THE EVENING NEWS.

GEORGE Q. CANNON, EDITOR AND PUBLISHES.

November 25, 1870

THAT BULING.

In another column we give the Ruling of Judge Hawley in the case of Col Ottinger and others arrested for rebellion. We give it publicity because we wish the world to know the kind of men we have in this country acting as Federal Judges. We know that by publishing this decision and other articles concerning such men as Judge Hawley we give them an importance which they do not merit. Whenever we allude to them we feel that we ought to apologize to our readers for so doing. Individually they are far beneath our contempt; but by some means they have obtained office, and thus have importance conferred upon them; and in this instance it is the Judge we criticise and not the man.

There are many points in this ruling which are new and which will strike those who peruse them, especially lawyers, as exceedingly ridiculous. It will be news to our citizens to learn that since they took up their residence here they have not been a part of the Union! We, in this country, have al ways been simple enough to believe that we were a part of the Union. We guess Judge Hawley entertained the same pinion at the time he delivered his two hours' oration, July 4th, 1869; if he did not, then he selected a most extraordinary subject on which to talk to the people.

that Judge Hawley says and in all that was said by the prosecuting attorneys, and that is, there has been no law of tion and examine it in any degree, until not know that this Proclamation was Congress, or statute of the Territory this morning. violated by the training of Mesars. Ottinger, Burt and the others. The most that can be said about their action is disputes this? Do the men who went member or officer of the militia of this question is, has a Governor's proclamation the force of law, or can a violation of such be called rebellion or insurrection? Judge Hawley says that disobedience to a Governor's proleamation. issued rightfully, is unquestionably rebellion. But he says "issued rightfully." There is great meaning in these words. Would disobedience to a proclamation of the curfew bell for the extinguishing requiring the people to pay homage to a cap placed upon a pole as was Gesler's among the Swiss."

of the Militia in the several Territories, that they shall be elected by the people

in such manner as the respective Legislatures thereof shall provide by law; Act of June 15, 1844, Section 2 of Chapter 69. In the face of such a law, how can it be said that such a proclamation, as that alluded to, has been "issued rightfully" when it is in plain violation of the Constitution and the laws of Congress?

So much for the Proclamation.

Now, if the offence of which these arrested men are accused is anything, it is simply disobedience to an order embodied in the proclamation of the Governor, and if sustained would expose them to a reprimand from a Court Martial of the officers of the Territorial Militia. But for this "heinous" offence Judge Hawley, setting aside all law, both of the Territory and of the United States, and without precedent, presumes to issue a writ and arrest men. and in his capacity as a Court of examination, immure free American citizens for months to come in a mili-

RULING OF JUDGE HAWLEY.

are not a part of the Union.

REPORTED BY GEO. F. GIBBS.

In the case of the people versus Ottinger and others, that was examined yesterday, I regret to say I have not had are bound to take notice of such Proclatime to give it that careful and thor- mation. As to the wisdom or expediency There is one thing a parent in all that Judge Hawley says and in all that was said by the prosecuting attorneys, und that is there has been no law of

All governments are based upon authority. The bulwark of that author- the principal representative of the Govity is that of mental and physical force. ernment of the United States, and also In a Republic like ours this authority the representative of the Executive authat it is a violation of the late Gover-nor's proclamation. Judge Hawley evades the issue when he quotes the Organic Act to satablish the idea that Organic Act to establish the idea that Its territorial elements are part, how- respect and obey him in all that he the Governor is Commander-in-Chief ever, of the domains of the United may issue lawfully. of the Militia of this Territory. Who States, and its people subject to the gov- In 1862 Congress enacted a law to ernment of the United States. It has no part, or the people have no part, in may be found in the twelfth United out to train? Do the gentlemen arrest- the election of the President, or other States Statutes at Large, pages 589 and ed? Who has ever disputed it? If any general officers of the government. It 590. This statute, or so much of it that has no Senator or Member of the House is pertinent to the question before the of Representatives; but is permitted to court is as follows:-"Be it enacted by Territory has done so, we are not aware have a Delegate to Congress to repre- the Senate and House of Representaof it. To assume, therefore, that this is called in question is to endeavor to throw dust in the eyes of the people, and to dodge the point at issue. The real Territories. The Constitution of the United States. Ar icle 2, Sections 1 and 2. Section 1 made free; or, at the discretion of the provides: "The executive power shall court, he shall be imprisoned for not less be vested in a President of the United than five years and fined not less than States of America." Section 2 of the ten thousand dollars, and all his slaves, same article provides: "The President if any he have, shall be declared and shall be commander-in-chief of the army made free; said fine shall be levied and and navy of the United States, and of collected on any or all of the property, the militia of the several States real or personal, excluding slaves, of when called into actual service of the | which the said person so convicted was when called into actual service of the which the call person so convicted was of a Governor of Utah Territory, re-viving the police regulation of William the Conqueror, respecting the ringing ful rules and regulations respecting the the Conqueror, respecting the ringing ful rules and regulations respecting the Territory, or other property belonging That if any person shall hereafter incite, of fires and lights, be called rebellion? Would it be rebellion to disobey a proc-lamation of a Governor of this Territory the people to keep and bear arms shall fort thereto, or shall engage in, or give her position, expresses his willingness the people to keep and bear arms shall tot be infringed." This right to this Amendment of the Constitution does not mean, nor can it be construed to permit, insubordination Construed to permit, insubordination tot thereto, or shall engage in, or give her position, expresses his willingness to join in a congress, and repeats his expression of anxiety to remain friendly with England and Turkey. Russell's dispatch is understood to state that to the rightful constituted authorities exceeding ten years, or by a fine not Bismarck recommends a congress. over the people of the States: nor insubordination of the military organiza- the liberation of all his slaves, if any is now stated that Gortschakoff was tion in the States: nor insubordina- he have; or by both of said punish-tion of that, or any of the sub- ments, at the discretion of the court." premature in the publication of his letordinate commanders of such miliconstrued to permit insubordination to tary organizations. For instance, it is the offences described in this act shall regarded the treaty of '56 as unjust to State, or other particular place, under be forever incapable and disqualified to Russia as the treaty of '15 has been to certain circumstances, in rebellion, and hold any office under the United States." France, and has expressed surprise that strued to permit the Governor to over-ride law, to act in defiance of statute, to set aside the organized militia and to establish a despotism? A militia or-ganization has existed in this Territory ganization has existed in this Territory ganization has existed in this Territory for upwards of twenty-one years. It was organized years before the Terri-tory was organized, and while we lived The Governor of Illinois, who is ject to the President under the Constihere from a remote place, and issues a my memory serves me correctly-issued proclamation in which he assumes ex- his order to a certain regiment of that traordinary and unheard of powers. He sets out by prohibiting all drills, musters or gatherings of militia of the Territory-a step to begin with in direct antagonism to the Federal Constitution and to the rights of the monle under The Governor was not willing that they and to the rights of the people under that sacred instrument. But he did not

itia. To attempt to do this is an illegal stretch of power, and is clearly vexatious and hostile to the rights and liberties of the people. Neither has the Commander-in-Chief the right to appoint a Major General of the Militia of the Territory. To prove this reference need only be made to the laws of Congress; one of which save, respecting General officers which says, respecting General officers defendants, and on the part of the other this new statute of the United States. counsel it was insisted upon as being

tia law of the Territory is not all or in any particular legal. I shall for the present assume its legality. I will re-mark, however, that the attempted revision of this law, pages 190-2-3 of the Territorial statutes, probably is not a statute. There is no evidence that it was ever enacted by the Legislature, or approved of by the Governor. If not, it is not a law, nor is it of force. But there is an organization under the previous law of 1852, which may be found on pages 207 to 223 inclusive. This or-ganization is denominated by this law, the "Nauvoo Legion;" of this organiza-tion the Governor of this Territory, by virtue of the authority of the United States in the Organic Act contained, is the Commander-in-Chief. As such his orders and proclamations, when rightfully put forth, have the force of law

and must be obeyed. On the 15th of September, 1870, the Governor of this Territory issued the following Proclamation, which was admitted by the defendants' counsel to pute to its being in due form of law.

(The Proclamation was here read.) This Proclamation is admitted by the defendants to have been made. There is no doubt, from what has preceded, or the remarks which I have made, of the Governor's right to issue it. When issued it is binding upon all persons whatsoever, whether there is any military or anization or otherwise, and all even contemplated until it was in print. The Governor must be acknowledged

punish treason and rebellion.

There has been, so far as I have been mentarily expected at Madrid. The enabled to examine the authorities, but Captain General of Aragon telegraphs an illegal law or enactment. The enabled to examine the authorities, but Captain General of Arago counsel for the defendants also insist one decision under the law. There to Prim a revolution will that to this military or militia law of may be others-probably are others, inforcements are not sent.

that to this military or militia law of the Territory there is a military organ-ization. It is not needful with this proceeding that I should decide whether this mili-tia law of the Territory is not all or in any particular legal. I shall for the present assume its legality. I will retioned. It was there shown to be immaterial what intents, other than those of the law, existed in the mind of a man when he committed a criminal act, provided the law's intents were present influencing him. In the same sian armies is about to take place. way we are to consider this act. It is Earl Russel writes to the Times say immaterial what a man does, of a le-gally indifferent nature, providing he does the thing which the law forbids. In other words, all intents and all acts not lying within the cognizance of the criminal law, are deemed to be mere surplus matter which has no effect, one way or the other, upon the question of ture.

legal guilt, etc. [Quoted also, Bec, 804 of same Vol. also from 2nd Vol. of the same work Sections 1,207, 1,208 and 1,209. Also cited the "Chapman Treason Case" that arose in California, under Sec. 1,209.] How far the defendants may be guilty, I am not called upon to decide, nor tary prison! Well may he say that we have been issued, and there is no dis-are not a part of the Union. have been issued, and there is no dis-pute to its being in due form of law. tory, under which they have been arrested, except so far as to decide that the defendants, however, probably have committed a crime. I shall leave the matter, therefore, to be further considered and investigated, and to that end powers. shall leave the defendants to answer to the deliberations of a Grand Jury. I

will fix the bail bond in the case of the higher grade of officers to the sum of 5,000, and to the lesser, \$2,000.

[SPECIAL TO THE DESERET NEWS.] By Telegraph.

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AFTERNOON DISPATCHES

Earl Russell advocates meeting Russia with force should she set aside the Treaty of Paris !

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A public meeting is proposed here to the Germans, of defensive for aggressive PICTORIAL, MUSICAL policy.

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been unremitting since Tuesday. A special to the Herald, London, says

all hope of an armistice is abandoned. An important movement of the Prus-

RUSSIA.

ST. PETERSBURG 24.-Prince Gortschakoff's reply to the British and Austrian governments is very conciliatory. It explains the pacific meaning of the previous declaration, and affirms that Russia craves peace generally and in the East especially. It would be im-possible to maintain it without a common understanding, and Russia shrinks from acting seperately from other

Special Notices.

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MONTH ago, on or near Main Street, in this city, a GOLD BROOCH, set with ismonds and Rubies in fliggree work, with a place at the back for a likene.s. The inder will confer a favor on and shall be rewarded by Z. SNOW, on leaving it at the office of Snow & Hoge. Nov. 21, 1870 d21w

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The Constitution expressly says that

"A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

Judge Hawley says this cannot be Granted. But, we ask, can it be construed to permit the Governor to over- to place such State or place under marization. Statutes have been passed by rightfully. the Legislative assembly of the Territory to authorize and regulate it, and under the constitution of that State, under these the militia has operated Commander-in-Chief of the militia, subuntil the present. A Governor arrives tution of the United States, in 1863 -if

which shall suffer death, and all his alaves, if any he have, shall be declared and

exceeding ten thousand dollars, and by A special to the Herald, London: It

Sec. 3: "And be it further enacted,

bellion. Let us look at this statute for one mo-ment: It will be observed from the 2nd the dock yards. section, that crime is varied in its application. "If any person shall hereafter incite, set on foot, assist or en- is certain. gage," either of these, "in any rebellion or insurrection against the authority of gage in rebellion to the authority of the United States.". Now it has been remarked here, and I was sorry for one Tours, 23.-The Monitcur reports that such remarks were made, that that a sufficient force is now opposed to





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Training the time using wire all the pair in