LIBRARY OF THE U. S. SENATE

JUDGE PECK.

March 23, 1830.

Read, and committed to the Committee of the Whole House on the state of the Union.

Mr. Buchanan, from the Committee on the Judiciary, to which had been referred the memorial of Luke E. Lawless, complaining of the official conduct of James H. Peck, Judge of the District Court of the United States for the District of Missouri, made the following

REPORT:

The Committee on the Judiciary, to which was referred the memorial of Luke E. Lawless, complaining of the official conduct of James H. Peck, Judge of the District Court of the United States for the district of Missouri, report:

That, in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion, that James H. Peck, Judge of the District Court of the United States for the district of Missouri, be impeached of high misdemeanors in office.

AN ABSTRACT OF THE CASE OF

Julie Soulard, widow, James G. Soulard, and others, heirs and legal representatives of Antoine Soulard, deceased, vs. *The United States.*	In the District Court of Missouri.

(In which the opinion of Judge Peck, referred to and printed as part of the evidence, was pronounced. Prepared from the record, by C. A. Wickliffe, under the direction of the committee.)

The petition of Soulard's heirs was filed on the 22d August, 1824, against the United States, in the District Court of Missouri, claiming ten thousand arpents of land, under a Spanish concession, which petition was amended at the November term, 1824, by leave of the court.

At the March term, 1825, the United States, by her attorney, filed in court their answer to the said petition. And at the same term, an issue of fact was submitted to the jury in these words:

"Was there such concession made to Antoine Soulard as in complainants' bill alleged?" The jury found there was a concession, as alleged in complainants' bill. The cause was then heard in chief upon the depositions and documents filed, which are spread at length upon the record

On the fourth Monday in December, 1825, the Judge of the District Court pronounced the following decree:

"And thereupon this cause was continued under advisement, from term to term, until the December term of said court, being the fourth Monday of December, in the year of our Lord one thousand eight hundred and twenty-five, at which day 'the said cause coming on to be debated and heard in the presence of the counsel for the petitioners, and of the attorney of the United States for the District of Missouri, on the petition, the answer and the testimony which is embodied in the record, it appears that the petition sets forth, in substance, that, some time in the month of April, one thousand seven hundred and ninety six, Antoine Soulard, the ancestor of the present petitioners, being then a resident of the province of Upper Louisiana, and Surveyor General of the same under the Spanish Government, presented his petition to the then Lieutenant Governor of said province, Don Zenon Trudeau, praying the grant of a tract of ten thousand arpents of land, to be located on any vacant part of the royal domain. That, in compliance with the said petition, and in order to remunerate the services of said petitioner, the said Don Zenon Trudeau, Lieutenant Governor, did, about the time aforesaid, grant to the said petitioner ten thousand arpents of land, and by said decree of concession, did order the said quantity to be located, surveyed on any vacant part of the royal domain in said province, at the election of said petitioner. That the said quantity of land was, afterwards, on the twentieth day of February, one thousand eight hundred and four, surveyed and located by the deputy surveyor, Don Santiago Rankin, on a vacant part of the public land, situate about fifteen miles West of the Mississippi river, and seventy miles North of the town of St. Louis, on a branch of the river Cuivre, and bounded as follows: commencing at a point in the Northeast quarter of section twenty-five, township fifty-one North, range three West, runs thence North, sixty-eight East, three hundred and seventeen chains eight links, to a point in the Northeast quarter of section fourteen, township fifty-one North, range two West; thence, North twenty-two West, two hundred and fourteen chains and sixteen links, to a point in the Southeast quarter of section thirty-four, township fifty-two North, range two West; thence, South sixty-eight West, three hundred and seventeen chains and eight links, to a point in the Southeast quarter of section eleven, township fifty-one North, range three West; thence, South twenty-two East, two hundred and fourteen chains sixteen links, to the place of beginning. And that a certificate of said survey was duly made and recorded in the book of record of surveys kept by the said petitioner, as surveyor as aforesaid. That before the time when claims should have been filed, pursuant to the act of Congress of the second of March, one thousand eight hundred and five, the said decree of concession and certificate of survey were, by mistake, thrown into the fire and destroyed. That, in consequence of the destruction of said concession and certificate of survey, the said petitioner considered that he was excluded from the benefit of the act of Congress passed for the relief of land claimants, and omitted to file any notice of his claim, and has thereby been deprived of the benefit of the laws heretofore passed by Congress. That, of the said tract of land,

one thousand nine hundred and forty-seven acres and thirty-five hundredths of an acre have been sold by the United States, and that the residue of the said tract is not claimed or possessed by any person other than the petitioner: and that the same has been reserved from public sale until the final adjudication thereon, by the proper tribunal. The petitioner prays that the validity of his said claim may be inquired into and decided, and that his claim and title may be confirmed to all that part of the said tract which has not been sold as aforesaid by the United States; and that he be authorized to enter, in any of the land offices in the State of Missouri, the quantity of one thousand nine hundred and forty-seven acres and thirty-five-hundredths of an acre of land, the quantity sold as aforesaid by the United States. It appears also, that, on the seventeenth day of March, one thousand eight hundred and twenty-five, Julie Soulard, widow of the said petitioner, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, childen and heirs at law of the said petitioner, filed their petition, setting forth that the said Antoine Soulard, after having filed and prosecuted his said petition, died, leaving the said widow and children his only heirs and legal representatives, and praying that the said cause might be revived and stand in their names against the United States; and the attorney of the United States freely admitting all the facts set forth in the petition of the said widow and children, the said cause was revived accordingly.

And it also appearing that the answer of the attorney of the United States, sets forth, in substance, that he is wholly uninformed of all the matters and things in the said petition of Antoine Soulard, revived as aforesaid, contained, and therefore that he does not admit the same to be true, and that he prays the court, that the said petitioners may be held and required to prove all such facts, matters, and things, the existence whereof is or may be deemed necessary to the confirmation of the said claims. And, moreover, that the said petitioners may be required and compelled to produce and show to the court the law, usage, or custom, by force and virtue whereof the said claim can or ought to be confirmed. And it further appearing, by the finding of the jury impanneled to try the issue directed in this cause, that such concession was made to the said Antoine Soulard, as in the said petition is stated: and it also appearing in evidence offered on the part of the said petitioners, that a survey of the said land was made, and a plat thereof recorded as in the said petition is stated, and that it was the practice of the Lieutenant Governors of Upper Louisiana to make concessions of land, in virtue of their office as such Governors, and not in virtue of any commission as sub-delegate. And after debate of the matters aforesaid, and the court having inquired in the validity of the title of the said petitioners; and for that it appears to the court, that no grant of the King's domain could have been legally made, unless made in virtue of some law or authority from him; and for that the regulations of Count O'Reily, of the eighteenth of February, in the year one thousand seven hundred and seventy, and of Governor Gayoso of the ninth of September, one thousand seven hundred and ninety-seven, and of Morales, the Intendant, of the seventeenth of July, one thousand seven hundred and ninety-nine, exhibit a general intention and policy on the part of the Spanish Government, in relation to the disposition of the public domain, which excludes every reasonable supposition of the existence of any law, usage, or custom, under and in conformity to which the alleged concession might have been perfected into a complete title, had not the sovereignty of the country been transferred to the United States; and for that the princi-

ples, commands, and prohibitions, in those regulations contained, are not to be reconciled with any idea of the legality of the said concession, and are incompatible with the existence of any law, usage, or custom, in conformity with which the said concession might have been confirmed, had no change of sovereignty taken place: the court doth therefore find the alleged concession and claim of the petitioners to be illegal in its origin, and invalid, and doth therefore decide, adjudge, and decree, against the validity of the same; and doth further order, adjudge, and decree, that the said petitioners pay all costs and charges occasioned in an about the prosecution and defence of this suit: and thereupon the said petitioners, by their attorney, aforesaid, pray that they may appeal from the judgment aforesaid, of the court here, so as aforesaid rendered to the Supreme Court of the United Stated, and to them the same is granted by the court here."

By which it will appear an appeal was prayed on the same day; and afterwards, on the 30th December, 1825, the following appeal bond was executed and filed with the papers:

Know all men by these presents, that I, Marie P. Leduc, am held and firmly bound unto the United States in the penal sum of five hundred dollars, to the payment of which, well and truly to be made, I bind myself, my heirs, administrators, and executors, firmly by these presents. Sealed with my seal, and dated this thirtieth day of December, eighteen hundred and twenty-five.

The condition of the above obligation is such, that whereas Julie Soulard, widow, James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs of Antoine Soulard, deceased, have this day prayed for, and obtained, an appeal to the Supreme Court of the United States, from the decree of this Court of the United States for the Missouri District against them, in a suit wherein they are petitioners, and the United States are defendants: Now if the said petitioners shall well and truly prosecute the said appeal with effect, and shall pay all costs occasioned by them in the prosecution of the same, and shall well and truly pay all costs which may be adjudged against them in said suit, then the above obligation to be void; otherwise to remain in full force and effect.

M. P. LEDUC, [L. S.]

UNITED STATES, }
Missouri District, } ss.

I, Isaac Barton, Clerk of the Court of the United States for the Missouri district, do hereby certify, that the appeal in the case of Julia Soulard, widow, and James G. Soulard, and others, children and heirs of Antoine Soulard, deceased, against the United States, was taken at the December term of said court, being on the twenty-sixth day of December, one thousand eight hundred and twenty-five, and that, on the thirtieth day of December, one thousand eight hundred and twenty-five, said court adjourned, to sit again on the third Monday of April then next.

In testimony whereof, I have hereunto set my hand, and affixed
[L. S.] the seal of said court, at St. Louis, the sixteenth day of September, one thousand eight hundred and twenty-six.

ISAAC BARTON, *Clerk*.

Court of the United States for the State of Missouri.

PECK, JUDGE.

James G. Soulard and others,
vs.
The United States.

This is a petition under the act of Congress of the 26th May, 1824, which authorizes certain claimants of lands to institute proceedings in this court, to try the validity of their claims, to obtain confirmations thereof.

The petition states, that, in the year 1796, a concession for 10,000 arpents of land, to be located on any part of the royal domain, was issued by Don Zenon Trudeau, Lieutenant Governor of the province of Upper Louisiana, to Antoine Soulard, the ancestor of the petitioners, who was then the Surveyor General of said province, in consideration of *public services:* that, on the 20th of February, 1804, the quantity of land as conceded, was located and surveyed by Don Santiago Rankin, deputy surveyor under said Soulard, and that a certificate of said survey was recorded in the book of records of the public surveys kept by the Surveyor General: that, before the time when claims should have been filed, pursuant to the act of Congress of the 2d of March, 1805, the said decree of concession and certificate of survey were, by mistake, thrown into the fire and destroyed; and that said Soulard believing he was excluded from the benefit of any of the acts of Congress passed for the relief of land claimants, in consequence of the loss of said papers, omitted to file any notice of said claim, and that he had consequently derived no benefit of any of the laws of Congress theretofore passed for the relief of land claimants.

A jury, to whom the court had submitted that fact for trial, found, that a concession, as above stated, had issued to the ancestor of the petitioners. No settlement or improvement is alleged, nor any thing in relation to those qualifications of the grantee, as to property, which are required by the regulations. This statement of facts is all that is necessary to be prefixed to the opinion of the court.

A mass of evidence was offered on the hearing of the cause, but except that which is adverted to, and stated in the opinion, no part of it is material.

Opinion of the Court.

The interests to be affected by the decision of the questions arising in this case, are extensive. The questions themselves are novel. There is nothing in relation to them which can be regarded in the nature of a precedent, or authority to influence their decision. They are now, for the first time, without any light from this source, presented for judicial determination. In their investigation, it is necessary to explore an extensive field,—a region of waste, where darkness obscures, and labyrinths embarrass; where the desolating hand of revolution, and of time, has removed many of those landmarks which, at any time, were scarcely distinguishable. Hesitation and distrust, therefore, must reasonably accompany the inquiry.

What were the laws which regulated the disposition of the King's domain, at the date of the alleged concession, is a question, first in order for examination.

It is contended on behalf of the petitioners, that the 81st article of the ordinance of the King of Spain, became in force in Louisiana, immediately on

the ratification of the treaty of Fontainebleau, of the 3d of November, 1762; or, at all events, on the occupation of Louisiana by Spain, in 1769, under that treaty.

The assumption, that this article of the ordinance became in force in Louisiana, as contended for, either as it is attempted to be supported by the law of nations, or by the proclamation of Count O'Reily, Governor General, appears to be without foundation.

By the law of nations, the ancient laws of a ceded country, continue in force until changed by the new sovereign. But this principle does not apply to those laws which a sovereign may have thought necessary to establish for the purpose of regulating the manner in which the royal lands should be disposed of. It is a principle which applies to the municipal regulations of a country in general, and is necessary to the preservation of order, the protection of rights, and the redress of injuries. A different rule would be productive of great inconvenience. If a change of sovereignty, of itself, introduced the laws of the new sovereign, the consequence would be, that the inhabitants of a ceded country must often become subject to laws which they had not the means of knowing; which might be locked up in a foreign language, and of which there could have been no promulgation. These reasons, upon which, doubtless, the principle of the law of nations, adverted to, was established, do not exist in favor of the establishment of the same principle in relation to those laws which may regulate the disposition of the sovereign's domain. These are excepted from the operation of the general principle of the law of nations here laid down. Each sovereign disposes of his royal lands in such manner as he may think proper. He may grant them from under his own hand; or, he may adopt the more convenient and judicious mode of delegating to others the power to grant them, subject to such instructions or laws, as to him may appear expedient. But when a sovereign disposes of territory by treaty, he thereby parts with the right to grant lands in such territory; the title to them having passed by such treaty to another; and the authority of all persons whom he may have authorized to grant lands for him, ceases with his own; and all laws relating thereto become inoperative, the subject upon which they were to operate, namely, the *title* of the sovereign, having been transferred to another. The consequence which follows this, is, not that those laws of the new sovereign, which should regulate the sale of his royal lands, would be thereby introduced into the ceded country, but, that no laws whatever, in relation to that subject, would be in force there; and therefore, that no lands could be there granted, except by the sovereign himself, until he should provide therefor by law, or otherwise.

It is possible for the legislative power of a government, so to form its laws, as to make them extend to, and be in force in countries thereafter to be acquired. This is a possible exercise of power, to which every government is competent. It is said by Mr. Livingston, in his answer to Mr. Jefferson, in the discussion of the question of title to the Batture at New Orleans, that this was done by Spain, in relation to her American possessions thereafter to be acquired. His words are, "A code had long been prepared for the government of the Spanish colonies in the *Indies*, by which name they designated all their American possessions. It is called the *Recopilacion de las leyes de las Indies*. It introduces the law of Castile, those of the Partidos and of Toro, that is to say, the whole body of the laws of Spain, in all cases not provided for by the laws of the Indies, and declares that the laws of that collection shall prevail in all the Spanish colonies, as well those

then established, as those which might in future be discovered or established."

"The moment then, that Louisiana became a Spanish province, it was subjected *de jure*, to the system of laws I have described; and *de facto*, none other has had the slightest authority since the transfer." (5th Am. Law Jour. p. 143.)

That such a code as is here described was prepared by the Spanish monarch for his American dominions is certain; and that it was the intention that this code should prevail in all the Spanish possessions in America, may likewise be admitted; but it by no means follows, that it was to prevail in all countries in America, which might thereafter be *annexed to the Spanish dominions by treaty, immediately on the ratification thereof, without any further act on the part of the Spanish government, to extend it to such acquired countries;* that it was to prevail in countries which, at the date of such annexation, should be inhabited and provided with laws, in countries whose language and laws should be foreign to such code; in countries where, from this cause, as well as for want of promulgation, the means of knowledge of the laws contained in such code, had not been afforded.—The intention of this legislative declaration is sufficiently satisfied, by allowing it to extend the laws to which it has reference, to all the then Spanish colonies in America, and to such as might thereafter be established in the said dominions, as well in countries then discovered, as in those thereafter to be discovered; and by allowing it also to express an intention, that the code was to be adapted to, and to prevail in, all the Spanish possessions in America, as well those acquired by treaty as others; but, with respect to the former, that they should be extended there, and made to prevail there, by an act of the government competent for such purpose, *after* such annexation by treaty.

A view of the Spanish dominions in America, at the date at which the code was given, favors the construction here contended for. The words themselves do not embrace the case of an acquired colony. It is scarcely to be supposed, that such a case was intended by the lawgiving power to be embraced by them; shall we allow a sense and interpretation, a comprehension to words beyond their necessary and proper import? Shall we do this in derogation of the principle of international law before mentioned; in violation of those maxims of justice that should receive a universal recognition? If this construction be not correct, at what point of time was the code of the *Indies* to be regarded as in force in Louisiana? Was it to be regarded as in force there, immediately on the occupation of the country by Spain, and without any promulgation or translation of them? or was some further act necessary on the part of Spain to introduce them there? This question must be answered in the affirmative. I do not, therefore, hesitate to deny, to the words quoted by Mr. Livingston, the effect which he imputes to them. The construction here given, agrees with that given by the Spanish government itself, so far as the acts of that government furnishes any construction.

When Spain took possession of Louisiana, in 1769, after the cession to her by France, no magic influence followed this act; the laws of the country were not thereby changed; nor had they been changed by the ratification of the treaty in 1762. This change remained to be produced by an act of sovereign power on the part of the Spanish government.

Accordingly, Count O'Reily, clothed with extraordinary powers, at the head of a military force, and as the Governor General of Louisiana, by pro-

clamation made immediately after his occupation of Louisiana, and for reasons therein mentioned, abolished the then existing form of government, and established a new one; abrogated the ancient laws, and introduced the code of the *Indies*, and took measures to provide the inhabitants with the means of becoming acquainted therewith. The code itself is introduced in qualifying terms, and it was clearly no part of the intention of that proclamation to introduce the 81st article of the ordinance of 1754, but only to introduce that portion of the *code of the Indies* which was of a general nature, and not that which had relation, exclusively, to the sale and grant of the lands of the Crown. It was not until the following year, that O'Reilly directed his attention to this subject. On the 18th of February, 1770, he published a set of regulations, prescribing the terms and conditions upon which lands should be granted.

It is manifest, from these regulations, that O'Reily did not consider the 81st article of the ordinance mentioned, to be in force in Louisiana. He does not pretend to derive his authority to grant lands from that ordinance; but he assumes the exercise of that power, as one among those given by his commission.

We have the testimony of *Morales*, the intendant, in the preamble to his regulations, that the power to grant lands belonged to the civil and military Government, after the order of the King of Spain, "that is, in virtue of the *order of the 24th August*, 1770, the powers of the civil and military Government both *centered* in the Governor General. To him belonged the power to divide and grant lands in virtue of this order.

If the 81st article of the ordinance of 1754, had been introduced into Louisiana, by the law of nations, in virtue of the Treaty, or by the Legislative declaration contained in the code of the *Indies*, or by the proclamation of O'Reily, and if it also authorized the Governor General of Louisiana to grant lands, why did O'Reily think it necessary to derive this power from the special terms of his commission? And why was a special order of the King deemed necessary for this purpose?

Morales, the intendant, in the preamble to his regulations, after reciting the power to distribute lands, which had been given to the intendancy, by the decree of the King of Spain, of 1798, proceeds to state the manner in which he intends to exercise that trust, thus: "wishing to perform this important charge, not only according to the 81st article of the ordinance of the intendants of New Spain, of the regulations of the year 1754, cited in the said article, and the laws respecting it, but also with regard to local circumstances; and those which may, without injury to the interest of the King, contribute to the encouragement, and to the greatest good of his subjects already established, or who may establish themselves in this part of his possessions." If the 81st article of the ordinance mentioned were in force in Louisiana, it was a law obligatory upon *Morales*, the intendant; a command to him, and from which he could not legally depart. How, then, could he perform this important charge "*with regard to local circumstances; and those which may, without injury to the interests of the King, contribute to the encouragement and to the greatest good of his subjects?*"

It must be that the intendant here considers the ordinance of 1754 in force only by his adoption, and expresses his intention to adopt it so far, and no farther, than local circumstances should make it expedient. The regulations of *O'Reily*, of *Gayoso*, and of *Morales*, in their provisions, and the general policy in which they are dictated, are, moreover, so repugnant to the

ordinance of 1754, as conclusively to show, that the latter was not in force in Louisiana, in the opinion of the framers of these regulations; for if the ordinance was in force in Louisiana, and the Governor General derived his authority to grant lands from the 12th section of it, he certainly could not annul the provisions of that ordinance from which he derived his authority, by making regulations repugnant thereto.

A comparison of the provisions of this ordinance with those of the regulations mentioned, will show, that there exists a general repugnancy between them, and an examination of the former will also show, that, if it be regarded as having been in force in Louisiana, no concession issued by the Lieutenant Governor, or commandant, can be considered authorized or valid.

The 1st section of the ordinance of 1754, provides, "that, from the date of this my Royal order, the power of appointing sub-delegate judges, to sell and compromise for the lands, and uncultivated parts of the said Dominions, shall belong hereafter exclusively to the Viceroys and Presidents of my Royal Audiencias of those Kingdoms who shall send them their appointment or commission, with an authentic copy of this regulation."

"The said Viceroys and Presidents shall be obliged to give immediate notice to the Secretary of State and Universal Despatch of the Indias, of the ministers whom they shall make sub-delegates in their respective districts and places where they have been usually appointed, or where it may seem necessary to appoint new ones, for his approbation."

"Those at present exercising this commission, shall continue. These, and those whom the said Viceroys and Presidents shall hereafter appoint, may sub-delegate their commission to others, for the distant parts and provinces of their stations, as was previously done."

This section prescribes the authority by which alone a sub-delegate can be appointed. It gives to the Viceroys and Presidents of the Audiencias the *exclusive power* of making those appointments; makes them the exclusive judges of the places and districts where such appointments may be necessary; and vests the sub-delegates with power to sub-delegate their commission to others for the distant provinces and places of their stations.

Had the Lieutenant Governor of Upper Louisiana, his appointment, as sub-delegate, from the Viceroys or Presidents of the Audiencias? or had he a sub-delegation from one so appointed? It has been proved on behalf of the petitioners, that he had not. The evidence, of the late Lieutenant Governor of Upper Louisiana, to this point, is, that he, and his predecessors, acted as sub-delegate, *without* any commission, as such; that he, and they, performed the functions of that office in virtue of their commission as Lieutenant Governor which issued from the Governor General of Louisiana; that the practice in other parts of the province, in this respect, was the same as in Upper Louisiana; in all, the Lieutenant Governors were, *ex officio*, sub-delegates. An appointment from the Viceroys or Presidents of the Audiencias of the Lieutenant Governor to be sub-delegate, is not permitted to be inferred from the performance of the duties of that office; the absence of such appointment, as well as the authority, in virtue of which the duties of the office were assumed, having been proved. According to this evidence, the Lieutenant Governor of Upper Louisiana was not a sub-delegate within the intention of the ordinance. Nothing can be more clear, than that a concession of lands by a Lieutenant Governor who had not been appointed a sub-delegate by the authority prescribed in the recited section of the ordinance, can be allowed to possess any validity, if that ordinance be considered as

having been in force. The 12th section of this ordinance, which is relied upon on behalf of the petitioners, as authorizing grants of land in Louisiana by the Governor General, does not vest that officer with power to appoint sub-delegates; this power having been exclusively given, by the 1st section, to the Viceroys and Presidents of the Audiencias, but vests him with precisely the same power and jurisdiction, in relation to the sale and grant of lands, which had been given in previous sections to the Audiencias, and directs, in addition, that certain other officers shall be associated with him, by whose advice confirmations are to issue.

The 12th section is in these words: "In the distant provinces of the Audiencias, or where the scene intervenes, as Carracas, Habanas, Cartagena, Buenos Ayres, Panama, Yucatan, Camana, Margarita, Puerto Rico, and in other of like situation, confirmation shall be issued by their Governors, with advice of the Officiales Reales, King's (Fiscal Minister) and of the Lieutenant General Letrado, where he may be stationed. The same officers shall also determine the appeals from the sub-delegate, who shall have been, or shall be appointed in each one of the said provinces and islands, without recourse being had to the Audiencia, or chancery of the district, unless the two decisions be at variance, and then this is to be officially, and, by way of consultation, to avoid the expenses of appeal. Wherever there shall be two Officiales Reales, the younger in office shall be the advocate of the Royal treasury in these causes, and the elder, the associate judge of the Governor, using the aid of counsel where there is no Auditor or Lieutenant Governor; and if the question is a point of law, by applying to any lawyer within or out of the district, and where there shall be but one Official Real, any intelligent person of the place may be appointed as the advocate of the Royal treasury.

"It shall also be the duty of the Governors, with their appropriate judges, to examine concerning the compositions of the sub-delegates, as provided in respect to the Audiencias."

The 5th section, which prescribes duties to the Audiencias, and the other officers to whom the power of confirmation is given by the ordinance, meaning the Governors mentioned in the 12th section, is in these words: "The possessors of lands sold, or compromised for, by the respective sub-delegates, from the said year 1700, to the present time, shall not be molested, disturbed, nor informed against now, nor at any time, if it shall appear that they have been confirmed by my Royal person, or by the Viceroys and Presidents of the respective districts while in office; but those who shall have held their lands without this necessary requisite, shall apply for their confirmation to the Audiencias of their district, and to the other officers on whom this power is conferred by the present regulation. These authorities having examined the proceedings of the sub-delegates, in ascertaining the quantity and value of the lands in question, and the patent that may have been issued for them, shall determine whether the sale or composition was made without fraud or collusion, and at reasonable prices. This shall be done with the judgment and advice of the Fiscals. After considering every circumstance, and the price of the sale or composition, and the respective dues of "*mediana ta*" (first fruits of the half year) appearing to have been paid into the Royal treasury, and the King's money being again paid in the amount that may seem proper, the confirmation of the patent of possessors of these lands, shall be given in my Royal name, by which the property and claim in said lands shall be rendered legal, as well as in the waters and uncultivated parts,

and they and their successors, general and particular, shall not be molested therein.

In addition to the duties prescribed in this section, the 9th prescribes, that "the Audiencias shall issue the confirmations by provinces, and in my Royal name, after an examination by the Fiscal as before said, without greater judicial expense to the parties than what is required by the regulated prices for such act.

"For this purpose, they are to collect from the sub-delegates of their district the proceedings that have taken place in the sale or composition of that for which confirmation shall be required. With these, and in proportion to the estimated value of the lands, and considering, at the same time, the benefit which it was my pleasure to grant to these my subjects, by relieving them from the expense of applying to my Royal person, they shall determine the sum to be paid me for this new favor."

In these sections, no power is given to the Audiencias, or to the Governors, to appoint sub-delegates. But the intention to make *sales*, and not *gifts* of lands, which is perceivable in them, furnishes ground for a further objection to the validity of the concession in this case, if the ordinance extended to Louisiana. By these sections, no confirmations are to be made, except *upon sales, or compromises, for a consideration in money proportioned to the estimated value of the land, the payment of which consideration is to precede the confirmation;* and, in addition to being compelled to pay the value of the land, the purchaser is required to pay the dues of *medianata*, (first fruits of the half year) and also, to pay for the favor which it was the Royal pleasure to confer, in relieving him from the expense of applying to the Royal person to obtain confirmation.

The laws, 14 and 15, cited in the second section of the ordinance, the requirements of which laws are there directed to be regarded, show that the King's general intention is to sell his lands. In the former of these laws he declares, that, "as we have succeeded to the entire seignory of the Indies, and all the lands and soil that have not been granted away by the Kings, our predecessors, or by us, in our name, belonging to our *patrimony* and our royal crown, it is proper that all lands held under false and illegal titles should be restored to us; and that all the land that shall remain, after receiving what may be necessary for constructions, commons, and pasturages, for the places which are necessary, not only for the present but for the future; and after distributing to the Indians what may be necessary for tillage and herding, confirming the land they now hold, and granting them more, shall be free for grants and dispositions thereof at our pleasure," &c. And in the 15th law, after having, among other things, directed an adjustment of title, it is directed, that "all the lands that shall remain to be adjusted shall be offered at public sale, and knocked down to the highest bidder," &c.

The 8th section of the ordinance directs that "a *proper reward* shall be given to those who shall inform of lands, grounds, places, waters, and of uncultivated and desert lands, and shall be allowed a moderate portion of those of which they shall have informed as being occupied without title;" the 7th section having authorized the sub-delegate to determine the quantity to be granted for such service.

A view of the whole ordinance removes all doubt as to the general intention to *sell* and not to *give* the royal lands, except to the inhabitants of towns for pasturage and commons, according to their wants, and to the Indians, as mentioned in the laws, 14 and 15, just recited, and except so

far as the grants which may be made to those who shall give information against persons occupying lands without title, authorized by the 7th and 8th sections, may be considered as in the nature of gifts.

From this view of the ordinance, the ambiguous meaning of the term *mercedes*, to be found in its preamble, produces no difficulty. The sense in which that *term* must be received, is to be determined by a view of the whole ordinance; it need not necessarily be interpreted to mean gifts, but may as well be interpreted to mean grants. If, however, it necessarily imported gifts, effect is sufficiently given to it in this sense, by the gifts to be made to the inhabitants of towns for commons and pasturage, and to be made to the Indians, as directed in the 14th and 15th laws, before adverted to.

If, then, this ordinance was to be be made the basis upon which the rights to confirmation in this case should be determined, the claim could not be confirmed, on the ground that the concession was not made upon a *sale for money*, and at the *reasonable value* of the land, but was made in consideration of *public services;* a consideration unknown to the ordinance, except in the case of an *informer*, as authorized in the 7th and 8th sections, where lands are authorized to be adjudged in moderate quantities to those who shall give information of them as being occupied without title. This is the only species of *service* for which this ordinance authorizes a concession. This is the only case in which a sub-delegate is made the judge of the value of services. He is not made the judge of the value of services of the nature of those upon which the concession in question is alleged to have been issued.

From this examination, it will appear to be the interest of the claimant to deprecate a decision which is to make this ordinance the rule by which his rights are to be tried. The repugnancy between this ordinance on the one hand, and the regulations of O'Reily, Gayaso, and Morales, on the other, is apparent in the end and objects of each, and in their respective provisions. To raise a *revenue* was the leading object of the former, and the *sale of lands* the means to be used for its accomplishment; and the *settlement of the country* and *interests of tillage* were the objects of the latter, and *donations of land* were the means to be used for securing these objects. The repugnancy is such that both cannot exist together: one must give way to the other—one must be regarded as void of authority.

The regulations, especially those made by the governors, were the acts of the supreme authority in Louisiana; the acts of that authority, which the inhabitants there regarded as both legislative and executive, which, in 1799, abolished the former government, and established a new one; abrogated the existing laws, and introduced a new code; that the regulations were the acts of an authority so transcendent, furnishes a presumption in favor of their legality. That the acts of the supreme authority in Louisiana must be regarded as *prima facie* authorized, is a proposition, the admission of which appears to be necessary to entitle any of the acts of that government to be regarded as valid. The presumption arising in favor of the authority of the Governor General to make regulations for the distribution of the royal lands, is fortified by the length of time during which grants were made in pursuance of those regulations; and which, it is reasonable to believe, were made with a knowledge of the Spanish Court. And is further supported by the recital contained in the preamble to the regulations of Morales, that *the power to grant lands belonged to the civil*

and military government, since the order of the King of 1770. What this order was; what power, what discretion it vested in the Governor General in making grants of the royal domain, and what restrictions it imposed, is left to be inferred (in the absence of the order) from the regulations themselves, and the other acts of the Governor General under it. In relation to these regulations, they may be regarded as rules which the governors prescribed to themselves, and to the inhabitants of the Province, and bear evidence that they had their source in a discretionary power. They are, therefore, to be regarded as laws in respect of the subject which they regulate; this conclusion follows from what has been said, and is consistent with a doctrine already laid down, that no grant of the public domain can be regarded as legal, except made in virtue of an authority from the Crown; such authority in this instance being presumed. That the regulations of O'Reily are of a date anterior to the order of the King, of 1770, does not appear to affect their authority. There would not, necessarily, be such a repugnancy between this order and those regulations, as to annul the latter. The subsequent sanction of these, and the presumption of their being authorized, thence arising, must be considered sufficient to give them the authority of law, whether the power to make them was comprised in the general and extraordinary powers given to the Governor General, O'Reily, previous to the order of 1770, or not.

From what has been said, it appears that the regulations of O'Reily, of Gayaso, and of Morales, are the *only laws* which regulated the distribution of lands in Louisiana, under the Spanish Government. Was the concession, in this case, authorized by these laws? It is not pretended that it was; and that it was not, is unquestionable. But it is insisted, for the petitioners, that the regulations of O'Reily did not extend to Upper Louisiana, and that those of Gayaso and of Morales, being of a date subsequent to the concession, ought not to affect it; that if the regulations did not authorize this concession, they did not prohibit it; and that, as it is not prohibited, a presumption arises in favor of its legality; that this presumption sustains the validity of the concession, and is sufficient to authorize its confirmation by this court.

In examining this reasoning, if it be admitted that the concession of an inferior officer is to be considered as *prima facie* authorized, this presumption, like all others, can stand only so long as it shall remain unopposed by evidence, or presumptions of a higher nature. A presumption can weigh only so far as it is calculated to induce belief; and so soon as it shall cease to do this, in consequence of the existence of facts, inconsistent with such belief, it ceases to make a *prima facie* case—ceases to furnish ground upon which a decision can rest. The presumption which arises in favor of the validity of the acts of the supreme authority, especially such as the enactment of regulations, and the acknowledgement of the authority of these for a series of years, is of a higher nature than that which arises in favor of the legality of a single act, or even a series of acts, such as concessions of land by the Lieutenant Governor, particularly when these acts are to be subject to the approval and confirmation of that supreme authority which gave those laws that were to regulate the subject of concessions.

Upon what reason is it to be believed that the Governor General intended to authorize grants of land in Upper Louisiana, upon principles different from those upon which grants were to be made in every other part of the province? Upon what reason were grants of land to be limited in quantity

in Natchitoches, Attakapas, and Opelousas, and unlimited in Upper Louisiana? And what policy dictated the limitation of grants in the latter place to 800 arpents, which we find in the 9th and 10th sections of Gayaso's regulations, and in the 1st section of the regulations of Morales, if before these regulations there was no reason for a limitation? Was not the extension of settlement and the cultivation of the soil as much to be encouraged by the distribution of lands in Upper Louisiana as elsewhere in the Province? Why, in Upper Louisiana, should grants have been made without regard to the means of the cultivator, or without regard to any cultivation whatever, when these particulars were to be attended to with strictness in every other part of the Province?

The regulations of O'Reily were made for the entire Province. They were made, as we are informed in the preamble to them, in consequence of petitions from the inhabitants, and of the information derived by the Governor in his visit through the country, and in consequence of the reports of the inhabitants assembled in each district by the Governor's order. They were made to "fix the extent of the grants of lands which should thereafter be made, as well as the enclosures," &c. Many of the articles in the regulations refer to particular places, and have a local application merely; but the same policy, namely, the extension of the settlements, and the interest of agriculture, dictated them all.

The regulations having, in previous sections, authorized small grants to be made, in proportion to the means of the cultivator, the 8th section directs that "no grant in the Opelousas, Attakapas, and Natchitoches shall exceed one league in front by one league in depth; but when the land granted shall not have that depth, a league and a half in front by half a league in depth may be granted;" and the 9th article directs, that, "to obtain in the Opelousas, Attakapas, and Natchitoches a grant of forty-two arpents in front by forty-two arpents in depth, the applicant must make appear that he is possessor of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants to be made of greater extent than that declared in the preceding article."

It would appear that the policy apparent in O'Reily's regulations did extend itself to the Province of Upper Louisiana. But it is a mistake to suppose that a prohibition was necessary to deprive the Lieutenant Governor of the power of making grants, and that, without a prohibition, his grant would be valid. The reverse of this is true—his grants are invalid unless authorized by an express authority from the King, either as derived through the Governor General, in the form of laws, or otherwise. Can it be believed that there existed an express authority which authorized this grant of 10,000 arpents, without any reference to settlement, cultivation, or property qualifications? The view which has been taken excludes such belief; and with it, every presumption in favor of the legality of the concession.

But the evidence of the late Lieutenant Governor is introduced to prove, that, in Upper Louisiana, that officer was unrestricted as to quantity, though the witness does not pretend that he had any authority, other than the law, to make such concessions. The amount of his evidence is, that the law clothed him, as Lieutenant Governor, with power to make concessions, and imposed no limitation as to the extent of the grant. Does the witness mean to prove that there existed any *unwritten law*, in virtue of which the officer mentioned, or any other officer of the Crown, was authorized to make grants

of the royal domain? If he does, the evidence is untrue. It may be assumed, with certainty, that *no unwritten law, no principle of the Spanish Constitution* gives to any officer of the Crown the power to grant the royal lands; and that such power, to be legitimate, must be derived from some authority other than the Constitution of Spain, or any unwritten law, usage, or custom. An express *written authority* was indispensably necessary to authorize the Lieutenant Governor of Upper Louisiana to grant lands. The existence of such authority might be inferred from circumstances, but its existence is indispensable to the validity of a grant. Can it be inferred in this case, that there existed a written authority in the nature of a law, or otherwise, in virtue of which the Lieutenant Governor of Upper Louisiana could grant lands, without regard to settlement, cultivation, the means of the cultivator, or the extent of the grant? It cannot, because the general law, as well as the general policy of the Spanish government, as evinced in all the regulations mentioned, is at war with such inference. If such authority did exist, it being an exception to the general law and policy, must be shown, and is not to be implied or presumed. The witness proves no such authority; he refers to none; he alleges the existence of none, in such way as to prove any thing. If he intended to prove the meaning of the regulations, that is not the subject of proof; these the court must construe for itself; if he means there was written law, which gave the alleged authority, the better evidence, the law itself, must be produced; if he means that there existed an unwritten law which gave the authority, the witness does not appear to be so learned in legal science as to make his opinion of any value; could it be considered as a foreign law, and therefore the subject of proof, and could it be at all admitted as possible, (which however it cannot) that any unwritten law could give any authority, or pertain to the subject. This evidence, then, does not vary the conclusion before made, that there existed no authority for the concession in question.

But if it were conceded that this concession furnished of itself a presumption of its own legality, and that no circumstances exist to impeach this presumption, this alone would not be sufficient to authorize its confirmation; the concession itself must be such as "might have been perfected into a complete title, under and in conformity to the laws, usages, and custom, of the Spanish government;" and the claim must be such as "the principles of justice" require to be confirmed.

The 1st section of the act of Congress, which refers this species of claim to the decision of this court, declares, "That it shall and may be lawful for any person or persons, &c. claiming lands, tenements, or hereditaments, in that part of the late province of Louisiana which is now included within the State of Missouri, by virtue of any French or Spanish grant, concession, warrant, or order of survey, legally made, granted, or issued, before the 10th day of March, one thousand eight hundred and four, by the proper authorities, to any person or persons resident in the province of Louisiana, at the date thereof, or on or before the tenth day of March, one thousand eight hundred and four, and which was protected or secured by the treaty between the United States of America and the French Republic, of the thirtieth day of April, one thousand eight hundred and three, and which might have been perfected into a complete title, under and in conformity to the laws, usages, and customs, of the government under which the same originated, had not the sovereignty of the country been transferred to the United States, in each and every such case, it shall and may be lawful for such person or persons, &c.

to present a petition to the District Court of the State of Missouri, setting forth," &c. The section then proceeds to direct what facts the petition must contain, and after having stated these, declares that the said court is thereby "authorized and required to hold and exercise jurisdiction of every petition presented in conformity with the provisions of this act, and to hear and determine the same," &c. "in conformity with the principles of justice, and according to the laws and ordinances of the government under which the claim originated." The 2d section declares, "That every petition which shall be presented under the provisions of this act, shall be conducted according to the rules of a court of equity;" and further declares, "That the said court shall have full power and authority to hear and determine all questions arising in said cause, relative to the title of the claimants, the extent, locality, and boundaries, of the said claim, or other matters connected therewith, fit and proper to be heard and determined; and by a final decree, to settle and determine the question of the validity of the title, according to the law of nations, the stipulations of any treaty, and proceedings under the same; the several acts of Congress in relation thereto; and the laws and ordinances of the government from which it is alleged to have been derived; and all other questions properly arising between the claimants and the United States." These discordant provisions of this act, make it difficult to ascertain its intention, as to the rule of decision which the court is to adopt.

It is to be remarked, that the act vests a new jurisdiction. The first part of the first section defines, with great precission, the cases of which the court is authorized and required to take jurisdiction. Any claim not included in that description, is not within the jurisdiction of the court. To give jurisdiction, the claim must be in virtue of a French or Spanish grant, or of a concession, warrant, or order of survey. These are the only cases to which the jurisdiction extends. But the description does not stop here; other circumstances must attend it; a further description must apply to each case, to bring it within the jurisdiction. The grant, concession, warrant, or order of survey, which is to form the ground of claim, must have been "legally made, granted, or issued, before the tenth day of March, one thousand eight hundred and four, by the proper authorities, to any person or persons resident in the province of Louisiana, at the date thereof;" it must have been "protected or secured by the treaty between the United States and the French Republic, of the 30th day of April, 1803;" and it must be such as "might have been perfected into a complete title, under, and in conformity to, the laws, usages, and customs, of the government under which the same originated, had not the sovereignty of the country been transferred to the United States." If the claim is without any member of this description, the jurisdiction of the court cannot embrace it. If, for instance, it was not originated before the 10th day of March, 1804, or by the proper authorities, or could not have been perfected into a complete title under, and in conformity to, the laws of the government from which it was derived, jurisdiction would not attach. If, however, jurisdiction attaches to the case in consequence of its being of the description mentioned in the act, it does not follow that the claim would necessarily be entitled to confirmation; for although the claim, at its inception, should be such as might have been confirmed, the term "might," implies possibility, and such a claim, therefore, might or might not have been confirmed, according to circumstances, and as the principles of justice should require; the claimant might not have complied

with the conditions of the grant, or the commands of the law; or he might have abandoned his claim. Such a claim, therefore, the court in the latter part of the section, is authorized "to hear and determine in conformity with the principles of justice, and according to the laws and ordinances of the government" from which it is derived.

The first part of the 1st section not only defines the jurisdiction of the court, but also furnishes a rule of decision, which the court is necessarily to regard in determining the validity of the claim. Among other things, it requires that the claim must be such as "*might have been perfected into a complete title under, and in conformity to the laws, usages, and customs* of the Government from which it is derived, had not the sovereignty of the country been transferred to the United States." The claim before the court, is for 10,000 arpents of land, founded upon a concession issued in 1796, by the Lieutenant Governor of Upper Louisiana; and public service is the consideration upon which the concession is alleged to have been issued. No location of this concession was made until the 20th of February, 1804, some time after the treaty of cession must have become known to the claimant. No settlement, no improvement or cultivation is alleged to have been made; nor, in issuing the concession, was regard had to the means of the claimant. In conformity with what law of the Spanish Government could this claim have been confirmed? Not in conformity with the regulations of O'Reily. It is the intention of these, that grants should be made with a view to settlement and cultivation, and that the property and qualifications of the applicant should determine the extent of the grant. It is their further intention, that a failure to settle or cultivate, should occasion a forfeiture of the grant: they authorize no grant which is not subject to these conditions; they authorize no grant to be made except with regard to the means of the applicant; nor do they authorize any grant of a greater extent than a league square.

Neither would the regulations of Gayoso, or of Morales, have authorized the confirmation of the present claim. They present the same objections to its confirmation that have been already adverted to, as growing out of the regulations of O'Reily. Each of these regulations contain provisions not to be reconciled with the idea that the present concession could have been confirmed, in conformity with law, had no change of sovereignty taken place. They equally evince an intention to authorize grants, with a view to tillage, and the settlement of the country, and to secure these objects, they required that, in all grants to be made, regard should be had to the family and property of the grantee, to determine the extent of the grant.

The 9th section of Gayoso's regulations directs, that, "to every new settler, answering the foregoing description, and married, there shall be granted two hundred arpents of land; fifty arpents shall be added for every child he shall bring with him."

The 10th section of the same regulations declares, that, "to every emigrant possessing property, and uniting the circumstances before mentioned, who shall arrive with an intention to establish himself, there shall be granted 200 arpents of land; and, in addition, 20 arpents for every negro that he shall bring: *Provided, however*, that the grant shall never exceed 800 arpents to one proprietor. If he has such a number of negroes as would entitle him, at the above rate, to a larger grant, he will also possess the means of purchasing more than that quantity of land, if he wants it, and it is necessary, by all possible means, to prevent *speculations* in lands."

Both these sections refer, expressly, to the province of Upper Louisiana, then known by the name of Illinois, as manifestly appears by the context.

The 1st section of the regulations of Morales prescribes, that, "to each newly arrived family who are possessed of the necessary qualifications to be admitted among the number of cultivators of these provinces, and who have obtained the permission of the Government to establish themselves on a place which they have chosen, there shall be granted *for once*, if it is on the bank of the Mississippi, four, six, or eight arpents in front on the river, by the ordinary depth of forty arpents, and if it is at any other place, the quantity which they shall be judged capable to cultivate, and which shall be deemed necessary for pasture for his beasts, in proportion according to the number of which the family is composed; understanding that the concession is never to exceed 800 arpents in superficies."

The 10th section of the last mentioned regulations prescribes, that, "in the posts of Opelousas and Attakapas, the greatest quantity of land that can be conceded shall be one league front by the same quantity in depth, and when forty arpents cannot be obtained in depth, a half a league may be granted, and for a general rule, it is established, that, to obtain in said posts a half a league in front by the same quantity in depth, the petitioner must be owner of 100 head of cattle, some horses and sheep, and two slaves; and also in proportion for a larger tract, without the power, however, of exceeding the quantity before mentioned."

The first section of the regulations last mentioned, after having directed the grants which are to be made on the Mississippi, directs that, *if made at any other place*, "the quantity which they shall be judged capable to cultivate, and which shall be deemed necessary for pasturage for his beasts, in proportion according to the number of which the family is composed; understanding that the concession is never to exceed 800 arpents in superficies." This section lays down the general rule which is to prevail throughout the province. The larger grants authorized at Opelousas and Attakapas by the 10th section, is an exception to this general rule, which exception is confined to the posts mentioned: so that the regulations of Morales limit grants in Upper Louisiana, like those of Gayoso had done, to 800 arpents, while they authorized them at the post of Opelousas and Attakapas to the extent of a league square. It does not appear to be necessary to inquire into the reasons upon which grants a league square were authorized at the posts mentioned, while 800 arpents only could be granted, under any circumstances, at any other place in the province. It is worthy of observation, however, that the regulations of O'Reily contain a like exception, in favor of these posts, and also of Natchitoches.

The 14th section of Gayoso's regulations, operates directly upon the present claim; it declares, that "the new settler to whom lands have been granted, shall lose them without recovery, if, in the term of one year, he shall not begin to establish himself upon them, or if, in the third year, he shall not have put under labor ten arpents in every hundred."

So, likewise, does the 4th section of the regulations of Morales, which declares, that "the new settlers who have obtained lands, shall be equally obliged to clear and put in cultivation, in the precise time of three years, all the front of their concessions, or the depth of at least two arpents, on the penalty of having the lands granted, remitted to the domain, if this condition is not complied with."

That the regulations, in which these sections are found, are of a date subsequent to the concession, in this case, forms no reason why they may not impose duties on the claimant, and prescribe forfeitures for a failure to perform those duties. Might not a forfeiture of the present claim have been adjudged under each of these sections? No settlement, no improvement was made, as required by either. This omission, it is declared by each of these sections, is to occasion a forfeiture of the claim.

The right of the party, such as it was at the change of the government, is that upon which the court is to decide. If, before this time, it had been abandoned, forfeited, or in any degree impaired, under the laws of Spain, the objection to its confirmation, which Spain might have raised, for either of these causes, may be raised with the same force before this court. The precise claim which existed against Spain, at the date of the transfer, is that which the United States is bound to satisfy. What, then, could the ancestor of the petitioners, at the date of the transfer, have claimed against Spain, on account of this concession? Could he have claimed a confirmation, without having shown a performance, on his part, of all that is required in the 4th and 14th sections, above recited? Could he have claimed a confirmation of his title, except in virtue of some law? In virtue of what law could he have demanded this? What law authorized him to expect its confirmation? If there was none, the claimant could have no just ground to expect that his claim would have been confirmed, and therefore no ground of complaint.

But complete titles have been produced to show, that, in some instances, the regulations have not been conformed to by the Governor General, and by the Intendant, in confirmations made by them; and it is thence insisted, that they were not in force in the province of Upper Louisiana, or that if they were in force there, they were only intended to provide for grants to emigrants and new settlers, and were not intended to provide for grants to the inhabitants generally; and that some law must be presumed, which authorized grants of land to the inhabitants generally, in pursuance of which, the confirmations mentioned were made. In answer to this, it may be observed, in addition to what has been before said relative to this subject, that the regulations of Gayoso refer, by express words, to the province of Upper Louisiana, by the name of Illinois, the name by which it was then known; and that the regulations of Morales are general, and are indubitably intended to extend to every part of the province. This is equally the intention of each set of the regulations which have been mentioned. The regulations which we have, do not permit us to believe that there existed others; Morales, in the preamble to those made by him, mentions those of O'Reily, and of Gayoso, in a manner which implies that these were all of which he had any knowledge, and shows, that he was making regulations which were to offer the *only means by which lands were to be obtained;* his language is, "That all persons who wish to obtain lands may know in what manner they ought to ask for them, and on what conditions lands can be granted or sold; that those who are in possession, without the necessary titles, may know the steps they ought to take to come to an adjustment; that the commandants as sub-delegates of the intendency, may be informed of what they ought to observe," &c. This preamble excludes the presumption, that other laws existed, by which titles could be obtained; and the regulations themselves, exclude all belief that any law existed, under which a confirmation of the title in question could have been claimed.

That the Governor General, who exercised a legislative power generally, and particularly for the distribution of lands, should feel himself authorized to dispense with the observance of any of the provisions of his own laws, is not strange. Such a dispensing power is incident to the legislative department of every government. Legislation implies discretion, in respect of the rules which are to be prescribed. The Governor General, with whom it was to exercise the power to make the law. could change it, or could dispense with its observance, either on his part, or on the part of the claimant; and it is probable that instances of the exercise of this dispensing power were not rare. That he should have been influenced by the particular circumstances of any case not within the law, or even by personal considerations of regard, in making grants not provided for by his own laws, is a presumption more to be relied upon, than that which is contended for on the part of the petitioners.

In relation to the disposition of the Royal domain, the Governor General and the Intendant successively represented, to some extent, the power of the King; to what extent, we are left to infer from their recorded acts only. The Congress of the United States succeeded to the powers of the Intendant, and of the crown of Spain. What portion of this power has Congress delegated to this court? It cannot be admitted, as contended for at the bar, that, because the Governor General, out of the plenitude of his power, or the Intendant, on succeeding to that power, might have confirmed the present claim, notwithstanding there existed no law under which its confirmation might have been required; that, therefore, this court may confirm it. It cannot be admitted that this court succeeds to the entire power of the Intendant. Here it is proper to observe the vast distance which, in general, separates the boundary that limits the inquiry of a court of justice, from that which limits the inquiry of a Legislature, in relation to the considerations which may properly influence the decisions of the one, or the acts of the other, especially in questions between individuals and the government. Courts are governed by rules of law: these form with them the subject of inquiry; the limits of their jurisdiction. But it is otherwise with the legislature: the defect in the law, its inadequacy to afford redress, is, in general, not only the cause of, but is necessary to justify, an application to that body. And on an application to this body for any purpose of relief, the claim to such relief may be urged upon every consideration which might be supposed to influence the deliberation of wise and good men, in the exercise of a discretion limited only by the constitution. That justice, clemency, and fostering care, which a government should extend to its citizens; that policy which should direct its measures, may all be invoked in support of a claim, when the legislature is the tribunal addressed. There must necessarily be reposed a latitude of discretion, equal to every emergency, in some department of every government, to enable it fully to display either wisdom or justice. This discretion, the King of Spain, and, to some extent, the Intendant, might have exercised in relation to applications for grants or confirmations. What portion of this discretion has Congress thought proper to delegate to this court, is a question which again recurs. The answer is, none. They have left it in the exercise of those powers which are common to courts of justice in general; in its determinations, they have confined it to rules of law; there are no words in the act which show an intention, on the part of Congress, to clothe it with the extraordinary powers of the legislature, in relation to these claims; to confer upon it the power to determine what would be ex-

pedient to be granted; what would be liberal, what magnanimous, on the part of the government, to grant. These considerations may properly be addressed to the national Legislature. The constitution has confided to Congress the power to dispose of the lands, and other property, of the United States. It is, therefore, with Congress to determine, what, in relation to these claims, is just, or expedient to be granted; what would be liberal, what magnanimous, on the part of the government, to grant. These are powers which belong to Congress; those which they have conferred upon this court, in relation to these claims, are, to hear such of them as might have "been perfected into a complete title under, and in conformity to, the laws, "usages, and customs," and to determine them "in conformity with the "principles of justice, and the laws and ordinances of the government under "which they originated."

All that the laws authorized the claimant to demand of the former government, the principles of justice require of the United States to grant; and to determine this, is the power which has been conferred upon this court.

This the claimant had a right to expect and to demand of the United States; and so far, his expectation, his demand, would be founded in legal obligation.

But he could have no just expectation, no expectation founded in law, that his title would be perfected, where such title had been originated without the authority of law; and this is more emphatically true, where it had been originated against the policy or the express provisions of the law.

In answer to that portion of the argument, on behalf of the petitioners, which denies the force of law to the regulations of Morales, in Upper Louisiana, for their supposed want of promulgation, it is only necessary to remark, that such a publication is proved, as must have brought them to the knowledge of the ancestor of the petitioners. The official station which he held, does not permit us to believe, from the publication proved, that he could have been ignorant of the forfeiture to be incurred by a failure, on his part, to comply with the commands contained in these laws. It is, therefore, unnecessary to decide, whether, according to the principles of justice which prevail in our courts, this tribunal can regard a forfeiture as incurred, even under the Spanish government, and by a subject of that government, for disobedience to laws which had never been promulgated.

The 2d section of the act which directs the question of the validity of the "title" to be decided "according to the law of nations; the stipulations of "any treaty, and proceedings under the same; the several acts of Congress "in relation thereto; and the laws and ordinances of the government from "which it is alleged to have been derived;" remains to be briefly considered. The only stipulation in any treaty, which has been brought to the view of this court, is contained in the 3d article of the treaty by which Louisiana was acquired. By this stipulation, the inhabitants of the ceded country were to be *maintained and protected* in their *property*. It protects rights, such as they were; it does not confer or enlarge them; it does no more than the law of nations would have done, in the absence of any stipulation whatever. The inhabitants of Louisiana, under this stipulation, have the same claim against the United States, in relation to the soil, that existed against Spain at the date of the transfer, and none other.

It is insisted for the petitioners, that the proclamation of Salcedo and Cassa Calvo, commissioners on the part of the Spanish government to deliver the possession of Louisiana to France, under the treaty between France and Spain, confirms all grants and concessions.

By the treaty of St. Ildefonso, of the 1st of October, 1800, Spain ceded Louisiana to France; by the treaty of the 30th of April, 1803, the same country was ceded to the United States, and on the 18th of May, 1803, the proclamation mentioned, was issued; nearly three years after Spain had parted with her right to the country.

If it were any part of the object of that proclamation to confirm grants or concessions, or to declare the intention of the treaty of St. Ildefonso, in relation thereto, it might then become necessary to consider the effect of such act, either as it might serve as an exposition of the treaty, or the ground of a title. It does not appear, however, to be any part of the intention of the proclamation, either to confirm titles, or to declare that such is the effect of the treaty. Its words are, "His Majesty makes known, that, by the wishes he entertains for the advantage and peace of the inhabitants of the colony, he expects, from the sincere and close amity and alliance which unites the Spanish government to that of the Republic, that the latter will give orders to the Governors and other officers employed in its service in the said colony and city of New Orleans, to the end, that the churches and other houses of religious worship, served by the curates and missionaries, should continue on the same footing, and enjoy the same privileges, prerogatives, and immunities, which were granted to them by the titles of their establishments; that the ordinary judges continue equally as the tribunals established, to administer justice according to the laws and customs adopted in the colony; that the inhabitants should be maintained and preserved in the peaceable possession of their property; that all concessions* or property of any kind soever, given by the governors of these provinces, be confirmed, although it had not even been done by his Majesty."

The plain sense of this, is, that his Majesty expects that the French Republic will give orders to the Governors and other officers employed in its service, in the colony and city of New Orleans, to the end, that "all concessions, or property of any kind soever, given by the Governors of these provinces, be

* *Concession.*—This is believed to be an erroneous translation; that *grants*, and not *concessions*, would be the true translation.—Whether the proper translation would make the term *grants* or *concessions*, was not deemed material to the determination of the cause. The document, in the original language, has not therefore been adverted to.

It is remarkable, however, that the words, "even though they had not been confirmed by his Majesty," which immediately follow, imply, that the confirmation by the King was necessary to give a complete title. The words are not, *even though they had not been confirmed by the Governor General, or Intendant*, as they would have been, if, in the opinion of the authors of the proclamation, those officers could have given complete titles; and more particularly, if the words had reference to concession, these being subject to immediate confirmation by the Governor General, or the Intendant, on the latter succeeding to the power of the former. The inferences which would seem to follow, are, that the confirmation of the King was necessary to a complete title; and that the proclamation has reference to *grants* as distinguished from concessions: the latter term applying to the act of the Lieutenant Governor by which the title was originated, and the former to the act of the Governor General, or the Intendent, which confirms that title. These inferences appear to be fortified by the fact, that the concession was to be referred to the Governor General, or Intendant, for confirmation, and not to the King; that if the title had to be referred to the King for his confirmation, this reference would not take place until after the confirmation by the Governor General, or Intendant; and by the additional fact, that the titles mentioned are those which had been "given by the Governors of these provinces," meaning, the Governors who had successively administered the government of the then provinces, and not to the titles which had been given by the commandants of posts, who in some places in the province had, and in others had not, the title of Lieutenant Governor. The titles, therefore, given by the commandant of a post, or a Lieutenant Governor, are not supposed to be referred to in the proclamation. All this is mere suggestion.

confirmed, although it had not even been done by his Majesty." His Majesty then expects, that these orders will issue from the French Republic, but, until such orders should issue, and confirmations take place under them, the concessions would remain unconfirmed. Have those orders ever issued from the French Republic, and the confirmations been made in pursuance thereof? Upon what is this expectation of his Majesty predicated? Not upon any stipulation in the treaty; No! it is predicated upon the "sincere and close amity and alliance which unites the Spanish government to that of the Republic;" and upon "the wishes his Majesty entertains for the advantage and peace of the inhabitants of the colony." The hypocrisy which could presume to mock a people with such grounds of hope, is aggravated no less by the ignorance upon which it presumes, than by the reflection, that its author had wholly disregarded that interest, at a time when he might have secured it, about which he now affects to feel solicitude!! This proclamation then, is no confirmation; no exposition of the treaty of St. Ildefonso; and as regards the right of property, it is not a law, nor intended to be such; it is a notice merely. It is therefore unnecessary to consider whether it could be regarded as a proceeding under, or resulting from, a stipulation in any treaty; or how far this clause in the act is qualified by the provisions contained in the the previous section.

That part of the act, which requires the court to determine "the question of the validity of the title, according to the several acts of Congress," &c. has been adverted to, on behalf of the claimants, but not seriously relied upon, as furnishing the ground of a claim to confirmation in the present case.

Upon this point it is only necessary to remark, that there is certainly no act of Congress, which would authorize the confirmation of the present claim, or any part thereof.

A decree must go against the validity of the title.

In the course of this opinion, a more extensive range may, at first view, appear to have been taken, than was necessary to the determination of the cause before the court. The questions, however, which had been discussed and decided, will, upon a nearer view, be found to belong to the cause, and their discussions to have been, in some degree, necessary to the elucidation of the questions involved in it. The title to more than a million, perhaps millions, of acres of land, was supposed to depend upon the decision of the questions which have been considered; and the opinion having mainly proceeded upon a view which had not been taken at the bar, and having been extended to an inquiry into the source and nature of the Spanish titles to lands in Louisiana, and to an enquiry concerning the laws under which those titles were derived; and the decision of most of the points, therefore, having proceeded chiefly upon grounds which had been little, or not at all examined, in the argument of the cause, it is deemed proper to remark, that counsel will not be excluded from again stirring any of the points which have been here decided, when they may hereafter arise in any other cause.

[From the Missouri Advocate and St. Louis Enquirer, of April 8, 1826.]

To the Editor.

SIR: I have read, with the attention which the subject deserves, the opinion of Judge Peck, on the claim of the widow and heirs of Antoine Soulard, published in the Republican of the 30th ultimo. I observe, that, although

the judge has thought proper to decide against the claim, he leaves the grounds of his decree open for further discussion.

Availing myself, therefore, of this permission, and considering the opinion so published, to be a fair subject of examination to every citizen who feels himself interested in, or aggrieved by its operation, I beg leave to point the attention of the public to some of the principal errors which I think that I have discovered in it. In doing so, I shall confine myself to little more than an enumeration of those errors, without entering into any demonstration or developed reasoning on the subject. This would require more space than a newspaper allows, and besides, is not (as regards most of the points) absolutely necessary.

Judge Peck, in this opinion, seems to me to have erred in the following assumptions, as well of fact as of doctrine:

1st. That, by the ordinance 1754, a sub-delegate was prohibited from making a grant in consideration of services rendered or to be rendered.

2d. That a sub-delegate in Louisiana was not a sub-delegate as contemplated by the above ordinance.

3d. That O'Reily's regulations, made in February, 1770, can be considered as demonstrative of the extent of the granting power of either the Governor General or the sub-delegates under the royal order of August, 1770.

4th. That the royal order of August, 1770, (as recited or referred to in the preamble to the regulations of Morales, of July, 1799,) related exclusively to the Governor General.

5th. That the word "mercedes" in the ordinance of 1754, which, in the Spanish language, means "gifts," can be narrowed by any thing in that ordinance or in any other law, to the idea of a grant to an Indian, or a reward to an informer, and much less to a mere sale for money.

6th. That O'Reily's regulations were in their terms applicable, or ever were in fact applied to, or published in, Upper Louisiana.

7th, That the regulations of O'Reily have any bearing on the grant to Antoine Soulard, or that such a grant was contemplated by them.

8th. That the limitation to a square league, of grants to new settlers in Opelousas, Attackapas and Natchitoches, (in 8th article of O'Reily's regulations) prohibits a larger grant in Upper Louisiana.

9th. That the regulations of the Governor General, Gayoso, dated 9th September, 1797, entitled "Instructions to be observed for the admission of new settlers," prohibit, in future, a grant for services, or have the effect of annulling that to Antoine Soulard, which was made in 1796, and not located or surveyed until February, 1804.

10th. That the complete titles made by Gayoso are not to be referred to as affording the construction made by Gayoso himself of his own regulations.

11th. That, although the regulations of Morales were not promulgated as law in Upper Louisiana, the grantee in the principal case was bound by them, inasmuch as he had notice, or must be presumed, "from the official station which he held," to have had notice of their terms.

12th. That the regulations of Morales "exclude all belief, that any law existed under which a confirmation of the title in question could have been claimed."

13th. That the complete titles, (produced to the court) made by the Governor General or the Intendant General, though based on *incomplete titles* not conformable to the regulations of O'Reily, Gayoso, or Morales, afford no

inference in favor of the power of the Lieut. Governor, from whom these incomplete titles emanated, and must be considered as anomalous exercises of power in favor of individual grantees.

14th. That the language of Morales himself, in the complete titles issued by him, on concessions made by the Lieutenant Governor of Upper Louisiana, anterior to the date of his regulations, ought not to be referred to as furnishing the construction which he, Morales, put on his own regulations.

15th. That the uniform practice of the sub-delegates or Lieutenant-Governor of Upper Louisiana, from the first establishment of that province, to the 10th March, 1804, is to be disregarded as proof of law, usage, or custom, therein.

16th. That the historical fact, that *nineteen-twentieths* of the titles to lands in Upper Louisiana were not only incomplete, but not conformable to the regulations of O'Reily, Gayoso, or Morales, at the date of the cession to the United States, affords no inference in favor of the general legality of those titles.

17th. That the fact, that incomplete concessions, whether floating or located, were, previous to the cession, treated and considered by the government and population of Louisiana as property, saleable, transferable, and the subject of inheritance and distribution ab intestato, furnishes no inference in favor of those titles, or to their claim to the protection of the treaty of cession or of the law of nations.

18th. That the laws of Congress heretofore passed in favor of incomplete titles, furnish no argument or protecting principle in favor of those titles of a precisely similar character, which remain unconfirmed.

In addition to the above, a number of other errors consequential on those indicated, might be stated. The judge's doctrine as to the forfeiture, which he contends is inflicted by Morales' regulations, seems to me to be peculiarly pregnant with grievous consequences. I shall, however, not tire the reader with any further enumeration, and shall detain him only to observe, by way of conclusion, that the judge's recollection of the argument of the counsel for the petitioner, as delivered at the bar, differs materially from what I can remember, who also heard it. In justice to the counsel, I beg to observe, that all that I have now submitted to the public, has been suggested by that argument as spoken, and by the printed report of it, which is even now before me.

A CITIZEN.

Be it remembered, that, at a Court of the United States for the Missouri district, begun and held at the city of St. Louis, within and for said district, on the third Monday of April, in the year of our Lord one thousand eight hundred and twenty-six, under the authority of an act of Congress, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims," the following proceedings were had in said court, to wit: "The court being satisfied, from the evidence of Luke E. Lawless, that Stephen W. Foreman, of this city, is the editor and publisher of the Missouri Advocate and St. Louis Enquirer, published in the said city, and that the paper of that name, of the eighth of April instant, which contains a

false statement of and concerning a certain judicial decision made in the case of Julia Soulard, widow, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs of Antoine Soulard, deceased, against the United States, issued from the press of the said Stephen W. Foreman. It is ordered, that the said Stephen W. Foreman show cause on to-morrow morning, at eleven o'clock, why an attachment should not issue against him for a contempt of this court, in publishing the said false statement, tending to bring odium on the court, and to impair the confidence of the public in the purity of its decisions."

Thursday, April 20th, 1826.

THE UNITED STATES, vs. *Stephen W. Foreman.* } *Rule for an attachment.*

In this case, the defendant having appeared, and for cause shows, that he is not the author of the said publication, and submits himself to the court, and purges himself of all contempt. It is therefore ordered that the rule be discharged.

The court being satisfied, upon the oath of Stephen W. Foreman, made in open court, that Luke E. Lawless, an attorney and counsellor of this court, is the author of a certain publication over the signature of "A Citizen," in a public paper printed in this city, by the name of the "Missouri Advocate and St. Louis Enquirer," issued on the eighth of April, of this instant, it is ordered, that the said Luke E. Lawless show cause forthwith, why an attachment should not be issued against him for the false and malicious statements in the said publication contained, in relation to a judicial decision of this court, in the case of Julia Soulard, widow, James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamin A. Soulard, children and heirs of Antoine Soulard, deceased, against the United States, lately pending and determined therein; with intent to impair the public confidence in the upright intentions of the said court, and to bring odium upon the court; and especially with intent to impress the public mind, and particularly many litigants in this court, that they are not to expect justice in the causes now pending therein; and with intent further to awaken hostile and angry feelings on the part of the said litigants against the said court, in contempt of the same court. And that he also show cause why he should not be suspended from practising in this court, as an attorney and counsellor therein, for the said contempt and evil intent.

Friday, April 21st, 1826.

UNITED STATES, vs. *Luke E. Lawless.* }

And the defendant, Luke E. Lawless, having appeared in obedience to the rule against him, to show cause why an attachment should not issue against him, and having been heard by counsel against the emanation of the said writ in the said rule mentioned; having been also heard by counsel against the said rule, to show cause why he should not be suspended from practising as an attorney and counsellor in this court; and the court having considered all and singular the premises, and for that it seems to the court

that the said defendant, Luke E Lawless, had committed a contempt, in manner and form as in the said rule is charged, it is ordered than an attachment issue against him, returnable forthwith. Which attachment was issued in the words and figures following, to wit:

"MISSOURI DISTRICT, *sct.*

"*The President of the United States of America,*

"To the Marshal of said district, greeting:

"You are hereby commanded to attach the body of Luke E. Lawless, and him forthwith have before the court of the United States for the Missouri District, now in session at the city of St. Louis, to answer unto the United States, touching a certain contempt by him committed, in publishing a false statement of the decision of said court, in the case of Julia Soulard, widow, and James G. Soulard, Henry G. Soulard, Eliza Soulard, and Benjamim A. Soulard, against the United States; hereof fail not, and have you then there this writ.

[L. S.] Witness the honorable James H. Peck, Esquire, Judge of the United States for the Missouri District, the twenty-first day of April, eighteen hundred and twenty-six. Issued at office, in St. Louis, under the seal of said court, the day and year last aforesaid.

ISAAC BARTON, *Clk.*

Upon which said writ, the marshal to whom the same was directed, made the following return, to wit:

"ST. LOUIS, *April* 21*st*, 1826.

"In obedience to this writ, I have herewith, in open court, the body of Luke E. Lawless, Esq. as within commanded.

H. DODGE, *Marshal.*
By JOHN SIMOND, Jr. *Dep. Marshal.*

UNITED STATES,
vs.
Luke E. Lawless.

The defendant in this case having been brought into court by attachment, and the court having demanded of him, whether he would answer interrogatories, or would purge himself of the contempt charged upon him; and the said defendant having refused to answer interrogatories, and having persisted in the contempt, the court doth find that the said defendant is guilty of the contempt to this court, as charged in the said rule.

UNITED STATES,
vs.
Luke E. Lawless.

The defendant in this case having refused to answer interrogatories, and having persisted in the contempt: It is ordered, adjudged, and considered, that the said defendant be committed to prison for twenty-four hours, and that he be suspended from practising as an attorney or counsellor at law, in this court, for eighteen calendar months, from this day.

MISSOURI DISTRICT, *set.*

I, Isaac Barton, Clerk of the Court of the United States for the Missouri District, do hereby certify, that the above and foregoing is a full, true, and perfect transcript of the record in the cases of the United States against Stephen W. Foreman, and the United States against Luke E. Lawless, for contempt.

[L. S.] In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at St. Louis, the ninth day of August, in the year of our Lord one thousand eight hundred and twenty-six.

ISAAC BARTON, *Clerk.*

ST. LOUIS CIRCUIT COURT.

MARCH TERM, 1826.

STATE OF MISSOURI, }
County of St. Louis, } *ss.*

"Upon the petition of Luke E. Lawless, setting forth that he is at present confined in the common jail of St. Louis county, by virtue of a warrant or order of the District Court of Missouri, charged with having refused to answer interrogatories, and having persisted in a contempt; it is ordered, that a writ of habeas corpus issue to the sheriff, to bring into court, forthwith, the body of the said Luke E. Lawless, together with the day and cause of his caption and detention. Whereupon the sheriff brings into court, the body of the said Luke E. Lawless, and makes his return on said writ as follows, to wit: "In obedience to this writ, I have herewith, in open court, the body of Luke E. Lawless; the cause of his detention will appear from a certain order, rule, or warrant, herewith enclosed, by virtue of which, he was committed to my custody, in the common jail of St. Louis county, April 21st, 1826. JOHN K. WALKER, *Sheriff.*" Whereupon, on examination of the paper purporting to be a commitment issued by the said District Court, and finding that the same is not authenticated by the seal of said court, it is ordered that the said Luke E. Lawless be discharged from the custody of said sheriff.

STATE OF MISSOURI, }
County of St. Louis. } *ss.*

I, Archibald Gamble, Clerk of the Circuit Court for the county of St. Louis, do certify the above to be a true copy of an order made by the said circuit court, at the March term, in the year of our Lord one thousand eight hundred and twenty-six, upon a writ of habeas corpus, upon which the said Luke E. Lawless was brought before the court.

Witness, Archibald Gamble, Clerk of said court, at office, this sixth day of September, in the year one thousand eight hundred and [L. S.] twenty-six, and of the Independence of the United States of America the fifty first.

ARCHIBALD GAMBLE, *Clerk.*

COMMITTEE ON THE JUDICIARY

Of the House of Representatives of the United States.

FRIDAY, 19*th March*, 1830.

Committee met—Present,

Mr. Buchanan, *Chairman.*	Mr. Ellsworth,
Wickliffe,	Davis, of S. Carolina, and
Storrs,	White, of Louisiana.

Luke E. Lawless, being duly sworn according to law, doth depose and say, as follows:

In the year 1826, on the 30th March, of the same year, I saw in a newspaper printed at St. Louis, called the "Missouri Republican," an article headed "Peck, Judge," and purporting to be a decision of judge Peck, as judge of the District Court of the district of Missouri, made in the case of Soulard's heirs, against the United States: In that case, I had been employed as counsel for the petitioner, in that court. I had also been employed in several other causes of a similar character. When I say a "*similar character*," I mean founded upon unconfirmed French or Spanish titles. The similarity of character consisted only in being founded in an incomplete title; because I consider the case of the heirs of Soulard, as peculiar and original in its leading characteristics I read that opinion with all the attention I could give it. When I commenced the reading of it, I had no feeling hostile to judge Peck, or even unfriendly. I thought I saw in it a number of errors, not only in fact, but in doctrine. Those errors appeared to me to have a fatal effect, if they should be established into law, upon that particular claim, and upon almost every other claim that was presented, or could be presented, to the court, under the law of 1824, which authorized judge P. to adjudicate. Shortly after this opinion appeared, I ascertained that it had created a great alarm with my clients and others, who I considered had just titles. The value of the property included in these claims, and the titles themselves, appeared to me to be suddenly, and materially, depreciated by this opinion, and the alarm it created. I had every reason to believe, that speculators might avail themselves of that alarm, to purchase, for a nominal or disproportionate price, the property I have mentioned. Taking all this into view; and further considering, that, inasmuch as judge P. had himself submitted his decision or opinion to the public, and, as had appeared to me, invited discussion upon it; and considering that I was exercising one of the most sacred rights of the American citizen, which I am, I published, on the 8th of April, in a newspaper printed at St. Louis, called the "Missouri Advertiser and St. Louis Enquirer," an article, in which I stated, according to the best of my opinion, a number, perhaps twelve or thirteen positions, that appeared to me to have been taken by the judge, and which I conscientiously believed to be erroneous. I beg leave to refer to that article, signed "A Citizen," which is appended to the papers presented by me. A few days after that article, signed "A Citizen," appeared, the District Court sat, upon a special adjournment. At the sitting of the court, I appeared in my place, as counsel. A few minutes after the judge had taken his seat, and had disposed of some matters before him, he produced a newspaper, and inquired if any person then in court could tell who was the editor of that newspaper, called the "Missouri Advertiser and St Louis Enquirer?" The manner of the judge, and the date of the paper, induced me to suppose that he was about to take some serious notice of the article

signed "A Citizen." I therefore, without hesitation, informed the judge that I knew who was the editor, that it was one Stephen W. Foreman. Other persons in court stated the same fact. The judge thought proper then, to call upon me to swear to the fact, which I did. As soon as the affidavit was made, he dictated a rule to the clerk, upon the editor, Foreman, to show cause why an attachment should not issue against him for publishing that article. I beg leave to refer to the rule itself, which is stated in my memorial, and appended thereto, for its terms and character. I appeared as counsel for the editor, to show cause, in obedience to that rule; and, on that occasion, I stated in my argument, all the grounds that occurred to me as proper.

I submitted to the court, 1st, That the article was not such as the rule described it to be; that it was neither libellous nor contemptuous. I then took the ground, that if it was such as the rule described it to be, that judge P. had no jurisdiction of the matter in a summary way, as a contempt of his court. That the proper mode of proceeding against the printer or publisher, would be by indictment. My positions in law, and all my arguments, were overruled by judge Peck. In the course of judge Peck's remarks, he betrayed, from time to time, great indignation and emotion; and, as I thought, evidently pointed at me, as the author of the article signed "A Citizen." I therefore prevented the rule from being made absolute against that printer, by giving up my name as the author; which was done by the editor. Judge Peck then directed the editor to swear to the fact, and upon his affidavit, issued a rule upon me, to show cause why I should not be attached, I believe, and be suspended from practice. For the terms and character of that rule, I beg leave to refer to it. I requested Mr. Geyer, Mr. Magenis, and Mr. Strother, members of the St. Louis bar, to appear and show cause for me. I instructed my counsel specially, as to the grounds they were to take. The first ground, was, that no libel or contempt was committed, or intended to be committed, by me. 2d, That, if it was libellous or contemptuous, it ought not to be treated by judge Peck as a *contempt*. 3d, That if it was a *contempt*, and within the legitimate jurisdiction of the court, as a *contempt*, the punishment of suspension from practice, was not that which should be inflicted upon me. Upon this last ground, I directed my counsel to urge that I wrote the article in the capacity of a private citizen, while the court was not in session, and distinct from my character or capacity of counsel of the court; also, that suspension from practice not only affected my rights and interests, but also those of my numerous clients. The first principal ground, on the merits, judge Peck did not suffer my counsel to go into. The judge observed, that that question had already been decided in the discussion of the rule against the editor. The other grounds were, as well as I can recollect, discussed, and ably too, by my counsel. Their arguments and authorities were, however, all overruled, and judge P. proceeded to make the rule absolute. In doing so, he pronounced a long argument, or speech, upon the nature of the article signed "A Citizen;" which article he caused to be read to him, paragraph by paragraph, and observed upon each part of it very much at length, and with very great acrimony and violence, particularly against me, as I considered. In this manner, judge P. proceeded for a considerable length of time, while I was present. At length, feeling myself exceedingly irritated by what I considered contumacious language towards me, I got up and left the court. My motive for so doing, was, to avoid being betrayed into an expression of my feelings, or even

into a gesture that might have become, as against me, a legitimate ground of judge Peck's jurisdiction for a contempt. From judge Peck's court, I went to the Circuit Court of the county of St. Louis, which was then sitting, and in which a cause was pending of great importance to the parties, and in which I was leading counsel for the defendant, Mr. Peter Chouteau, sen'r. of St. Louis. After I had been in the Circuit Court about an hour and a half, at least, Mr. Simonds, then Marshal of Missouri, or his deputy, which of them I cannot recollect, called me out of court, and informed me that judge Peck had made the rule absolute against me, and that I must appear before him forthwith. I appeared accordingly, and, upon my appearance, was informed by the judge, that I had a right to call for interrogatories to be exhibited to me, and asked me if I wished that interrogatories should be exhibited to me? To which I replied, that I did not wish interrogatories to be exhibited to me. And I further observed, that, if they were exhibited, I should not answer them. Upon which judge Peck dictated to his clerk an order for my imprisonment for 24 hours, in the jail of the county of St. Louis, and for my suspension from practice as attorney and counsellor at law, in his court, for the term of 18 months from the date of the order. I refer to the order amongst the documents appended to my petition, for its character and terms. I was conducted forthwith to the jail of the county of St. Louis, and was put into a room in that jail, where the common felons and criminals were put, and I was locked up therein by the jailor. After being in that room a few moments, I requested the deputy jailor to let me see the order under which I was imprisoned; which he did. I then drew up a petition, addressed to the Circuit Court of St. Louis, then in session, stating the fact of my imprisonment, and praying a writ of Habeas Corpus, which was granted. Upon this writ of Habaes Corpus, I was brought before the Circuit Court, about eight or 9 o'clock at night, having remained in prison about three or four hours. On examining the return, and discussing the matter for a short time, I was discharged by the court, upon the ground, as I believe, that the order of commitment did not show, upon its face, by what authority it was issued, inasmuch as it had not either the seal, or the signature, of the judge of the District Court.

Q. By Mr. Storrs. Had the opinion published in the "*Missouri Republican*," been previously delivered or read in open court, from the bench, by Judge Peck?

A. I do not recollect that it was; my opinion is that it was not.

Q. By the same. At what time was the final decree or judgment of J. Peck made in the Soulard cause?

A. It was made at a preceding term. It was made at December term, 1825, at which an appeal had been taken at that same term by Soulard's heirs.

Q. By Mr. Ellsworth. Whether the remarks or speech made by Judge Peck, when he made the rule absolute upon Mr. Lawless, were in writing?

A. No sir, I believe not.

Q. By the same. How much time was occupied in delivering those remarks?

A. At this distance of time, I would say, at least three hours.

Q. By Mr. Buchanan. Do you recollect any of the language of the judge which you say was offensive to yourself? and what was its character?

A. Its character was that of an imputation upon me of slander, of malice, of a wilfully false statement of the opinions or positions of the judge. The tenor of his language was, in my opinion, to represent me, not merely a

ontemner of the court, but an enemy and libeller of the judge himself, in his proper person.

Q. By the same. Were you present when Judge Peck pronounced his judgment in the case of Soulard's heirs?

A. Yes sir, I think I was.

Q. By the same. Have you related all that transpired in court after you were brought in upon the attachment?

A. Yes, sir, to the best of my recollection, I have.

Here the "Missouri Advocate and St. Louis Enquirer" of the 8th April, 1826, was exhibited to the witness, who identified it, and said the marks upon the margin of the newspaper correspond with similar marks upon the margin of the newspaper in which Judge Peck's opinion was published, and were intended by me to aid in the juxta-position of his opinion and my article.

Q. By Judge Peck. Who was the Attorney for the Government at that date? And was he in court at the time the paper referred to was produced by the court?

A. Mr. Ed. Bates was the District Attorney, and was, I believe, in the court at the time.

Q. By the same. When the paper was produced, did the court address itself to the Attorney for the Government, and request him to ascertain who was the Editor of that paper?

A. I do not recollect that the court addressed itself particularly to the Attorney of the Government in the first instance. It may be so.

Q. By the same. Did not the court request Mr. Bates to ascertain who was the Editor of that paper, and where it was published?

A. I do not recollect distinctly; but it may be so.

Q. By the same. Did you not, upon the court's addressing itself to Mr. Bates, volunteer to say that Mr. Foreman was the Editor of the paper, and that it was published in that city?

A. Yes, sir, when the court made the inquiry as to who was the Editor, I voluntarily stated that Mr. Foreman was the Editor.

Q. Was the Attorney for the Government, and the court, in conversation when you volunteered to give the information of the Editorship, and the place of publication?

A. I do not recollect that they were in conversation when I gave the information; but it may be so.

Q. By the same. Did you immediately undertake to appear for Mr Foreman, on the rules having been made against him?

A. I did.

Q. By the same. Did Mr. Geyer appear as associate counsel with you in the argument made against the rule?

A. Until very lately I had believed that I was alone as Counsel for the printer, and I have still no distinct recollection that Mr. Geyer was counsel for the printer with me. It may be the fact that he was. This I will distinctly say, that I have no distinct recollection of having heard his argument for the printer.

Q. By the same. Was he retained or feed by you for his appearance on the rule against the Editor?

A. No, sir, not that I recollect. The only recollection that I have is, that I requested him, as a brother counsellor, to appear for myself.

Q. By the same. Was he otherwise retained than upon that consideration?

A. None other to my knowledge.

Q. By the same. How long was the argument upon the first rule protracted? How many days?

A. As I recollect, I argued it myself upon two successive days.

Q. By the same. Was Mr. Geyer, on the argument of either rule, heard at any great length?

A. On the argument of the rule against me, Mr. Geyer was heard, it appeared to me, as long as he chose to speak on all the grounds except one, to wit: the intrinsic merits of the article signed "A Citizen."

Q. By the same. Do you mean by your answer to say that he was not permitted to be heard upon the question of misrepresentation charged in the rule?

A. I do.

Q. Was no counsel other than yourself heard upon that question?

A. I do not recollect that any counsel other than myself was heard upon the merits.

Q. By the same. Was the court numerously attended, generally, during the course of the argument?

A. It appeared to me to be so.

Q. By the same. What were the topics upon which the counsel mainly dwelt, and particularly yourself?

A. If by topics be meant grounds of argument, I have already stated them in my direct examination.

Q. By the same. Was it insisted in the argument, that the liberty of the citizen, of speech, and of the press, would be violated by the proceeding contemplated by the rule?

A. It was.

Q. By the same. Was it insisted that the constitution and the right of trial by jury, were also violated?

A. It was.

Q. By the same. Was the proceeding represented to be incompatible with the genius of our Government?

A. I believe it was.

Q. By the same. Was the judge represented, in the argument, as sitting in his own case, to punish an offence committed against himelf?

A. The judge was represented as in such a case, executing the functions of judge and juror, and perhaps witness, for the purpose of punishing an offence committed against himself.

Q. By the same. Were all these topics dwelt upon at great length?

A. I believe they were dwelt upon at considerable length, as also every topic that suggested itself, for the purpose of the argument to the counsel.

Q. By the same. Were not these arguments addressed to the surrounding crowd?

A. No, sir, they were addressed to the court. The crowd might have heard them,

Q. By the same. Were you present when the editor appeared in court, submitted himself thereto, and, under oath, purged himself of the contempt charged against him?

A. No sir, nor do I know any thing of such purgation.

Q. By the same. Were you present when he was examined by the court?

A. No sir.

Q. By the same. Did you or not endeavor to prevail upon the editor not to submit to the court, but abide its judgment and go to prison, if such should be the sentence of the court?

A. I recollect, in the first instance, that in my opinion the liberty of the press was concerned, that I thought an opportunity had occurred of vindicating that right in the person of the editor, and I did recommend to him to take that stand before the court; but when, as I have stated in my direct examination, I perceived the strong feeling of the judge directed against myself, and that he treated me as the author of the article, signed "a citizen," I changed my opinion on the subject of the printer's course, and then determined on taking the responsibility on myself, because I considered that in my person, not only the liberty of the press, but divers other rights were equally concerned.

Q. By the same. Did you come to this determination before or after the argument in behalf of the editor had been concluded?

A. The change of opinion was effected during the progress of the argument; but, as well as I can recollect, was not expressed to the editor until after the argument was concluded.

Q. By the same. Was it expressed to any body else? And to whom?

A. It may have been expressed, but I do not recollect whether it was, or to whom.

Q By the same. Did you not persist, after the argument had been closed, in desiring the editor to abide the judgment of the court, and not to give you up as the author?

A. I do not recollect that I did, after the argument had been closed.

Q. Did you not, until the editor had come to a different determination?

A. I do not know at what time he came to a different determination, therefore I cannot say whether my direction to him to give me up, was before or after.

Q By the same. Did the editor express to you, his determination to give you up against your consent?

A. Never.

Q. By the same. In the course of your argument, did not you and the bench confer upon the subject of your publication, as though you were the author?

A. As I have already stated, the court seemed to point at me as the author of the article, but, as respects myself, I avoided acknowledging the authorship, and appeared, as far as I could, in the distinct character of counsel.

Q. By the same. Did you at any time, by inadvertence, appropriate the sentiments contained in the publication to yourself?

A. I do not recollect that I did. It was not my intention so to do.

Q By the same. Who accompanied you to the prison?

A. As I recollect, Mr. Gaston Soulard, and Mr. Wharton Rector, and to the best of my recollection they were locked up with me; I do not think they remained the whole time.

Q. Was Mr. Soulard one of the parties against whom the decree was passed?

A. Yes.

Q. During the course of the argument upon those rules, who, generally, composed the crowd, who attended upon the court? Were they the land claimants, or, for the most part, persons hostile in feeling to me?

A. As far as I can recollect, there were persons of all descriptions there, land claimants, and not land claimants. As to their hostility, I know not that there was any existing in the breasts of the persons attending there against you; at the same time it is very possible that there may have been persons in that crowd with feelings unfriendly to Judge Peck.

Q. By the same. Had you any interest in Soulard's claim, and in other unconfirmed claims brought, or to be brought, before the Court?

A. I had.

Q. By the same. Were there not a number of causes depending before the court at the time of the publication, depending upon the principles of that determined, and involving other principles not decided in that case?

A. I believe there were.

Q. Were there not other causes depending involving other principles than those decided, the merits of which were attempted to be impressed upon the public in the publication?

A. My object in the publication was to show that Judge Peck had taken several positions in doctrine and in fact, which, should they be sustained, would, in my opinion, be fatal to the great majority of the claims, and which in my opinion, were erroneous. I was counsel in a great number of the claims depending at the date of the article.

Q. By Mr. Storrs. Were there any persons committed for criminal offences in the room in which you were imprisoned?

A. No, there was no person there at the time but myself.

Q. By Mr. Buchanan. Did your suspension continue during the whole of the 18 months?

A. Yes. And when I presented myself to Judge Peck, at the expiration of the 18 months, at the first court, he inquired of the Clerk, particularly, if the time had expired.

Q. By the same. Is that printed pamphlet, produced and identified by the signature of James Buchanan, on the title page thereof, the true substance of the argument delivered by you before Judge Peck?

A. It is, sir.

Q. By the same. When was it published?

A. It was published early in 1825. The argument was made in November, 1824.

Q. By Mr. Storrs. Were you required by the court to make any apology or other atonement for the publication of the article signed "a citizen," before the order was made for your imprisonment and for suspending you from the bar?

A. No sir. The only observation made to me by the court, previous to the order for imprisonment, was, that I had a right to have interrogatories exhibited to me, and demanded if I wishedto have them exhibited, to which I replied, that I did not, and would not answer if they were exhibited.

Q. By Judge Peck. Did or did not the court inform you that you had a right to purge yourself of the contempt by your own oath, and that this was a privilege, and that interrogatories were not to be put for the purpose of fixing the contempt, which must be otherwise proved; but for the purpose of enabling you to discharge yourself therefrom; and then asked you, whether you would avail yourself of that privilege?

A. I have no distinct recollection of this explanation by Judge Peck, but I understood him to have the intention of enabling me to purge myself of what he called a contempt, by those interrogatories. I don't recollect the details.

Q. By the same. Do you recollect of your coming in to address the court for the purpose of asking time to attend to a cause depending in the Circuit Court then sitting?

A. I do not say positively I did not, but I don't recollect it.

Q. By the same. Do you recollect commencing to address the court upon any subject pending the rule against you, and in which address you began to say "may it please your honor," and in a manner marked and significant, stopt in the middle of the word "honor" and adopted a different address?

A. I have no recollection of any such thing.

Q. Where did you first reappear in court after your suspension?

A. In the District Court of Jefferson City.

Q. By the same. Were you present when the opinion of the court in the case of Soulard's heirs was delivered?

A. I have no distinct recollection that I was; but I think it probable that I was, as counsel in the case.

Q. By the same. Was the opinion delivered and the decree rendered at the same term?

A. I am not certain, but believe they were. I have no recollection of hearing the reasons for the judgment delivered in open court. It seems to me, on recollection, I was not present.

L. E. LAWLESS.

Sworn and subscribed before the Judiciary Committee on the 19th March, 1830.

ATTEST,

JAMES BUCHANAN, *Chairman.*

Henry S. Geyer, being duly sworn according to law, doth depose and say as follows:

Some time in the month of April, 1826, I was informed that proceedings had been instituted against the printer of the Missouri Advocate, for an alleged contempt towards the District Court, then sitting for the trial of land claims. I went into the court, at which Judge Peck presided. According to my recollection Colonel Lawless was then addressing the court in behalf of the editor. I remarked at that time, that the judge treated Col. Lawless as the author of the publication. In the course of Colonel Lawless' remarks he was often interrupted by the judge, with observations like these: "But, sir, in your strictures, you say;" he would then repeat something which I supposed had been said in the publication imputed to Colonel Lawless. Once or twice, I think, he added, with some emphasis, "Which is false." I thought the judge, at that time, somewhat excited. After Col. Lawless had concluded his remarks, I, of my own accord, without solicitation from any person, addressed an argument to the court, against the alternative presented by the rule, which was an attachment. I was heard by the court without interruption. The point for which I contended, in that argument, was, that the publication could not be punished as a contempt, insisting that

the guaranties of the Constitution extended to all cases not absolutely necessary to protect the court from interruption in the administration of justice; that the publication being made after the decision of the cause, if libellous, must be punished as a libel as against any other person; and insisted, also, that the published opinion of a judge was a fair subject of criticism to all persons; and if misrepresented, it must be met as the misrepresentation of the conduct of any other public officer. Those propositions were all overruled by the court. On the next day after I had appeared before the court, I was informed that Col. Lawless had been given up as the author of the publication in question, and that a rule had been made upon him to show cause why an attachment should not be issued against him for a contempt. I again went into the court. Col Lawless, with Mr. Magenis, and Col. Strother, were sitting at the bar. These gentlemen, I was informed, were to act as the counsel of Col. Lawless. Mr. Lawless requested me to assist them in the argument of the question. Mr. Magenis made an argument, but I am not certain whether Mr. Stother did or not. I followed Mr. Magenis, and attempted to re-argue the whole ground which had been taken on a former occasion. I was stopped by Judge Peck, who stated, that he had already decided the publication was a contempt, and that he would hear no argument on that point. I then insisted that the court could not punish Col. Lawless, in his character of counsel, for the publication, by suspending him from practice, as had been intimated in the rule. I maintained, that the counsel, as such, was only to be punished while acting in that character in court, or in relation to business of that court, out of it. After the argument was concluded, Judge Peck requested Mr. Bates, then District Attorney, to read the publication, signed "a Citizen," sentence by sentence. At the end of each sentence the judge made some commentaries. I remember when Mr. Bates read the following sentence from the publication: "I observed that, although the judge has thought proper to decide against the claim, he leaves the ground of the decree open for further discussion," the judge repeated the first words, putting an emphasis on the word "judge," adding, "there, it is very manifest, that this publication is aimed at the judge, with a view to bring him into contempt." This was said with an unusual degree of emotion, I thought. It appeared to me, at that time, from the manner of the judge, as well as from expressions he used, he thought the attack was made upon him from some motive of personal hostility, and that advantage had possibly been taken of his then situation in order to impress upon the public mind, that he was incompetent to the duties of his station. He was some time in delivering his opinion, and in the argument in support of it, to make the rule absolute against Col. Lawless. In the course of which I thought some of his remarks exceedingly harsh, so much so, that I told Col. Lawless, who was sitting near me, that I did not think he ought to stay there and listen to that abuse of himself. The only expression that I remember distinctly, however, was, in substance, this: the judge said, "that in China such a calumniator would have his house blacked, as a fit emblem of his heart, that all persons might avoid him." This made an impression on me at the time, as the fact was new, and because it put Col. Lawless in the attitude of a libeller, and, as such, I thought could not be punished summarily. Before the final order was taken I left the court house. I saw nothing more on that occasion that I remember.

Question by Mr. Davis, of So. Co. Did the judge exhibit much anger or excited temper when giving his reasons for making the rule absolute?

Answer. I thought he was very angry, more so than I had ever observed him on any occasion. That circumstance struck me with particular force, as Judge Peck was generally mild.

Q. by the same. Was the conduct of the memorialist generally decorous or otherwise in the presence of the judge, on the proceedings against him under the rule?

A. I do not remember that Col. Lawless said one word after the rule had been made against him. In the discussion of the rule against the printer, his manner was unusually subdued. He bore his interruptions submissively, much more so, than, from my knowledge of him, I had anticipated.

Q. by the same. Did the suspension continue till after the time that trials of these land causes were limited by the act of Congress?

A. I think it did, beyond the time limited by the first act.

Q. by the same. How long did Col. Lawless remain in prison?

A. I think it could not have been more than two or three hours, when he was brought into the Circuit Court, in custody, and the argument continued two or three hours, when he was dismissed.

Q. by Mr. Wickliffe. Was Col. Lawless suspended from practice in the District Court when sitting for the trial of ordinary causes as well as when sitting for the trial of land causes?

A. It was so understood both by the court and the bar, as I believe. In point of fact, Col. Lawless did not practice in either court during the eighteen months for which he was suspended.

Q. by Mr. Buchanan. Why was Mr. Bates requested to read the publication, signed "A Citizen?"

A. I suppose it was because Judge Peck had very sore eyes, and could not see to read himself. I believe he was almost entirely blind at the time.

Q. by the same. To what did you refer when you said you believe Judge Peck supposed that advantage had been taken, by Mr. Lawless, of his then situation, to impress upon the public his unfitness for the office which he held?

A. I allude to this: the situation of Judge Peck's eyes had been the subject of much conversation out of doors. Many persons were under the impression that, under such circumstances, he was incapable of discharging his duties; and, I suppose that Judge Peck imagined, that the opportunity had been thus seized, part of the public being thus impressed, to create the belief that he was incapable, mentally, as well as physically, of discharging his duties.

Q. By the same. How long was Judge Peck delivering his opinion, when he made the rule absolute?

A. At this distance of time, I cannot answer that question with precision; but my impression is, he was between two and three hours.

Q. By the same. What portion of that time did Mr. Lawless remain in court?

A. I don't think he was in the court room more than one hour.

Question by Judge Peck. Do you know what number of days had been consumed by the counsel in the argument against the rules against the printer and Col. Lawless.

Answer. I cannot answer the question with certainty. I was there part of two days myself, and occupied about four hours in the two days, address-

ing the court against the rules. I know that Col. Lawless occupied considerable time about two hours after I came into the court the first day, on the rule against the printer. On the second day Mr. Magines occupied some time—how long, I can't say. I now remember, also, Col. Strother commenced a speech; but in consequence of his taking a ground which Col. Lawless did not wish him to assume, he was desired by Col. Lawless not to proceed further in his remarks.

Q. By the same. What ground was Mr. Strother assuming when Col. Lawless interrupted him?

A. I think he was rather manifesting a disposition to apologise and acquiesce in the positions assumed by the court.

Q. By the same. Was it after he, Strother, had requested the use of Wheaton's reports, which the court had procured for him to examine a case in those reports, and after he had examined the case?

A. There was, at the time, a vol. of Wheaton's reports on the table; how he procured them, I know not; or whether he read it on the occasion, I do not remember.

Q. By the same. Was there, at that date, a sentence of suspension against Col. Strother himself in the Circuit Court, as attorney and counsellor of that court?

A. I know there had been such a sentence for six months; whether it was in force or not at that time, I know not of my own knowledge.

Q. By the same. Do you recollect, that, in the argument against the rule, the counsel had insisted that the opinion being published, made it public property; and that, if it had been misrepresented, the opinion itself could be recurred to to correct any misrepresentation which had been made of it; and that the court, in reply to that argument, said those who might see the misrepresentation, might never see the opinion which had been misrepresented; that men could not know, intuitively, whether what they read was true or false; that, if they could, calumny would cease to be mischevous, and would not require punishment; that there would be no wisdom in that law of China, by which the dwelling of the calumniator was painted black, as emblematical of the heart of the calumninator, while it afforded an admonition that what he should say should be harmless?

A. The substance of the argument of the counsel on that branch of the subject, and the answer given to it by the judge, as stated in the above question, is substantially correct, with the exception that I do not think that the allusion to the law of China, was made in reply to that argument of the counsel. The effort of the judge was to prove the publication of Col. Lawless, signed "A citizen," calumnious. In the course of his observations, Col. Lawless was represented as a libeller, and I thought that the allusion to the law of China was made in such form and in such connection, as satisfied me, that, in the mind of the judge, Col. Lawless was a fit subject for a similar operation. In this, however, I may possibly be mistaken. The judge was very warm and vehement in his manner, and may have intended a different application.

Q. By the same. Did the judge at that period wear goggles?

A. I am not certain that he wore goggles then, or a bandage over his eyes: one or the other he certainly wore.

Q. By the same. In the course of the argument, had popular themes been much dwelt upon by the counsel, such as the liberty of the citizen, of the press, and of speech, and the importance of the right of trial by jury: all said to be encroached upon, by the proceeding of the court?

A. The guaranties of the constitution, the freedom of the press, the liberty of speech, the right of trial by jury, were frequently referred to in the course of the argument, and it was insisted that all of them would be violated, if the author or publisher was punished, summarily, for contempt; and, in the course of my remarks, I referred to the bill of rights of the State of Missouri, which declares that no man shall be punished, summarily, for an offence indictable. unless by the intervention of a grand jury; and which also, authorizes the truth to be given in evidence upon the trial of all cases for libel. When I read those clauses in the bill of rights, the judge intimated that they were inapplicable to his court, to which I replied they were applicable in all cases to citizens in Missouri. The counsel spoke at large against the danger of invading those constitutional guaranties.

Q. By the same. Was there generally a crowded audience in attendance in court, during the argument and proceedings of the court upon the rules?

A. There were many persons both in the court room and the room adjoining, which was occupied by a private family, and as many persons as could gain admittance then were in the room.

Q. By the same. Was there a considerable excitement produced in the crowd, and generally through the city, by the argument of counsel?

A. I heard many persons express dissatisfaction at the conduct of the court: whether that was produced by the argument of counsel, or their own views of the subject, I am unable to say. Those I heard express themselves most warmly, were some of those who were present at the argument.

Q. By the same. Was the dissatisfaction expressed during the whole course of the proceedings?

A. I don't remember on the first day that I heard any person say any thing upon the subject. On the second day, there were many persons conversing freely and warmly among the crowd.

Q. By the same. Did the court, in its opinion, examine all the grounds which the counsel had taken in argument against the rule?

A. I think it did.

Q. By the same. Have not the Supreme Court of Missouri exercised the same power of punishing for contempts, when their opinions have been misrepresented by publications in the newspapers?

A. There was, I remember, a case which was decided by the Supreme Court of Missouri, affirming the judgment of the Circuit Court. The plaintiff in error, upon a petition, obtained a rehearing of that cause; and a publication was made in a newspaper, in relation to that cause, after the rehearing had been granted. The Supreme Court held that publication to be a contempt; not on the ground, as I understood it, of its being a misrepresentation of the opinion of the court, but a publication about a cause then pending. After argument of the rule against the publisher, the court ruled it to be a contempt, and the publisher purged himself of the contempt.

Question by Mr. Buchanan. What were the names of the parties in the cause to which you have alluded? and against whom was the rule to show cause granted?

A. Alexander Billissime was the plaintiff, and Joseph McCoy the defendant; and Col. Lawless was the person against whom the rule was granted.

Question by Judge Peck. What was the state of the Judge's health during the pending of these proceedings?

A. I do not think his health was good; he was enfeebled, and very much debilitated.

Question by the same. In the conference to which you have referred, between the Court and Mr. Lawless, on the first rule, did Mr. Lawless, by inadvertence or otherwise, apply to himself the sentiments contained in the publication?

A. Not while I was there, to the best of my recollection.

Question by the same. In the words which you have attributed to the Judge, in the first part of your deposition, do you pretend to speak with accuracy, as to the words used by the Court?

A. I do not. I cannot be positive that I use the words of the Judge, precisely as they were delivered: I have, however, given his language, as near as I can remember it.

Question by the same. Has the intercourse between you and myself been rather limited to a professional one than otherwise?

A. I think it has.

Question by the same. Do you know whether the members of the St. Louis bar were generally monopolised by the land claimants?

A. I do not know that any of the members of the St. Louis bar were employed in any of the land causes, unless it was by the claimants.

Question by the same. Do you recollect whether, when the publication of Mr. Lawless had been read by Mr. Bates, so far as that the Judge had been three times brought to view in it, twice by his proper name, that the Court then stopped Mr. Bates, and commented upon that fact as indicative of an intention to hold the Judge up to public observation rather than the Court?

A. That was the substance of the Judge's remarks on the paragraph, which I have quoted in the first part of my deposition. He adverted to the frequent repetition of the words "Judge," and "Judge Peck," as an evidence that he was aimed at rather than the Court. He commented upon the words "has thought proper," as implying that he had made the decision in the exercise of his own will, rather than having been governed by the law.

Question by Mr. Davis. Was the memorialist engaged in much professional business, in the District Court of the United States, other than the class of land cases before alluded to?

A. I answer that Colonel Lawless' business was chiefly in the land courts; there was very little other business in the District Court, and of that I do not think Col. Lawless had his proportionate share.

H. S. GEYER.

Sworn and subscribed before the Committee on the Judiciary, the 19th March, 1830.

ATTEST,

JAMES BUCHANAN,
Chairman.

MARCH 20, 1830.

Judge Peck requested that Mr. Geyer might be recalled and asked the following questions; which was done accordingly:

Q. Did you request of me that the opinion in the case of Soulard's heirs might be published?

A. I expressed such a wish.

Q. Do you recollect whether—before you made your first argument—you had compared the publication with the opinion, or whether you argued the matter of the agreement or disagreement, or left that to your associate counsel?

A. I do not think I ever compared the two documents, either before or after that argument. I left the question of misrepresentation entirely out of my argument, proceeding on a different ground.

Q. Whether Colonel Lawless was interrupted in his argument whilst discussing any other question, except that of misrepresentation; and if so, what?

A. The interruptions occurred whilst Colonel Lawless was attempting to show that the piece signed "A Citizen" was not a misrepresentation. He read occasionally a sentence from the opinion of the Judge, as published, and then from his own publication, and proceeded to argue there was no misrepresentation in that part of it, from time to time. It was on these occasions, and these only, that I recollect he was interrupted in the manner I have stated upon my former examination. The Judge referring occasionally to other remarks in the piece signed "A Citizen," which he insisted were misrepresentations. The Judge referred at the same time to other parts of the opinion.

H. S. GEYER.

Sworn and subscribed before the Committee on the Judiciary, the 19th March, 1830.

ATTEST, JAMES BUCHANAN,
Chairman.

Arthur L. Magenis being duly sworn according to law, doth depose and say, as follows:

I had heard an intimation that, on the convening of the District Court of Missouri, sitting as a court for the trial of land claims within the State of Missouri, the court would, in all probability, take some proceedings relative to a publication which had appeared in the "Advocate," under the signature of "A Citizen," commenting upon an opinion delivered by that court, and published in the "Missouri Republican," relative to the case of Soulard. I was not in court immediately on its opening. I think that some time in the course of the day, on my going to the place where court was held, I found Colonel Lawless addressing the court upon the subject of a rule being made against the printer of the Advocate, and contending against the legality of making such a rule. It is not in my power to say, for what length of time the counsel, Colonel Lawless, had been engaged in addressing the court upon that subject. As far as I can recollect, there were frequent interruptions made by the court, and a species of colloquy going on between the bench and the counsel. I thought the interruptions calculated to embarrass and impede the counsel in his discussion. I am not certain that I remained in court until the conclusion of the argument, nor do I think that I was present when the court pronounced its decision upon the points made at bar. I did, however, learn that the court had over-ruled the grounds assumed by Colonel Lawless. Either on that evening, or the succeeding morning, I was informed, either that the printer and publisher of the Advocate had given up the name of Colonel Lawless, as the author of the piece signed "A Citizen," or that Colonel Lawless had avowed himself to be such; which of the two I cannot positively state. At the same time, I think it was stated to me, by Colonel Lawless, that a rule to shew cause had been made by the court against him, as the author of that piece, why an attachment should not issue for a contempt alleged to be by him committed in the publication of the piece referred to. I was requested by Col. Lawless

to attend at the place where court would meet, and, as his counsel, argue against the rule. In compliance with that request I accordingly appeared and delivered an argument before the court, contending against the legality of the rule. Whether I was informed by the court, or learned it privately, that the question, as to whether the matter contained in the publication, signed "A Citizen," amounted to a contempt, and that argument would be precluded as to that point in the case, I am not able to state precisely, though the impression on my mind, now is, that, before commencing the argument, I applied to the court for information, and was informed that that point was not debateable; it being settled that the matter in the piece involved a contempt. I then assumed the ground before the court, that, admitting the matter contained in the piece to be such as would amount to a libel, that the cause having been finally decided by that court, and passed away from its jurisdiction, it could not be considered a contempt: That I viewed the doctrine of contempt as applying only in relation to publications which were made, touching cases pending in court, and to offences committed in the presence of the court: That the case before the court did not come within that rule: That the case was as much beyond the control of that court, as if it had been decided years before; and that the court of King's Bench, might just as well punish, for a comment upon an opinion delivered by some of its judges, who were dead and no longer ceased to exist, as this court attempt to exercise that authority. I believe I urged upon the court the propriety, even admitting the legality of the position assumed by the court, of submitting the matter to the consideration of a Grand Jury. I was listened to by the court without interruption. Mr. Geyer followed me on the same side. Mr. Strother was making observations, and sat down at the request of Col. Lawless, I believe. The court, on the conclusion of the argument, sustained the rule, and over-ruled the positions assumed by the counsel of Colonel Lawless. I think that previous, or immediately at the point of time, when the court commenced delivering its opinion, Mr. Bates, the District Attorney, was requested by the court to read the publication, signed "A Citizen;" as he proceeded in the perusal of it, the court commented upon the paragraphs, and so on until the publication was read through by Mr. Bates, or nearly so. The judge appeared to be under a strong excitement; his manner was vehement; he commented upon the motives which could have induced that publication. The precise words which he used, I cannot pretend to give; some of them impressed themselves upon my recollection; and to the best of my belief, the terms false, malicious, slanderous, calumniator, were repeatedly used in the course of his observations, and, as I understood them, applied to the author of that publication. One particular passage I know, referred to the course which was pursued in China, as against an individual who was convicted of slander or calumny, that his house was blacked as significant of the heart of its inhabitant, and as a warning to the community to beware of such a person, or something like that. During the time when the court was pronouncing its opinion, Colonel Lawless, I think, to the best of my recollection, spoke in an under tone to Mr. Geyer and myself, to know whether we thought he ought to remain—I think he said to listen to such a torrent of abuse, or words to that effect; and I recollect, he was advised to go away, either by Mr. Geyer or myself, or both, and accordingly left the room. On the rule being made absolute, I cannot presisely say whether I remained or left the court house, nor can I say, that I was present when the court pronounced its sentence. The Circuit Court of

the State was then in session, and my attention was so divided that I am unable to assert, whether I was present at the delivery of the sentence or not, but it was immediately communicated to me, if I were not present. Colonel Lawless was taken into custody by the marshal, and so soon as I was released from my duties in the circuit court, I went to the gaol of the county of St. Louis, where I found him. I obtained the cause of his detention, and on the proper affidavit being made, a writ of habeas corpus was obtained, the body of the prisoner was brought before the Circuit Court, and he was discharged in from, two to four hours after his commitment; not less than two, nor more than four hours.

Q. By Judge Peck. From whom did you receive the information that proceedings were, probably, to be taken by the court, in consequence of the publication by "A Citizen," and when?

A. I cannot state any individual in particular from whom I received the information; it appears to me that it was a topic of conversation or discussion, first among the members of the St. Louis bar. The time at which the matter was first broached, could not have been long previous to the session of the court at which the rule was made.

Q. By the same. Were you present during the whole, or what part of the argument made by Colonel Lawless?

A. I was not present at the whole of the argument made by Colonel Lawless. To the best of my recollection, when I heard Colonel Lawless, he was commenting upon the piece signed "A Citizen;" and endeavoring to prove, or to shew to the court that it contained nothing which was derogatory to the character of the court, or a misrepresentation of its opinion.

Q. By the same. Were the interruptions by the court, made during his comment upon the publication, and while he was endeavoring to sustain its truth by a reference to the opinion?

A. It appears to me so. In this I may be mistaken, but to the best of my opinion such was the fact.

Q. By the same. On these interruptions, did the court refer the counsel to parts of the opinion from time to time, which it supposed to be misrepresented?

A. I think the court did. In some of the interruptions, the court referred the counsel to some parts of the opinion, in which it stated, that the publication misrepresented it.

Q. By the same. Did the court, in other interruptions of the counsel, refer to parts of the publication which it supposed to be exceptionable?

A. It is very possible the court may have so done.

Q. By the same. Did Mr. Geyer make any argument upon the question of misrepresentation of the decision of the court, which was charged in the rule?

A. I rather think I did not hear Mr. Geyer on the argument, made upon the rule against the printer; and when Mr. Geyer spoke upon the rule made upon Colonel Lawless, I am of the opinion that Mr. Geyer did not take any such ground, as I have before stated; it having been decided by the court, upon the rule against the printer, that the publication signed "A Citizen" was a misrepresentation, and no longer left for discussion.

Q. By same. If the court interrupted Colonel Lawless with any other object than that above referred to by you, please state it.

A. I cannot pretend to divine the motive of the court.

Q. By the same. Please state the nature of the interruptions on the part of the court, and the words it used, other than that of directing the attention of counsel to particular parts of the publication, which were supposed to be addressed, with the view of influencing the public mind, or that of the claimants, or supposed to reflect upon the court, or to contain a misrepresentation of the points decided by the court, or to some part of the opinion supposed to be misrepresented?

A. It is not now in my power, nor perhaps could I even then have repeated the words used by the Court to the counsel during the course of those interruptions. As to the nature of the interruptions they were frequent. From the manner of the Judge he appeared to be impatient. The impression made upon my mind by his manner was, that he was aware the counsel who was addressing the Court was himself the author of the publication in question.

Q. By the same. Did the understanding seem to be mutual between Court and Counsel in relation to the authorship of the publication?

A. I was aware of the fact that Col. Lawless was the author of that publication, and thought that he showed a more subdued tone when engaged in the discussion, in consequence of his being the author, than he would have done in a case where he was simply acting as counsel without being at all implicated personally in the transaction.

Q. By the same. Do you or not say, during the progress of the argument, to Mr. Bates, that the Court and Counsel seemed to understand very well as between them who the author was, or in substance to this effect?

A. I have no particular recollection of such an observation; but, as I believe such was my impression, I think it highly probable I may have so said.

Q. By the same. Did Col, Lawless, in the course of his argument, frequently affirm or assert that all that was contained in the publication was true?

A. Colonel Lawless, it appears to me, whenever he touched upon the question of the publication having misrepresented the opinion of the Court, strenuously contended that the opinion was not misrepresented by the publication. I cannot state whether he did or did not use the precise words *that every thing contained in the publication was true.*

Q. By the same. Were you present after Colonel Lawless had been brought in upon the attachment?

A. That is previously answered in my statement in chief. I cannot say whether I was or not.

Q. By the same. Do you recollect of presenting a bill of exceptions to the Court, and of the Court declining to sign the bill of exceptions, of moving that the bystanders should do so?

A. Since it has been mentioned by the Judge, it rather appears to me that such may have been the fact, though even yet I would not speak with certainty upon the subject. I can only attribute my want of a clearer recollection of the circumstances to the hurry in which it must have been done, as my attention was very much divided at the time, the Circuit Court of the State being then in session, and my presence in that Court being almost every moment required.

Q. By the same. Could you recollect the day of the week upon which the judgment was rendered against Colonel Lawless?

A. I could not.

Q. By the same. Do you recollect how many days the proceedings were continued?

A. Several days, but the number I cannot state.

Q. By the same. Did the Court, in delivering its opinion, recite in substance the several parts of the opinion which it supposed was misrepresented in the publication, to point out the character of the misrepresentation?

A. I believe it did.

Q. By the same. Did the Court comment upon the influence of the publication upon the public, and upon the claims?

A. The Court spoke of the evil tendency of the publication, of its falsity, and of the motive of its author, which it declared was intended to prejudice the claimants against the Court, to bring the Court into disrepute, and to shake the faith of the suitors in the impartiality of the Judge.

Q. By the same. Is there not a general rule of the Court which precludes more than two counsel from arguing any cause or question except by permission of the Court?

A. I believe there was before and at that time a rule of the Court which confined the argument of any point of law to two counsel on the same side.

Q. By the same. Was the apparent irritation, of which you speak, on the part of the Court, constant during the whole course of the argument by Colonel Lawless?

A. I have already stated that I was not present during the whole of the argument by Colonel Lawless. I thought the Court was excited; whether or not there was an internal excitement going on during the whole time in the breast of the Court I will not undertake to say. I could only judge of the feeling of the Court, by the manner of the Judge displayed when addressing himself to Counsel.

Q. By the same. Is there feeling of ill-blood on your part against me?

A. I am the relative of Col. Lawless. I never was intimate with the District Judge of Missouri. Previous to his appointment as judge, we were upon terms of common acquaintance; subsequent to his appointment I never concealed my dislike to that appointment. It was frequently and publicly expressed. Up to the period when the transaction took place, in which the rule of court was made absolute against Col. Lawless, I believe we were barely on speaking terms. Since that time I am not aware that I have ever addressed myself to Judge Peck, except upon matters of business, and freely admit that I have been unfriendly to him.

Q. By the same. Were you concerned as counsel for the claimants, or any of them?

A. I am inclined to the opinion that, up to the time of the proceedings against Col. Lawless, I was not concerned for any claimant. Subsequent to that period, I was employed and acted as counsel in relation to some claims of Col. John Smith T. and perhaps in one other case.

Q. By the same. Was this paper, identified by the name of James Buchanan written thereon, and produced here by Col. Lawless, read in open court by you or Col. Lawless, after he had been brought into court and before sentence pronounced?

In the District Court for the District of Missouri, sitting at St. Louis, on the 21st day of April, 1826, for the decision of land titles.

The United States,
vs.
L. E. Lawless.

Be it remembered, that on the day and year aforesaid, the said [illegible] upon the said defendant to know whether if there were interro[illegible]

in this cause he would answer them, which the said defendant declined for the following reasons, which he assigned to said court in the words following: First, I refuse to answer the above interrogatories because this court has no jurisdiction of the offence charged upon me, in manner and form as the court has proceeded against me. Second, because the positions ascribed in the article signed "A Citizen" are true, and fairly inferred, and extracted from the opinion of this court in the case of Soulard's widow and heirs *vs.* the United States, as published.

A. The paper described in the interrogatory is in my hand writing, and I presume was read in open court at the period mentioned, but whether by myself or by Col. Lawless I cannot say; and, in truth, my belief upon that subject is based more upon the fact of that paper being in my hand writing, than upon any distinct recollection of the transaction, apart from the paper itself.

Q. By the same. Were you present when the rule was made against Col. Lawless?

A. My impression is rather that I was not.

Q. By the same. Was there much excitement during the pendency of the proceedings of the court?

A. There was considerable excitement among the members of the bar, during the pendency of the proceedings of the court. I do not think that the excitement became general until after sentence was pronounced by the court against Col. Lawless. Previous to that time I think it was confined, in a great degree, to the persons who were present during the discussions which took place. The room in which the court sat, was an apartment in a private dwelling, by no means remarkable for its size. After the decision against Col. Lawless, the excitement became strong and general throughout the community. It may be proper to remark, that I think the room upon the day when Mr. Geyer and myself addressed the court, was well filled, if not crowded.

Q. by Mr. Davis, of South Carolina. Was the language and deportment of the memorialist respectful and decorous to the court, while discussing the rule against the editor?

A. At those times when I was present I thought entirely so.

Q. by the same. Was the conduct of the judge respectful to the memorialist during his argument of the rule, or impatient, or rude?

A. I thought that the manner of the judge evinced considerable impatience and abruptness. It appeared to me that it was entirely different from the usual manner of Judge Peck, and I drew the inference that he was treating Col. Lawless rather as the author of the publication than as the counsel of the printer or publisher.

Q. by the same. Did you understand the allusion of Judge Peck to the Chinese custom of blacking the door of the slanderer's house, as being intended by him to have any application to Col. Lawless?

A. I understood it distinctly to apply to Col. Lawless. During the delivery of his opinion, he had frequently used the words slanderous, malicious, false, as applicable to the publication, and immediately then quoted the custom in China, which was adopted to a slanderer or calumniator, leaving the conclusion in my mind, that he thought him a proper object of such a mark of distinction.

Q. by Mr. Buchanan. How do you stand related to Col. Lawless?

A. We are second cousins.

Q. by same. Has the conduct of the court towards Col. Lawless, since the termination of his suspension, been respectful?

A. I know nothing to the contrary.

A. L. MAGENIS.

Sworn and subscribed before the Committee on the Judiciary, this 20th March, 1830.

ATTEST, JAMES BUCHANAN, *Chairman.*

John Mullanphy being duly sworn according to law, doth depose and say as follows;

I was in Court when the Judge made strictures upon a publication in the newspapers. I thought the Judge was a little irritated, when giving his opinion, and the only words I remember of his remarks, were the punishment of a calumniator in China, which is to have his house painted black. I know nothing more of the business than what I have stated.

Question by Judge Peck. How long were you in Court during the delivery of the opinion?

A. I cannot tell exactly, perhaps an hour or more.

Question by the same. Did the Court appear to have for its object the discussion of the questions which had been argued by counsel, and which were presented in the case?

A. I cannot tell what was the object of the Court, excepting as a preparatory step to the punishment of Col. Lawless.

Question by the same. Was the manner of the Court rude, in relation to any body?

A. I considered the Judge to be irritated against the author of the piece.

Question by the same. Had you been present during the previous discussion?

A. I do not remember that I was. What brought me there that day, was, that I understood proceedings were to be had against Colonel Lawless, for a contempt of Court.

Question by the same. Did the Court appear to wander from the subject under its consideration, for the purpose of lavishing abuse upon any one?

A. No. I do not know that it did. The various parts of that publication was discussed, and remarks made by the Judge as he went along.

Question by the same. Will you state the indications of excitement? In what did they consist? In sharpness of voice, in earnestness of manner, or in what?

A. I thought there was an earnestness of manner in the remarks made upon the piece, and the words slander and falsehood, as applicable to the author, were made use of more than once.

Question by Mr. Davis, of South Carolina. Did you understand the allusion of Judge Peck to the Chinese custom of blacking the door of the slanderer's house, as being intended by him to have any application to Col. Lawless?

A. I remember looking at Mr. Lawless whilst the Judge made that remark. Knowing Mr. Lawless to be of rather a hasty temper, I had my eye fixed upon him during the time, to see how he would take the language, as I conceived it applied to him.

JOHN MULLANPHY.

Sworn and subscribed before the Committee on the Judiciary, this 20th March, 1830.

Attest, JAMES BUCHANAN, *Chairman.*

The Reverend Thomas Horrell, being duly sworn according to law, doth depose and say as follows:

When I entered the room in which the Court was sitting, Mr. Magenis was making an argument before the Court as counsel for Colonel Lawless; I cannot distinctly recollect the grounds of his argument. His object was to shew that the rule could not apply in that case. He was succeeded by Mr. Geyer, who also appeared as counsel for Colonel Lawless. Colonel Strother commenced a speech, but stopped abruptly; I did not then know from what cause. The Judge then called upon Mr. Bates to read the publication signed "A Citizen," and proceeded to comment upon it. I cannot distinctly recollect the language of the Judge, but remember that the words calumny, slander, and misrepresentation, were used by him; and I considered them as intended to be applied to Colonel Lawless. I distinctly recollect his referring to the law of China, by which calumniators were punished by having their houses painted black. I did not remain in the Court until the Judge had concluded his remarks, but left it soon after Colonel Lawless absented himself. I cannot be expected to recollect particulars, not having charged my memory, and expecting never to be called upon to testify in this case.

Q. By Judge Peck. Is your recollection perfect as to the words of the Court so as to enable you to say whether it charged the publication to be slanderous, libellous, or false; or, whether such imputations were actually made against the defendant himself?

A. I certainly understood the language of the Judge as applicable to the author of the publication.

Q. By the same. Were not the matter of the publication, when the language referred to as used by the Court, the subject of its consideration??

A. I think so.

Q. By the same. Was not the words applied to the publication, and it charged to be slanderous and libellous, rather than as addressed by the Court to the defendant himself?

A. I perhaps shall find some difficulty in distinguishing between the application of the language of the Court to the publication and the then known author of it. I certainly understood the language of the Judge to be applicable to the author.

Q. By the same. Was the paper the subject of remark?

A. The paper, as I have before stated, was read by paragraphs, and the Judge proceeded to comment on that publication.

Q. By the same. Did the Court address itself to the author personally, or was it treating of the publication, and pronouncing upon its character?

A. I think the Court did not address itself personally to Colonel Lawless, but thought the language used was intended to be applied to him.

Q By the same. Were you in Court when the rule against Colonel Lawless was made?

A. I was not.

Q. By the same. Were you in Court, at any time after that, when Colonel Lawless came in and addressed the Court?

A. I was not.

Q. By the same. Were you in Court when Colonel Lawless was brought in upon the attachment?

A. I was in the Court but once during that term, and left it before the Judge had finished his comments upon the publication signed "A Citizen."

Q. By the same. Whether, in the course of that discussion, the Court in delivering its opinion was earnest and ardent in defence of principles, which you could have inferred had been the previous subjects of discussion?

A. I cannot distinctly recollect what principles were involved in the discussion. The manner of the Judge I thought animated and vehement.

Q. By Mr. Buchanan. How long had the Judge been employed in delivering the opinion of the Court before you left the court-room?

A. I suppose not more than twenty or thirty minutes—not more than half an hour.

Q. By the same. What was your understanding as to the application intended by the Judge of the law of China?

A. I understood it as being applicable to the author of the piece signed "A Citizen."

Q. By the same. What was the manner and conduct of Mr. Lawless whilst the Court were delivering their opinion?

A. I saw Mr. Lawless occasionally, and during some parts of Judge Peck's comments. His countenance indicated considerable excitement. He, however, remained quietly in his seat until he got up for the purpose of leaving the room, and until he left the room.

THOMAS HORRELL.

Sworn and subscribed before the Committee on the Judiciary, this 20th March, 1830.

Attest, JAMES BUCHANAN, *Chairman.*

Charles S. Hempstead being duly sworn according to law, doth depose and say as follows:

Understanding that a rule had been served upon Mr. Foreman, the Editor of "the Missouri Advocate," to shew cause upon an alleged contempt for the publication of an article which had been printed in his paper, signed "A Citizen," which contained strictures upon an opinion of the District Court of Missouri, sitting as a Land Court, in the case of Soulard's heirs; being a practitioner in that Court, I recollect being present in that Court when the argument was had upon that rule against Stephen W. Foreman. According to my recollection, at this time, Col. Lawless, Mr. Geyer, Mr. Strother, and perhaps Mr. Magenis, appeared as Counsel on behalf of Foreman on that occasion and resisted the rule being made absolute upon Foreman. The argument of the Counsel upon that occasion I cannot state at length, but from what I have understood from the testimony of Colonel Lawless and Mr. Magenis before this Committee, according to the best of my recollection the positions which they have stated in their testimony have been correctly stated, and were discussed by them before the Court. I understood that those positions were overruled by the Court, and that Col. Lawless was either given up or acknowledged himself to be the author of the piece signed "A Citizen," and I understood that a rule was served upon Col. Lawless to answer for the alleged contempt committed by him in the writing and publication of the piece signed "A Citizen." I was probably in Court during most of the proceedings against Col. Lawless upon that rule, but do not now distinctly recollect all the proceedings that occurred on that occasion, until the Judge delivered his opinion upon the rule against Col. Lawless. I distinctly recollect being in Court at that time. When Judge Peck commenced delivering his opinion, I think that he called upon Mr.

Edward Bates, then District Attorney of Missouri, to read the article signed "A Citizen." The Judge, according to my recollection, laid down what he considered to be the general principle of law as applicable to the doctrine of contempts, and applied them to the case then before the Court; that he expressed himself at some length, but what were his arguments I do not now recollect, but he stated, as the result of his opinion, that the case before the Court was one of those contemplated by the law of contempt, as he understood it, and that he should accordingly apply it to the author of the publication signed "A Citizen;" that he then proceeded to comment upon the article signed "A Citizen," paragraph by paragraph, as read by Mr. Bates, but I do not now recollect, from the lapse of time, all that he said upon that branch of his opinion, but I remember some portions of it. He stated it was evidently the intention of the author of "A Citizen" to misrepresent the opinion of the Court in the case of Soulard's heirs, to shake the public confidence in the impartiality of the Court, to bring the Court into disrepute, and to create a belief in the country, that land claimants having suits before that Court, could not expect justice from it. That the statements contained in the Citizen, as to matters of fact, were mistated. The Judge, I do not pretend to recollect the precise language of the Judge upon that occasion, but that he applied the terms of slanderer and of calumniator to the author of the piece signed "A Citizen;" that he expressed himself with much vehemence of manner, and appeared to be at times much excited. I now. recollect, although it had escaped me in my previous examination before the Committee, of the Judge mentioning the punishment awarded to slanderers and calumniators in China, of having their houses blacked, as an evidence of their disgrace, and to give a warning to all persons to avoid and pass by such a character, and according to my recollection, I think that he said that if the author of "A Citizen" was in China, and had committed such an offence as the Court deemed that he had by the publication of such an article as the "Citizen," that such would be his punishment. I do not now recollect whether I was in Court when the final sentence was pronounced on Colonel Lawless, but recollect being in Court during the time that most, if not all the Judge's opinion on that occasion was delivered. The time consumed in delivering that opinion, according to my recollection, was something more than an hour, perhaps two hours. I do not know that I can state any thing more at this time.

Q. By Judge Peck. Were you in Court when the rule was made upon Col. Lawless?

A. I do not recollect.

Q. Were you in Court when Col. Foreman, the Editor was examined by the Court?

A. I think I was.

Q. Do you recollect whether he did not, under that examination, disclaim all knowledge of the mischievous tendency of the publication, and all intention on his part to reflect upon the Court?

A. I don't recollect Col. Foreman's precise answer, but according to my recollection he disclaimed all intention of committing any contempt of that Court.

Q. Were you present at any time after the rule made upon Col. Lawless, when he appeared in Court, and addressed the Court for the purpose of having time allowed to him to attend to his professional business in the other Court, before the argument should proceed in his case?

A. I was probably present, but do not recollect distinctly of Col. Lawless' addressing the Court at any other time than as Counsel for Col. Foreman. Although he might have made the motion you speak of, I don't recollect it.

Q. Were you present when the opinion of the Court was delivered in the case of Soulard?

A. I was, and took notes of it. I was also present during the argument of that case.

Q. Who was associated with Col. Lawless in the argument of that case?

A. Col. George F. Strother.

Q Were they heard at great length?

A. Col. Lawless made an argument of great length, and a very elaborate argument, but I don't recollect when Col. Strother spoke or how long, although I know he appeared in the case.

Q. Was the decree rendered at the same term at which the opinion was delivered in the case of Soulard?

A. I do not positively recollect; my impression is, it was not.

Q. Was its rendition postponed for the purpose of enabling Col. Lawless to be present?

A. I do not know the fact, Col. Lawless was absent during the progress of the suit; possibly it might have been so.

Q. Were you present during the argument of Col. Lawless on the rule against the Editor?

A. I was.

Q. Can you say whether the Court interrupted Col. Lawless for any other purpose than that of directing his attention to some point arising out of the publication, or the opinion commented upon therein, and if you can, what?

A. I do not distinctly recollect; Col. Lawless was interrupted several times, but I do not now recollect for what purpose.

The witness here said,

There is one thing which escaped me in my direct examination; that the Judge, in commenting upon the motives which probably induced the author of "A Citizen" in writing that article, appeared to be directed not only to injure the Court, but to reach the Judge.

Q. By Mr. Buchanan. What was the manner of the Judge and of Mr. Lawless, respectively, whilst the argument of the rule against the printer was proceeding?

A. I do not recollect that there was any thing extraordinary in the conduct of either.

Q. By the same. What was the manner of each of them, whilst the Judge was delivering his opinion on the rule against Mr. Lawless?

A. The manner of the Judge did not appear to be directed personally towards Mr. Lawless, but speaking of him as the author of "A Citizen" and the defendant on that rule before the Court, appeared to be vehement and much excited. I observed nothing particular in the conduct of Mr. Lawless whilst he remained in Court, which he left before the opinion was finished.

CHARLES S. HEMPSTEAD.

Sworn and subscribed before the Committee on the Judiciary, this 20th of March 1830.

Attest, JAMES BUCHANAN, *Chairman.*

Edward Charless being duly sworn according to law doth depose and say as follows:

"The Missouri Republican" of the 30th March, 1826, identified by the name of James Buchanan written thereon, was exhibited to the witness, whereupon his examination proceeded as follows: I was the publisher and printer of this paper. The opinion therein contained, was published, to the best of my recollection, at the request of Judge Peck. He unquestionably furnished the original for publication.

Q. By Judge Peck. Were you in court during any part of the proceedings against Mr. Foreman or Mr. Lawless?

A. I was I think about ten minutes on the day on which the rule was made against Col. Lawless. Col. Lawless was addressing the court. I have no recollection of the arguments made by him or the language used. I merely recollect that he was sometimes interrupted by the Judge.

Q. By the same. - With what view did the interruptions, on the part of the court, appear to be made? Had they for their object to refer the counsel to any matter arising out of the publication or the opinion which had been commented upon?

A. They were in relation to the article published in the Advocate. The short time that I remained in court, so little of the proceedings did I hear, that I am unable to answer the question fully.

Q. By the same. Was there any thing remarkable in the manner of the court whilst you were there?

A. I thought the manner of the Judge was earnest, and appeared at times a little excited.

EDWARD CHARLESS.

Sworn and subscribed before the Committee on the Judiciary, March 20, 1830.

Attest: JAMES BUCHANAN, *Chairman.*