# THE WILMINGTON JOURNAL.

# WILMINGTON, N. C., MAY 3, 1866.

# Shame, Where is Thy Blush !

After every storm, a filthy scum, stirred up from the foul and decayed sediments of the bottom, rests for awhile upon the surface. This is also true of great political agitations and revolutions, and has had apt illustration in the Southern States recently. In most of our States, however, this scum, by the weight of its own filth, is rapidly sinking to the bottom, as the political waters sub side, and it is to be hoped, with the returning calm, it will entirely disappear.

In Tennessee and Virginia, however, the people are yet cursed by rulers who are a disgrace to the age in which we live. In the former, from the act of the Legislature, disfranchising all the citizens but the followers and worshipers of the moral and political abortion, who now chances to be Governor, we fear time must elapse before they can be freed from the evils which beset them. In the latter State, however, the people, who are libeled by the course of their present chief magistrate, will, as soon as it is permitted them to speak at the ballot box, place the seal of condemnation upon his conduct.

Since the close of the war, nothing has happened, which will so shock the moral sense of the civilized world as the recent conduct and remarks permit Gen. Colston to deliver his lecture on General Stonewall Jackson in the Hall of the House of is as follows : Delegates. We had supposed, during the great Revolution just ended, if there was one character who had acted his part in the terrible tragedy, and had passed from among us to render an account of his stewardship on earth, in whom all the elements were so blended as gave the world the assurance of a man, it was Gen. T. J. Jackson. We had thought that the exalted reputation of the citizen, the exemplary character of the christian, and the brilliant exploits of the soldier, had rendered the character of Jackson worthy the admiration of every man who honored virtue, truth and manliness, and had made him not only worthy the pride of Virginians, but a pride to the American name; nay, an honor to the human race. We venture the assertion that Gov. Pierpoint will remain for all time to come almost, if

not a solitary exception, without distinction of party, section or nationality, who sees nothing in the character of Jackson to admire. And with the following extract from the report of the Richmond Examiner, of the opening of Gen. Colston's lecture, we propose to leave this worthy Governor alone in his uneviable glory

From the Daily Journal, 2d inst. Judge Fewle's Opinion. We publish to-day to the exclusion of editorial

and much other matter, the able and learned opinion of his Honor, Judge Fowle, in the matter of Major John H. Gee. The opinion will be read with pleasure by the public. It will be found to

be an earnest and noble vindication of the supre macy of the civil law, and will add greatly to the reputation of Judge Fowle as a jurist.

The proclamation of the President in connec tion with the telegram to Gov. Worth, which we give below, renders the condition of things very anomalous, and gives grounds for a conflict of authority between judicial and military officers. Of course, under orders received by him, Gen. Ruger acted properly, and Judge Fowle, as an independent and conscientious judicial officer, discharged his duty, in construing the proclamation

according to the Constitution. "It is a source of relief and gratification," says mitted. the Raleigh Sentinel "to learn that an order is to be issued that will remove and relieve all misconstruction of the proclamation. How any other construction, than the one which we have felt ourselves warranted in placing upon it, and which Judge Trigg, Judge Fowle, and others, have given it, can be given to its plain and unequivocal language, we cannot see. But the President's expla-

nation of his intentions, when fully made known, will satisfy our people, who are convinced of his disposition to do all for them that he can, under of Gov. Pierpoint, in reference to his refusal to the peculiar circumstances which surround him. The telegram of the President to Gov. Worth Confederate Government all power to make any arrests

### WASHINGTON. D. C., April 27, 1866.

Gov. Worth I am directed by the President to inform you that by his proclamation of April 2, 1866, it was not intended to interfere with Military Commissions at that time, or previously, organized, or trials pending before such Commissions, unless by special instructions the accused were to ceru. e turned over to civil authority

Gen'l Ruger has been instructed to proceed with the rial to which you refer, but before the execution of any partial jury of the State and district, wherein the crime sentence rendered by such Commission, to report all proceedings to the War Department for examination and re- wise than under warrants returnable before the regularly

ment growing out of a misconstruction of the proclamation, of which I will send you a copy.

EDWARD COOPER, Acting Private Sec'y.

### SUPERIOR COURT OF LAW. WAKE COUNTY.

Ilis Honor Daniel G. Fowle, Presiding IN THE MATTER OF JOHN H. GEE.

Art. 5th. of the amendments to the Constitution declares, that, "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia in actual service in time of war or public danger, nor shall any person \* \* \*

be deprived of life, liberty, or property, without due pron either service, then a court-martial would have had juisdiction, but this court, recognized and limited by the

Constitution to the trial of those in the military or naval service, is very different, as we have shown, from a military commission, which assumes to try civilians. But it is said, that the jurisdiction was conferred under

the act of Congress, ratified March 3d, 1863, and the proclamations of the President declaring that the privilege of the writ of habeas corpus was suspended. If this were so. the Sheriff : still, as the suspension of the privileges of the writ of habeas corpus was to continue "throughout the duration of the present rebellion," see proclamation 15th Septem ber, 1863, as the rebellion "is at an end and is henceforth To the Sheriff of Wake County, Greeting be so regarded," such jurisdiction is now gone. But did any such jurisdiction accrue? The only right of which the suspension of the privilege of the writ of ha eas corpus deprives a citizen, is that of being admitted to bail, where the offence is bailable, and he is still entitled under article 6 of the amendments to the Constitution to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been com

During the existence of the rebellion, the presiding off er of this Court introduced into the House of Commons of the General Assembly of North Carolina, of which body he was a member, a series of resolutions relating to the suspension of the privilege of the writ of habeas corpus among which were the following Resolved. That the privilege of the writ of habeas corpu extends no further than securing to the party under arrest the right to be carried before a civil tribunal to have quired into his claim to be discharged or admitted to ail, and that the clause in the Confederate Constitution which was identical in language with that contained in he Constitution of the United States,) which authorises

the suspension of the privilege of the writ, applies only to cases of persons who may stand committed for criminal or upposed criminal offences, &c., &c. Resolved. That the provision in the Constitution that

'no person shall be deprived of life, liberty or property without due process of law" was meant to deny to the except upon warrant from a civil tribunal, and that any arrests otherwise made or authorized by Congress or trials except by due course of law, "except in cases arising in

the land or naval forces, or in the militia in time of war or public danger," are unconstitutonal and subversive of every principle of civil liberty, and that North Carolina could not see a violation of this fundamental and reserved right, in regard to her citizens, without the deepest con-

Resolved, That Congress has no constitutional power t impair the right to a speedy and public trial, by an imshall have been committed, by authorising arrests otherestablished constitutional tribunals of the country, "ex There has been an order this day prepared, and will cept in cases arising in the land and naval forces, or in soon be issued, which will relieve and settle all embarrass- the militia when in actual service, in time of war or public danger.

principles of the Constitution and their whole tenor is adverse to the idea, that the suspension confers any jurisdiction upon the Military Commissions. They were adopted by a large majority, and ratified on the 6th of February,

This subject received my undivided attention at the time and subsequent reflection has but strengthened the views then expressed

the determination, at any cost, to retain the offices The fourth section of the act of March 3d, declares, That any order of the President or under his authority and patronage of the Government as long as pos- plead that he was not guilty of burgalary, but guilty of land Ryan, of Chapel Hill, for the duty of distribution SATURDAY, April 28, 186 made at any time during the existence of the present relarceny. Judgement of the Court, that he receive thirty- uting artificial arms and legs among the maimed sible. bellion shall be a defence in all courts to any action or nine lashes immediately, that he be then returned to jail, soldiers of the State, under the act of the Legis Fearing to compromise these objects by appearprosecution, civil or criminal, pending or to be commenced ing to keep the South longer out of the Union, and there be imprisoned thirty days, and at the end of that lature. Maj. Ryan was a lame soldier himself for for any search, seizure, arrest or imprisonment, made time he be taken out and receive thirty-nine lashes more, awhile, and he brings to the aid of his late unfordone or committed, or acts omitted to be done, under an desiring, by way of delay, to furnish food for agiby virtue of such order," &c. and then be discharged upon payment of costs, or other- tunate comrades-in-arms, a good head, willing This section does not pretend to confer any jurisdiction tation and discussion, the committee have submitwise according to law. upon Military Commissions, but is only intended to make ted a report, the adoption of which, by Congress, the President's order a defence to any action or prosecu-No further business of importance was transacted durtion for a " search, seizure, arrest or imprisonment, and its subsequent acceptance by the requisite ing the day.-Daily Journal, 2d inst. Whether it is Constitutional, even to this extent, is not number of States, would more effectually now the question, but it does not confer upon the Presi-SUPERIOR COURT.-The Court met at the usual time Troops," is a sufficient guarantee that whatever vened and organized in said city for the trial of said peti- dent the right to try a civilian by Military Commissio prevent reconstruction, if possible, than the sucyesterday, but done nothing worth reporting, except to they be, they will be well performed. assuming to have the power to pass upon life and death, but the implication is strong, that the order of the Presicess of the Confederate arms. Still, illiberal as order a special venire of a hundred men to appear at the Charge 1st .- Violation of the laws and customs of war. dent shall not be a defence, if more than imprisonment is the reported scheme is, devoid of justice, expedi- Court House to-day, in order to select from this number a to-day. The board is composed of first rate men. The proclamation of September 15th, 1863, reciting that ency and common sense, no one can hardly be before the Court this morning. act -uspends the privileges of the writ of habeas corpu thereof at Salisbury, in the State of North Carolina, in a thoughout the United States, in certain cases, but does surprised at it. We suppose, had the committee NEW HANOVER COUNTY MEDICAL ASSOCIATION .- Accornot attempt to confer any jurisdiction upon Military Combeen compelled to report in ten days from their ding to the call of the President, this body assembled at missions, except such as are conferred by the rules and ar first meeting, their deliberations would have re- the City Hall in this city, on Tuesday evening last. We ticles of war, and the tules and regulations prescribed for understand that the number of Physicians in attendance, the military or naval forces. sulted in similar conclusions. Their continued In this respect this proclamation differs very materially and extended sessions, and their examinations of from the city and county, were respectable, and that the and may be regarded as a modification of the proclama-The offences are alleged to have been committed during | tion of Sept. 24th, 1862, which purported to suspend the proceedings were harmonious and interesting. This asmany distinguished Southerners, were but expensvivilege of the writ of habeas corpus, and to confer auive mockeries, intended as a pleasant, counterfeit assemble in Baleigh, and its operations, suspended during done. thority, in certain cases, upon Courts Martial and Military Commissions, without the sanction of any act of Conof honest legislation. the war, are now resumed under favorable auspices. We can hardly believe that the report of this The object of this County Medical Association, as set As it is now conceded that the privilege of the writ of forth in the constitution and adopted, are the "advanceabeas carpus can only be suspended by an act of Con-Committee, expected to give peace, reconstrucment of Medical knowledge, the elevation of professional gress, and as Congress never conferred the power to sus tion and reconciliation, but which has really pro- character, and the promotion of all measures of a profesend upon the President, until the 3rd of March 1863, it sional nature that are adapted to the relief of suffering oflows that the proclamation of Sept. 25th, 1862, was unposed in their stead war, destruction and alienahumanity, and to improve the health and protect the lives authorised, and that this is the view taken by the military authorities, we are led to believe, from the return of Ma tion, would be endorsed by two-thirds of Conof the community. jor General Ruger, who asserts his right to hold John H. Gee as a prisoner under the authority of the President of gress, which is the majority necessary, had we not the best efforts, individually and collectively, of the whole seen as great outrages to justice and law, already Medical Profession, and in their attainment, the commuthe United States, and makes return as in such cases renity are of course deeply interested and should give their quired by General Order No. 313, War Department, Adjupassed over the veto of the President, and in face warm and hearty support. Combined action, based upon tant General's Office, Washington, Sept. 1863, the proclaof the unanimous protest of a people, whose utter scientific objects are honorable principles, like those which nation of the 15th day of September, 1863, and the act d Congress of March 3rd, 1863, but omits any reference to have prompted and are carying forward this movement, helplessness, should have rendered their rights promises in every way more success by such voluntary ashe proclamation of Sept. 24th 1862. sociation, than when singly made, on the well known prin-The general view of this subject, which we have taken, under the Union sacred. le that there is more strength and efficiency in union. is fully sustained by His Honor, Judge Trigg, of the Cir-We have more hope, however, from the Legis-The following otticers were elected for the ensuing year: cuit and District Court of the United States, for Tennes-DR. WM. G. THOMAS, President. innocence of the petitioner is not at issue. The question see, at its recent term in Memphis, in the case of Herron latures of the several States than from Congress. DR. F. CUTLAR, Vice-President. es. General Runkle, Superintendent of the Freedmen's DR. A. E. WRIGHT, Treasurer. Conservative Legislatures of Northern States Bureau, in which it was declared, that the Bureau Courts DR. S. S. SATCHWELL, Cor. Secretary. can examine no legitimate authority in time of peace, as must certainly reject the proposed constitutional DR. W. H. HALL, Recording Secretary. they are entirely of a military character. The regular meetings of the association are appointed amendment, and of course the Southern Legisla-In the opinion of the Court, it is said, that "The recent be held quarterly in Wilmington on Tuesday of each proclamation of the President of the United States, declartures will do the same. But we can hardly foresee | County Court week, when medical and surgical diseases will ing that an insurrection no longer exists," is a declaration to what extreme limits radical measures will be be considered, communications, oral and written, be made of peace, which sweeps from among us every thing which and discussed, and other business transacted. Special savors of military constraint upon the rights of citizens carried. We know from recent experience that meetings may be had in addition at any time. lutely necessary. Thus, during the war with Mexico, mili- and restores to them the ordinary and peaceful channel An adjourned meeting will be held on the 15th inst., to constitutional restrictions and honorable obligamature further arrangements intended, when an opportu-The Court therefore concludes, that there is no jurisdic tions have no control of them, and to accomplish nity will again be offered to regular physicians to apply for membership in the association. their purpose we have but little reason to hope

cases, continue to exercise jurisdiction as if the insurrec-tion were still waging. If he could continue the suspen-sion a day beyond the constitutional limitation, he might kept away from New York and other ports until continue it indefinitely It is considered by the Court, that the return to the wr is insufficient, and it is Ordered, That an attachment in this cause issue against all the ships that come to those ports of the Uni-It is not contended that the petitioner was ever in either the land or naval service of the United States. If he was in either service, then a court-martial would have had in. Brevet Major Concert Theor. It. Rager, out that the same, if Brevet Major Concert Theor. It. Rager, out that the same, if on service of a copy of this rule upon him, cause the said John H. Gee to be brought before me, in obedience to the writ of habeas corpus, heretofore issued in this cause. DAN'L. G. FOWLE, J. S. C.

> April 28th, 1866. The following is a copy of the writ directed to

> > STATE OF NORTH CAROLINA, WAKE COUNTY.

You are hereby commanded to take the body of Brevet-Major General Thomas H. Ruger, and him safely keep so that you have him before me forthwith, without bail or mainprise, at the Court House, in Raleigh through with Herein fail not, and have you there and then this writ. Witness, Daniel G. Fowle, Judge Superior Court of Law,

at Court House in Raleigh, this 28th April, 1866. DANL. G. FOWLE, J. S. C. Which the Sheriff subsequent returned with the follow ecution

g endorsement Executed the rule by serving copy upon Maj. Gen'l Ruger The General declined producing the body and refused to submit to an arrest, and I was unable to make the

same, because he was in command of a military force too strong to be overcome by the power of the country. April 28th, 1866 E. H. RAY, Sheriff.

(Signed.) Whereupon the Counsel of Maj. Gee submitted a request that the Clerk be directed to certify and transmit all the proceedings in the case to his Excellency, the Governor, for such action theron as he might deem advisable. The Court accordingly

Ordered. That the papers in this case, together with the opinion of the Court, be filed with the Clerk of the Superior Court of Law of Wake county, who is hereby directed to certify and transmit to his Excellency Jonathan Worth, Governor of the State of North Carolina, a transcript of all the proceedings of the Court in this case, that he may take such action in the premises as he may deem proper.

#### Reconstruction.

If the people of the South had been in doubt as to the object of the Jacobins of Congress, the report of the Reconstruction Committee would now relieve it. Of all the shallow political knavery

which has heretofore distinguished Congress, this is the consummation. After five months of assidious labors the committee of fifteen of the two Houses, appointed ostensibly to inquire into the condition of the States lately engaged in war with

the Federal Government, but really to bolster up These resolutions were believed to state correctly the party, and to secure success in the next Congressional and Presidential elections, have agreed upon

and reported a plan of action. A careful analysis of the report reveals but one fact only, and that is

vent the requirements of the Constitution in this

regard, we see that Mr. Sumner maintains that

the States, at present represented in Congress,

constitute at present the United States, that a ma-

jority of their electoral colleges are sufficient for

the election of a President-that they, only, are

gress, or three-fourths of the States, in the adop-

tion of a Constitutional amendment. As Sumner

seems to control Congress, this construction may

be sanctioned, in which event the proposed

The Cholera in New York Harbor.

amendment will prevail.

day. such time as it begins to rage with violence in Northern Germany, England, and Ireland. When cholera they cannot escape; but, as that disease is as yet infrequent in the ports with which our cities thing depends on the success of the farmer, and have most-trade, they ought to escape a visitation for several months, if not until another year. The Boards of Health will undoubtedly have an abundance of time to prepare for the dreaded visitation.

SUPERIOR COURT .-- Yesterday being the commencement If the second week of the present session of the Court, the cases on the State Docket were pretty much all gotten

Aaron Malloy, a freedman, was tried and convicted of arceny. Judgment of the Court : That the defendant receive 12 lashes upon his bare back, and pay costs of pros

The next case taken up was that of the State vs. Robt Brock. Charge, murder. The Grand Jury in this case having returned the bill of indictment as "not a true bill," on motion the defendant, Robt. T. Brock, was discharged. [It will be remembered that this man Brock was imprisoned sometime during the close of the past year, on suspicion of being the murderer of one John Connell, who was found murdered in his room at the Franklin Hotel.]

Sentence was passed upon Medora Ann Cutlar, a negro mental was necessarily neglected. The Postoffice woman, who was convicted of manslaughter on Saturday Department is erecting a temporary wooden build last. The Court sentenced the prisoner to imprisonment for thirty days, making the whole term of her imprisonment, since she was first committed, six months. His Honor in passing sentence upon her, warned her to be more careful in administering medicine in future, as, for the war a handsome brick postoffice, worthy the a repitition of the offence she would certainly be hanged,

whether it was her intention to kill the person or not. No other business of importance was gotten through with except a few eases on the civil docket, among which were those of one Wm. Porter, who was charged with retailing spirituous liquors without a license. The number

of charges thus brought against him were twenty-thres. He along. was found guilty, however, in only ten instances and was and the country beyond in town, patiently await sentenced by the Court to pay a fine of \$25 and the costs of ing their time to be called on to give evidence in the prosecution. -Daily Journal, 1st inst.

SUPERIOR COURT .-- In our report of the proceedings of he Court in vesterday's issue, we omitted to mention the case of the State cs. James Wilson, alias James Boyd, alias the declining fortunes of the present dominant James Carey. Charge, highway robbery. The defendant, in this case, plead that he was not guilty of highway

robbery, but guilty of larceny. Ordered by the Court, that the defendant receive thirty-nine lashes on his bare back, and be discharged upon payment of the costs.

The first case taken up yesterday, was that of the State tion of Col. Jno. A. Gilmer, of Greensboro', for es. William Johnson. Charge, burgalary. The defendant | the post of Adjutant General, and of Mr. L. Gar-

paratively calm discussion of the issues of the Would it could continue ! Let us not be disturbed by bickerings at home, while receiv ing the peltings of radical wrath ! Poverty and affliction should make us avoid all exhibition of private animosities. We should leave that for the return of prosperous days, if it be necessary at any time. Our people are straining every nerve to get the means to keep them afloat 'till the crop of the coming Fall shall afford some relief. Every. the farmer happily seems alive to the responsi bility upon him. The merchant who has fur nished us with the necessaries of life, for a consid eration, has long ago reached the bottom of our pockets, and he now doubts whether it be worth his while to replenish his half emptied shelves. while his anxious look often indicates that he has

but little surplus funds to meet the demands of his Northern creditor and support his dependent family. The mechanic is in a little better condition, but he feels that he cannot count with certainty upon a paying job, when he shall have

finished that which now occupies his attention. We are glad to see the State and General Governments have some work here to give a few of our honest painters and carpenters. The pain ter's brush has within a few days past worked considerable improvement in the appearance of the rooms in the Capitol. Each of the officers has, in turn, been compelled to vacate before that practical Board of Internal Improvements, and seek an asylum with a neighbor till his sanctum was refit ted. The Executive rooms present quite a different appearance from what they did in the latter days of the war in North Carolina, when the orna

ing for a postoffice, on the corner where Law rence's Hotel formerly stood, the site of the hotel having been purchased by the United States Government several years before the war. But for Capital of the State, would probably ere now have been erected. Such a building would serve an excellent purpose in the way of ornament to that portion of the city, by partially concealing from view our poor apology for a Courthouse in the neighborhood.

The trial of Maj. Gee still drags its slow length We see several gentlemen from Salisbury behalf of the priso...er. By the way, if we mistake not, to-morrow is the day fixed by Judge Fowle for giving his decision, on the motion of counsel for an attachment for contempt against General Ruger, for not producing the body of the prisoner as required by the writ.

Gov. Worth has not the patronage possessed by the Governors during the war, and the late Provisional Governor; but we see he has recently made two excellent appointments-in the selec-

Ladies and Gentlemen :- I had hoped to-night to have addressed you in another place, but in a conversation which has been accurately reported in one of the morning papers, [the Examiner] the Governor of Virginia refused ne the use of the Hall of the House of Delegates for any " such purpose as to deliver a enlogy on the most honored and beloved son Virginia has produced in modern times. [Hisses.]

In order that the reader may better know the character of this "conversation" to which General Colston alludes, and the accuracy of which he testifies to, we reproduce it here, as printed in the Ecaminer of last Thursday.—ED. EXAMINER.

\* \* The Hall of the House of Delegates should have been offered to General Colston without solicitation, but, in default of that fitting courtesy, he approached the socalled "Governor" of Virginia to ask for it. The following brief dialogue will show how he and his application were received.

presented to him the letter of invitation he had received from many of our most prominent citizens, which was Government, and prays that the writ of habeas corpus be taken and read. As the Governor returned the letter, General Colston remarked pleasantly

"Governor, I suppose now that the war is over, that every Virginian feels a pride in the fame and character of 14th, at which time brevet Major General Ruger made re-Stonewall ' Jackson.'

Pierpoint.-" No sta: / feel no pride in Jackson as a Virginian, and can see nothing in his character worthy of United States." admiration.

After some further remarks, Pierpoint asked, contemp-"What is there in the character of Jackson to He was a kind of crazy enthusiast, with a good deal of bigotry of Cromwell in him. That was all. General Colston .- "I merely called, sir, to ask you if I

could get the use of the hall for my lecture. tend the Hall of the House of Delegates for any such pur-

pose And then he again asked, derisively, "What was there in the character of Jackson to admire?

General Colston .- "It is usely for us who differ so widely, sir, to discuss that subject. You must excuse me for doing so. Good morning." And the General depar-

In closing his able and entertaining lecture, Gen. Colston, himself a distinguished and worthy follower of the distinguished soldier, very truth-

fully remarks

He was beloved by his soldiers, admired by his enemies and the world. Jackson's name was honored by all the authorities, and subject at all times to the control of the world over, by friends and fees alike, and it was reserved for one who calls himself the Governor of Virginia to say that he felt no sort of pride in Jackson, and could see nothng for admiration in his character. But the soldiers who fought him did not think so; the soldiers of the Federal army always respected and appreciated him. The soldiers of both armies had not been unmindful of the generous he demagogues, who kept out of the battle, that kept howling for blood and confiscation.

#### The Baltimore Fair.

At a meeting of the Executive Committee of Ladies, held on the 26th ult., the sum of \$108,000 was appropriated to the following States :

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Virginia . North Carolina		eex and exails	\$20,000
North Carolina	1.0.000		10,000
South Carolina	I A NOT A ROOM A ROOM A	and the second second	15,000
Georgia		CONTRACTORS.	10,000
A TANK TANK AND A TANK AND AND A TANK AND A TANK AND			1.11 (14)
Alabama Mississippi Florida	a province and a second	DOCTOR DOCTOR	15,000
T TOTAL TROUBLE AND A REAL PROPERTY AND A REAL PROPERTY.	A REPORT OF A REPORT	THE REPORT OF A 14 YO M.	3,000
Tennessee			6,000
Arkansas	A LEAGUER   AND		4,000
Arkansas			6,000
Maryland	1 - 4 KG	A AN ALL ALL	8,000

 $\Lambda$  committee of three ladies was appointed to

[The prisoner was represented by his counsel, D. P. Holland, of Florida, and John Wilder, of Boston, Mass.] Upon the opening of Court Judge Fowle delivered the following opinion :

On the 10th inst., John H. Gee, a citizen of the State of Florida, filed a petition before me, alleging that he was mprisoned and held in close continement in the city of Raleigh, by brevet Major General Thos. H. Ruger, U. S. A., commanding the Department of North Carolina, and that, by his order, a Military Commission had been contioner, under the following charges and specifications, to

Specifications.-Cruelty and inhumanity to prisoners of attempted. war, taken and held as such from the armies of the United

States, by the rebel government, or the military authority prison which was under the command and charge of John H. Gee, who was, or claimed to be, a Major in the rebel

military service Charge 2d .- Murder in violation of the laws of war. Specifications.-The felonious killing of prisoners of war

ommitted to his custody, as aforesaid. the late rebellion, to wit : in the months of October, No-

vember, and December, 1864. The petition further sets forth the proclamation of h Excellency Andrew Johnson, President of the United

States, and claims that by virtue of said proclamation of On entering the Governor's room, General Colston April 2nd, 1866, he is entitled to be discharged from the custody of the military authorities of the United States issued, &c., so that the cause of his capture and detention may be inquired into, &c.

On the 11th inst., the writ was issued, returnable on the turn that the said John H. Gee was detained by him "as prisoner under the authority of the President of the

The body of the petitioner not being produced, his counel moved for an attachment to issue against brevet Major Feneral Ruger, on account of his non-compliance with the mandate of the writ, and the insufficiency of his return hereto

The Court adjourned the consideration of the motion t the 28th inst., to-day. So far as the present inquiry is concerned, the guilt or

is, in regard to the sufficiency of the return made to the writ by General Ruger, and that depends upon whether :

1st. The Military Commission has jurisdiction of the lleged offences. 2nd. Have the civil courts the right to issue the writ of

abeas corpus Military Courts have been sanctioned, during time of war, upon the ground that the order, discipline and safety

of an army in the field rendered such jurisdiction absotary commissions were convened and organized under the for the assertion and enforcement of these rights. command of Gen. Scott. They were never regarded as

of the United States, but as mere agents of the military in time of peace, either by the common law, the Constitucommanding officer.

The question which we have to consider, is not whether, during time of war, the creation of such commissions is a him, but that such jurisdiction is in direct contraventier legitimate exercise of military power, but, whether, after of the proclamation of April 2nd, 1856, which declares, in the restoration of peace, and the Proclamation of the accordance with the principles of Magna Charta, and the President of the United States, declaring that the insur- Constitution of the United States, that, "standing armies rection, so far as North Carolina is concerned, is at an military occupation, martial law, military tribunals and spirit exhibited by both of their great leaders ; it was only end and is henceforth to be so regarded, a tribunal thus the suspension of the privileges of the writ of habeas cororganized can continue in the exercise of a jurisdiction, pus, are in times of peace dangerous to public liberty, in assumed during time of war.

It will not do to say, that if the military commission was | trary to the genius of our free institutions and exhaustive organized during the existence of the rebellion, that the of the national resources, and ought not, therefore, to be urisdiction having attached, the proclamation does not sanctioned or allowed, except in cases of actual necessity perate to suspend a trial already commenced; for, it is for repelling invasion or suppressing insurrection or r vell settled by the decisions of the Supreme Court of the bellion.

United States, that if a law can be repealed upon which Assuming, then, that the Courts in question were in the jurisdiction depends, before judgment, the court can / their inception legitimately and properly established, and no further with the case-5 Cranch, 281, 6; Ibid. that the jurisdiction exercised by them, during the exis-3-329-but it must be shown that it is a jurisdiction, tence of the war, was also legitimate and proper, it does to be counted in ascertaining a quorum of Conhich can be exercised, not only during time of war, upon not follow that they have a right, now the war is ended hich question the Court does not wish to be considered to make and summarily to enforce orders as they di s expressing an opinion, as it is not necessary for the while a state of war existed. ecision of this case, but also in time of peace.

Whence is any such jurisdiction derived? Not from he common law, for, in 1st Blackstone's Com., page 413, is said, that "martial law, which is built upon no seted principles, but is entirely arbitrary in its decisions, is,

courts established under the authority of the Constitution tion conferred upon Military Commissions to try civilians

tion of the United States, act of Congress or any procla mation of the President after the power of suspending the privilege of the writ of habeas corpus was conferred upon

to interfere.

compatible with the individual rights of the citizen, con-

The war being ended, that is an end to the Court, an there being no longer any such Court, the officer of th Bureau has no longer any authority to act in that capacity and to enforce judgments or orders, whether made before

s Sir Mathew Hale observes, in truth and reality no law, der that pretext seizes the property of a citizen, he will but something indulged, rather than allowed, as a law.— The necessity of order and discipline in an army is the only thing which can give it countenance, and therefore it

The subject of epidemics, yellow fever, Asiatic cholera, that personal honor, constitutional barriers, or &c., are already engaging the earnest attention and deliberations of the association, as we are informed.

the safety and prosperity of the Union itself will The question of cholera, now so much engaging the in the future, more than in the past, be permitted public anxiety, is duly appreciated, and a laudable desire treating that terrible disease. The Corresponding Secretary was directed to open correspondence with the muni-The refusal of ten States to ratify, would defeat cipal and medical authorities abroad on this subject, with the proposed amendment. In order to circum- a view of eliciting the views of others.

# OUR RALEIGH CORRESPONDENCE.

he Weather Stormy-The Editors Calm-The Farmer, the Merchant and the Mechanic—Dull Times -Trial of Maj. Gee-Appointments by Governor Worth-Adjutant General-Distribution of Artificial Limbs-The Literary Roard, &c., &c.

MESSRS. EDITORS :-- When the world was less We will not do the good sense of our readers given to gab than it is now, I believe it was laid the injustice of discussing the different proposidown by Rhetoricians, "never say anything un-

hands, and a sympathizing heart. Gen. Gilmer's duties as Adjutant General, we imagine, will not be very onerous, but his character as an officer, earned while he was "Colonel of the 27th N. C

We understand the Literary Board is in session suitable jury in a case of burglary, which will be brought but we doubt that even they will be able to make the "N. C. new 6's and 8's" with which the Treasury of the Literary Fund was once filled, availa ble for much in promoting the cause of education in the State ; and we believe the Legislature appropriated the thousand old 6's belonging to the Fund, and its only valuable effects, to the use of the Public Treasury. We would fain hope the Board may discover a way to save the Fund [?] sociation is auxiliary to the State Medical Society, soon to from bankruptcy, but we do not see how it can be

I am yours, &c.,

### LATEST NEWS BY MAIL.

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### [Correspondence of the Baltimore Sun.] Reconstruction.

WASHINGTON, April 29.-The joint committee on reconstruction have at last agreed upon a plan. and will report to-morrow to both Houses a proposed amendment to the Constitution, with two bills to carry into effect its guaranties. The propositions made by the committee will without doubt be endorsed by their associates in Congress, but are of such a charater that it will be impossible for the South to accept them, which is precisely what the Radicals want. They have no intention that the South shall be represented in the national Congress unless she sends members in full accord with them, and who will at once fall into the party traces under the lead of Stevens, Sumner & Co. All the wisest and best men of the South are to be forever excluded from holding office ; men like Alexander H. Stephens who, with a proper spirit on the part of the North to ignore the past and conciliate dif ference, could do so much to re-unite the bonds of brotherhood now so wide asunder ; and, then, all who adhered to the cause of the South are to be excluded from voting for members of Congress and Presidential electors until July, 1870. Now, with such a provision as this, where are the voters nanifested to adopt the best means of preventing and to come from if the South does not confer suffrage upon her ignorant negroes ? The committee wel know that, rightfully or wrongfully, the great mass of the Southern people cast their fortunes in with the cause for which so much was sacrificed, and yet they propose this wholesale disfranchisement of a heretofore franchised people. And as to the blacks, it is known that they are as uncord. plaining and faithfully worked in supporting the rebellion in their way as any others, as long as -Improvement of The Capitol-New Post Office they were not, by the force of circumstar ces, prevented from doing so by being brought within the area of the extending Federal lines. This week will probably be the most interesting, and exciting since the convening of Congress, a', the debate on the plan of the model re-constructionists will take a wide and extended range. The three Democrats on the committee all vote ago inst the report.

THE CHOLERA IN NEW YORK. [From the New York Herald, 29th ult.] The cholera is again reging at the lower quar-antine. Five deaths bave taken place, and thir less you have something to say." If the rule were teen additional cases been received on board the authority in this day, I should certainly not trouble Falcon since Dr. Bissell made his last report. The whole number remaining in the hospital is ninetyman of my promise and I promised you an occa- Dr. Swinburne, in a communication to the Board six, being an increase of eight since the last report of Health, gives a very hopeful account of matters All other themes failing we can have recourse to the on board the Falcon, and says that the severity of the disease is evidently lessening. The old sloopof-war Saratoga was anchored in the lower bay on imagined that old Æolus had reduced to subjection Friday night, and will be used for quarantine purposes.

(From Our Own Correspondent.) RALEIGH, April 27th.

superintend the distribution for each State-a list of whom will be published in a few days. In addition to the appropriations above, about \$50,000 | laid down, (by Lord Coke in 3. Inst. 52) that if a lieutenwill remain as a reserved fund in the hands of the Executive Committee to increase the allotment to such States as may require it, and to meet special The result of the Fair has been so far developed as to make it certain that its aggregate proceeds will not be less than one hundred and sixty thousand dollars. The entire expenses will will be hereafter shown in the Earl of Lancaster's case. not exceed three thousand dollars.

### U. S. District Court.

The District Court of the United States, for the District of Cape Fear, in the District of North Carolina, opened its Spring session in this place vesterday, His Honor G. W. Brooks, presiding .---The United States Attorney for the District of North Carolina, D. H. Starbuck, Esq., and the U. S. Marshal, Mr. Goodloe, were present.

The Court has but a limited [criminal [jurisdiction, and under the Act of Congress, persons to form a Grand Jury are not summoned except; by a special order from the Judge. The first Grand Jury which has been convened in this Court for not parts ; but they were to be ordered and governed acmany years past, was organized vesterday, and we learn that they received from the Court a very lucid and comprehensive charge. We hear, however, of no business of a criminal nature, which will be brought before the Court.

THE REVENUE LAW AND POST OFFICE DEPART-MENT.-We call attention to the very important communication, on our first page, from Mr. Treas-

Office Department, in reference to Postmasters and Contractors,

ought not to be permitted in time of peace, when the King's Courts are open for all persons to receive justice according to the laws of the land \* \* \* \* \* And it is ant or other that hath commission of martial authority. doth in time of peace hang or otherwise execute a man by olor of martial law, this is Murder, for it is against Magia Charta.'

The President has declared, in his proclamation, that in North Carolina " the laws can be sustained and enforced by the proper civil authorities, State and Federal." other words, "the Courts are open for all persons to receive justice according to the laws of the land," and this of itself constitutes in judgment of law a time of peace, as A considerable portion of the history of England consists of a record of the struggles of our ancestors to precent the King from the exercise of such powers as are

claimed for the purpose of sustaining military commis-sions. Magna Charta was the result of the first great victory over milit ary domination, but the struggle terminated not, until it was entirely settled that Military Comnissions for the trial of civilians for any offence were entirely illegal

t page 34 : "Touching the business of martial law these | ces against the same, which are not directly connected hings are to be observed, viz : First. That in truth and reality, &c. (As quoted in

Blackstone, supra.) Secondly. This indulged law was only to extend to mem-

bers of the army, or to those of the opposed army, and never was so much indulged as intended to be executed or exercised upon others who were not listed under the army, had no color or reason to be bound by Military Constitutions applicable only to the army, whereof they were cording to the laws to which they were subject, though it were a time of war. Thirdly. That the exercise of martial law, whereby any person shall lose his life or member, or liberty, may not

e permitted in time of peace.' Lord Loughbrough, in the case of Grant vs. Sir Chas. Gould, 2, H. Black, 69, says : "Martial law, such as is described by Hale, and such also as it is marked by Mr. Justice Blackstone, does not exist at all in England." In the Earl of Lancaster's case, upon petition of error in the first Parliament of Edward 3rd, it was declared,

1st. That in time of peace, no man ought to be adjudicated to death for treason, or any other offence, without

which is of the first importance to the tax payer and receiver. Also, on the same page, will be found a commu-nication from Mr. Jobe, Special Agent of the Post Office Department, in reference to Postmasters and 'ontractors, Cated to death for treason, or any other offence, without being arraigned and held to answer. 2nd. That regularly when the King's Courts are open it is a time of peace in judgment of law. 5, 3rd. That no man ought to be sentenced to death by the record of the King, without his legal trial per pares. Neither is any such authority bestowed by the Consti-tution of the United States, but, on the contrary, if it had held been the intention of the framers of that instrument to inegative any such construction, words more opposite P

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judgment was rendered and not enforced before the war ended, then it cannot be now enforced, for the authority by which it was rendered has ceased with the war and no ion ger exists.

The only question remaining for our consideration is as to the jurisdiction of the civil Courts, and their right to issue the writ of habeas corpus in order that the capture and detention of the petitioner may be inquired into

As the privileges of the writ were only suspended during the existence of the rebellion, and the rebellion, so far as North Carolina is concerned, " is at an end and henceforth to be so regarded," it follows that the Court can issue the writ, provided it has jurisdiction. The fact that the petitioner is held by a Fedral officer. and the writ has been sued out from a State Court, is not

important, inasmuch as it has been decided in North Carolina, in Bryan's case, 9 Jones 1, that the Court has juris diction in such cases. The petitioner is not arrested and held for trial merel

as a prisoner of war and because of his participation in the rebellion, but it is charged that he has violated the laws and customs of war.

The laws and customs of war are a part of the laws o the nations, and the latter have always been regarded as Sir Mathew Hale, in his history of the common law, says | a part of the common law. 4. Black. Com. 67, and offenwith the order, discipline and safety of an army in the tield, are punishable by the civil tribunals. The charges against the petitioner are not of the latter character. Whenever a party is the recognized loval custodian of

the invitation? another, and is guilty of cruelty or inhumanity towards him, the law will hold him ameniable and he is subject to indictment in our civil courts. If he is not the legal custodian, then he is indictable for a false imprisonment, and the cruelty and inhumanity is considered in determining the punishment to be awarded. If death has ensued from cruelty and inhumanity under such circumstances, the party is indictable for murder, and upon conviction will suffer death.

The jurisdiction, therefore, of the Superior Courts of Law, is clear.

It has been suggested that the President did not intend by his proclamation to interfere with Military Compais sions, at that time or previously oganized, or trials then pending before such Commissions, and that if the Court is satisfied that such was the intention of the President, would not interfere by means of its writ. The Constitution declares that "the privilege of the writ of habeas cor-pus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it," and the act of March 3rd, 1863, authorizes the President only to suspend the privilege of the writ during the existence of the rebellion. It therefore follows that as soon as the rebellion is declared to be at an end, that it is the duty of the Court to declare that, in judgment of law, the privi-lege of the writ was restored. The fact being declared, the result inevitably follows, and there is no power in the President to declare that the insurrection is at an end, but that these Courts of Military Commission may, in certain

tions laid down in the report. They will be found elsewhere. Their adoption will most assuredly accomplish what they are designed for-the furyou with another letter, yet awhile. But I am a ther exclusion of the Southern States. Be the consequences what they may, poor and overwhelmed as we are, they will be rejected with scorn and

indignation by the entire South. We, at least, weather, and I will say a word about that. We had will take no part in forging the chains that will bind us hand foot to the Radical charriot-wheels. the winds that were so rampant during the month The tender of the bribe, in the proposal to inof March, and had fastened them securely in their dulge the ratifying States in the matter of the diprison-house, his cave, but he must have been derect tax for ten years, is not more insulting to us ceived by their quietness and apparent submission than it is characteristic of them. Consulting their own hearts and taking counsel of their corruption. Certain it is they have been rushing madly by us they add this offer, hoping our poverty may control our virtue. The spider has indeed woven a beautiful house and provided his parlor with encaged " again. It is a pity the old jailor should ticing furniture, and now holds out a tempting offer to unwary flies to "walk in." Who accepts have so relaxed his vigilance. The beauty of our

little city, and the country around, has suffered considerably in consequence. The trees were just

The recent cold snap seems to have killed off cate tints appropriate to the season, and many, what was left of the cholera poison on board the vessels in the lower New York harbor. There while the garment of the others are much tattered were no new cases for the twenty-four hours which and torn. The gardener, too, has cause to have his closed at the date of the last report, the 29th ult.,

visage lengthened when he looks upon the vegwhile the deaths were few and the sick were genetables that were just becoming the pride of his erally getting better. In a few more days we may table, and sees the effects of the blasts upon them. reasonably hope that all traces of the pestilence It is true, however, that a few days calm and sunwill have disappeared from the vicinity of that shine will restore things to their late healthy apcity. Theorists may say what they please about pearance and beneficent May will find them preparthe uselessness of quarantines, but the cases of ed for her favors and smiles. the Virginia and the Atlanta show that cholera

can be kept out of populous communities by a editors (I ask your pardon !) who, a few weeks blades are already two feet high. rigidly-enforced quarantine. That disease does back, kept the public excited or aroused by their

rigidly-enforced quarantine. That disease does not originate upon this continent, and every in-stance of its appearance in this country can be stance of its appearance in this country can be not originate upon this continent, and every intraced to the ship which brought it over. We be- mishing, and our journals are marked by a com- in advance, and no huggin."

THE DEAD OF THE WAR .--- A plan for the vault of the Washington Cemetery, intended for the reception of the Union dead who fell on the batand allowed them to escape his bolts and bars. tle-fields of Virginia, has been approved by the Quartermaster-General. It will be circular in shape, with an interior diameter of twenty feet, one after another, for two or three days past, in and covered with a hemispherical arch or doom. a manner that indicated a resolve never to be In the top of this dome will be an elliptical opening, covered with stone tablet, on which proper inscriptions may be made. The vault will be di vided into four compartments by two cross wall intersecting at right angles. The remains of Union soldiers are generally distinguished from putting on their spring garments, of all the deli- those of the rebels by the buttons of their uniforms, and sometimes by the descriptions of the in part or in whole, have been hurled to the earth, the close of the war, were interred with the bodies of our dead heroes for subsequent identification by their friends or relatives.

WHEAT PROSPECTS IN THE SOUTH .-- The Nash ville Gazette learns that the prospects of the wheat crop in Georgia are most flattering. From Mr Lollar, who has been travelling extensively throughout Alabama and Mississippi during the past few weeks, we have a similar report in regard to the prospects of the wheat crop in those States. A much larger amount of this staple cereal has The winds are all blusterers now. Even the been grown this year than ever before, and the