NEW-ORLEANS BEE.

BY J. BAYOU,
PRINTED TO THE STATE AND TO THE TOWN MUNICIPALITY

NEW-ORLEANS:
TUESDAY MORNING, DEC. 25, 1838.

To-day being Christmas, no paper will be issued from the office of the Bee on Wednesday.

RESUMPTION OF SPECIE PAYMENTS.

A few individuals supply this assertion that the banks should anticipate the day fixed for the resumption of cash payments, and should voluntarily return to a sound currency a week prior to the period stipulated. We, who have traced the important question of resumption from first to last, with more than ordinary attention, feel no surprise whatever at this measure. Proposed as it comes as the banks have been for many months, we are bound to believe that they were actuated by reasons advantageous to the community at large in postponing for a while this salutary determination.

The effect of this most auspicious resolution has been to produce a powerful sensation on all classes of society. If we rehearsed in yesterday's paper from mentioning the agreeable news, it was because we felt assured that as much confidence was reposed in their actors, as in the specie which might be obtained in exchange for them.

To-day, however, the subject wears a different aspect. We have to communicate this momentous intelligence not simply to Louisiana, but to the whole Union. We wish to state, that if the banks of New Orleans were constrained to suspend specie payments, they have now pursued the course of honor, justice and good faith in resuming.

In whatever point of view this measure be regarded, its consequences cannot fail to be salutary. Confidence being often re-established, commerce, lately paralyzed will soon recover its former activity, and we shall see our merchants relieved entirely from the difficulties of the last two years, and recompensed for the deplorable losses they have sustained. We have never doubted that the New Orleans banks, though embarrassed, were in an entirely sound and solvent condition, and we have invariably believed that they would meet their engagements fully and fairly—this in common with many of our citizens we sought to eradicate abuses which had obtained deep root in some of these institutions. We have been among the first to recognise and admit the utility of banks; we have more than once exposed their advantages—while, at the same time, we acknowledged that banks improperly conducted, and subjected to radical vices in their administration, exerted a detrimental instead of beneficial influence.

The lessons we have all received during the continuance of this eventful financial crisis, will serve us for the future as a wholesome example; if we have suffered misfortune, we have acquired experience. The crisis has caused the most solid fortunes to totter, and has raised the hopes of the wealthy and the proud. The day, however, has at length arrived when we are bound to forget the past, not to recommence the same deceptive and vicious course, but to begin a new and better career. The country was in danger, but is now safe. Let us hope that our citizens will sustain the measure adopted by the bankers one which must contribute to their prosperity as entirely as it does to that of these institutions.

It is not out of place to repeat here that the banks are bound to come to the relief of the 1st and 3rd municipalities. The resumption of specie payments is a blow at these municipalities, which may not only greatly retard their progress, but may occasion great losses to the public. Already these notes had begun slightly to depreciate in value; and we must admit that when we hear it announced at public sales, that the notes of the 1st and 3rd municipalities will not be received in payment of articles purchased, that distrust will be materially augmented. These corporations are extremely rich, and however trifling may be the aid extended to them, they will ultimately surmount their present difficulties.

The demand for specie made on the banks yesterday were so trifling, as to render an account of the sums paid wholly unnecessary.

PUBLIC EDUCATION.

If there be a truth (says J. B. Say) which is so generally admitted, that it appears trivial, it is, that education makes man what they are. If two children, one born in Turkey, of Turkish parents, the other in France, of French parents, were both transferred at the age of one year, the former to France, the latter to Turkey—the Turkish child to be educated in our colleges, the French child by the mufti—who can doubt that the French boy would become an excellent Mussulman, and the Turk a good Christian? The young Turk would regard Shakespeare as an ambitious scoundrel; he would cultivate literature, would pay his court to the ladies, and respect the rights of his equals; while the Frenchman, brought up by the Mufti, would treat the Christians with sovereign contempt as idolaters, would lock up his women, and make his five ablutions per day. It is evident from this hypothesis, which we take to be indisputable that education forms that general mode of thinking and system of habits, from which spring the opinions and actions of men. Thus far the French philosopher and his theory is correct. The character of a nation is formed in her schools and colleges: the ability and patriotism of her statesmen, the devotion and courage of her soldiers, are all derived from the same source and unhappily we are compelled to acknowledge that the ignorance, the pride and selfishness that degrade too many of our race, are traceable to the evil example and loose maxims of those to whom the care of their early youth is confided. If there be a case in which government ought to interfere in private affairs, probably it is in offering inducements and opportunities to parents to give a proper education to their children. Coercion is resorted to in some parts of Europe to enforce the performance of this duty; that is, the schools and colleges are all endowed and directed by the government, and parents are heavily mulcted who refuse or neglect to give their children the advantages of the instruction provided for them. Such, we believe, is the Prussian system. A mode, somewhat similar, is practised in some of the northern states of our union, Massachusetts for example, where schools are provided at the public expense and a general plan of instruction is prescribed. A man is not compelled to send his children to these seminaries in preference to private institutions; but every one, we believe, is compelled by a pecuniary penalty to cause the elements of learning to be bestowed upon his children, as the system of public schools deprives every one of the plea of poverty. This is better than the system of Prussia where, whatever your private opinions in politics and religion may be; and whatever your ideas of the fitness of a particular mode of instruction, you are forced to educate your children agreeably to the regulations prescribed by the government. These are excellent no doubt, so far as they regard what is called learning. But every one may deem another course of instruction better in itself and fitter for the peculiar disposition and talents of his child.

The American system of public education is not so rigid as this—and yet it must, from the nature of things, have great influence in giving a direction to the course of instruction generally followed both by those who are immediately subject to it, and indirectly upon those who are not governed by its regulations. Devised and regulated through all its details by men of intelligence and patriotism, it is adapted to the circumstances of the population, and it receives such changes and improvements as time and experience may render necessary. At least it is uniform throughout the state in which it is adopted, and from this circumstance alone, its influence in forming the opinions and habits of the people, must be very great, however numerous the private institutions may be and however different their plans of instruction.

Perhaps there is no defect in the domestic policy of Louisiana so apparent and so deplorable, as the want of adequate means of conveying a solid and useful education to the rising generation. This is not owing to niggardly legislation, or to apathy in the public mind in relation to this most vital subject. Immense sums have been appropriated in the course of the last twenty five years to the formation of schools and the endowment of colleges. Perhaps no state in the confederacy has expended half as much money on this object in proportion to her population as ours has done. And yet every one will admit that no adequate benefits and advantages have been derived from the generosity of the general assembly. It is an indisputable truth that the son of a poor man in Louisiana has but a slight chance of obtaining a liberal education. The acts of assembly have made provision, it is true, for receiving gratuitously in some of the colleges and academies, supported by the funds of the state, a limited number of poor scholars. But this provision bears no kind of proportion to the wants of a large class of our population. The number, thus gratuitously educated, is comparatively insignificant, when we regard the vast number of young men who are growing up in ignorance, who are thus doomed to pass the remainder of their lives as an inferior caste.

It is a well digested system of public schools and an uniform plan of instruction that form the great *desideratum* of our community—a system that shall spread over the whole state and be fixed in the frontier parishes as well as in heart of New Orleans—a place of instruction that shall leave nothing to the caprice and incapacity of teachers employed by the state. This is the only effectual mode of directing the resources of the community to this most important of all public objects—this is the only way of striking at the root of an evil that is so much complained of—nay, under the present circumstances of the people, it affords a sure and unfailing opportunity to the youth of Louisiana of becoming intelligent and useful citizens, and without something of the kind they will be unable to keep pace with the progress making in other states and countries in science and in acquaintance with those parts of knowledge which give respectability and dignity to man.

ST. CHARLES THEATRE.

The Flying Dutchman was repeated on Sunday evening. The effect produced by the *Phantom Ship* had an electrical power upon the audience, and indeed much pains seems to have been bestowed upon the general arrangement of the piece. As doubtless considerable expense was attended the production of this drama, we trust that a full house, will this evening greet its third representation.

The steamboat *Swan*, arrived yesterday, reports having seen a ship on fire in Mobile Bay, burned nearly to the water's edge. She had a figure head and painted poop—the name unknown. She was supposed to have been loaded with cotton.

Lately—On the 17th ult. while the Philip Hone (lately arrived at New York from Valparaiso) was in lat. 8° 40, long. 4, 6, a very severe shock of an earthquake was felt, which lasted fourteen minutes. The bows bought by the Hone-has been extinguished by heavy outbreak.

The first officer of the ship Hero of Salem, was murdered by one of the seamen at Valparaiso, on the 26th January last. The murderer was apprehended by the public authorities.

THE CLIMATE OF LOUISIANA.

We certainly live under the most singular and anomalous climate in the world. Those who stability in the seasons, are frustrated in the expectation of regular causes which effect atmospheric transitions. Our climate is as capricious in Jannary as in April, as in May as in December; the changes daily, monthly and under calculable rain and sunshine. Rainbows are with us random experiments—they may speak to the day of the week and month, and the usual conclusions for fearing and doubting; but their variegated colors are sometimes of temperature—their declarations duplicate, such a day will be warm or cold, moist or dry, sultry or stormy, are utterly fickle and not to be depended upon. The past with us is no criterion for the future, and the oldest and most experienced residents of our city agree that our climate is a wonderously and must not be judged by the usual standards of meteorological phenomena.

The distinguishing peculiarity in our climate is the abruptness of its changes. We have seen the four seasons typified in as many days. The balmy breath and mild and equable temperature of spring, the close and sultry heats of summer, the damp and dreary weather that distinguishes the latter end of autumn, and the horn and nipping winds of winter have all been felt within the briefest possible period. An aged and observing physician of New Orleans informs us that upon one occasion some fifteen years ago, the inhabitants passed their shutters with open doors, and extinguished fires, and that many of them doffed their winter habiliments, substituting linskin and drilling for flannel and woollen. We have no doubt of the fact, and our limited experience tends entirely to confirm it. The extreme rapidity with which these alternations occur is not less astonishing—in one night the mercury in the thermometer has been known to fall 30, 50 and even 40 degrees. About four years ago, if we recollect aright, the mercury descended within twenty-four hours from fifty to seventeen degrees—the coldest weather that had been experienced for a great many successive winters.

It is these sudden transitions which render our climate, especially in winter, so trying to delicate constitutions and to strangers, and hence the indispensable necessity of wearing warm apparel, and of keeping every part of the body equally protected, throughout the cold seasons. This, to be sure, is sometimes extensively disagreeable, particularly when by the same uncomfortable variation, the weather from being quite sharp and severe, suddenly becomes uncomfortably warm. But those who are anxious to preserve their health unimpaired, would do well to sacrifice a little comfort and convenience to the attainment of this most important object. A great proportion of the diseases of Louisiana—of course excepting epidemics—may be traced to the operation of these rapid changes upon temperaments unaccustomed to our peculiar climate.

There is a curious circumstance connected with the winters of Louisiana—viz: that they progressively increase in severity. Twenty-five or thirty years ago, we had comparatively speaking, little winter. A norther would visit us occasionally with its keen blasts freighted with sleet, reducing the temperature most sensibly and making the city for a few days wear the aspect of winter in higher latitudes.—These visitations were, however, few and far between and for the last past, winter was what it is, what spring is to people of the northern and eastern states—sometimes frosty and biting but generally temperate and genial. This state of things has been slowly but sensibly giving way to a more decided manifestation of the seasons, though our climate still continues proteau enough to confound and put to naught to prognostications of the would-be seers and prophets.

Prior to the intense cold that characterized the winter of the 1835, cold weather had so little rigor about it, that the products of tropical countries were cultivated to some extent in Louisiana, among them the orange was conspicuous, and experts of this fruit to a considerable amount were not unfrequent. But the frost of that memorable season did not spare a single orange tree in Louisiana, and as a consequence, its cultivation as an article of commerce has been since totally abandoned.

These remarks have been occasioned by the extraordinary change that has taken place within the last three days. We inserted a paragraph in Friday's paper expressive of our gratification at the mild and delicious weather—during Saturday night a north western wind swept across our city, and in the morning, spring, as if by the potent agency of a magician's wand, was converted into cold and cheerless winter.

ANNE BOLEYN.

We made some allusions in yesterday's paper to the now tragedy of "Anne Boleyn," now in preparation. The play commences with a declaration of love from "Harry Percy," the son of the Earl of Northumberland, and a descendant of the same house and name with the "Hotspur of the north." King Harry, on his way to the tournament, perceives their intimacy, and is resolved on destroying it, without having any distinct notion in what manner he will attach Ann to himself. As usual in all such cases he has recourse to "Woolsey," who advises the king, and promises to use his authority to check all further intercourse. Percy being a resident of Woolsey's palace, the cardinal deems this an easy task. Contrary to his opinion, the young lord justifies his choice, and refuses to renounce his love. Woolsey then has recourse to the father of Percy, who, in his interview succeeds no better.

This scene is a fine contrast between the old feudal time, when parental authority exacted obedience at the expense of affection, and the present day, when "the schoolmaster has been abroad," and our republican age, when children have at least the right of choice.

Harsh measures are made use of, and Percy is obliged to marry a woman he never loved. A scene of misery ensues. Ann is withdrawn by the direction of the tyrant Harry, who having appealed to her to become his "mistress" in vain, she finally consents to become his wife, when convinced that Percy has broken his vows of constancy.

This attachment subsists not long, and Ann surprises her king in an interview with Jane Seymour, which convinces her "Prosperity's departed." The words which ensued when next the king and queen met, decided her fate. She is condemned to be beheaded. Thus died the mother of Elizabeth. Ann inherited all the fire of her daughter, and history shows she attacked Woolsey with his own hypocrisy, for fall soon follows her. This character is preserved in the drama, for while she affects to believe the cardinal's professions of sincerity for her advancement, she tells the king her real opinion, and rejoices in his fall. The play is founded on Miss Benger's Memoirs of Anne Boleyn, and is replete with poetry, interest and dramatic effect.

THE BLACK ART.—Among the most innocent and interesting of the amusements offered for the holidays are the slight-of-hand performances of Signor Blitz, the conjurer, at Plough's museum, which are given daily at noon, and at four and seven o'clock P.M. The signor is inimitable in his art, and his facetious and humorous manner renders his exhibitions highly amusing. A fine collection of paintings, and many rare specimens in the mechanic arts, and in natural productions, are likewise to be seen at the museum.

From the Natchitoches Herald, Dec. 16.

INVASION OF TEXAS.—It was hardly to be expected that we should ever be called on to record that our neighbors on the Sabine had invaded this country, yet strange as it may seem, it is nevertheless true. A courier was despatched about a week ago from Shreveport to Fort Jesup, with the astonishing intelligence that that town was filled with an armed force from Texas, amounting to about one hundred men, under the command of General Rusk, and that the lives of some of its citizens had been threatened by the invaders. On the receipt of this intelligence, Col. Many, with all the troops under his command, taking with him one field piece, marched to succour the citizens of Shreveport. The result of his expedition is not yet known, though since he left fort Jesup we have received a letter sent from Shreveport, which renders it certain that our gallant colonel and his command will not have a chance to measure swords with the Texians, as they had already left the country. We understand that General Rusk stated that he came with no hostile intention towards the citizens of the United States, but that the Caddo Indians, living within the United States, had crossed over into Texas and waged war upon its citizens, and that he came to disarm them. This we understand he did—as well as threaten Mr. Sewell, the Indian agent at Shreveport, for having furnished them with arms and ammunition. General Rusk, we learn further, had a talk with the Caddos, made a treaty with them, and returned to Texas.

☞ If Col. Benton live through his present term of service in the senate, he will have been a member of that body a quarter of a century.

POLICE OF THE FIRST MUNICIPALITY.

RECORDER'S OFFICE.

Report of the 20th and 21st December, 1838.

Ellen M'Cabe, a white woman, intoxicated; found lying in the street; sent away, having given satisfactory bond to the recorder.

William Hall, James Harvey, Jacques Julien, Wm. O. Spalden, Augustine Manchaud, Henry Dobson, intoxicated; found lying in the streets; discharged, having satisfied the recorder.

Jacob Lebeau, fiddler, arrested at the request of Mr. Octave Leon Blanc: the suit being withdrawn, he was discharged by the recorder.

21st and 22d instant.

James Orr, arrested at the suit of Madame Hewlett, for having struck her in her own house; the suit being withdrawn, he was discharged.

Margaret Turrell, a white woman, intoxicated; arrested at the request of Madame Talley; the suit being withdrawn, she was discharged.

Archibald McCray and Edward Clarck, intoxicated; found lying in the street; having answered the recorder satisfactorily, they were discharged.

Dick, a negro slave, arrested by the guard as a runaway on board the steamboat Brilliant; sent to the police jail.

Spencer, Edward, and Jack, negro slaves, arrested in a cabaret at half-past seven pm; sent to the police jail.

Jules Blamy, fiddler, arrested for assault and battery; furnished security in $200 and was discharged.

D. Wharton, a vagabond and suspicious character, arrested in St. Philip street at eleven o'clock in the evening; sent to prison until further orders.

Archibald McCray, arrested as a vagabond, and sent to prison until further orders.

James Bratton, arrested wandering in the streets; having satisfied the recorder, he was discharged.

Marius Leonard, Richard Colley, Thaer. H. Booth, George Hill, intoxicated, found lying in the streets; having given satisfactory reasons to the recorder, they were discharged.

Romero Fernandez, arrested for threats and insult; on being withdrawn, he was discharged.

Sam, a negro slave, arrested with a pass not dated; sent to the police jail.

Rose, a negro woman, a slave, arrested at an improper hour; sent to the police jail.

Recorder's office, 23d and 24th December.

Mathew, a negro slave, accused of theft; discharged, having satisfied the plaintiff.

James Phaine, John Brown, James Callinan, Jacob Weber, John D. Cherry, intoxicated; discharged by the recorder, having given satisfactory replies to his interrogatories.

John Dorinson, Wm McWatch, Charles Williams, Charles Smith, Neil Smith, Louis Boisdore, sent to prison for two months, as vagabonds and suspicious characters.

Edward, William, Anthony, slaves, found at a late hour, and not claimed accordingly to law.

Wm. Brown, a free man of color, found in the street at late hour; sent to prison.

Wm. Brown, the free man of color, a fiddler, treating of his violence, loud fiddling.

OPINION OF JUDGE MARTIN.

By the grace of God and the sovereignty of the people.

STATE OF LOUISIANA.

Parish Court for the City and Parish of New Orleans.

[illegible]

[illegible] 1st. That the said writ was not signed by the clerk of said court.

2d. That the said writ had not attached to it the impress of the seal of said court.

3d. That there was no time expressed in said writ or process for its return, consequently it was inoperable.

4th. That the judge of said court transcended his power and jurisdiction in the sentence and condemnation pronounced against the petitioner, by the duration of his imprisonment, and in rendering a condition impossible to be performed.

To the petition was annexed as a part thereof, a copy of the process under which the prisoner was detained.

Upon this application so soon on Saturday the 8th of December, this court ordered the issuing of the writ of habeas corpus prayed for, and at the special request of the petitioner's counsel, instead of making it returnable within the delay fixed by the 823d art. of the Code of Practice, this court ordered it to be returned on Monday the 17th. On motion of the counsel it was further ordered, that the subpoena for witnesses be addressed to F. H. Holland, marshal of the eastern district of Louisiana, to bring into court the writ or process by which he arrested and caused the petitioner to be confined; and Thos. Slidell, Esq. attorney of the United States for the eastern district of Louisiana, have notice of the application.

On Monday, at the time appointed, the case being ready to go into the examination of the case, the trial with the consent of the petitioner, and by agreement between the counsel, was again postponed until the following day at nine o'clock a. m.

On Tuesday the 18th of December, all parties being in court and ready for trial, John H. Holland, the U. S. marshal, according to the order to him addressed, produced the original of the process under which the petitioner, Francis A. Foygnet, was arrested and confined. He is worded as follows:

United States of America. United States Circuit Court, ninth judicial circuit and eastern district of Louisiana. The president of the United States to the marshal of the eastern district of Louisiana, greeting.

Whereas, at a session of said court, on the eighth day of December 1838, an entry and decree were ordered to be recorded on the minutes of said court, in the words and figures following—to wit:

The United States of America vs. Francis A. Foygnet.

This day the district attorney appeared on behalf of the United States, and the defendant, assisted by his counsel R. H. Chinn, esq. also appeared, and filed certain written answers under oath to the written interrogatories to him propounded.

—Whereupon the case being submitted to the consideration of the court by said district attorney, counsel for party, and the court considering that Francis A. Foygnet has been guilty of a contempt of this court, in disobeying their lawful order issued in the case of the United States vs. Paris Childress and others, wherein he was condemned to bring into court the record of said cause on the fifth day of December instant, and that the said contempt has not been purged away by the answer of said Foygnet:

Do now order, adjudge and decree that the said Foygnet be punished therefore by being imprisoned, he is now condemned to be imprisoned till he shall bring into court and deliver up to John Winthrop the clerk of this court the record in the said case of the United States vs. Paris Childress and others.

And that he be further condemned to pay the costs of the proceedings therein and remain so in prison till the requisitions of this judgment shall be fully complied with.

Now therefore you the said marshal are hereby commanded to take into your custody and safely keep the body of the said Francis A. Foygnet until the above recited judgment shall be complied with, and make a due return of your proceedings herein.

Witness the hon Roger B. Taney, chief justice of the supreme court of the United States, at the city of New Orleans this eighth day of December, A. D. 1838, and of the independence of the United States the sixty third.

[Signed] JOHN WINTHROP, clerk.

In obedience to a warrant or process directed to the undersigned, of the Eastern District of Louisiana, wherein the within is a true copy. I have committed the within named Francis Achille Foygnet to the prison of the parish of Orleans, and the sheriff of the said parish is requested to keep him in safe custody until he shall be released by the said marshal, upon his complying with the within mentioned judgment.

[Signed] JOHN H. HOLLAND,
United States marshal.
By JOHN P. WALKER,
Dy. marshal.

The petitioner was assisted by Messrs. R. H. Chinn, Jno. R. Grymes and Chs. M. Conrad, his counsel, and in the early part of the trial the attorney of the United States, who had upon the invitation of the court, presented himself, opposed the application; but shortly after going into the trial I saw myself deprived of the valuable aid and information which I was in hope to obtain from that gentleman, an assistance which would have been the more precious as the question I was called upon to decide belonged to a system of jurisprudence which I candidly confess to be very little acquainted with.

That the examination of the case went on, and in the opinion which I am about to render, I must entirely rely upon such information as is afforded to me by the provisions of our code of practice relative to the writ of habeas corpus, and by the authorities invoked on the part of the petitioner, which after a careful examination have appeared to me applicable to the case.

The first ground assumed on behalf of the petitioner as making his confinement unlawful, is, that the writ under which he was committed, is not signed by the clerk of the court by whose order it purports to have been issued.

In support of that ground an attempt was made by the petitioner's counsel to enter into an inquiry of the proceedings of the circuit court, which preceded the commitment of the petitioner, and into an examination of the legality of this condemnation by that court, for a contempt of its authority. Aware that this court is not the one to which appertains the revision of the decisions and judgments of the circuit courts of the United States, and knowing that by law circuit courts of the United States are vested with the power of punishing individuals for contempt, I, of course, repelled the attempt. Under the same branch of the argument, a document was introduced on behalf of the petitioner, showing, that on the 21st day of February 1834, Duncan N. Hennen had been appointed clerk of the district court for the eastern district of the state of Louisiana, and that on the 11th instant, to wit—the very day preceding the date of the issuing of the writ of habeas corpus, and six days posterior to the date of the commitment under which the petitioner is confined, he, the said petitioner, acting as deputy of the said Duncan N. Hennen, had certified under the seal of the court, from the minutes of the said court, which extract was no less than the entry by which the said Duncan N. Hennen was recognized as clerk, on the 21st of February 1834.

On the production of that document from which it resulted, that the petitioner, Francis A. Foygnet, which he was confined in the body of the jail of the parish of Orleans, was performing the functions of clerk of the United States district court for the eastern district of Louisiana, and affixing the seal of that court to extracts from its minutes, I should certainly have felt much astonishment, had I not been previously informed, not officially it is true, but by common report, by newspaper publications, in short, by public notoriety, of the controversy which has lately arisen in the United States court in this city, respecting the exhibition of that court, I deemed it my duty to issue an order, from the return of which, I was in hopes to obtain by the production of the minutes of the circuit court, positive information as to the person who had assumed to perform the duties of clerk of said court, and was recognized as such on the 8th of December, the date of the commitment; but in this I was again disappointed, and could not obtain the information in the way I might have desired. The fact however, is proved before me, that the petitioner, F. A. Foygnet, was in a situation which made it impossible for him to act in court as deputy of the titular clerk, Duncan N. Hennen, absent from the state, added to the notoriety imparted to me by public notoriety, of the appointment of John Winthrop to the clerkship of the circuit court which appears to have given rise to the controversy above mentioned, and upon which I am not called to decide, form sufficient ground for me to refrain from declaring that the commitment in this case, being signed by John Winthrop, is not signed by the clerk of the circuit court, which would be the same as declaring that John Winthrop is not the clerk of that court, and that indirectly deciding a question, with which I again repeat, I have nothing to do.

The second ground assumed by the petitioner, is, that the writ had not attached to it the impress of the seal of the circuit court. It is alleged to be the king's precept in writing, under seal, issuing out of some court, to the sheriff or other person, and commanding something to be done, touching a suit or actions, &c.—Jacob's Law Dictionary, vol 2, verbo writ.

The 1st section of the act of congress of the 4th 1792, provides as follows: all writs and processes issuing from the supreme or circuit court, shall bear test in the chief justice of the supreme court, or (if that office shall be vacant) of the associate justice next in precedence . . . which said writs and processes shall be *under the seal* of the court from whence they issue, and signed by the clerk thereof. The seals shall be provided at the expense of the United States.

By a rule of the supreme court it is provided that the seals of the circuit courts shall be the arms of the United States, engraved on circular pieces of silver of the size of half a dollar, with these words in the margin in the upper part, *The Seal of the Circuit Court*, and in the lower part, the name of the district for which it is intended. From these authorities, I may be permitted to infer: 1st. That there is no legal writ without a seal. 2d. That no writ issuing from a circuit court of the United States is legal without the seal of such court. 3d. That a seal which does not conform to the requisites of the above recited rule of the supreme court, who have no doubt the right to make such rule, cannot be said to be the seal of a circuit court of the United States. 4th. That therefore a writ with a seal different from the one required is little better than if it had no seal at all.

As a precedent shewing the necessity of a seal to a writ of commitment I have been referred to the case of the *United States vs. Lake and Lawless*, in which Lawless having been committed for a contempt by order of the judge of the United States district court for the district of Missouri was brought before Judge Story one of the circuit judges of the State of Missouri, and by said judge discharged from imprisonment on the ground that the warrant of commitment was a military, having no judicial seal or signature by which it could be authenticated—*Judge Peck's trial before the Senate of the United States, by Arthur T. Stranahan, page 6.*

Now in the case before me the order of commitment bears the impress of a seal, whether the seal with which the impress was made is of silver or of steel, I am unable to say, nor is it probably necessary to inquire, but it is certain that the dimensions of that seal are larger than is required by the rule of the supreme court above mentioned, and that the words in the margin are neither individually the same, nor placed in the manner fixed by the rule.

If I understand my thing of the doctrine of seals which belongs especially to a system of laws with which I have already stated I am very little acquainted, the seal gives a great deal towards giving authenticity to the signature of the clerk or other officer by whom it is used. If I am correct in this, it will be confessed that the instance before us is perhaps one in which a seal, I mean a legal and proper seal, was requisite on account of the particular situation in which the clerkship of the United States circuit court is placed, and to which I have alluded above.

These are certainly questions of mere form but in criminal proceedings and this is considered somewhat in the shape of a criminal proceeding, but it all errors in proceedings, affecting the liberty of the citizens, matter of form are pretty matter of substance.

The 9832 article of our code of practice mentions among the cases in which a judge granting a writ of habeas corpus in favor of a party confined by the order of some tribunal, may remand such party to liberty, the 2nd "Lord 13th order of a tribunal competent to issue legal mandates." . . . The 9833 article makes it the duty of the judge, whenever it shall appear to him that there is no sufficient legal ground for the detention of the prisoner, on grounds of any opinion with which he may be charged, or with the order of imprisonment may have been rendered in an irregular and unauthorized manner, to render a new order of arrest, in replacing the party to the same custody, or in such other custody as he shall think fit, and he may in case of the 2nd, remand the party to the same custody, or in such other custody as he shall think fit, and he may in case of the 3rd, remand the party to the same custody, or in such other custody as he shall think fit, and he may in case of the 4th, remand the party to the same custody, or in such other custody as he shall think fit, and he may in case of the 5th, remand the party to the same custody, or in such other custody as he shall think fit, and he may in case of the 6th, remand the party to the same custody, or in such other custody as 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