THE DAILY PITTSBURGH GAZETTE.

ESTABLISHED IN 1786. PITTSBURGH, TUESDAY MORNING, NOVEMBER 10, 1863. VOLUME LXXVI---NO. 308.

Pittsburgh Gazette.

TUESDAY MORNING.....NOV. 10, 1863

TERMS OF THE GAZETTE.

MORNING EDITION, by mail, per year.....$8 00.
" " month..... 70.
" " week..... 15.
" " single copies..... 2.
EVENING EDITION, by mail, per year..... $ 50.
" " month..... 33.
" " week..... 15.
" " single copies..... 2.
WEEKLY EDITION, single copies, per year... $ 00.
" " clubs of 5 to 10, " ... 1 50.
" " clubs of 10 or more " ... 1 23.
—and one extra to the party sending club. For a club of fifteen, we will send the EVENING GAZETTE daily. For a club of twenty, we will send the MORNING GAZETTE daily. Single copies, 5 cents.

☞ All subscriptions *strictly in advance*, and papers always stopped when the time expires.

THE CONSCRIPTION ACT.

The Supreme Court of Pennsylvania Decide the Conscription Act Unconstitutional—Decision of Chief Justice Lowrie.

On Monday, Chief Justice Lowrie rendered a decision in the matter of the application of three drafted men belonging to Philadelphia, who filed Bills in Equity to test the constitutionality of the Conscription Act. The applications were for injunctions to restrain the Government officers from sending the complainants into the military service. The Chief Justice decides the act of Congress *unconstitutional*, and grants preliminary injunctions in each case. Concurrent opinions were read by Justices Woodward and Thompson, and dissenting opinions by Justices Strong and Read. We give below the opinion of the Chief Justice, and in the inside we publish the dissenting opinion of Judge Strong:

Knee dior vs. Lane and others. Smith vs. Lane and others. Nichols vs. Lehman and others.

OPINION OF LOWRIE, C. J.—These are three bills in equity wherein the plaintiffs claim relief against the defendants who, acting under the Act of Congress of the 3d of March last, well known as the Conscription Act, claim to coerce the plaintiffs to enter the army of the United States as drafted soldiers. The claim of the plaintiffs is founded on the objection that that act is unconstitutional. The question is raised by a motion for a preliminary injunction, and might have been heard by a single judge. But at the request of our brother Woodward, who allowed the motion, and on account of the great importance of the question, we all agreed to sit together at the argument. But we are very sorry that we are left to consider the subject without the aid of an argument on behalf of the government, by the proper legal officers of the government having deemed it their duty not to appear.

For want of this assistance I cannot feel such an entire conviction of the truth of my conclusions as I would otherwise have, for I cannot be sure that I have not overlooked some grounds of argument that are of decisive importance. But the decision now to be made is only preliminary to the final hearing, and it is to be hoped the views of the law officers of the government will not then be withheld.

We have, however, a much greater difficulty in the decision of this question, and one that is quite inevitable. It is founded on the fact that the question has become a question of politics, and the great parties of the country have divided upon it. People have not awaited the decision of the courts on the subject, and could not be expected to do so; but have studied and decided it for themselves, or have rallied, in opposing ranks, in support of leaders who profess to have studied it or have done so. Our own history shows that our courts have no *moral* authority adequate to bring such divisions into unity. That sort of authority requires a much larger degree of mutual confidence between the courts and the people than is usual in our experience, especially in times of popular excitement.

All men believe themselves impartial in the decision even of party questions, and therefore it is impossible for them to abandon their decisions on the mere authority of any one, unless when they feel that authority to be final. Partiality in such matters seldom proceeds from any dishonest purpose, and generally arises from giving undue prominence to some purpose or idea that is, in itself, quite proper, and, of course, this is usually done quite unconsciously. In times of excitement it is quite impossible to avoid this, and hence in such times moderate views are very sure to be condemned, and even government itself, in all its departments, is sure to be driven into measures which, in the course of a few years, are condemned and pass away. With a sort of moral polarity, the extremes of social excitement breed each other, and moderation falls, for a while, powerless between them; and usually, it is only by severe social trials that this condition of society is remedied, and then it is discovered what were the purposes and ideas to which undue prominence had been given, to the disturbance of the order and harmony of the State.

On this question we ought to be able to avoid this vice, which is so common in all moral and political reasoning; for our appeal is to the Constitution, a written standard, adopted by us all, sworn to by many of us, and obligatory on all who exercise the rights of citizenship under it, until they can secure its alteration in a regular and peaceable way. By that standard alone can we try this act. Is it authorized by the federal constitution?

That Constitution, adopting our historical experience, recognizes two sorts of military land forces—the militia and the army, sometimes called the regular, and sometimes the standing army, and delegates to Congress power "to raise and support armies" and "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions." But though this act of Congress is intended to provide means for suppressing the rebellion, yet it is apparent that it is not founded on the power of "calling forth the militia," for those who are drafted under it have not been armed, organized and disciplined under the militia law, and are not called forth as militia under State officers as the Constitution requires.—Art. 1, 8, 16.

It is, therefore, only upon the power to raise armies that this act can be founded, and as this power is undisputed, the question is made to turn on the ancillary power to pass "all laws which shall be necessary and proper" for that purpose.—Art. 1, 8, 18. It is therefore a question of the *mode* of exercising the power of raising armies. Is it admissable to call forced recruiting a "necessary and proper" mode of exercising this power?

The fact of rebellion would not seem to make it so, because the inadequacy or insufficiency of the permanent and active forces of the government for such a case is expressly provided for by the power to call forth the usually dormant force, the militia; and that therefore is the only remedy allowed, at least until it has been fully tried and failed, according to the maxims, *expressio unius est exclusio alterius*, and *expressum facit cessare tacitum*. No other mode can be necessary and proper so long as a provided mode remains untried; and the force of these maxims is increased by the express provision of the Constitution, that powers not granted are reserved, and none shall be implied from the enumeration of those which are reserved. *Amendments* 9, 10. A granted remedy for a given case would therefore seem to exclude all ungranted ones. Or, to say the least, the militia not having been called forth, it does not and cannot appear that another mode is necessary for suppressing the rebellion.

And it seems very obvious that a departure from the constitutional mode cannot be considered necessary because of any defect in the organization of the militia, for Congress has always had authority to correct this, and it cannot possibly found new powers in its own neglect of duty. Most of the Presidents have repeatedly called the attention of Congress to this subject, and yet it has never been adequately attended to. I do not know why it might not have been performed since this rebellion commenced, and yet I do not know that it could.

Though, therefore, this Act was passed to provide means for suppressing the rebellion, yet the authority to pass it does not depend on the fact of rebellion. That fact authorizes forced levies of the militia under their own State Officers, but not for the Regular Army.

But it is not important that Congress may have assigned an insufficient reason for the law. If it may pass such a law for *any* reason, we must sustain it for that reason. The question then is—may Congress, independent of the fact of rebellion or invasion, make forced levies in order to recruit the Regular Army?

If it may, it may do so even when no war exists or threatens, and make this the regular mode of recruiting; it may disregard all considerations of age, occupation, profession and official station; it may take our Governors, legislators, heads of State Departments, judges, sheriffs and all inferior officers, and all our clergy and public teachers, and leave the State entirely disorganized; it may admit no binding rule of equality or proportion for the protection of individuals, States and sections. In all other matters of allowed forced contribution to the Union, duties, imposts, excises, and direct taxes, and organizing and training the militia, the rule of uniformity, equality or proportion is fixed in the Constitution. It could not be so in calling out the militia, because the emergency of rebellion or invasion does not always allow of this.

But for the recruiting of the army no such reason exists, and yet, contrary to the rule of other cases, if it may be recruited by force, we find no regulation or limitation of the exercise of the power, so as to prevent it from being arbitrary and partial, and hence we infer that such a mode of raising armies was not thought of and was not granted. If any such mode had been in the intention of the fathers of the Constitution, they would certainly have subjected it to some rule of equality or proportion, and to some restriction in favor of State rights, as they have done in other cases of compulsory contributions to federal necessities. We are forbidden by the Constitution from inferring the grant of this power from its not being enumerated as reserved; and the rule that what is not granted is reserved operates in the same way, and is equivalent to the largest bill of rights.

No doubt it would be unreasonable to suppose that Congress *could* so disregard natural rights as to take such an advantage of this want of regulation of their power, as that above indicated; but the fathers of the constitution did presume that some such things are *possible*, and therefore they would have regulated the mode, if such a mode had been intended. It needed no regulation, if all recruits were to be obtained in the ordinary way, by voluntary enlistments.

Our jealousy of the usurpations of dominant parties is quite natural, and has been inherited through many generations of experience of cavalier and roundhead, court and country, whig and tory, parties, each using unconstitutional means of enforcing the measures which they deemed essential or important for the public welfare, or of securing their own power; and the fathers of the constitution had experienced such usurpations from the very beginning of the reign of George III, and were not at all inclined to grant powers which, for want of regulation, might possibly become merely arbitrary. They had no experience of forced levies for the regular army, except by the States themselves, and it seems to me they did not intend to grant such a power to the Federal Government.

Besides this, the constitution does authorize forced levies of the militia force of the States in its organized form, in cases of rebellion and invasion, and on the principle that a remedy expressly provided for a given case, excludes all implied ones, it is fair to infer that it does not authorize forced levies in any other *case* or *mode*. The mode of increasing the military force for the suppression of rebellion being given in the constitution, every other mode would seem to be excluded.

But even if it be admitted that the regular army may be recruited by forced levies, it does not seem to me that the constitutionality of this act is decided. The question would then take the narrower form. Is this mode of coercion constitutional?

It seems to me that it is so essentially incompatible with the provisions of the Constitution relative to the militia that it ought to be so held. On this subject, as on all others, all powers not delegated are reserved. This power is not expressly delegated, and cannot be impliedly so, if incompatible with any reserved or granted powers. This is not only the express rule of the Constitution, but it is necessary so; for we can know the extent to which State functions were abated by the Federal Constitution only by the express or necessarily implied terms of the law or compact in which the abatement is provided for. And this is the rule in regard to the common law; it is changed by statute only so far as the expression of the statute requires it to be.

Now, the militia was a State institution before the adoption of the Federal Constitution, and it must continue so, except so far as that Constitution changes it, that is, by subjecting it, under State officers, to organization and training according to one uniform Federal law, and to be called forth to suppress insurrection and repel invasion, when the aid of the Federal Government is needed, and it needs this force. For this purpose it is a Federal force; for all others it is a State force, and it is called in the Constitution "the militia of the several States," 2, 2, 1. Its, therefore, the standing force of the States, as well as, in certain specified respects, the standing force of the Union. And the right of the States to have it is not only not granted away, but is expressly reserved, and the history shows its purpose to be to secure domestic tranquility, suppress insurrections and repel invasions. Neither the States nor the Union have any other militia than this.

Now, it seems to me plain that the Federal Government has no express and can have no implied power to create any national force that is inconsistent with this. This force shall continue, says the Constitution, and the Federal Government shall make laws to organize and train it as it thinks best, and shall have the use of it when needed; this seems reasonable and sufficient; but the power provided for by this act inconsistent with it?

It seems to me it is. By it all men between the ages of 20 and 45 are "declared to constitute the national forces," and made liable to military duty, and this is so nearly the class which is usually considered to constitute the militia force of the States that we may say that this act covers the whole ground of the militia and exhausts it entirely. It is in fact, in all its features, a militia, for national, instead of State purposes, though claiming jurisdiction only under the power of rebellion being given in the constitution, every other mode would seem to be excluded.

But even if it be admitted that the regular army may be recruited by forced levies, it does not seem to me that the constitutionality of this act is decided. The question would then take the narrower form. Is this mode of coercion constitutional?

It seems to me that it is so essentially incompatible with the provisions of the Constitution relative to the militia that it ought to be so held. On this subject, as on all others, all powers not delegated are reserved. This power is not expressly delegated, and cannot be impliedly so, if incompatible with any reserved or granted powers. This is not only the express rule of the Constitution, but it is necessary so; for we can know the extent to which State functions were abated by the Federal Constitution only by the express or necessarily implied terms of the law or compact in which the abatement is provided for. And this is the rule in regard to the common law; it is changed by statute only so far as the expression of the statute requires it to be.

Now, the militia was a State institution before the adoption of the Federal Constitution, and it must continue so, except so far as that Constitution changes it, that is, by subjecting it, under State officers, to organization and training according to one uniform Federal law, and to be called forth to suppress insurrection and repel invasion, when the aid of the Federal Government is needed, and it needs this force. For this purpose it is a Federal force; for all others it is a State force, and it is called in the Constitution "the militia of the several States," 2, 2, 1. Its, therefore, the standing force of the States, as well as, in certain specified respects, the standing force of the Union. And the right of the States to have it is not only not granted away, but is expressly reserved, and the history shows its purpose to be to secure domestic tranquility, suppress insurrections and repel invasions. Neither the States nor the Union have any other militia than this.

Now, it seems to me plain that the Federal Government has no express and can have no implied power to create any national force that is inconsistent with this. This force shall continue, says the Constitution, and the Federal Government shall make laws to organize and train it as it thinks best, and shall have the use of it when needed; this seems reasonable and sufficient; but the power provided for by this act inconsistent with it?

It seems to me it is. By it all men between the ages of 20 and 45 are "declared to constitute the national forces," and made liable to military duty, and this is so nearly the class which is usually considered to constitute the militia force of the States that we may say that this act covers the whole ground of the militia and exhausts it entirely. It is in fact, in all its features, a militia, for national, instead of State purposes, though claiming jurisdiction only under the power of rebellion being given in the constitution, every other mode would seem to be excluded.

But even if it be admitted that the regular army may be recruited by forced levies, it does not seem to me that the constitutionality of this act is decided. The question would then take the narrower form. Is this mode of coercion constitutional?

It seems to me this is an unauthorized substitute for the militia of the States. If valid, it completely annuls, for the time being, the remedy for insurrection provided by the Constitution, and substitutes a new and unprovided one. Or rather it takes away every State force, strips it of its officers, despoils it of its organization, and reconstructs its elements under a different authority, though under somewhat similar forms. If this act is law, it is supreme law, and the States can have no militia and yet the class usually called to militia duty; for the whole class is appropriated as a national force under this law; and no State can make any law that is inconsistent with it. The State militia is wiped out if this act is valid, except so far as it may be *permitted* by the Federal Government. If Congress may thus, under its power to raise armies, constitute all the State militia men into "national forces" as part of the regular army, and make them liable to perform duty in the service of the United States when called out by the President," I cannot see that it may not require from them all a constant military training under Federal officers as a preparation for the greatest efficiency when they shall be so called out, and then all the State militia and civil officers may be put into the ranks and subjected to the command of such officers as the President may appoint, and every one would then see that the constitutional State militia becomes a mere name. The Constitution makes it, and the men in it a national force in a given contingency, and in a prescribed form, but this act makes them, irrespective of the constitutional form and contingency. *This is the substantial fact, and I am not able to refine it away.*

And it seems to me that this act is unconstitutional, because it plainly violates the State systems in this, that it incorporates into this new national force every State civil officer, except the Governor, and this exception might have been omitted, and every officer of all our social institutions, clergymen, professors, teachers, superintendants of hospitals, &c., and degrades all our State Generals, Colonels, Majors, &c., into common soldiers, and thus subjects all the social, civil and military organization of the States to the Federal power to raise armies, potentially wipes them out altogether, and leaves the states as defenseless as an ancient city with its walls broken down. Nothing is left that has any *constitutional right* to stand before the will of the Federal Government.

If this be so, the party in power at any time holds all State rights in its hands. It is subject to no restraints except that of the common morality of the time and of the party, and every one knows how weak and changeable this is in times of popular excitement, when the party in power, convinced of the rightness and greatness of its own ends, thinks lightly of the modes and forms that in any way obstruct or retard their attainment. There are no *constitutional* restraints of this power, if it exists, and therefore, if the unsteady morality of party excitements will bear it, the party in power may require all the troops to be drafted from the opposite party or from States and sections where it prevails.

Our fathers saw these dangers, and intended the constitution to stand as a restraint upon party power. They knew that a party in power naturally encroaches upon every institution that obstructs its will, and is inclined, when its power totters, to adopt extreme, unusual and unconstitutional measures to maintain it; and they intended to guard against this. They knew how episcopalians, independents and presbyterians, cavalier and roundhead, court and country, whig and tory parties, had each in turn, when in power, tyrannized over their opponents and sacrificed or endangered public liberty; they had felt, how great was this evil in all the partisan struggles that preceded our revolution, and they desired posterity to profit by their experience.

Very restriction upon appropriations for the support of the army exceeding two years, is copied from our English ancestors, and was deemed by them a constitutional limitation of the party in power. None of our constitutions, state or federal, have any purpose or function more important than that of restraining and regulating the party that may chance to be in power, and that is one of the most important purposes of the separation of governmental functions into different departments.

Let any one read a few of the instances in English history alone, without reference to our own or Roman or Grecian history, wherein liberty has been sacrificed to the interests of a party in power, and he will see how important are our constitutional restrictions, and how little probable it is that so great a power as this should have been left by our fathers without restriction—courts of high commission, ecclesiastical commission, and star chamber, and high courts of justice, and special commissions of oyer and terminer, under such judges as Scroggs and Jeffries, created for the purpose of trying and condemning acts which no law forbade—liberty of speech and of the press most cruelly punished by such courts when it ventured on too free a dissent from the policy of the dominant party—informations by the Attorney General substituted in such cases for indictments by the grand jury—members of parliament expelled because their opposition was offensive or dangerous to the ruling power—military officers dismissed because of their political opinions, as were Lord Shelburne, General Conway and Colonel Barry, under the Granville ministry, for their opinions in favor of America—rumors, of plots, real or fictitious, such as the Oates conspiracy, the Meal Tub and Rye House plots, raised and magnified in order to alarm the people against all opposition, and facilitate the downfall of dangerous rivals—patronage, pensions, and seats in parliament corruptly dispensed in opposition to public liberty—and the control of the militia so attempted to be usurped as to produce a revolution that resulted in the execution of Charles I. But it seems to me that all this experience was lost, in relation to a most important power, if the whole State militia system can be set aside by the federal government at the very time when it ought to act with most vigor, as it is done by this act. All this clearly shows how little reliance can be placed upon mere partisan morality in political affairs, and how necessary it is to have an acknowledged standard, such is the compact of the Constitution by which it is to be understood and tried.

In England the popular jealousy of power was usually directed against the party which was ordinarily represented by the King, because he was a permanent authority; but in this country, in the act of framing the federal constitution, it could be directed against no other power but that which the people were then creating, or the parties that were sure to contend for it, and history tells us that this jealousy was intense and watchful, and it was perfectly natural and inevitable that it should be so. States, as well as individuals, are careful in putting themselves under the power of others. That was the power to be feared in the relations with the States, and I know not how it is possible to suppose that under the power to raise armies, they were really giving up their whole militia system, at the time when it is most needed, to be the instrument of a suspected power, a federal party in power, always prone, whatever be its name, to place its respect for the time-honored doctrines of constitutional liberty in subordination to the intemperate, and therefore often disingenuous zeal for party success, in great political commotions, lifted into the greatest prominence, because, neither party knowing how to give or to receive those reasonable concessions or that generous respect that is necessary to restore peace, the occasion demands force, and alarm or excitement gives it an undue measure, which increases the resistance, and consequently the excitement and alarm and the force, until all the bulwarks of constitutional liberty are passed or swept away.

If Congress may institute the plan now under consideration, as a necessary and proper mode of exercising its power "to raise and support armies," then it seems to me to follow with more force that it may take a similar mode in the exercise of other powers, and may compel people to lend it their money; take their houses for offices and courts; their ships and steamboats for the navy; their land for fortresses, their mechanics and workshops for the different branches of business that are needed for army supplies; their physicians, ministers and women for army surgeons, chaplains, nurses and cooks; their horses and wagons for their cavalry and for army trains, and their provisions and crops for the support of the army. If we give the latitudinarian interpretation, *as to mode*, which this act requires, I know not how to stop short of this. I am sure there is no present danger of such an extreme interpretation, and that even partisan morality would forbid it; but if the *power* be admitted, we have no security against the relaxation of the *morality* that genders it, I am quite unable now to suppose that a great a power could have been intended to be granted, and yet to be left so loosely guarded.

It may thought that even voluntary enlistments in the regular army have the same sort of inconsistency with the militia system as forced recruiting has; but more careful reflection will show that it is not so. The enlistment in the army takes away a part of the militia; but every militia system allows for this, and the *general* purpose of both is the same—the constitution of a military force. And, besides this, it is of the very nature of the system that it leaves every man free in the pursuit of his ordinary calling, and binds no man to any part of the militia, except by reason of residence, which he may abandon or change as he pleases.

This act seems to me to be further unconstitutional in that it provides for a thorough confusion between the army and the militia, by allowing that the regular soldiers obtained by draft may be assigned, by the President, to any corps, regiment or branch of service he pleases; whereas the constitution keeps the two forces distinct. Under this law, the President may even send them to the navy. Under the militia system every man goes out with his neighbors and friends, and under officers with whom he is acquainted. It is very properly suggested that, in 1790, Gen. Knox, the Secretary of War under President Washington, and with his approval, and in 1814, Mr. Monroe, President Madison's Secretary of War, recommended plans of recruiting the army, which were very similar to this one, and no doubt this is some argument in favor of its constitutionality. But, notwithstanding our great reverence for those illustrious names, it is impossible to admit them as very influential on this question, when we consider that neither of those plans was adopted by Congress, and the subject never received such a discussion as to settle the question. Instead of Mr. Monroe's plan, a pure militia bill was reported by Mr. Giles, from the Senate's Committee on military affairs.

I have noticed an argument that, because the notorious Hartford Convention opposed the war of 1812, and with it Mr. Monroe's plan of recruiting the army, therefore, opposition to a similar plan now ought to be suspected as unpatriotic. No doubt such an argument may have some influence, but it has no real value in ascertaining truth, for even bad men may have many correct principles. It was not for opposition to Mr. Monroe's plan that that convention became notorious. Even their denunciation of it seems intended as a prefatory apology for their other schemes; for it was not prepared until two months after the plan had been virtually abandoned by the report of Mr. Giles' plan to the Senate. The condemnation of the Hartford Convention was founded mainly on the undue and selfish prominence which it gave to, and the agitations it raised in favor of its own sectional interests, when the country was engaged in a dangerous war—its opposition to the admission of New States, for fear of losing the balance of power—its demand that negroes should be considered part of the militia—its opposition to persons of foreign birth being allowed to hold office, and to its real or supposed intention to produce a secession of the Eastern States, if it should not succeed in its measures. Their views, therefore, even by inversion, or *ad invidiam*, amount to nothing in favor of this law.

On the subject of our authority to hear such a case, I must infer, from the refusal of the Federal Counsel to appear, that it is denied; and I express my views as well as I am able without that assistance which I think they ought to have rendered.

No one denies that a Federal, as well as a State Officer, acting without constitutional authority, to the injury of any one, is liable to be sued for his acts in the State Courts, and I am quite unable to discover that there is any distinction in such cases between preventive and redressive remedies. As at present advised, I cannot doubt that the State Courts, having authority to determine the right in such cases in the first instance, they may exercise it according to any known remedy that suits the case, legal or equitable.

No ordinarily well educated man can doubt that, independent of the Federal Constitution, such universal judicial power is inherent in the States, and might by them be assigned to their judiciary, as it is in our State in the authority to enjoin against all acts contrary to law and prejudicial to the rights of individuals; and, therefore, this power remains to the States, unless it is taken away by direct prohibition, or is otherwise incompatible with the Federal system.

No one that I know of pretends that it has been directly taken away. Indeed, so far as the constitution itself goes, it is expressly left to the States and therefore to the State Courts: for the constitution actually institutes no Court but the Supreme Court; and it gives to it no original jurisdiction except in cases where a foreign minister or consul, or a State is a party. For all other cases within the federal power, it gives only appellate jurisdiction. And, as there may be no other than State Courts to try those cases, the appellate jurisdiction of the Federal Supreme Court, necessarily leaves an original jurisdiction in them.

True, the constitution authorizes such inferior Federal courts as Congress may think proper to establish; but the authority to establish such inferior courts cannot divest this original State jurisdiction; for Congress might never exercise its authority, or it might not assign to them the whole of this original jurisdiction, or it might not assign it to them exclusively of the State courts. The very frame of the constitution, therefore, admits that the States may have the original jurisdiction of such cases, subject to the appellate jurisdiction of the Federal Supreme Court, and no Federal law has yet forbidden it to them, even if this may be done.

And such a judiciary system was not at all strange to the fathers of the constitution, and is well known in history. It was the very system of the colonies before our independence. Our colonial courts had authority to try all kinds of cases whether arising under colonial or under imperial law, and the only remedy for misjudgment was by appeal or writ of error to the proper imperial courts in England: and so it was in Ireland before the Union. And so it is every where with courts and other authorities that are merely local in their constitution and jurisdiction; they administer even the general law of state, but always subject to the appellate authority of more general jurisdiction. And this appellate jurisdiction was in general considered sufficient to preserve the Anglo Saxon courts in due subordination to the royal courts after the Norman conquest; though *ecclesiastics* to transfer causes before trial was also in use, and no Norman was bound to abide the judgment of a Saxon court to whose jurisdiction he chose to object. No doubt a similar system can be traced in every country, not purely despotic, where different State organizations or different peoples have been united under one general government. In many cases the paramount law is *international* law, and yet sociological or State courts may decide what is its, subject to the appellate jurisdiction of treaties or of armies.

With all this present to the minds of the fathers of the Constitution, it seems to me that they could not have intended a departure without giving expression to their intention, and this they have not done. They seem even to express the contrary when they declare the Constitution and the laws made under it to be, not merely federal law, but "the supreme law of the land," and require all State officers to be sworn to support it. That more federal *authority* does not exclude State *action*, is very well illustrated by this very subject of the militia, where the federal authority to legislate has never been regarded as preventing actual State legislation. And the danger of conflicts between federal and State authorities is not different in its character from that which may arise between different departments of the same government, and lead to results that are quite insoluble. Mutual trust and respect and a careful adherence to the Constitution can alone save us from such difficulties.

It is with very real distress that I find my mind forced into this conflict with an act of Congress of such very great importance in the present juncture of federal affairs; but I cannot help it. Possibly, and the question is so presented that I cannot evade it, an argument from the counsel of the government might have saved me from this, if it is an error; and it may yet produce a different result on the final hearing, which I trust will take place so soon that no public or private injury may arise from any misjudgment now and here.

Certainly, in this great struggle, we owe nothing to the rebels but war, until they submit, unless it be that we do not let the war so depart from its proper purpose as to force them to submit to a constitution and system different from that against which they have rebelled. But we do owe it to each other, to minorities and individuals, that no part of that sacred compact of Union shall become the sport of partisan struggles, or be subjected to the anarchy of conflicting moralities, urged on by ambitious hopes veiled in the back ground. Our solemn oaths and plighted faith have made that compact the shield of State constitutions, institutions and peculiarities, and of their right to their own free development, against all arbitrary and intermeddling action of the central government (which in all free countries represents a party,) and I venture to hope that that shield will continue to afford its intended protection.

What I have written I have written under a very deep sense of the responsibility imposed upon me by my position, and with an earnest desire to be guided only by the Constitution. Very many will be dissatisfied with my conclusions; but I submit to the judgment of God, and also to that of my fellow citizens when the present troubles shall have passed away and are felt no more.

I am in favor of granting the injunction in favor of each of the defendants for his own protection, but not for the staying of all proceedings under the act.

ORDER.

Nov. 9, 1863. Preliminary injunction (in each case) granted for the protection of the plaintiff, on his giving bond with surety, to be approved by the prothonotary, in the sum of $500, according to law, and refused for any further purpose.

Gallantry of the Pennsylvanians and Knap's Battery.

We clip the following additional item in reference to the gallantry of our brave troops at the battle of Wauhatchie, Tennessee:

On the right of our line, when the enemy attempted to flank that portion of it—be it known that the right of our line rested on the Wauhatchie Junction Railroad, crossed the common road, extended along the edge of a thin woods, up a small rise of ground, near the extreme termination of the base of one of the Raccoon ranges, and ended here as our extreme left, the whole line fronting towards Chattanooga, and being nearly two miles distant and at right angles, to a certain extent, to the other or supporting commands, under Hooker, Howard, Steinwehr and Schurz)—some thirty men of the Twenty-ninth Pennsylvania volunteers, assisted by two artillery men dragged one gun of Knap's battery of which all the horses had been killed, to where there was a pass on the right of the railroad line, and here worked the gun with canister, and succeeded in actually driving back a flanking approaching column of rebels, and in preventing the contemplated flank movement Knap's battery lost thirty-three horses from two sections and had twenty-two men killed and wounded. All the artillery officers were either killed or wounded. There was expended 224 rounds of battery ammunition in less than two hours. The men and officers of the battery were wounded or killed so rapidly that during the last hour of the fight the survivors could only work the guns with difficulty.

OFFICERS WOUNDED AND LOSSES.

General Green was wounded while in line of battle. A gunshot struck him in the mouth, carried away a portion of his teeth, a piece of his jaw bone, and passed out through his cheek.

The loss of General Geary's son has peculiarly affected the command. He was a bright, intelligent young man and a general favorite.

Lieut. G. R. Dare, Aide de Camp, Geary's staff, wounded seriously, in the shoulder. Captain Moses Veale, Commissary of Musters, Geary's staff, wounded slightly in the shoulder. Assistant Janes Chadenning, 19th Pennsylvania Volunteers, killed. Lieutenant John M. Parland, slightly wounded. Major Jas. A. Doyle, 111th Pennsylvania Volunteers, killed. Lieutenant Marvin D. Pettit, killed. Lieutenant Albert Black, severely wounded. Lieutenant A. H. Tracy, slightly wounded. Lieutenant Col. James S. Wasser, slightly wounded. Capt. James M. Wells, slightly wounded. Capt. Wallace Warner, slightly wounded. Capt. Silas Pierson, severely wounded. Lieut. Marshall Corbett, severely wounded.

The One Hundred and Thirty-seventh New York volunteers had its killed and so wounded—total, 103.

The Campaign in the Southwest.

The centre of public interest, says the Philadelphia *Press*, is still with the Grand Division of the Mississippi. Gen. Grant is already developing a plan of operations which is as grand in conception as we may hope it will prove in its results. It is plain that to drive the rebels from their present strong position in the mountains of Georgia would require the sacrifice of an army much larger than that of Gen. Thomas. To cross those mountains and attack Gen. Bragg in flank and rear, or threatening such an attack, will cause a speedy evacuation of Lookout, and perhaps many other mountain fastnesses. Selecting Atlanta as the point of concentration for a heavy pitched battle, Gen. Grant is moving forward the two wings of his grand army, with a view of closing down on either flank of the rebel army of Tennessee, now near Chattanooga. It is manifest, if proper, however, that the first and main advance should be made eastward by the army of the Tennessee, under Major Gen. Sherman. By a preliminary movement, Gen. McPherson has advanced already to Lucas Station, and General Sherman's remaining corps d'armee under Generals Hurlbut and Logan, are rapidly moving up to the support of the gallant McPherson. This army is competent to do the work—namely, to compel General Bragg to retire east of the mountains by a rapid and decisive movement through the State of Alabama, from which the rebels are drawing most of their provisions and many men. In this advance the only important railway communications held by the rebels in the Cotton States will fall into our possession. Such a movement is entirely practicable, and may be executed during the present month, and advance of the Army of the Ohio, under General Burnside, reinforced by the loyal East Tennessean, can be made East or South with advantage. Owing to the admirable position of this army, it is the one which the rebels most fear and wish to destroy, as we learn from the Southern journals. The enemy might hope for the accomplishment of this design, could he persuade himself of the utility of concentrating his entire force in Northern Georgia, and the abandonment of Virginia, and in doing this he would incur a sturdy pursuit from the Army of the Potomac. We look for great events, and that shortly. Our position, and we shall be disappointed if Burnside and Hooker do not soon show how great an interest has been delegated to them in this gigantic campaign.

RETALIATORY ORDER.—We learn from the Nashville *Press*, of Wednesday, that "General Mitchell has issued an order to Lieut. Colonel Brownlow, commanding him to go immediately to the place where the train was recently thrown off the Nashville and Chattanooga Railroad, and fired into by guerrillas, and warn all the secessionists and their apologizers in that neighborhood to cross our lines and go into Dixie within two days. If they fail to heed the warning, then it shall be his duty to destroy all secess property within a radius of five miles of the scene of the outrage."

THE Raleigh *Standard* says that with the result of the late Northern elections that last main hope for the South from the North has departed. The Southern people stand alone with the world against them, and they had better make peace with Providence or the North very soon. Then appeals to the people of North Carolina to vote for conservative men at the coming State election. Mr. Davidson, the author of the constitutional argument against Secession, published last September in the *Standard*, has issued another article of the same kind.

WHAT THE ELECTION IS MARYLAND DECIDES.—The Baltimore *American* says the election in that State, just held, has decided that Maryland hereafter is to be a free State. The people have decided in favor of a Convention to blot out slavery. The vote for General Goldborough was the test on the question of speedy emancipation. Baltimore has given a vote nearly unanimous on the question. The imposition of a test oath on every voter whose loyalty was suspected, doubtless kept many from voting.

ONE of the most trustworthy detectives in the Government service at Alexandria, states that large numbers of persons belonging to the rebel army are now infesting the counties of Stafford and Prince William. These men are mostly residents of those counties, and are around at home during the day, and at night go out and commit depredations on the property of Union citizens.

THE chief of police of Cincinnati is said to have discovered a conspiracy to burn that city. The first intimation he received was through a letter which was taken out of the post office by mistake, opened and read. The plan of conspiracy was to divide the city into four sections and set fire to each simultaneously.

IT IS REPORTED in Chicago that an offer of two thousand five hundred pounds sterling has been received from the agent of the British Museum, in New York, for the manuscript copy of the President's Proclamation.

THE Washington Literary Association have engaged Park Benjamin, Horace Greely, S. S. Cox and Dr. Wise, to lecture before them this winter. These lectures are a novelty of only one winter's duration here.

THE certificates of indebtedness issued prior to the 4th of March last, recently ordered to be redeemed by the Secretary of the Treasury, amount, it is said, to $84,000,000.

IT is said that Woodward has been engaged by Artemus Ward to travel with his show and sing the pathetic ballad, "Oh! I'm a Used up Man."

AMUSEMENTS.

☞ PITTSBURGH THEATRE.

Lessee and Manager.....WM. HENDERSON.
Treasurer.....H. OVERINGTON.

Second night of the re-engagement of the popular artiste, Miss CHARLOTTE THOMPSON, who will appear in the new character, written expressly for her, entitled, Donna Inez.

THIS (Tuesday) EVENING,

Will be presented, the entirely new and original play, in five acts, entitled,

CLOUDS WITH SILVER LININGS.

Donna Inez.....Miss Charlotte Thompson.
Conrad.....C. Loveday.
Ferdinand.....F. Chippendale.
Diego.....J. Garrison.
Overture.....Orchestra.

To conclude with

THE LOTTERY TICKET.

Wormwood.....J. O. Sefton.
Susan.....Anne Ward.

FOR SALE.

FARM FOR SALE.—The undersigned offers at private sale, a very valuable Farm in Mifflin-township, Allegheny county, Pa., containing 75 acres, with coal under it, situated one mile and a quarter from John O'Neal's Coal Works, on the Monongahela river, five miles from McKeesport and nine miles from Pittsburgh, by land. The improvements are a frame dwelling house, frame barn and other necessary buildings; also a fine orchard. About 60 acres good cleared land. It is the property formerly owned by James Finney. The land and coal will be sold together or separate, to suit the buyer; or if sufficient inducements be offered, it will be cut up and sold in lots suitable for country residences.

If the above named property is not sold before the 13th of NOVEMBER, it will be offered, on said day, at public sale, on the premises, at 1 o'clock.

For terms of sale call with the subscriber, JAMES MCGREW, West Newton, Westmoreland Co., Pa.

oct24tf

DRY GOODS STORE FOR SALE, in a flourishing Western town on the P. F. W. & C. R. R., not over 300 miles from Pittsburgh, now doing a large and profitable trade. The stock is new, and has been selected with reference to the country trade. Has all been purchased for cash at lowest market prices.

The present proprietor has decided to retire from the trade owing to bad health, and now *reluctantly* offers the stock for sale; also the good will of the retiring party. The house has a large and respectable trade, which can be retained. The present stock will invoice from seven to ten thousand dollars, but would be reduced if desired.

Parties wishing to know the particulars will please address or call personally on

LYDAY & CHORPENNING,
oct15tf 59 Hand street, Pittsburgh, Pa.

HOTEL FOR SALE—The property known as MEANOR'S HOTEL, situate on Fourth street, between Ferry and Market streets. The lot is 40 feet front on Fourth street, by 95 feet deep. The Hotel is a three story brick, 37 feet by 75 feet. The house was lately built, and is doing a good business. The furniture will be sold with the hotel, if required.

For further particulars, as to terms, &c., inquire of J. W. HALL, No. 89 Fifth street, or of J. B. MEANOR, on the premises.

oct5 1m*eod J. B. MEANOR.

FLOURING MILL FOR SALE.—The subscriber offers for sale the ALLEGHENY CITY MILLS, situated in the Fourth Ward, Allegheny City. This well known Mill has been rebuilt lately, and contains four run of French Burrs, with all the latest improved machinery for manufacturing the best brands of Flour. Enjoys a good local as well as foreign custom. This is a rare chance for business men, and we invite any who wish to engage in a profitable business to call at the Mill, where terms will be made known.

oct21mdaw7 J. YORGTLY

A FARM FOR SALE, near Perrysville, of 106 acres of land, under a good state of cultivation. 70 acres cleared, balance good white oak timber land. Improvements are a good brick cottage dwelling of 6 rooms, a good frame barn and stabling, with a brick granary. Also a double log barn. The place is well supplied with good water. Also a choice variety of good fruit trees. For a more minute description and terms, apply to

G. S. BATES, Commercial Broker,
Butler street, Lawrenceville.

FOR SALE OR LEASE—A large Lot in Sharpsburg, on the Passenger Railway, five miles from Pittsburgh, on which there is a good dwelling house of nine rooms, also, several other Houses, all built of brick. A well of good water in the yard, plenty of good fruit, and convenient to churches and schools.

For particulars address or call on

G. T. GILLILAN,
Sharpsburg, Allegheny County, Pa.

oct12tf&wF

FOR SALE—A three-story Brick Dwel