

Cincinnati October 30th 1857. 257

To his Excellency
E. Louis Lowe,
Governor of the State of Maryland,

Sir,

To the
Governor,
from
Wm. Childs
in the
case
of the
State of
Maryland
vs
Wm. Childs
an
alleged
Fugitive
from
Justice.

You have probably been informed of the fact, that William Childs of this City, who was arrested at the Suit of the State of Maryland, upon a warrant of the Governor of Ohio, issued in compliance of your requisition, has been discharged on a writ of Habeas Corpus, issued by Judge Hoadley of our Superior Court of Cincinnati. A writ of Habeas Corpus was first obtained from Judge Key of the "Com. Court of Cincinnati a Court of Cincinnati a Court of Concurrent jurisdiction with the Superior Court in civil matters and having jurisdiction of Writs of Hab. Corp.) and after a full hearing) Childs was remanded to Custody under the warrant. Application was then made to Judge McLean of the Imp^l Court U.S. who refused to issue the Writ, on the ground that the judgment of Judge Key was conclusive. They next applied to Judge Hoadley, waiting however until the Custody ~~was~~ ^{had} changed from the Sheriff to Messrs. Wise & Zell, agents of Maryland. The whole matter was again argued before him, Judge H., who decided,

1. That he was not concluded by the decision of Judge Key, and that the principle of Res adjudicata did not apply to proceedings on Habeas Corpus.

2. That the act of Congress of 1793 providing for the delivery of Fugitives from Justice was unconstitutional and Void, and that the power of legislating on the subject was exclusive in the States.

3rd That if the act of 1793 were unconstitutional, the Governor of Ohio, had no right to issue his warrant to the Sheriff of Hamilton County to make the arrest.

4th That Childs was not a fugitive from Justice, because an actual flight was not shown.

The chance of holding a fugitive from Justice, against such doctrines as these, on the Bench, was slender indeed. Judge Hoadley's Free Soil and Abolition opinions were not unknown; but it was not supposed, that he would presume to overrule the decisions of the Supreme Court U.S.

We trust however, that you will not suppose that the opinions, upon which this extraordinary decision of Judge Hoadley is based, are entertained by any considerable number of lawyers, or men here in our City.

The Bar is quite unanimous against this overruling of all former decisions on the validity of the law of 1793, if all except Mr Chase, who alone made the point, although the case was elaborately argued by two other Counsel of distinguished ability, on the part of Childs. There may be, here and there,

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