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THE BAKER HABEAS CORPUS CASE.

Argument on the Jurisdiction of Probate Courts.

BY HON. GEO. C. BATES, LATE ATTORNEY FOR THE UNITED STATES IN THE TERRITORY OF UTAH.

ON Thursday, May 15, the notorious swearist, C. W. Baker, who was tried and convicted of robbery at the last September term of the Probate Court, in this city, on his own petition, was brought before Judge Boreman, sitting in chambers, alleging in his petition that the court which tried and convicted him had not legal jurisdiction in criminal matters, and being deprived of his liberty unjustly, he prayed to be discharged. Mr. Maxwell, who has been almost invariably the champion of nearly every convicted scoundrel who has been liberated in this city on *habeas corpus* for several years past, appeared on behalf of the fellow Baker, and Messrs. Z. Snow and George C. Bates for the people. The closing argument on behalf of the people was made by Mr. Bates on Friday afternoon, a full report of which we here present to our readers.

MR. BATES.

Inasmuch as this case is a very peculiar one I most respectfully ask the court to give me an opportunity, for a very few minutes, to present some authorities, on the question of the jurisdiction of probate courts in criminal cases, which have never been cited in the courts of this Territory thus far, in the discussion of this question from the beginning.

The relator Baker, has been tried, convicted, and sentenced to the penitentiary for robbery, has served part of his time, and now seeks to be discharged on the ground that the probate court of the Territory of Utah has no jurisdiction over crimes committed within the county or Territory, in short that the probate court has no other or further jurisdiction than that of a mere probate court, to wit, in the administration of estates, probate of wills, and guardianship of children, and that under the municipal charter or organic law of Utah, Congress alone can prescribe the criminal jurisdiction of the courts of the Territory; and that by the 9th section of the charter or act of incorporation of Utah, it has limited the jurisdiction of the probate court solely to probate jurisdiction.

The peculiar character of the relator, the heinous crime with which he is charged, and for which he has been convicted and sentenced, and the important consequences to the people of Utah which depend on the decision of this court will justify me in asking your honor to re-consider and to re-examine the law which is applicable to this case. Will your honor let me begin by premising that at the end of last century and for quite a long period in this there sat on the bench in England one of those eminent men who seem to be created by God to administer equal and exact justice to all men. His name, now a household word among the bench and bar of the world, was Lord Mansfied. He said, your honor, and I repeat it, that "the highest "and strongest evidence of a man "being a good judge was, that he was "the first to correct and the first to "detect his own errors." Nothing is truer than that, your honor; and whensoever and wheresoever a judge is called upon to administer justice, there can be no higher evidence in the world than this, that he is a man who understands the duties of his position. I know, your honor, that I am talking to such a judge. Your honor is just fresh among us, and being born in one of the old States of the Union, you have never been called upon to discuss these questions of Territorial law with which I have been familiar since I reached manhood.

It happened to me, your honor, to come to the bar in a Territory almost forty years ago—in 1834. It happened to me, there and then, to learn, before Territorial judges, the intricacies of Territorial questions, in the midst of a conflict with which this in Utah is as nothing. I refer to the foundation of the Territorial government of Michigan. It happened to me, your honor, to assist in organizing the Territory of Michigan, in defiance of Congress, and to resist the Federal government in its attempt to trample on the rights of a Territory, and even to bid Andrew Jackson—that old lion of the democratic party—defiance in his den. Michigan, your honor, organized her government without the protection and in defiance of Congress, and it was not until two years after that she was admitted into the Union on an equality with the other States. Without pretending, therefore, to be a learned lawyer, I have had great experience, in a Territory very much in the condition of Utah now, except that the questions at issue were of a different character.

And first, it is insisted that under our form of government Congress has no legal power to prescribe the jurisdiction in CRIMINAL CASES for a violation of the *local* laws of a Territory. That is the foundation or keystone on which I build my superstructure. Congress never has had the power, and Congress never attempted until 1862 to interfere in any respect, by legislation, with the criminal jurisdiction of the States or Territories. I wish to emphasize this, because I shall have occasion to refer with the greatest possible respect to your honor's opinion delivered in a recent *habeas corpus* case here. I say nothing about jurisdiction in *chancery* or at *common law;* but I say that Congress has no power whatever, under our form of government, to intermeddle with the prosecution of crimes for offenses against the local laws of a Territory, and never was such a pretence set up until after that unholy, unhappy war in 1862. If this proposition be true, then, your honor, that would end the whole of this discussion. Now, Congress may exercise power, brute power, and there can be no appeal from it; although I think that I could demonstrate, in five minutes, that that bill that was before Congress last winter—the Frelinghuysen bill—was in utter violation of the theory of our government, and that the Supreme Court would have put its heel upon it the very moment it got there. It was directly in the teeth and eyes of the decision given in the Engelbrecht case, which I have before referred to, and which I shall cite. Congress may exercise the power to say "yea" and "nay," and may do many things from which there is no redress, but which are unlawful. For instance, the vote at the close of the last Congress by which they took fifteen hundred thousand dollars from the Treasury was an infamous wrong to the government, which the people can only redress at the ballot box.

Now, your honor, I say that when the municipal charter of this Territory, that is, the organic law, was granted, the powers of the people and of the local legislature under that charter were precisely the same as they are in a State; and that when I came here, when your honor came here, when these hundred and twenty thousand people came here—I do not care where they came from, nor what is their religion—they did not lose their citizenship or their manhood; and I am going to show your honor that, even previous to the days of 1784, Congress never pretended, until 1862, to exercise the right to intermeddle with the local affairs of a Territory, or with the local jurisdiction in crimes against the local laws of a Territory. The powers of Congress over Territories having sufficient population to maintain a local government, to wit, five thousand people, are confined to simply this, they can grant a municipal government called the organic law. I think your honor was born in West Virginia. Well, its charter, which was given by Elizabeth, Queen of England, is precisely the same in its character as the charter which was given by Congress to the Territory of Utah. Congress possesses the power to regulate the Territories so far as to confer upon them, when they have a sufficient number of people, a municipal government adapted to the laws and Constitution of the United States; and then, so far forth as their local matters are concerned, the people of every Territory are as independent as the people of Virginia were of the Crown; and it was a violation of that principle which led to the overthrow of the power of the King of Great Britain and the independence of our country. Congress possesses the power to extend the Constitution and laws of the United States to the Territories, and to enforce them, and then leave them to regulate their own local matters.

This man, your honor, has been charged with the violation of a local law of this Territory. Congress has nothing to do with and has not attempted to define the crime of which he was guilty, nor the jurisdiction of the court which tried him.

Now, your honor, I want to go back for a minute. This is a very interesting question. It sprang up in this Territory owing to circumstances to which I will not now allude; but never, sir, from 1784 until 1862 did Congress attempt to interfere with the local laws of a Territory. I read from the ordinance of 1784. I need not tell this court that it was drawn up by one Dane, as was said by the Senator from South Carolina, in the great discussion between himself and Mr. Webster. Now, your honor knows full well that at the time of the organization of the Government the only territory we had outside the limits of the States was territory conveyed by Virginia, North Carolina and Georgia, and it became necessary to frame a form of government for it, and Nathan Dane, one of the most learned, patriotic and best men that ever lived, drew up this ordinance. The spirit of this ordinance, and I may say the letter of this ordinance, your honor, is found right here in the laws of Utah. This very day Nathan Dane's ordinance is re-enacted here by the Legislative Assembly of the Territory of Utah.

I will now read section 5 of the ordinance of 1787:

> The Governor and Judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district until the organization of the General Assembly therein, *unless disapproved of by Congress*, but afterwards the Legislature shall have authority to alter them as they think fit.

Now there were three stages of government, your honor. The first one was that simple form wherein, in order to save expense, Congress authorized the governor and judges to become a legislature and to adopt, as they did in Michigan, from other States, certain laws, and they were to remain in full force and effect until the organization of the general Assembly, *unless disapproved by Congress.* I beg your attention to this, because, really, at the bottom of this question, which is being discussed here, which people are so flippant about on the streets, and in regard to which so many newspaper discussions have taken place, every principle, every theory, the very heart of our government is involved.

Now, your honor, that is the theory of territorial government from 1784, re-enacted in 1787, and which constitutes, to-day, the sole principle upon which Congress can interfere, or can direct or legislate at all on the subject of Territorial rights. Such has been the settled law of the United States, and of all departments of the government since 1784, and upon which the government itself was established.

I will now allude for a moment, your honor, to the modern theory, that Territories are the wards of Congress; that the pioneers who settled these magnificent valleys, I speak not alone of those in this valley, but also of those who have gone clean over to the Pacific Ocean, whose log cabins have been built on Puget Sound, who left their homes in the east as we did ours, and as you have yours in Virginia or Missouri; that these pioneers, the bravest and best men that ever lived, the most enterprising, daring, and honest, unless corrupted by extraneous influences, are the wards of Congress, and that Congress is our guardian. Heaven forbid it! We have lost neither our manhood nor our citizenship by coming here. We all of us stand here before your honor, to-day, clad in the panoply of American citizenship. No member of Congress, be he honest or corrupt; no president, be he good or bad, holds in his hands any one of our rights that are guaranteed under the Constitution of the United States, and when we left our eastern homes we did not surrender any right to self-government.

I read first 19 Howard, page 448, Dred Scott against Sandford:

> But the power of Congress over the person or property of a citizen (in a Territory) can never be a mere discretionary power under our Constitution and form of government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved.
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> A reference to a few of the provisions of the Constitution will illustrate this proposition.
>
> For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.
>
> Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.
>
> These powers, and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property have been guarded with equal care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution, which provides that no person shall be deprived of life, liberty, and property, without due process of law. And an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.
>
> So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a Territory without the consent of the owner, in time of peace; nor in time of war, but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a Territory who was convicted of treason, for a longer period than the life of the person convicted; nor take private property for public use without just compensation.

The powers over person and property of which we speak are not only *not* granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under Territorial Government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution.

I know, your honor, that there is an unhappy antipathy amongst lawyers to this decision. So far forth as it attempted to extend the power of slavery beyond Territorial law it was rejected; but so far as it settled the power of Congress over the Territories it was assented to by every single judge on the bench. Let us see who they were: R. B. Taney, J. McLean, Jas. M. Wayne, John Catlon, P. V. Daniel, S. Nelson, R. C. Grier, B. R. Curtis, J. A. Campbell. We have seen what they say on this subject. I am speaking now, your honor, on the point that Congress has no authority, whatsoever, to interfere with the *criminal jurisdiction* of our local courts, for local offences. So far as offences are committed against the laws of the United States, of course Congress has the power to control them, but so far forth as local laws regulating crimes against a Territorial government is concerned, I repeat that Congress has no more business to pass a law defining what shall be robbery, murder or larceny in this Territory than in the State of Illinois; and whenever it does pass such a law, the Supreme Court of the United States, as soon as the matter is brought before them, will certainly reverse it.

Now, your honor, three years ago, in this city, a secretary of the Territory undertook to forbid a body of men called the Nauvoo Legion—I have no sympathy with Mormonism—from turning out on the 4th of July, and yet, sir, the Constitution of the United States declares that every man may and ought to bear arms. That is one of the indispensable requisites to the dissemination of our government, guaranteed by the Constitution itself, and yet by virtue of a proclamation an attempt was made to prohibit certain persons calling themselves the Nauvoo Legion from appearing on these streets with arms on their persons on the 4th of July, 1871, and it was submitted to. I do not wish to be boastful, but I would like to see a man—a judge or any Government officer—who would deprive me of my Constitutional right to bear arms when and where I please.

PRISONER'S COUNSEL.—"Do you make that a point in this case?"

MR. BATES.—I make it part of my illustration of the power of Congress to intervene in reference to the criminal law of a Territory. It is a mere illustration, it is not in the record, and I will confine myself to that. Congress may just as well send a parcel of troops here and, in violation of the Constitution, quarter them in the houses of private individuals as to interfere with our local matters in reference to local jurisdiction.

Now, your honor, my proposition on the first point is this—Congress has no more power, under our form of government, to interfere with the *domestic matters of this Territory*, especially those connected with offenses against our local laws, than it has to quarter soldiers in private houses in this Territory, or to deprive our citizens of their rights under the Constitution. A word or two in this connection, upon this Engelbrecht decision, and ask you to re-examine it and to study it and study it again and again. It is the unanimous decision of the tribunal of last resort of our country, I may add the noblest tribunal that administers justice in the world. This opinion was pronounced by a man who has just gone to his long account, and whose whole life was