THE SENTINEL.

WM. E. PELL, SEATON GALES, Editors.

Thursday Evening, Jan. 17, 1867.

"The history of the European world furnishes even still more striking examples of the impolicy of mere force or power, and of the policy of kindness and conciliation. The Netherlands, in the sixteenth century, were lost to Phillip II. by the ferocious conduct of Alva; and in that land, under him, the historian tells us that "the axe, the stake, the rack, the dungeon knew no rest." His boast was that he had executed eighteen thousand six hundred persons. But these executions, his council of blood, his devastation of the land, ended, as in the judgment of God such conduct has ever ended, in defeat. The invader was driven off, and the country lost to the inhuman Phillip.

Poland, because of a policy nearly as inhuman, is now but an expense to Russia. She dreads insurrection; she has vainly endeavored to prevent or guard against them by force. Kindness, conciliation, mercy, would long since have achieved there what they haver never failed to achieve everywhere.

Austria, because of a like stern policy, has lost her German possessions, and is soon, unless her treatment of Hungary is changed, to lose that country, which might be made the source of wealth and power.

All these examples should lead us to a policy of kindness, to a proclamation of peace and amnesty, to a cheerful reception into our political homestead of the brethren who, having strayed from it, are anxious to return. This done—and the sooner it is done the better—the desolations the war has caused will be removed, and the power of the country be greatly enhanced, its prosperity enlarged, and its ability to meet the expenses the war has entailed upon us placed beyond all doubt; its credit consequently be put upon as high if not a higher footing than that of any other nation in the world, and we be again what God, I trust, designs us to be, brethren forever, having but one flag, "the glorious old stars and stripes," to fight for."

The foregoing eloquently-expressed and noble sentiments constitute the concluding portion of the Hon. Reverdy Johnson's speech, in the United States Senate, a few days ago, upon the repeal of the thirteenth section of the act of July 17, 1862, the object of which repeal was to affect the power of the President to grant a general amnesty. We should be gratified, if we had the space, to publish the greater part, or the whole, of this admirable and statesman-like effort,—worthy, as it is, of the Senate in its palmy days, before the present era of small politicians. His entire argument demonstrates conclusively that the only power of Congress over the remission of offences is to repeal the statute creating them, not to pardon offenders. That is vested in the Executive alone by the Constitution. It is within his province to pardon the single offender, either before or after conviction, or to make a general amnesty proclamation. Of the last the courts [illegible] may require the certificate of the State Department. The section repealed, therefore, neither qualifies nor limits the power belonging to the President by the very terms of the Constitution. This has been fully decided by the recent decision of the Supreme Court in the matter of the test-oath. "This power of the President (say the Court) *is not subject to legislative control*."

We would that the patriotic aspirations of the eminent Senator could find an echo in the hearts of the dominant party and of the whole people of the North. The historical illustrations which he cites are pregnant with warning and point unerringly to the consequences of a relentless and vindictive policy towards our unfortunate section. They are already beginning to develope themselves, and it would be unnatural and anomalous if such were not the case. Nations have not yet attained that degree of *patience* and *perfection* that would return confidence and good-will for continued distrust and persistent oppression. They probably never will, so long as human nature and political society are constituted as they are.

It is, perhaps, useless to repeat what we have frequently had occasion to say; but we affirm what we know, when we declare, that the entire people of the South,—always excepting the "Southern Loyalists"—are earnestly and sincerely anxious for the resumption of all their relations to the government upon the basis of the Constitution, interpreted in its true letter and spirit. They desire harmonious and friendly intercourse with the people of the North.—They are willing to bear and to forbear. They are solicitous to lay aside the acerbities of the past, and, acknowledging that each side has much to forget and forgive, to bury all bitterness and clasp hands over the common grave.—These results would long since have been accomplished, had the opportunity been afforded, and a united people would have been on the highway of a career unparalleled in the history of nations. These things may yet be, if Christian and conciliatory counsels prevail. If madness continues to rule the hour and sway the hearts and conduct of men, "Ichabod" may be written on the walls. There is no abyss of ruin deeper than that into which the whole country will be plunged.

Public School Fund.

We omitted, on yesterday, to call the attention of our readers to the report of the Literary Board, in reference to the School Fund. It will be seen that the condition of that Fund has been rendered totally inadequate, by the exigencies of the war, to accomplish anything by its agency. The repudiation of the State war debt, and the ruin of the Banks of the State, a fate which all the Southern Banks have met, render the Board unable to make and appropriations for the revival of the Schools. What may be done in future, by the sale of Swamp Lands and the prosperity of the Rail Roads, cannot now avail anything. We believe the true policy of the Legislature is to inaugurate some plan by which the fund may be revived and augmented. In the meantime, the towns, neighborhoods or counties, which can revive the schools by their own efforts, should be permitted and encouraged to do so, at the earliest period.

Emigration.

Since the close of the war, a number of persons have emigrated from this State. The exodus has been greater, perhaps, from the counties of Randolph, Davidson, Guilford, and Forsyth, than from the rest of the State—Most of these are laboring people, whose services were much wanted at home, and whose material interests, we are satisfied, would have been more certainly promoted here, than whither they have gone. The emigrants from those counties have mostly gone to Indiana and Illinois, induced by the representations of the abundance and productiveness of the lands.—Several persons from this section were induced to go, but most of them have returned, and, so far as we can learn, all of them are dissatisfied with the prospects of poor men in that section.

Those who have gone to the West and South West have no better prospect of success. In conversation with an intelligent gentleman, whose acquaintance in the South West is very extensive, and who has recently spent several months in that section, we learned, a few days ago, that the pecuniary condition of the people is universally bad, and that the last crop was nearly an entire failure, rendering the prospect exceedingly gloomy. He gives it as his opinion, that no portion of the South is in as hopeful a condition as the Old North State—that the signs of life and recuperation here are vastly greater than in any portion he visited. We learn that this opinion is corroborated by Northern merchants and drummers, who say that our North Carolina merchants have been more prompt than those of any part of the South and that our people are in better spirits.

From the above facts, we conclude that many of our up-country planters have acted wisely, who, instead of going North or Southwest, have removed to our Eastern Counties and bought lands. Quite a number have gone, and are still going, we learn, for the purpose of making cotton. The Wilson *Carolinian* speaks of a number of the citizens of the upper counties who have settled in that region, attracted by the good lands. That paper very properly suggests to the old settlers to receive them kindly and contribute, as far as possible, to their comfort and assistance.

The lands of our Eastern counties would sustain, handsomely, ten times their population, and the true policy of the landholders, in that section, is to sell such portions of their lands as they can dispose of, to actual settlers. The policy of holding up their lands from market, to a future period, for a higher price, is the most sure method of turning the tide of emigration to other sections. Sell a portion, in order to create a demand for the rest, is the true policy.

"President Swain asks, in his "Third Letter to Gov. Perry on Political Subjects," how the [illegible] 100,000 voters in this State? The answer is easy. It can be done by the test oath in Mr. Stevens' bill, or by some other test-oath. The instigators and leaders of the rebellion, and such latter-day war saints as Governors Swain and Graham, would not think for a moment of "degrading" themselves by taking this test-oath."—*Standard*.

President Swain's last letter seems to have made the Ex. P. G. writhe and twinge. Few are in possession of more facts, which are too stubborn for the Ex. P. G. to bear, were he disposed to bring them out, than President Swain. But the question he puts to Gov. Perry is a pertinent one? Under any scheme for the reconstruction, or rather destruction, of the Southern States, which Congress might devise, it would be exceedingly difficult, nay *impossible*, to ascertain the *true* character of the 100,000 voters in this State, no matter what kind of test or plan it might adopt. No single man in this State knows more of the difficulty, than Mr. Holden himself. While Provisional Governor he declared our people were loyal. He says he took the utmost pains to prevent any but loyal men from voting, &c. He bore testimony to the loyalty of the voters himself, and declared that none but pardoned men were loyal; and yet this same Provisional Governor caused official announcement to be made, that over 500 men were *pardoned* and were allowed to vote, and many of them did vote, none of whom were *then* pardoned. Now, in a State where a Provisional Governor would do a thing of that kind, is there no difficulty? Pshaw! Moreover, this same Ex. P. G. declared they were loyal and true, and did not change his mind, until he found they did not vote for him.

"Such latter-day war saints as Govs. Swain and Graham would not think for one moment of degrading themselves by taking this test-oath." Certainly not. But few men, with pretensions to decency, would be found willing to take it, if they could consistently do so. They could not put themselves with such a crowd.

Seriously, we ask Messrs. Holden and Pool, if either of them would dare take the oath inserted in the Holden-Pool bill or Mr. Stevens' bill?

The Test Oath—Supreme Court.

The recent decision, delivered by Judge Field in the Supreme Court of the United States, to our mind not only settles, definitely, the unconstitutionality of the test oath in one case, but in all cases. The Congress which passed it, doubtless so regarded it at the time, but designed it as a war measure, and rather as a preventive, than as a punishment for crimes.

Its principle, however, is punishment—but the genius of the American Constitution and laws suppose and treats every man as innocent until he is duly tried and proven guilty. Further, it forbids, as adverse to liberty, the passage of a law by Congress, which punishes crime committed before its passage, by the prohibition of *ex post facto* laws or bills of attainder.

Hence, we conclude that this decision not only declares the test oath, as passed, unconstitutional, but, in advance, settles the unconstitutionality of those bills now before Congress, which require a *test oath*. In this respect the oath framed by Holden, Pool & Co., is as untenable as the oath demanded by Mr. Ashley, or the celebrated test oath.

IMPORTANT DECISION.

The Test-oath Pronounced Unconstitutional by the Supreme Court.

The United States Supreme Court, when their opinion in the Indiana military commission cases was announced, prohibited reports from being made for publication, but the rule has been relaxed on condition that the publishers state that the reports are from reporters' notes, and not from the official manuscripts of the judges. The following report is from the short-hand notes of Mr. D. F. Murphy, one of the corps of the Reporter, and for many years a well-known reporter of the United States Senate:

Mr. Justice Field (having delivered the opinion of the court in the case of Cummings vs. The State of Missouri) proceeded to say:

I am also instructed by the court to deliver its opinion in the matter of the petition of A. H. Garland.

On the second of July, 1862, Congress passed an act prescribing an oath to be taken by every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval departments of the public service, except the President of the United States, before entering upon the duties of his office, and before being entitled to its salary or other emoluments. On the 24th of January, 1865, Congress passed a supplementary act, extending its provisions so as to embrace attorneys and counsellors of the courts of the United States, which provides that after its passage no person shall be admitted as an attorney or counsellor to the bar of the Supreme Court, and after the 4th of March, 1865, to the bar of any circuit or district court of the United States, or of the Court of Claims, or be allowed to appear and be heard by virtue of any previous admission or any special power of attorney, unless he shall have first taken and subscribed the oath prescribed in the act of July 2, 1862. The act also provides that the oath shall be preserved among the files of the court; and if any person take it falsely he shall be guilty of perjury, and, upon conviction, shall be subject to the pains and penalties of that offence.

At the December term of 1860, the petitioner was admitted as an attorney and counsellor of this court, and took and subscribed the oath then required. By the second rule as it then existed, it was only requisite to the admission of attorneys and counsellors of this court that they should have been such officers for the three previous years in the highest courts of the States to which they respectively belonged, and that their private and professional character should appear to be fair. In March, 1865, this rule was changed by the addition of a clause requiring the administration of the oath in conformity with the act of Congress.

In May, 1861, the State of Arkansas, of which the petitioner was a citizen, passed an ordinance of secession which purported to withdraw the State from the Union, and afterwards, in the same year, by another ordinance, attached herself to the so-called Confederate States, and by act of the Congress of that Confederacy, she was received as one of its members. The petitioner followed the State and was one of her representatives, first in the lower House, and afterwards in the Senate of the Congress of that Confederacy, and was a member of the Senate at the time of the surrender of the Confederate forces to the armies of the United States.

In July, 1865, he received from the President of the United States a full pardon for all offences committed by him by participation, direct or implied, in the rebellion. He now produces this pardon, and asks permission to continue to practise as an attorney and counsellor of the court, without taking the oath required by the act of January 24, 1865, and the rule of this court, which he is unable to take by reason of the offices he held under the Confederate Government.

He rests his application principally upon two grounds: First, that the act of January 24, 1865, so far as it affects his status in the court, is unconstitutional, and void; second, that if the act be constitutional he is released from compliance with its provisions by the pardon of the President. The oath prescribed by the act is as follows: 1. That the deponent has never voluntarily borne arms against the United States since he has been a citizen thereof. 2. That he has not voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto. 3. That he has never sought, accepted, or attempted to exercise the functions of any office whatsoever under any authority or pretended authority in hostility to the United States. 4. That he has not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto.—5. That he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same.

This last clause is promissory only, and requires no consideration. The questions presented for our determination arise from the other clauses. These all relate to past acts. Some of these acts constituted, when they were committed, offences against the criminal laws of the country, and some of them may or may not have been offences, according to the circumstances under which they were committed and the motives of the parties. The first clause covers one form of the crime of treason, and the affiant must declare that he has not been guilty of this crime, not only during the war of rebellion, but during any period of his life since he has been a citizen. The second clause goes beyond the limits of treason, and embraces not only the giving of aid and encouragement of a treasonable nature to a public enemy, but also the giving of assistance of any kind to persons engaged in armed hostility to the United States. The third clause applies to the seeking, acceptance, or exercise, not only of offices created for the purpose of more effectually carrying on hostilities, but also of any of those offices which are required in every community, whether in peace or war, for the administration of justice and the preservation of order. The fourth clause not only includes those who gave a cordial and active support to the hostile government, but also those who yielded a reluctant obedience to the existing order established without their co-operation.

The statute is directed against parties who have offended in any of the particulars embraced by these clauses, and its object is to exclude them from the profession of the law, or at least from its practice in the courts of the United States. As the oath prescribed cannot be taken by these parties, the act as against them operates as a legislative decree of perpetual exclusion. An exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as a punishment for such conduct. The exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate, and, instead of lessening, increases its objectionable character. All enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional inhibition against the passage of bills of attainder, under which general designation they are included. In the exclusion which the statute adjudges, it imposes a punishment for some of the acts specified, which were not punishable, or may not have been punishable, at the time they were committed; and for all the acts it adds a new punishment to that then prescribed, and it is thus brought within the fourth inhibition of the Constitution against the passage of an *ex post facto* law.

In the case of Cummings vs. The State of Missouri, just decided, we had occasion to consider at length the meaning of a bill of attainder and an *ex post facto* law in the clause of the Constitution forbidding their passage by the States, and it is unnecessary to repeat here what we there said. A like prohibition is contained in the Constitution against enactments of this kind by Congress, and the argument presented in that case against certain clauses of the constitution of Missouri is equally applicable to the act of Congress under consideration in this case.

The profession of an attorney and counsellor is not like an office created by an act of Congress, which depends for its continuance, its powers, and its emoluments on the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counsellors are not officers of the United States. They are not elected or appointed in the manner prescribed by the Constitution for the election or appointment of such officers. They are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair character. Since the statute of 4th. Henry IV., it has been the practice in England, and it has always been the practice in this country, to obtain this evidence by an examination of the parties. In this court, the fact of the admission of such officers in the highest court of the States to which they respectively belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct.

They hold their office during good behavior, and can only be deprived of it for misconduct, ascertained and declared by the judgment of the court, after opportunity to be heard has been afforded. Their admission and their exclusion are not the exercise of a mere ministerial power. The court is not in this respect the register of the edicts of any other body. It is the exercise of judicial power, and has been so held in numerous cases. It was so held by the Court of Appeals of New York in the matter of the application of Cooper for admission. "Attorneys and counsellors," said that court, "are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature, and hence their appointment may, with propriety, be entrusted to the courts; and the latter, in performing this duty, may very justly be considered as engaged in the exercise of their appropriate judicial functions." In *ex parte* Secomb, a *mandamus* to the Supreme Court of the Territory of Minnesota to vacate an order removing an attorney and counsellor was denied by this court on the ground that the removal was a judicial act.

"We are not aware of any case," said the court, "where a *mandamus* was issued to an inferior tribunal commanding it to reverse or annul its decision, where the decision was in its nature a judicial act, and within the scope of its jurisdiction and discretion." And in the same case the court observed that "it has been well settled by the rules and practice of common-law courts, that it rests exclusively with the courts to determine who is qualified to become one of its officers as an attorney and counsellor, and for what causes he ought to be removed." The attorney and counsellor, being by the solemn judicial act of the court clothed with his office, does not hold it as a matter of grace and favor; the right which it confers upon him to appear for suitors and to argue causes, is something more than a mere indulgence, revokable at the pleasure of the court or at the command of the Legislature; it is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency. The Legislature may undoubtedly prescribe qualifications for the office, with which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life; but to constitute a qualification, the condition or thing prescribed must be attainable, in theory at least, by every one. That which from the nature of things, or the past condition or conduct of the party, cannot be attained by every citizen, does not fall within the definition of the term. To all those by whom it is unattainable it is a disqualification which operates as a perpetual bar to the office. The question in this case is not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment against the prohibition of the Constitution. That this result cannot be effected indirectly by a State under the form of creating qualifications, we have held in the case of Cummings vs. The State of Missouri, and the reasoning upon which that conclusion was reached applies equally to similar action on the part of Congress.

These views are further strengthened by a consideration of the effect of the pardon produced by the petitioner and the nature of the pardoning power of the President. The Constitution provides that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." The power thus conferred is unlimited, with the exception stated; it extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon nor exclude from its exercise any class of offenders.—The benign prerogative of mercy reposed in him cannot be fettered by any legislative restriction. Such being the case, the inquiry arises as to the effect and operation of a pardon. On this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender, and when the pardon is full it releases the punishment and blots out the existence of his guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching. If granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights. It makes him as it were a new man, and gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment. The pardon produced by the petitioner is a full pardon for all offences by him committed arising from participation direct or implied in the rebellion, and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offence committed by his participation in the rebellion. So far as that offence is concerned he is thus placed beyond the reach of punishment of any kind; but to exclude him by reason of that offence from continuing in the enjoyment of previously acquired right is to enforce a punishment for that offence notwithstanding the pardon. If such exclusion can be effected by the execution of an expurgatory oath covering the offence, the pardon may be avoided, and that accomplished indirectly which cannot be reached by direct legislation. It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of Executive clemency.

From the petitioner, therefore, the oath required by the act of January 24, 1865, cannot be exacted, even were that act not subject to any other objection than the one just stated. It follows, from the views expressed, that the prayer of the petitioner must be granted.

The case of R. H. Marr is similar in its main features to that of the petitioner, and his must be granted; and the amendment to the second rule of the court, which requires the oath prescribed by the act of January 24, 1865, to be taken by attorneys and counsellors, having been unadvisedly adopted, must be rescinded, and it is so ordered."

ELEVEN PETITIONS from North Carolina *negroes* were yesterday presented to Congress, praying the subversion of our State government. This wickedness and folly is the result of *white* advice, to gratify spleen and hate against its own race and color. The negro is but the poor deluded dupe.

MR. SOMEBODY, in Congress, on yesterday, denounced the Southern State Governments as *piratical*. Piracy is defined, by Webster, as the "act or crime of robbing on the *high seas*." Probably the speaker was "*half seas over*," which accounts for the misapplication of the term.

The most remarkable specimen of eloquence that we have noticed lately is embodied in the address of Mr. Barker, the newly elected Speaker of the Maine Legislature, delivered on taking the chair. His remarks were prodigal of alliterations. In referring to the contest between the President and Congress, he speaks of it as a dead-lock, when "veto voided vote, vote vanquished veto." In describing the effect on the Democracy of the Union victory in Maine, in September last, he said: "The weird wizards that had bubbled into being, trilling their glees, and tripping their dances, and muttering their incantations, and paltering with the senses, at the Philadelphia cauldron scene, had vanished into air, leaving their spectre word of promise to the ear to be most fearfully broken to the (sinborn) hope."

WILMINGTON, N. C., Jan. 11.—Letters of administration were granted by proper authority on Saturday to Richard Reed, a colored man, who made application to administer on the estate of John Nixon, colored. This is probably the first instance of the kind on record in the South.