Me solicit the aid of our friends in extendng our circulation.

THE CASE OF DICK McCANN.

The Application for a Writ of Habeas Corpus to take the Case out of the State Court-Judge

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

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 habear corpus to be directed to one M. D. Bearden who, it is alledged, 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, in the armies of the so-called Confed rate States, as such surrendered and was regularly paroled, under the agreements entered into by the authorities of the United States, and the commanders of the armies of said Unfederacy—that he thereafter took and subscribed the oath prescribed in the amnesty proclamation of the Prescribed States of Markovitz ninth. ident of the United States, of May twenty ninth, eighteen hundred and sixty-five-that he has fully and faithfully kept said parole and cath, and is entitled to all the immunities and protec-tion offered and extended by them—that, in di-rect and palpable violation of said parole and pardon, he has been arrested and confined in fail in Knox county, Tennessee, to answer for an act, (before a State court) fully condoned and pardoted by the National Government." And proceeding to set forth the causes of his arrest and detention, he states the allegation against him to be "that he was a member of a court marcial before which one A. C. Hann was tried during the war, at Knoxville, and who was subsequent ty executed by the military authorities of the so-called Contederate States, after the proclama tion of marrial law; and upon this state of facts and indictment was found, and is now pending against him in the Circuit Court of Knoz coun-

He states in his petition that the said Hann was arraigned and tried at Knoxville in the winser of sighteen hundred and sixty one, by a court murtial, regularly ordered and convened by the military authorities of the Confederate States than at war with the United States, and then in full, complete, and undisturbed occupaney and passession of the whole of that division of the State of Tennessee wherein the trial oc-

Happ, it was stated, was charged as a secret, notive 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 Last 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, standestinely, and in the night time, and not in connection with any organized or recog-nized budy of the troops of the United States, to dearroy the railroad from Chattaneoga to nized body of the troops of the United States, to desirely the railroad from Chattaneoga to Bristol—said read cunning and lying wholly within the military lines of the Confederate forces, and being used by the armies of the said Confederate forces, and being used by the armies of the said the cases recently decided by the Supreme Court, and which are known as the "prize" cases respected in the second volume of Black's Reports.

It is my opinion, therefore, that if the chappens are said to the said the cases recently decided by the Supreme Court, and which are known as the "prize" cases respected in the second volume of Black's Reports. Comoderacy for the daily transportation of trouts, munitions, of war, supplies, etc. It was also charged against said blann that he actually burned and destroyed one of the bridges upon said road, and shot and captured divers Confederate selecters guarding said bridge, on the night of the ninth of November, eighteen hundred and sixty-one. The petitioner states that the trial

The petition then avers "that holding of him, under these circumstances, by State authority, is a direct negation, and setting saids of the ampetry and pardon authorized by the General Government to induce all persons to lay down arms, to return to their loyality, and to restore the authority of the United States."

considered as true, and upon the facts so stated must this application be determined.

It is apparent, from the facts stated in the

Government of the United States was in fact a civil war, and that the persons engaged in it were belligerents, and as such entitied to all the rights appertaining to the laws of war. And, incomen as the petitioner as a member of the court markal regularly convened, by order of superiors, in conformity to the laws and neages of war, and as such member, in the regular discharge of his daty, concurred in the finding which required in the death of Hann, is is argued that he is no more criminal and no more re-sponsible for the act than would be the judge of a civil court, who, in the discharge of his daty, might pronounce a similar sentence against a party found guilty by the verdice of a jary—and consequently it is insisted that she petitioner cannot be held personally responsible for his complients in the scion of the court martial, and that he cannot, therefore, be held amenable to the laws of the State of Tenuesses upon the indictment pending against him for marder in the Circuit tourse of Kuox county.

It must be conceded, I think, that if the rebelifion, as it has been almost uniformly denomined to be a more consistent of the laws of the State of Tenuesses upon the indictment pending against him for marder in the Circuit tourse of Kuox county.

It must be conceded, I think, that if the rebelifion, as it has been almost uniformly denomined to the laws of the state of Tenuesses upon the indictment pending against him for marder in the Circuit tourse of Kuox county.

It must be conceded, I think, that if the rebelifion, as it has been almost uniformly denomined to be province or State be admosticated in order to constitute it a party belligated in order to constitute it aparty belligated in order to constitu

the common laws of war; and if a court mar-tial, organized as the one in question is stated to have been, be in conforming to the laws and usu-ges of war, lot the trief of persons circumstanced as the position states that Hash was, then I am ment of the United States has recognized the exis-tence of a civil war between Spata and her colo-ne the position states that Hash was, then I am have been, be in conformity to the inwa and usually colored and the conformity to the inwa and usually colored and the colored

DATLY SENTINEI

"I WOULD RATHER BE RIGHT TRAN BE PRESIDENT,"-Henry Clay.

RALEIGH, FRIDAY, DECEMBER 29, 1865.

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Messrs. W. H. & A S. TUCKER,

Oct. 17th, 1865-61-5m.

Then we come to the question-was the late rebellion in its inception and progress a mere re-bellion, ordid it pass beyond those boundaries he Application for a Writ of Habeas Corpus which ordinarily limit a rebellion, and attain the to take the Case out of the State Court-Judge 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. Vattel, "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 oldes take up arms. Usage applies the term civil war to every war between members of the same political society. If is is between a part of the citizens on one side, and the severeign and those who obey him on the other, it is sufficient that the malgoritents have some reas 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 sub-

jects 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 sor. 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, so be observed on both sides. The same reasons which make them obligatory between foreign States, render them more necessary in the unhappy circum-stances where two exasperated parties are de-

atroying their common country."

To any one at all tamiliar with the incidents of the fast four years, if upon reading this quo-tation he will recall the number, power, and or ganizations of the p-reons 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 up-on a mere rebellion, yet that soon culminated

into civil war. "When a part of a State," says another modern writer, "inkes up arish against the Government, if it is sufficiently strong to resist its action and to constitute two parties of equally baltorward determined. It 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 for this consideration that we treat of it in international law, since each party forming as it were a separate nation both should be regarded as subject to the laws of war. This subjection to the laws of mations is the more necessary in civil wars, since, these, by nourishing more natred and resentmen a than toreign wars, require more the corrective of the

law of nations in order to moderate their ravaages." (See note to Wheaton's International Law, 523.) But it seems annecedsary to quote other authorities to establish the true character of the great civil commotion through which our coun-

the Court, as it seems to me, has settled thm question, and no United States Court or Judge, or indeed can any State Court disregard that decision. Mr. Justice Grier, in delivering the opinion of the Court in those cases, ease : "The sixty-our. The paritioner states that the trial of lines occurred and of lines occurred acress that the trial of lines occurred acress that he was allowed counsel of his own choice to defend him; and that the whole proceeding was conducted and the court in those cases, says: The parties beliggerent in a public war are independent nations. But it is not necessary to constitute which parties beliggerent in a public war are independent nations. But it is not necessary to constitute war that both parties should be acknowledged and the court in those cases, says: The parties beliggerent in a public war are independent nations. But it is not necessary to constitute war that both parties should be acknowledged and the court in those cases, says: The parties beligerent in a public war are independent nations. But it is not necessary to constitute war that both parties should be acknowledged as independent nations or sovereign States. claims sovereign rights as against, the other in surrection against a Government may or may not culminate in an organized rebeilton, but a civil war always begins by insurrection against the lawful authority of the Government. A civil war is never solumnly declared; is becomes such by accidents—the number, power and organization of the persons who originate and car-Upon the foregoing state of facts, the petitioner prays that the writ of habeas corpus may issue, to the end that justice may be done him in
the premises, and that he be released from his alleged illegal confinement. Of course upon this armies; have commenced hostilities against their application the statement of lacts appearing on the lace of the petition, which is duly verified by the cath of the petitioner, is to be taken and independence, in order to become a sovereign State, while the sovereign party treats them as insurgents and rebels, who owe allegiance and

It is apparent, from the facts stated in the potition, that the first question presented for consideration is whether the petitioner is illegally demand in custody? This question has been to ably, scalously and elaborately argued that it fact constrained to express an opinion upon it.—It is insisted, on behalf of the petitioner, that the late rebellion against the authority of the Government of the United States was in fact a fact and the periods engaged in it.

aume the responsibility of pronouncing otherwise of party faction. Of such a result I cannot per-than that it was a civil war—that the parties cu-gaged in it were belligorents, and as such, collided. My confidence in the uprightness and integrity of to exercise every right accorded to them by the laws 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 sugaged in it were beliggerents 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 pasty.

Taking then the statement in the petition of Me-Cann 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 act for h in the pelition, was such a military tribunal as is recognized by the laws of war, or, in other

wards, by the law of untions.

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 Rast 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 Chattausoga to Bristol, which road was used by the armies of the so-called Confederacy for the daily transportation of troops, munitions of war, supplied cir.; that be, with others, actually burned and de-stroyed an important bridge on said road, and shot and captured divers Confederate soldiers then guarding said bridge.
These are the sets, it is alleged, of a secret, ac-

tive, and public enemy of the so-called Confederate States, and the question is, whether the court that tried him is such a tribunal as is recognized by the laws of war. To establish this proposition it is un-necessary to do more at this time than to roter to this opinion of Attorney General Speed in answer to the question of President Johnson—whether the persons charged with the offense of assassirating the President could be tried by a military tribunal, or whother they must be tried before a civil court ? The whole scope of that opinion goes to show, not only that there must be military tribunals to decide questions arising in time of war between belligerents, who are open and active enemies, but also to determine the late of those who are active but secret participants in the hostilities. He says :"The commander of an army in time of war has the
same power to organize military tribunals and exeouts their judgments that he has to set his squad-rons in the field and fight battles. His authority in such cases is from the law and usage of war."— He also says that a bushwhacker, a jayhawker, a bandit, a war rebel, an assassin, being public enemies, may be tried, condemned, and executed as offenders against the laws of war. The soldier that would fail to try a spy or bandit, after his capture (and I suppose any other secret, active enemy), would be as derelict in duty as it he were to capture. He is as much bound to try and exe-cuts, if guilty, as he is to arrest. The same law which makes it his duty to pursue and kill or capture makes it his duty to try according to the usages of war. The Judge of a civil court is not more strongly bound, under the Constitution and the law, to try a criminal than is the military to try an offender against the laws of war. These are among the rights which accrue to beligerents from the laws of war, and of course any belogerest has a right to exercise them. The petrtioner insists that they were inwitally exercised by the court

ade against Haun, as the same are stated in the petition, were true, he would be an offender against d faws of war, and might properly be tried by mi ltary court. A d that the members of such court, if they acted in good faith even though they may have given a wrong judgment, cannot be held responsible upon an indictment, or other proceed-

decur it unnecessary now to express an opinion.— But it is certain that the Government of the United States never so neknowledged it, nor did any other power of which I am aware, Such acknowledge ment. I presume, would be ensential to make it a defacts government within the meaning of the law

The only remaining question to be considered in that made upon the power of a Federal judge to issue a writ of habote corpus in this case. This is a question of paramount importance, and so for as the application is concerned, must absorb all others which have preceded it. It is one, however, which

has been so definitely and absolutely notifed, that it would seem impossible that there could now be any conflict of opinion upon it.

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 is the case on this perition, to issue the writ of Aubers corpus, he must consult the acts of Congress to ascertain what his

power and jurisdiction are upon that subject.

The fourteenth action of the Judiciary Act of seventeen handred and eighty-noise, provides, "That the Courts of the United States shall have power to issue write of ecerc facion, habens corpus, and all other writs not specially provided for by statistic, which may be necessary for the exercise of their respective jurisdoctions and agreeable to the principles and usages of law. And that either of the Justices of the Supreme Court, as well as Judges of the District Courts, shall have power to grant writs of habeas corpus for the purpose of an logary into the cause of commitment: Provided, that write of habeas corpus shall in no case extend to principers in juli, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before nome Court of the same, or are necessary to be brought toto Court to testify."

This new is so pinks that it cannot be misappreheaded, and it azimits of no comment. and all other write not specially provided for by

headed, and it numits of no comment, The pentiuner, according to his own showing, is

a prisoner in jail, upon thech argent marders protected against him by Indichment in the State Lourt, and he is not "in susuedy under or by color of the number of the United States, or committed for trial before any court of the same," I have therefore, so power or juri-diction under the law, to great the prajer of the positioner in this case, and consequently the writ must be de-nied the the case of perior Dorr, seven Howard, one bundled and lour, or part Cabrera, one Wasin.

utterly forbids any such apprehension.

Courts have been instituted for the best and woment purposes. It is their peculiar provines to administer the laws without partiality or prejudice, and when thus prospeted 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. The sumed the courts of the country are actuated. The through which a court should see-and insanuch as the law makes no distinction in its application amongst men, and consequently tolerates no bias in its administration, it should be the highest ambition of a just and upright Judge to discharge the duties incumbent upon him without bias, and in total disregard of extraneous influences, come from whatever source they may. This being the spirit which should, and doubtless does, animate the courts in their administration of the laws, it would not only be uncourteous, but exceedingly unbecom-ing in me to indulge even a suspicion that any State court would not be actuated by it in the dis-charge of its judicial functions. But if it were even made manifest to me that there existed, from any cause whatever, grounds enflicient to distruct the State triousnas, that distruct could add nothing to the jorisdiction with which I am invested as a United States Judge, or in any degree enlarge the powers which the law harconferred upon me.

CONNALLY F. TRIGG.

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war being a part of the laws of nations, and cones queatly are laws of the United States, the cours of the respective States are as much bound to respect them as are the courts of the United States.

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