EASTON GAZETTE.

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VOL. XXVI. EASTON, (MD.) SATURDAY MORNING, APRIL 8, 1843. No. 14.

PRINTED AND PUBLISHED EVERY *Saturday Morning*, BY

Alexander Graham,

TERMS.

TWO DOLLARS AND FIFTY CENTS Per annum, payable half yearly in advance

ADVERTISEMENTS

Not exceeding a square inserted three times for ONE DOLLAR; and TWENTY-FIVE CENTS for every subsequent insertion.

GENERAL JACKSON & THE FINE.

[CONCLUDED.]

In his general order of the 11th March 1815, General Jackson expressly claimed the right to establish martial law, and, to suspend the habeas corpus, in these words: 'The Constitution of the United States secures to the citizen the most valuable privileges yet the same Constitution contemplates the necessity of suspending the exercise of some in order to secure the continuance of all. If it authorises the suspension of the habeas corpus in certain cases, it thereby impliedly admits the operation of martial law, when in the event of rebellion or invasion, the public safety may require it. To whom does the declaration of this law belong?—To the guardian of the public safety—to him who is to conduct the operations against the enemy, whose vigilence is to descry danger, and whose arms are to repel it?'

This claim of power for a military commander is so directly in violation of the Constitution of the United States, the fundamental principles of free government, and the spirit of all our institutions—it is so replete with future danger to our liberties, and may be so perverted to other dangerous consequences—that the committee feel bound to expose its utter fallacy.

To sustain such a claim of power, examples must not be drawn from despotic times, or from absolute Governments, where the monarch pretends to rule by Divine right; where he as Louis XIV. said, is the State, and the people are his dependent subjects, who derive their rights only from his grace and favor.

There is no martial law known to the laws of the United States but such as Congress has provided for the government of the army. That other martial law, which General Jackson claimed a right to establish was never acknowledged in our country and has never been tolerated in England since the time of William III., more than one hundred and fifty years since, when in the Declaration of Rights it was provided, 'that the pretended power of suspending laws and the execution of laws by regal authority, without consent of Parliament, is illegal;' and 'that the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal.' These declarations were afterwards, to make assurance doubly sure, incorporated in the Bill of Rights. (See De Lolme on the Constitution, Stephens's edition.) Hume in his History of England, (5 vol. 454.) in stating the instruments of power and oppression employed by the Tudors and the Stuarts, after describing the terrible jurisdictions of the courts of Star Chamber and High Commission, says:—'But martial law went beyond even these two courts, in a prompt, arbitrary, and violent method of decision. Whenever there was any insurrection or public disorder, the Crown employed martial law; and it was during that time exercised, not only over the soldiers, but over the whole people. Any one might be punished as a rebel, or an aider and abettor of rebellion whom the provost-martial or lieutenant of the country pleased to suspect.'

It was this martial law which the Declaration of Rights put to an end in England and which it was reserved for a country, where the people are the source of all power, to see revived and enforced by a republican general. This sort of martial law has no fixed boundaries, no prescribed principles. 'It is,' says Blackstone, (1 vol. 413,) 'built on no settled principles, but it is entirely arbitrary in its decisions, and is, in truth, no law, but something indulged rather than allowed as a law—a temporary excrescence bred out of the distemper of the State.'

Lord Loughborough, in 1792, (2 H. Black. 99,) declared that this vast, vague and most dangerous power had no existence in England. It was contrary to the Constitution, and had been for a century totally exploded.' So are the authorities in our own country.

In Lambs case Judge Bay, of south Carolina, said: 'If by martial law is to be understood that dreadful system, the law of arms, which in former times was exercised by the King of England and his lieutenants, when his word was the law and his will the power by which it was exercised, I have no hesitation in saying that such a monster could not exist in this land of liberty and freedom.'

So, too, in a case which was very carefully considered and ably argued by the Supreme Court of Louisiana (1 Con. Rep. of Louisiana, 158,) in 1815, Judge Martin declared that the proclamation of martial law 'if intended to suspend the functions of the court or its members, is an attempt to exercise powers exclusively vested in the Legislature,' and 'is in this respect null and void.' Judge Derbigny, in the same case, said that 'the proclamation of the martial law cannot have had any other effect than that of placing under military authority all the citizens subject to military service. To give it any larger extent, would be trampling upon the Constitution and laws of our country.' 'If there is any principle distinguished as inseparable from the character of our institutions, it is the subordination of the military to the civil authority. It is of the essence of a free Government, and liberty cannot be said to have any guaranty where this principle does not prevail. The Constitution of the United States establishing a Government of limited and granted powers, does not contain an enumeration of all the powers prohibited by it; but the third article of the amendment provides that no soldier in time of peace shall be quartered in any house without consent of the owner, nor in time of war, but in a manner to be prescribed by law—a provision which shows the jealousy with which our fathers looked on the military power, and their determination to keep it within the control of law. It does not, as Judge Derbigny said in the case before mentioned, 'provide that in times of public danger, the Executive power shall reign to the exclusion of all others. It does not trust into the hands of a dictator the reins of the Government.' 'If it had the States would have rejected a Constitution stained with a clause so threatening to their liberties.'

Their Constitutions contain the most positive provisions against the supremacy of the military power, which it was their intention at all times and under all circumstances, to keep in strict subjection, to the law. They were not likely to intend otherwise, when in the Declaration of Independence which they had not yet forgotten, they had denounced the King of England for affecting to render the military independent of and superior to the civil power.

In Maryland the Declaration of Rights says (sec. 7) that no power of suspending laws, or the execution of laws, unless by or derived from the Legislature, ought to be exercised and allowed; and (sec. 27) that in all cases and at all times the military ought to be under strict subordination to and control of the civil power.

In Massachusetts the Constitution declares that 'the military power shall always be held in exact subordination to the civil authority and be governed by it.' Similar provisions are found in the Constitutions of Vermont, New Hampshire, Connecticut, Pennsylvania, Virginia, Kentucky, Tennessee, and other States; and all, it is believed, prohibit the suspension of the habeas corpus except by the legislative authority.

This doctrine of necessity, which at one time is said to abrogate the Constitution and all laws, and at another to justify the invasion of a part of the citizens' privilages that the rest may be preserved, has long been known as the tyrant's plea.

From what has been said of the history of public liberty in England, it is seen that it is not tolerated there, no matter what may be the distemper of the times; & while it is palpably incompatible with the principles of American freedom, it is also directly met and expressly denied by the constitutional provisions and judicial decisions above mentioned.

The country may, in consideration of great services and upon atonement made, excuse the individual who has violated these constitutional principles; but whenever they yield submissively to the invasion of these rights, whenever they are prepared to admit the tyrant's plea, they are fit only to be the tyrant's slaves.

General Jackson, however, claimed the right, under the Constitution, to suspend the habeas corpus, and thus, by implication, to declare martial law. Let us examine this source of authority. It has already been said that the Constitutions of most, if not all, the States declare that the suspension of the habeas corpus shall only be by legislative authority.

So also is the Constitution of England, as declared by Parliament on the celebrated Bill of Rights, and it is worthy of remark that from that time to the present, a period of more than one hundred and fifty years, the habeas corpus has never been suspended by regal or military authority. In the time of William III. & of Anne, during the struggles against the House of Hanover, the stormy periods of the French Revolution, and of the riots succeeding the peace of 1815, Parliament has interfered and suspended the habeas corpus by limited and well guarded *laws*. Even during the Pretender's invasion, a period of great national peril and of universal dismay in some parts of the kingdom, the duration of the suspension was fixed by law, and the only effect was to allow the detention of dangerous individuals, not their trial by courts martial. That clause of the Constitution of the United States which relates to the subject is found in the first article, which contains the enumeration and the prohibition of powers to Congress. It is in these words, article 1, section 9: 'The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.' This power of suspension is in itself a legislative power. The law making power is the law repealing or suspending power. The prohibition of repeal in this case is on Congress, and of consequence the allowance of suspension in the case of invasion or rebellion, is to Congress. It is the duty of Congress to make, repeal or suspend laws—of the Executive and his subordinates to execute them. It would be an anomaly in our system of Government disgraceful to us, & utterly subversive of our boasted freedom, if a construction should obtain which would wrest from the representatives of the people one of their peculiar powers and confer it on any military commander, who, at his own uncontrolled discretion upon any necessity of which he should be the sole judge, might reverse the fundamental maxim of our institutions, and set up the military above the civil power.

It would be still more monstrous, if, besides suspending the habeas corpus & detaining the citizen, he should claim to try and execute him by martial law, which is not tolerated even in the realm of England or in any country except where despotism reigns. We are not without the lights of judicial construction on this point. In the case of Bollman & Swartwout (4 Cranch, and 2 Cond. Rep. of Sup. Court, 47) the Supreme Court so decided on a motion for a habeas corpus, and Judge Marshall said: 'If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the Legislature to say so. The question depends on political considerations, on which the Legislature is to decide. Until the legislative will be expressed, this court can only see its duty and must obey the laws.' This doctrine as fully recognised by the Supreme Court of Louisiana in the case before referred to. They declare the idea to be *preposterous* that a military commander may, 'by his own authority, suspend the functions of the civil magistrate,' and 'destroy the tribunal established by law as the asylum of those oppressed by military despotism.'

We must not forget that General Jackson not only claimed to suspend the habeas corpus, but during such forcible session to try a citizen upon a charge of libel before a military court, under that vague and vast power called martial law, which was utterly exploded in England one hundred and fifty years ago, and which never had the shadow of an existence in this country.*

But General Jackson contended that New Orleans was his camp, and therefore he had the right to suspend the habeas corpus, and enforce martial law within its limits. To this it was well replied by Judge Derbigny, in the case before cited, 'that the abuse of words can not change the situation of things: that the transformation of the city itself into a camp by the mere declaration of the General, is no more to be conceived than would the transformation of the camp into the city by the same means.' What is a camp but the portion of ground occupied temporarily by an army while in the field? During the invasion, the camp of Gen. Jackson was several miles below the city; after the retreat of the enemy, Gen. Carroll had his camp about four miles above the city. The headquarters of the commander in chief were, indeed, at New Orleans; but the troops there had been withdrawn from *the field*, though still in service, & it was no more *the camp* than Gen. Carroll's camp was the city. But if it had been his camp, there is nothing so holy in such a place that it may not be reached by the habeas corpus. There is no spot in the United States where the birthright of the American citizen can be nullified or suspended except by law. The 14th clause of the judiciary act (see Gordon's Digest, 106) provides that 'all the courts of the United States may issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their *respective* jurisdictions, & agreeable to the principles and usages of law; and either of the justices of the Supreme Court, as well as judges of the district courts, may grant writs of habeas corpus for the purpose of inquiring into the cause of commitment, but writs of habeas corpus shall in no case extend to prisoners in jail, unless they are in custody under, or by color of, the authority of the United States, or are committed for trial before some court of the same," &c. Here is the sole restriction, and it is manifestly intended to prevent a collision of Federal and State authority. Whether Louallier was in a jail, or a military prison, in or out of the camp, it is presumed that he was confined under color of the authority of the United States, as alledged to be vested in one of their generals, and, if so, it cannot be doubted that he would be reached by the writ. Judge Marshall has said that though the power to award the writ be given by written law, we must look to the common law for the meaning of the term. (Bollman's case, 2 Condensed Reports, Supreme Court, 38.) If we look for its meaning into English history, we shall find that it has always been the palladium of English liberty; and that, from the time of Magna Charta to that of Charles II, there was a constant struggle on the part of the Crown to curtail its benefits to gratify the lusts of ambition. A dependent judiciary is apt to be corrupted by the power at whose mercy it is; and accordingly we find that until the English judges were made independent, in the reign of William III, the habeas corpus was occasionally shorn of its utility by the instruments of the Crown. "These evils were so apparent," says De Lolme, "that Parliament were obliged to restore the ancient law for the protection of liberty," by what is commonly called the habeas corpus act, passed in the time of Charles II. This act made it, among other things, imperative on the judge to grant the writ even during vacation; made him liable to a penalty of £500 for illegally denying it; and authorized the writ to run into places previously privileged. The propriety of this was unquestionable, for 'the arbitrary discretion of any man is the law of tyrants, in the best it is often capricious in the worst it is every vice, folly, and passion to which human nature is liable.' Such was the habeas corpus before and at the time when introduced into our system by the English Constitution,† and thus was Judge Hall bound to do precisely that for which he was imprisoned by Gen. Jackson?

In England, it is well established that all courts of a military kind are held in strict subordination to the ordinary tribunals. These latter will take cognizance of any abuse of authority committed by courts martial, even upon a soldier who is liable to the military law. De Lolme (page 982) mentions a curious case, in which Lieutenant Frye, of the marines, who had been illegally convicted by a court martial in the West Indies and was sentenced to fifteen years' imprisonment meeting with the president of the court in England, sued him, and recovered a thousand pounds damages—the judge, at the trial, informing him that he might bring his action against any of the members of the court whom he could meet with. He accordingly instituted suits against two other members who were then in England, and sitting on another court martial. They were arrested just as the court broke up.—This was resented by all the court as an insult. They met and passed resolutions which the judge advocate was directed to lay before the King. In these resolutions they asserted that, by this proceeding, the order, disipline, and government of his majesty's armies, by sea were dissolved, &c. The altercation lasted a long time, but the military power were at last glad to submit, and sent a written apology to Chief Justice Willes, 'signed by seventeen officers, admirals and other members of the court. The judge read their letter in open court, and directed it to be recorded in the Remembrance Office, 'as a memorial to the present and future ages that whoever set themselves above the law, will, in the end, find themselves mistaken.

It only remains for the committee to inquire into the nature and extent of the court's power to punish for contempts.—The doctrine on this subject is not modern. It is not the offspring of common law technicality, of judicial usurpation, or of professional bigotry. It is a very ancient doctrine, founded on common sense, and probably coeval with the organization of courts of justice, to whose existence and administration it is indispensable. In Anderson and Dunn's (6 Wheaton) case the Supreme Court said that 'courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates;' and this principle belongs as well to the civil law as to the English common law and has indeed, been assumed and exercised, for the same reason, by the House of Representatives itself, in the instance of one of the parties whose case is above cited.

Whether Congress, by their legislation on this subject, only sanctioned and limited existing or implied powers, or, in fact, created and conferred these powers, it is not necessary to inquire though it would be very easy to answer. It is sufficient that in the seventeenth section of the judiciary act passed in 1789, the courts of the United States are empowered to 'punish, by fine and imprisonment, at their discretion, all contempts of authority in any cause or hearing before them, and make and establish all necessary rules for the orderly conducting business in the same.' Here the power is granted, and if not limited in its extent, and controlled in its administration by the common law from which it is said to have been borrowed, it is to be limited and controlled only by judicial discretion. The courts of the United States, however not grasping at power, have always followed the rules of English law on this subject, except where restrained by statute, as was done in 1831, by the act of March 2, where it was provided that 'the power of the courts to inflict summary punishment for contempts of courts shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of said courts, or so near thereto as to obstruct the administration of justice, &c. and the disobedience of any of the officers &c. or *any other person* or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.' This recognises, as already existing, the power of punishing summarily such contempts as disobedience of a habeas corpus.

The power of the courts, before this statute, was such as the English courts possessed; for, when the judiciary act gave to them the power to punish for contempts, without limitation, it was from the English law on the subject that they were to look for the rules of construction and modes of proceeding. (See 1 Gallison's Reports, 490, also 1 Kent's Com., By this statute certain constructive contempts were abolished; but the courts retained the power 'to inflict summary punishment' for disobedience of their process, such as a writ of habeas corpus.—As to the mode of proceeding adopted by Judge Hall, it has been objected that he followed the rules of the common law instead of the civil law, or the law of Louisiana; and that he did not allow the intervention of a jury. To which it may be replied, that by the act of March 2, 1793 the United States courts have the right to regulate their practice in such manner as shall be fit and necessary for the advancement of the ends of justice, and especially, to that end to prevent delays in its proceedings. The 34th section of the judiciary act is considered a legislative recognition of the principles of universal jurisprudence as to the operation of the local law but not as applying to the practice and process of courts.—(10 Wheaton, 1) Judge Hall, therefore was not bound to regulate his proceedings in this case by the practice of the Louisiana courts, though; in fact, his mode of proceeding and theirs were precisely the same. The power of the Louisiana courts to punish for contempt has been given and limited by statute. As to the mode of proceeding, there is no provision in the law. But they adopt, and do always follow, the English forms in this particular, quoting and acknowledging the authority of the English courts and law writers. (See Martin's Reports, vol. 1, page 102, 103.) They no more allow the intervention of a jury in such cases than did Judge Hall. They inflict 'summary punishment' as our statute says; and if the civil law had been the only law of Louisiana, which is by no means the fact, it would have made no difference, because the intervention of juries was unknown to that code. As to Judge Hall's sitting in case of contempt against himself, it is sufficient to say that it could not be otherwise. No court can take cognizance of a contempt but that against which it is committed; and if there be only one judge, as in the district court, he must necessarily sit in the case, or the contempt, however flagitious, must go unpunished. As to the delay in punishing the contempt, this was owing to General Jackson's imprisoning, and subsequently banishing the judge from New Orleans. In fact, Judge Hall adopted the most liberal rules of proceeding known in such cases; and the committee see no reason to reproach him with arbitrary or vindictive conduct.

The conclusions to which the committee have come are that martial law was declared at New Orleans by General Jackson without law, and in violation of the Constitution of the United States; that its continuance up to March 14 1815, was not only unsanctioned by law, but not excusable by necessity; that the arrest and imprisonment of Louallier for publishing an article in the Louisiana Courier, was a violation of that right of the citizen to discuss without fear the conduct of those in power which is inseparable from the idea of a free people, and a revival of the worst features of the sedition law; that his trial by a court martial was in violation of the laws of the U. States and of the State of Louisiana, which exempted him from all military service; that his trial by officers of the regular army was in violation of the law of the U. States, which required, if tried at all by a court martial, that it should be composed of militia officers; that his detention after his acquittal by the court martial was a dangerous and despotic exercise of power; that General Jackson's refusal to obey the writ of habeas corpus and his imprisonment of the judge was a violation of the most sacred right of the citizen, of the express provision of the Constitution, and of the judicial independence, and together with his seizure of an original court paper, was a contempt of court for which he was justly and legally fined.

The committee regret that they have been forced into this investigation. They would have much preferred that the friends of General Jackson had been contented with the imperishable glory won by his courage and military skill, and the repeated proofs of national gratitude which he has received. They were willing to bury in oblivion the memory of those transactions on which they have been compelled to animadvert. At the last session they consented that a bill should be submitted, with such a report from the minority of the committee as they thought proper. But the claim for remission of the fine has now been placed on other grounds, and the most unsound principles, as they think, have been invoked to its aid. The House, too, with the bill before mentioned on their calendar, have again referred the subject to this committee, which they consider as instructions to examine into the facts and principles of the case. Under such circumstances, they would have been recreant to their duty if they had shrunk from the performance of a most disagreeable task.

Living without Drink.—The last Boston Medical Journal contains a communication from Dr. W. A. Alcott, in which he states that he *drank nothing* during the whole of the year 1842; and in fact that he had not yet returned to the use of drink. With one exception he suffered less than formerly from thirst. 'This exception was in July, when, in order to make a fair experiment, he worked hard at haying. The first day or two, it being very hot weather, he felt a return of thirst which he allayed by gurgling his throat with cold water, and eating bread crumbled in water. After two days he felt no more thirst, though he worked hard. The object of the experiment was to prove, for the benefit of the friends of temperance, that if our food is simple & plain, we need but very little drink.—His diet was bread fruits, and succulent vegetables."

BRITISH PHILANTHROPY.—The N. Y. Courier says, the British frigate Madagascar, Capt. Foote, recently destroyed several slave barracks on the Coast of Africa, and had in the course of the proceeding, several skirmishes with the natives, in which some of the crew of the frigate were killed; but the English succeeded in capturing about twelve hundred slaves, who were taken to St. Helena, *and put to labor as "hired apprentices."* Hired of whom?—Hired of themselves? Oh no, hired of their captors of course, without the negroes themselves having any say in the premises. This is suppressing slavery with a vengeance, and exhibits the "British philanthropy," of which we hear so much from the British themselves and from our own abolitionists, in a remarkably translucent light.

WORK FOR THE CLERGY.—A petition has been presented to the legislature of Massachusetts, praying that the punishment of death be abolished; or, if not, that the awfully solemn duty of hanging the convicted criminals, and ushering the guilty soul into the presence of God, instead of being longer imposed upon sheriffs, whose humane feelings are often shocked by such brutality, may hereafter be assigned to *hangmen*, such as your wisdom may enable you to select out of that numerous portion of the *clergy*, who are the most zealous advocates of *judicial murder*, and through whose influence the inhuman practice has been so long continued."

What will the clergy says to this?

From the Life of Sir Astley Cooper, which has been published in London by one of his relations, we take the annexed account of the professional income of this distinguish surgeon:

"'My receipts,' says he, 'for the first year were £5,5s., the second,' £26; the third, £64; the fourth, £96; the fifth, £100; the sixth, £200; the seventh, £400; the eighth £610; the ninth, (the year he was appointed surgeon to the hospital,) £1,100." He himself appends a remark which sufficiently shows his feeling on this subject—'Although I was a lecturer all the time on anatomy and surgery."

The extent of practice which he subsequently obtained may be inferred from the fact that his professional income for the year 1815, exceeded £21,000—nearly a hundred thousand dollars.

It is said that so much pork has been killed in Cincinnati the present season, that most of the literary ladies *inter-lard* their conversation with 'scraps' *from Bacon*. "Hog's tales" are quite a favorite work, and efforts are being made to discover the lineal descendants of the patriarchal Ham. Several girls are in the market as "spare ribs."

AN IMPUDENT SOUTHERN CONUNDRUM.—To the question, by a lady:—"Why is the steamer Brilliant like gentle a maiden?" Major Kelly, of the Bayou Sara Chronicle, answers:—"Because she *stops a good deal of cotton oft!*"

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*NOTE 1.—In his letter to the editors of the Globe, published 28th June, 1842, the General denies that Louallier was arrested for a libel, but the record of the court martial shows that he was charged before them for 'publishing a wilful and corrupt libel.'

NOTE 2.—No suspension of the habeas corpus has ever been authorized by Congress.—In 1807 Mr Giles reported in the Senate of the United States a bill for its suspension which passed the Senate, but was rejected in the House by a vote of 113 to 19. See 3 Senate Journal, January 22, 1807, pp. 127, 130, 131; 5 Journal H. R., January 26, 1807, pp. 550, 551, 552.

†It was one of Mr. Jefferson's objections to the Constitution that the suspension of this writ was ever to be allowed, even by Congress. In the 2d volume of his works, page 274, he declared himself in favor of 'the *eternal and unremitting* force of the habeas corpus laws.' And in pages 343 and 344 of the same, he says 'of the Constitution: 'It is a good canvass in which some strokes only want retouching.' To the suspension of the habeas corpus he was opposed, *even in insurrection & rebellion.*

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