perished under any other rule than that which is proposed to be enacted here.

It is only necessary to remind the lawyer himself that there is an analogy to this in that time honored institution, the trial by jury, which, although generally referred to the great charter of English liberty, antedates the records of our race, and is imbedded in all our institutions as the palladium of all our rights—the one great pre-eminent defense of private and public liberty. It was not enough that the person and property of the citizen should be walled round by the principles of this people. Even that security was treated as inadequate without the unanimity that constitutes its excellence. It was still possible that seven men out of twelve might be warped by prejudice, misled by ignorance, imposed on by cunning, corrupted by money, or seduced or overawed by power. The life and liberty and property of the citizen were not to be trusted to the keeping of the majority, or taken away except by the unanimous accord of all his judges, passing in criminal cases as well upon the law as upon the facts. It is the glory of England, as it is the boast of America, that not one of the great natural rights, whose protection is the only legitimate object of all government, shall be disturbed, even in the smallest particular, without the unanimous judgment of a larger bench than that which claims to pass, by a division of vote, upon the fundamental law of a great nation, and in effect to nullify that law, or to make it speak in accordance with its own imperial behests. Why, then, shall say that there is in this amendment anything unreasonable or unprecedented, or any departure from the analogies of our Constitution; or that a nation may not borrow in its extremity, for the preservation of its life, the sanctities it has already thrown around the humblest individual and the lowliest home?

If there is anything that is transcendently and indefensibly unreasonable, it is in the idea that it should be competent for even any seven or eight men, however exalted, add with like passions and infirmities as ourselves, either to legislate away by construction the great charter of our liberties, or to set aside decrees of the high council of the nation, embodying, as it always does, a large share of the intelligence and all of the majesty of a great people, and in effect to land everybody but itself. That is as manifestly necessitated, perhaps, by the fact of a written Constitution, but still it is anomaly that may well startle us, in view of the possibilities that are so strongly suggested by the present condition of the nation, wherein its highest judicial tribunal is invoked and depended upon, as powerful, nay, a resistless auxiliary in the war waged by the Executive against the power that is intrusted under the Constitution with the making of the laws. There was a time when it was seriously doubted whether there was any authority in the States or the United States that could declare an act of the law-making power to be invalid because it conflicted with the constitutions of either. That question has been settled affirmatively on grounds that may be, perhaps, conceded to be unanswerable, and which I will not, at all events, attempt to controvert. It was apparent, by the logical and necessary result of an antagonism between a superior law and an inferior one, which could not be reconciled without the surrender of one or other of them. If the fundamental, and of course the higher law was not to prevail in such a strife, the Constitution became valueless as a limitation, which it was intended to be. It was not without reason, however, as we have occasion from very recent experience to know, that the jealous and watchful and sagacious Jefferson referred again and again to the power claimed for that tribunal, as involving the establishment of a judicial oligarchy in the land.

We look in vain to the country from which our institutions are derived for any example of such a tribunal, with such a power to control and law. The royal negative, it is true, may suspend the action of the legislative body, although, for point of fact that prerogative has slept for near two hundred years, but it settles nothing in regard to the power of that arm of the Government, and only serves to illustrate the extent and venerable, with all its historic prestige and all its array of learning, has ever ventured to set limits to the authority of the law-giver. The appeal is not there from Parliament to the courts, but practically from the courts themselves to Parliament, and the highest of them all. And well and faithfully has that great depository of the unwritten laws and customs of England, which has been the safeguard of the liberties of its people, observed and performed that responsible and exalted trust. In the colonial courts they would have sickened and died under the withering influence of royal favor. The history of that nation proves abundantly that all the struggles between prerogative and privilege, the supplest instruments of tyranny have been the judges. But to the honor of the Legislature be it said, it had no decision has ever been made by them which violated the instincts of the Saxon race, by breaking in upon its landmarks, or traversing its great maxims of liberty, by impinging upon the natural rights of the subject, which have been constantly reversed by the Commons of England in Parliament assembled. And thus, without a written Constitution, they have guided the ship of state, by those hoary and venerable customs, and those hallowed traditions of the past, which, handed down to them from sire to sire, from prehistoric times, make up the body of their common customs of law, the liberties of England, so wisely reserved for their own keeping, have been perpetuated from generation to generation, not only unimpaired, but improved, developed, and strengthened by the flow of centuries. They have not learned the royal lesson of the last Presidential campaign, which is still rehearsed and reiterated even here, that the danger of tyranny is from the many, or, in other words, from them. They said that they required the voices of a king, or the supervisory power of a court, to restrain them as to their duties to the people, and to save them themselves. Once have been none among their representatives so deficient in self respect as to abase themselves in the presence of those who have so unappreciative of their own high trusts, or so forgetful of their political dignity, as to insist, or even think, that they were more wisdom and learning, and virtue concentrated in any body of seven, or eight, or twelve men in Westminster Hall, selected by the Crown, than was to be found in the multitude of counselors that represent the people of England, the guardian of the liberties of England, and cannot betray those liberties without surrendering in one fell swoop, with our Constitution and all of value it can give. When it ceases to be safe in the hands of the people, when it ceases to be in all the people, who have a direct interest in its provisions, it is idle to hope that it can be locked up securely under the custody of any seven men, or even eight, or twelve doctors of the Westminster, with the high prerogative of reading and interpreting it to the people, as the imperial judgment or the caprice of a majority of them may determine. The statesman who holds that we cannot safely trust ourselves, and that our only security is in such a guardianship, surrenders the idea of self-government as a visionary and impracticable thing, and advocates that a political master of ours cannot exist without a master. That is an ancient superstition. Wise men of old and some of modern times have contended that the world has never yet been governed under it, but often by a hierarchy. It was supposed for a long time to have been exploded. It is now revived under the auspices of the Democratic party—once so hostile to this *regime* as the idea of a secret of literate college—a priesthood of a new religion—a little oligarchy of lawyers—is the only safe depository of the supreme power of the State. The Jew lawyer—is only between an octarchy and a monarchy—between eight ascendant masters—a sort of conclave of superannuated cardinals, in wigs and gowns, and a single royal one in purple. Without disparagement to either of these high professions, and especially with none to the profession, and especially with none to that to which nearly forty years of my life have been devoted, and which I love dearly, and the judges of the Supreme Court of the United States, lately passed away, and the judges of the Supreme Court of the United States, united and cemented together under a feeling of common danger, have come to feel that the Federal judiciary is saved along with the Union on which it depends, they are found to divide again according to their original political connections and proclivities, upon the validity of the test-oath, the military commission, and perhaps others of the minor measures of self-preservation and defense that contributed so largely to carry us successfully through the war. It is not to be denied, that if the authority of Congress is not absolutely menaced at this very moment, from the same direction, the body at least, if not the whole country, is affected with the deepest alarm by rumors of a combination between the Executive and the courts for the overthrow of the legislative power.

Allow me to remark, however, that in what I have just said in relation to the decisions of the courts I have not intended to inquire who of the judges involved were right and who were wrong, because it is not necessary to the argument, and gentlemen on the other side, to whom it is equally addressed, might differ with me as to that. The object I have in view just here is only to make good the allegation that the decisions of the courts, on constitutional questions especially, are almost invariably governed by the party affiliations of the members, and therefore not so much the judgments of lawyers as of politicians. If the fact be so, it is, of course, and must forever be, in the mutations of party and with the ever changing kaleidoscope of politics, entirely fatal to the idea of uniformity of decision, and nothing is ever to be settled, as nothing apparently has been settled incontrovertibly heretofore. Assuming it to be true, moreover, there is an end of all argument in support of the judgment of a divided court, if there is not an end of all apology for treating even its unanimous decisions on questions of constitutional law as conclusive upon Congress and the people when they are not even conclusive upon themselves.

It was a grave error, therefore, as I honestly think, on the part of the founders of the Republic, when they departed from the example of our British ancestors in giving place to such an anomaly, instead of reserving the ultimate judgment in all such cases to their own representatives, or at least preserving the control over the judiciary, by the method of address by two-thirds of both Houses, which was provided in the statute of 9 William III., and has been copied by some of the State Constitutions, instead of relying only on the inadequate remedy of impeachment, which corrects no error, however vital, and leaves the defaulting Judge to shelter himself under the plea that he erred from ignorance or without corrupt intent. To obviate this difficulty, however, I have had the honor to submit a constitutional amendment to the same effect, in order to maintain the just authority of the law-making power, by bringing the Federal judiciary within the reasonable control of Congress, with such qualifications as will guard it sufficiently against abuse, which I propose to bring to the notice of the House at some more favorable opportunity.

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It is admitted on all hands that questions of this sort are of great delicacy and ought not to be even heard, except in the presence of a full bench. This is in the province of a Republic, and perhaps everywhere else, and the practice of the Supreme Court of the United States is shown by the Reports to be in strict accordance with it. (6 Wheaton.) There can be no possible objection, therefore, to so much of the bill as merely imparts the sanction of law to what is already recognized as a rule of the court.

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"The question whether a law be void for its repugnancy to the Constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. It is not an immediate inference from the principle that the Legislature is to be presumed to have transcended its powers because it is equally subject to the Constitution and the law as those who make the rule are subject to the strong conviction of their incompatibility with each other."

And this is reason. When we look to the fact that every law enacted by Congress and by the States must pass the ordeal of a bench of judges in the Judiciary Committee of each House; undergo public discussion and criticism, if worship is admissible, all the prejudice of party, and all the spirit of the times and sections to the contrary, and then, if there be a doubt, the appeal is not there from Parliament to the courts, but practically from the courts themselves to Parliament, and the highest of them all. And well and faithfully has that great depository of the unwritten laws and customs of England, which has been the safeguard of the liberties of its people, observed and performed that responsible and exalted trust. In the colonial courts they would have sickened and died under the withering influence of royal favor. The history of that nation proves abundantly that all the struggles between prerogative and privilege, the supplest instruments of tyranny have been the judges. But to the honor of the Legislature be it said, it had no decision has ever been made by them which violated the instincts of the Saxon race, by breaking in upon its landmarks, or traversing its great maxims of liberty, by impinging upon the natural rights of the subject, which have been constantly reversed by the Commons of England in Parliament assembled. And thus, without a written Constitution, they have guided the ship of state, those hoary and venerable customs, and those hallowed traditions of the past, which, handed down to them from sire to sire, from prehistoric times, make up the body of their common customs of law, the liberties of England, so wisely reserved for their own keeping, have been perpetuated from generation to generation, not only unimpaired, but improved, developed, and strengthened by the flow of centuries. They have not learned the royal lesson of the last Presidential campaign, which is still rehearsed and reiterated even here, that the danger of tyranny is from the many, or, in other words, from them. They said that they required the voices of a king, or the supervisory power of a court, to restrain them as to their duties to the people, and to save them themselves. Once have been none among their representatives so deficient in self respect as to abase themselves in the presence of those who have so unappreciative of their own high trusts, or so forgetful of their political dignity, as to insist, or even think, that there were more wisdom and learning, and virtue concentrated in any body of seven, or eight, or twelve men in Westminster Hall, selected by the Crown, than was to be found in the multitude of counselors that represent the people of England, the guardian of the liberties of England, and cannot betray those liberties without surrendering in one fell swoop, with our Constitution and all of value it can give. 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