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THE CASE OF DICK McCANN.

The Application for a Writ of Habeas Corpus to take the Case out of the State Court—Judge Trigg decides that he has no jurisdiction in the Case.

Judge Trigg delivered the following opinion in the United States District Court Monday morning: Ex-Parte J. R. McCann.

This case comes up on the petition of J. R. McCann to the United States District Judge for the District of Tennessee, for a writ of habeas corpus to be directed to one M. D. Bearden who, it is alleged, illegally detains the petitioner in custody, and deprives him of his liberty.

The petitioner states that he was lately an officer in the armies of the so-called Confederate States, as such surrendered and was regularly paroled, and under the agreement entered into by the authorities of the United States and the commanders of the armies of said Confederacy—that he thereafter took and subscribed the oath prescribed in the amnesty proclamation of the President of the United States, of May twenty ninth, eighteen hundred and sixty-six—that he has fully and faithfully kept said parole and oath, and is entitled to all the immunities and protection offered and extended by them—that in direct and palpable violation of said parole and pardon, he has been arrested and confined in jail in Knoxville, Tennessee, to answer for an act, (before a State court) fully condoned and pardoned by the National Government.

He states in his petition that the said Hann was arrested and tried at Knoxville in the winter of eighteen hundred and sixty-one, by a court martial, regularly ordered and convened by the military authorities of the Confederate States then at war with the United States, and then in full, complete, and undisturbed occupation and possession of the whole of that division of the State of Tennessee wherein the trial occurred.

It is stated, that he was charged as a secret, active public enemy of the so-called Confederate States, and of the armies so in the occupation of said country, being that division of the State known as East Tennessee, with having committed an act contrary to the laws of war. He was charged, as it is stated in the petition, with conspiring and attempting with others, secretly, clandestinely, and in the night time, and not in connection with any organized or recognized body of the troops of the United States, to destroy the railroad from Chattanooga to Bristol—said road running and lying wholly within the military lines of the Confederate forces, and being used by the arms of the said Confederacy for the daily transportation of troops, munitions of war, supplies, etc.

"I WOULD RATHER BE RIGHT THAN BE PRESIDENT."—Henry Clay.

Then we come to the question—was the late rebellion in its inception and progress a mere rebellion, or did it pass beyond those boundaries which ordinarily limit a rebellion, and attain the proportions of a civil war, and by consequence entitle the parties engaged in it to all the rights of belligerents?

"A civil war," says Mr. Yattel, "is when a party arises in a State which no longer obeys the sovereign, and is sufficiently strong to make head against him, or when, in a republic, the nation is divided into two opposite factions, and both sides take up arms. Usage applies the term civil war to every war between members of the same political society. If it is between a part of the citizens on one side, and the sovereign and those who obey him on the other, it is sufficient that the rebels have some reason to take up arms, in order that the disturbance should be called civil war, and not rebellion."

The Prince never fails to call rebels all his subjects who openly resist him; but when the latter become sufficiently strong to make head against him—to compel him to carry on war regularly against them—he must be contented with the term civil war. Civil war breaks the bonds of society and the government; it gives rise in a nation to two independent parties, who acknowledge no common judge. The common laws of war are in civil wars to be observed on both sides. The same reasons which make them obligatory between foreign States, render them more necessary in the unhappy circumstances where two transported parties are destroying their common country."

To carry out all familiar with the incidents of the last four years, if upon reading this quotation he will recall the number, power, and organizations of the persons engaged in hostile operations against our Government, he will be willing to concede that the recent conflict of arms between the opposing forces, although at the beginning it may have been consequent upon a mere rebellion, yet that soon outgrew into civil war.

"When a part of a State," says another modern writer, "takes up arms against the Government, if it is sufficiently strong to resist its action and to constitute two parties of equally balanced forces, the existence of civil war is thenceforward determined. If the conspirators against the Government have not the means of assuming this position, their movement does not pass beyond a rebellion. A true civil war breaks the bonds of society by dividing it in fact into two independent societies, it is in this consideration that we treat it as international law, since each party forming as it were a separate nation, both should be regarded as subjects to the laws of war. This subject, in civil war, since, though by nourishing more hatred and resentment a than foreign war, require more the corrective of the law of nations in order to moderate their ravages." (See note to Wheaton's International Law, 523.)

sume the responsibility of pronouncing otherwise than that it was a civil war—that the parties engaged in it were belligerents, and entitled to exercise every right accorded to them by the laws of war. It will of course be conceded, that if it were a civil war, and the parties engaged in it were belligerents in the sense of international law, then whatever one of the belligerent parties might do in conformity to the law and usages of war, so also might the other party.

Taking then the statement in the petition of McCann to be true, it only remains to inquire, so far as this branch of the subject is concerned, whether the court martial regularly convened, as it is alleged, for the trial of Hann, upon the charges set forth in the petition, was such a military tribunal as is recognized by the laws of war, or in other words, by the law of nations.

The petition asserts that Hann was charged as a secret, active, public enemy of the so-called Confederate States, and of the armies in occupation of East Tennessee, with committing an act contrary to the laws of war, viz: conspiring and attempting with others, secretly, and not in connection with any organized body of the troops of the United States, to destroy the railroad running from Chattanooga to Bristol, which road was used by the armies of the so-called Confederacy for the daily transportation of troops, munitions of war, supplies, etc.; that he, with others, actually burned and destroyed an important bridge on said road, and shot and captured divers Confederate soldiers then guarding said bridge.

It must be remembered that the District and the Circuit Courts of the United States, and the judges of said courts, can exercise jurisdiction in those cases only where it is expressly conferred upon them by a law of Congress. And so upon application made to a District Judge, as in the case on this petition, to issue the writ of habeas corpus, he must consult the acts of Congress to ascertain what his power and jurisdiction are upon that subject.

Of party faction. Of such a result I cannot permit myself to judge the thought for a moment. My confidence in the uprightiness and integrity of the courts of the country, both State and Federal, utterly forbids any such apprehension.

Courts have been instituted for the best and wisest purposes. It is their peculiar province to administer the laws without partiality or prejudice, and when thus prompted in the discharge of their duties, every man, no matter what may be his station in life, can feel that his legal rights will be protected, and that the laws will be administered to him in that spirit of justice by which it is presumed the courts of the country are actuated.

By a YOUNG LADY, A GRADUATE OF G. F. College, who has had five years' experience in teaching the English branches and Music, a situation in private family. Testimonials given and required. Address immediately, MISS L. Greenboro, N. C., Box 46, December 23, 1865-116-117.

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