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(By Authority.)

AN ACT

To extend the power of granting writs of injunctions to the judges of the district courts of the United States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passing of this act, the judges of the district courts of the United States shall have as full power to grant writs of injunctions to operate within their respective districts in all cases which may come before the circuit courts within their respective districts as is now exercised by any of the judges of the supreme court of the United States, under the same rules, regulations and restrictions as are prescribed by the several acts of Congress establishing the judiciary of the United States, any law to the contrary notwithstanding. Provided, that the same shall not, unless so ordered by the circuit court, continue longer than to the circuit court next ensuing, nor shall an injunction be issued by a district judge in any case where a party has had a reasonable time to apply to the circuit court for the writ.

NATHL. MACON,
Speaker of the House of Representatives.

GEO: CLINTON,
Vice-President of the United States, and President of the Senate.

February 13, 1807.

APPROVED.

TH: JEFFERSON.

AN ACT

To annex certain shores and waters to the district of Mississippi, and to authorize the building a Custom house at New-Orleans.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirtieth day of June next, all the shores and waters of the river Ohio, and of the several rivers and creeks emptying into the same, and also all the shores and waters of the rivers which empty into the river Mississippi or any of its branches, be and the same are hereby annexed to & shall make part of the district of Mississippi.

SEC. 2. *And be it further enacted,* That a surveyor shall be appointed for each of the following towns or places, that is to say: Pittsburg, Charlestown, Marietta, Cincinnati, Limestone, Louisville, Massac, and Natchez, who shall be authorized to grant temporary registers to vessels of the United States, in the same manner and on the same terms and conditions as may be done by the collectors of the several districts of the United States; and each of the said surveyors, besides the fees paid in relation to the admeasurement and registering of vessels, shall receive an annual salary of one hundred and fifty dollars.

SEC. 3. *And be it further enacted,* That the collector of the district of Mississippi shall, on the surrender of any temporary register granted to a vessel of the United States as aforesaid, issue a permanent register for such vessel—Provided, That the master of such vessel shall take the usual oath, and perform all the other conditions required by the registering act, except that he shall not be obliged to give any new bond to the said collector.

SEC. 4. *And be it further enacted,* That so much of any act or acts as erects any of the shores or waters, annexed by this act to the Mississippi district, into separate districts, be and the same is hereby repealed.

SEC. 5. *And be it further enacted,* That the Secretary of the Treasury be, and he hereby is authorized and directed to cause to be built upon some convenient site belonging to the United States, in the city of New Orleans, a good and sufficient house, to serve as an office and place of deposit for the collection of the customs at that place. And the sum of twenty thousand dollars is hereby appropriated to defray the expense of erecting the same, to be paid out of any money in the treasury, not otherwise appropriated.

NATHL. MACON,
Speaker of the House of Representatives.

GEO: CLINTON,
Vice President of the United States and President of the Senate.

February 13, 1807.

APPROVED.

TH: JEFFERSON.

(By Authority.)

AN ACT

Making an appropriation for the support of the poor, infirm, and diseased of the city of Washington.

BE it enacted by the first and second chambers of the city council of Washington, That for the support of the poor, infirm and diseased of the city of Washington, from the 1st day of November, 1806, until the first day of November, 1807, the sum of one thousand and five hundred dollars (including the proceeds of the tax imposed for the relief of the poor, by the act, intituled, "An act imposing certain taxes and providing for their collection," passed the fifth day of September, 1806, and which will become due on the 1st day of December next,) be and the same is hereby appropriated; and the Treasurer is hereby authorised to pay over the same to the trustees of the poor for the time being, out of any monies in the Treasury not otherwise appropriated.

SEC. 2. *And be it further enacted,* That the trustees of the poor in drawing their warrants on the Treasurer, shall not draw for more than one third of the above appropriated sum in any one quarter.

T. H. GILLISS, *President of the First Chamber.*

PHINEAS BRADLEY,
President of the Second Chamber.

Approved,
November 28th, 1806.
ROBERT BRENT, MAYOR.

AN ACT

Making appropriations for the compensations allowed to the officers of the corporation, and for sundry contingent expenses.

BE it enacted by the first and second chambers of the city council of Washington, That for the compensations allowed to the Treasurer, Register, Secretaries of the council, and clerks of the markets, the sum of one thousand four hundred and sixty dollars be and the same is hereby appropriated.

SEC. 2. *And be it further enacted,* That for defraying the expence of house rent for the council, stationary, printing and fuel; and for the payment of interest on the debt due at the Bank, the sum of six hundred and ninety dollars be and the same is hereby appropriated.

T. H. GILLISS, *President of the First Chamber.*

PHINEAS BRADLEY, *President of the Second Chamber.*

Approved, November 28th, 1806.
ROBERT BRENT, MAYOR.

AN ACT

Making an additional appropriation for the repair of pumps.

BE it enacted by the first and second Chambers of the City Council of Washington, That for the repairs of pumps previous to the first Monday in June, one thousand eight hundred and six, there be, and is hereby appropriated, the sum of four hundred dollars.

T. H. GILLISS, *President of the First Chamber.*

PHINEAS BRADLEY,
President of the Second Chamber.

Approved, January 21st, 1807.
ROBERT BRENT, MAYOR.

PATENT Fire & Water Proof
CEMENT.

Among the various discoveries which have of late been made in the United States, we know of none more deserving of public notice than the following by LEWIS DE NIROTH. Such a desideratum in the architecture of buildings has been long wanting. Many attempts have been made to compose or manufacture a chemical composition similar to that used by the ancient Egyptians; but we have heard of none which approximates nearer to that which is generally called the Egyptian cement and which has put at defiance the ravages of time for several thousand years, than that which the Patentee here describes.

A composition equal in durability to free stone for covering roofs, floors, and plaistering walls of houses—

Rendering Cellars that are marshy and damp water proof.

Chimney pieces.

Fire hearths and cisterns.

Steps to front and back doors of houses.

Cement pavement entire for front and rear of houses, arches, and works under water, statues, images, &c. plaister out side of houses.

The materials of this cement does not much exceed the price of common plaistering.

A Specimen of the composition may be viewed at Mr. Stelle's hotel, Capitol Hill and also at the Union tavern Georgetown.

N.B. Application by letter, post-paid, addressed to Mr. Henry Ahern, Federal City will be punctually noticed.

Feb 13—3t.

FOR SALE, for a term of years, several Likely young Women, among them is a very good cook. To hire by the year, two good Laborers and a Boy——they all have good characters. Also to rent on north G Street, square 141, a Two Story FRAME HOUSE with two rooms on a floor and a passage.

Enquire of the Printer,

October 15—wtf

Mr. HARPER'S Argument

(CONCLUDED.)

Considering it then as settled, as I trust we may, that Congress has intended to give this court the power to issue writs of Habeas Corpus ad subjiciendum; the next question is, whether Congress had authority by the constitution to confer that power?

The authority of Congress must be tested by the constitution, and if they should appear to this court to have exceeded limits there prescribed, I admit that this court must consider their act as void. I am not only one of those who admit this power in our courts, the power of collating an act of Congress with the constitution, when it comes judicially before them, and of declaring it void if against the constitution; but I contend for and prize this power, as one of the best barriers against oppression, in fluctuations of faction, in those times of party violence, which result from the operation of the human passions in a popular government, as naturally as fevers result from the circulation of the blood, and tempests from the motion and properties of the atmosphere. In the violence of those political storms, which the history of the human race warns us to expect, this shelter may indeed be found insufficient; but weak as it may be, it is our best hope, and in my judgment it is the part of patriotism to uphold and strengthen it to the utmost.

But while my feeble voice shall, for these reasons, be raised, on every fit occasion, in behalf of this power in the judiciary department, I shall also contend that it is a power of a delicacy inferior only to its importance; which ought to be exercised with the soundest discretion, and to be reserved for the clearest and the greatest occasions.

The question then is, whether Congress have authority under the constitution, to confer on the supreme court the power of issuing writs of Habeas Corpus ad subjiciendum? This question depends on another; whether this power of jurisdiction be in its nature original or appellate? The original jurisdiction of the supreme court, being confined to certain specified cases, of which this is not one, it follows that this power, if original in its nature, cannot be conferred on, or exercised by, that court.

To investigate on general principles of law, the distinction between original and appellate jurisdiction, would lead to a more minute and extensive discussion, than time could be spared for, from the numerous and important avocations of this court; and would also require the consideration of many authorities to which I cannot have recourse. But fortunately this has been rendered unnecessary, by the decision of this court, in the celebrated case commonly called the mandamus case. In that profound and learned decision, which has been read with reverence and delight by every man of information in this country, this court has drawn with equal perspicuity and exactness, the line of discrimination between original and appellate power. The case is reported in 1. Cranch, and the part of it to which I refer, is found in page 175. These are the words of the court:

"To enable this court then to issue a mandamus, it must be shewn to be an exercise of appellate jurisdiction, or to be necessary to enable them to exercise appellate jurisdiction."

"It has been stated at the bar, that the appellate jurisdiction may be exercised in a variety of forms; and that if it be the will of the legislature that a mandamus should be used for that purpose, that will must be obeyed. This is true; yet the jurisdiction must be appellate, not original."

"It is the essential criterion of appellate jurisdiction, that it revises and corrects proceedings in a cause already instituted, and does not create that cause. Although therefore a mandamus may be directed to courts; yet to issue such a writ to an officer, for the delivery of a paper, is in effect the same as to sustain an original action for that paper; and therefore seems not to belong to appellate, but to original jurisdiction."

This passage needs no comment. The criterion which distinguishes appellate jurisdiction from original, is that it revises and corrects the decision of another tribunal: and a mandamus may be used, when it is for the accomplishment of such a purpose. Now let me ask, may it please your honors, what is the object of the Habeas Corpus now applied for? Is it not to revise and correct the proceedings of another tribunal? Do not these applicants stand committed under the proceedings and decision of the circuit court? Is it not of those proceedings and that decision that we complain? Do we not seek to revise those proceedings and to correct that decision, by virtue of the Habeas Corpus? Had the circuit court given judgment against the applicants in the sum of one hundred dollars, the power to revise that judgment would have been appellate, and might have been given by Congress to this court. From a decision which might take a few dollars from their pockets, they might be relieved. Shall the relief be rendered impossible, because the decision deprives them of all that can distinguish a freeman from the most abject slave, of all that can render life desirable?

If the question then, respecting the power of this court, under the constitution and the act of Congress, if not under the common law, to issue the writ of Habeas Corpus ad subjiciendum, were still open, I should contend that it ought, on these principles and authorities, to be decided in the affirmative. But may it please your honors, it is not open. It has been twice solemnly adjudged in this court. First in the case of Hamilton, 3 Dallas 17, not long after the court was organized; and very recently in the case of Burford, which is not yet reported in print, but is perfectly in the recollection of some of your honors, who sat in the case. I will not trouble the court with the narration of this case, which has been very fully stated by the learned gentleman who made this motion; but I will request indulgence while I read from a manuscript report, the opinion of the court, as pronounced by the chief justice.

"There is some obscurity in the act of Congress, and some doubts were entertained by the court, as to the construction of the constitution. The court, however, in favor of liberty, was willing to grant the Habeas Corpus. But the case of the U. S. v. Hamilton, 3 Dal. 17, is decisive. It was there determined that this court could grant a Habeas Corpus. Therefore let the writ issue, returnable immediately; together with a certiorari as prayed."

Here we find that the case was argued on both points, as well the constitution, as the act of Congress; that some doubts as to both had been entertained by the court; and that in favor of liberty, and on the authority of Hamilton's case, which the court declares to be decisive, the doctrine for which we now contend was admitted, and the writ of Habeas Corpus awarded.

I contend, may it please your honors, with submission, that the case is settled by these decisions. I contend that it is no longer a question, whether this court have the power which it is now called on to exercise. The exercise of this power, the benefit of these decisions, the protection of the law thus established I claim for my clients as a matter of right, which this honorable court cannot refuse.

Shall it be said, may it please your honors, that no part of our law is fixt and settled, except what is positively and expressly enacted by statute? Is it not on the contrary certain, that by far the greatest portion of that law, on which our property, our lives, and our reputations depend, rests solely on the decisions of courts? Shall it be said that all this extensive and important branch of the law is uncertain and fluctuating, dependent on the ever varying opinions and passions of men, and liable to change with every change of times and circumstances? Shall it be said that each individual judge may rightfully disregard the decisions of the court to which he belongs, and set up his own notions, his prejudices or his caprice, in opposition to their solemn judgments? No, may it please your honors! This is not the principle of our law, this is not the tenure by which we hold our rights and liberties. *Stare decisis* is one of its favorite and most fundamental maxims. It is behind this wise and salutary maxim that courts and judges love to take refuge, in times and circumstances might induce them to doubt of themselves, to dread the secret operation of their own passions and prejudices, or those external influences against which, in the imperfection of our nature, our minds can never be sufficiently guarded. In such times and circumstances a judge will say to himself, "I know not how far I might be able, in this case, to form an impartial opinion. I know not how far my judgment may be blinded or misled by my own feelings or the passions of others, by the circumstances of the moment, or the views and wishes of those with whom I am connected. But here is a precedent established under circumstances which exclude all possibility of improper bias. This precedent is therefore more to be relied on than my judgment; and to this I will adhere, as the best and only mean of protecting myself, my own reputation and the safety of those who are to be affected by my decision, against the danger of those powerful, though imperceptible influences, from which the most upright and enlightened minds cannot be considered as wholly exempt."

There have indeed been instances, where precedents destructive to liberty and shocking to reason and humanity, established in arbitrary or factious times, have been justly disregarded. But when in times of quiet, and in cases calculated to excite no improper feeling, precedents have been established in favor of liberty and humanity, they become the most sacred as well as the most valuable parts of the law; the firmest bulwark for the rights of the citizens, and the surest guardian for the consciences and the reputation of the judges.

Such are the precedents on which I rely. The case of Hamilton was decided soon after the establishment of the government, when little progress had yet been made in the growth of party passions and interests; and when whatever of political feeling can be supposed to have existed in the court, was against the prisoner. Yet this beneficial power was exerted for his relief. He was brought before this court by Habeas Corpus, and was discharged. And the precedent thus established was by this court, fifteen years afterwards, in the case of Burford, declared to be decisive.

The case of Burford was wholly unconnected with political consideration, or party feelings. The application was made on behalf of an obscure individual, strongly suspected, though he could not be legally convicted, of a most odious and atrocious crime. The abhorrence of his supposed offence, the strong circumstances which appeared against him, the course of his life, his general character, and the universal belief entertained of his guilt, all combined to excite against him every honest feeling of the human heart. Yet he was relieved by the exercise of that power to which we no appeal; yet he had the benefit of one of those precedents which we now claim; and in his case the authority of another and a more solemn decision was added to the doctrine for which we contend.

And let me again ask, may it please your honors, is not the law to be considered as settled by these repeated decisions? Are we still, as to this most important point, afloat on the troubled ocean of opinion, of feeling and of prejudice? If so, deplorable indeed is our condition. *Misera conditio ubi lex vaga et incerta.* But I ask, may it please your honors, if this great principle, *stare decisis*, so fundamental in our law, and so congenial to liberty, be not peculiarly important in popular governments, where the influence of the passions is strong, the struggles for power are violent, the fluctuations of party are frequent, and the desire of suppressing opposition or of gratifying revenge, under the forms of law, and by the agency of the courts, is constant and active? Such are the defects of our particular form of government, arising from the imperfections of our general nature, and against the dangers resulting from these defects, our best protection is found in the great maxim "*Stare decisis.*" The protection of this maxim, the benefit of these decisions, I again claim for my clients, as a matter of right, which I humbly contend that it is not in the power of this honorable court to withhold.

I come now, may it please your honors, to the second general head of enquiry—whether the power to issue writs of Habeas Corpus, thus shewn to exist in this court, be restricted in the present case, by the circumstance of the commitment having been made by the circuit court of the district of Columbia? If this principle stand not in our way, it is clear that our application must succeed.

Before we admit such a principle let us enquire into its possible and even probable effects on the liberties of the people. Is it not manifest that it would deprive the citizens of the guardianship of the highest, the most respectable and the most independent courts, and place their personal liberty at the mercy of inferior tribunals? Do we not know that Congress may institute as many inferior tribunals, and may assign to the judges of these tribunals such salaries, as they may think fit? Does it not hence result that a succession of courts may be instituted, to the lowest of which may be assigned salaries so contemptible, and duties so unimportant or so odious, as to exclude necessarily and certainly every man of character, talents and respectability, of every party? Will not such courts, therefore, be necessarily filled, by the meanest retainers, the most obsequious flatterers, and the most servile tools of those in power for the moment? Can any thing like independence or integrity be expected from such judges? Will they not act continually under the influence, not merely of their own party passions and prejudices, but of hope and of fear, those great perverters of the human mind? The precedent is already set that they may be turned out of office by the abolition of their courts; and their hopes of promotion to an higher station, and a better salary will depend on their servility and blinded obedience to those in power.

Let it be once established by the authority of this court that a commitment on record by such a tribunal as I have described, is to stop the course of the writ of Habeas Corpus, is to shut the mouth of the supreme court, and see how ready, how terrible and how irresistible an engine of oppression is placed in the hands of a dominant party, flushed with victory, and irritated by a recent conflict; or struggling to keep down an opposing party, which it hates and fears.