

Ex parte

John Merryman

Petition for
Writ of Habeas
Corpus

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Filed June 1861

Success

1
Ex parte

John Merryman

Before the Chief
Justice of the Supreme
Court of the United
States.

At Chambers.

The Application in this Case for a writ of Habeas Corpus, is made to me under the 14th Section of the Judiciary Act of 1789, which renders effectual to the Citizen the Constitutional Privilege of the writ of Habeas Corpus.

That Act gives to the Courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant writs of Habeas Corpus, for the purpose of an inquiry into the Cause of Commitment. The petition was presented to me at Washington, under the impression that I would order the prisoner to be brought before me there, but as he was confined in Fort Mifflin, at the City of Baltimore, which is in my Circuit, I resolved to hear it in the latter City, as obedience to the writ, under such Circumstances, would not withdraw



General Cadwalader, who had him in charge, from the limits of his Military Command.

The ~~petitioner~~ ^{petition} presents the following Case:

The petitioner resided in Maryland, in Baltimore County, while peaceably in his own house, with his family, it was, at 2 o'clock on the morning of the 25th of May 1861, entered by an armed force, professing to act under military orders.

He was then compelled to rise from his bed, taken into custody, and conveyed to Fort M'Henry, where he is imprisoned by the commanding officer without warrant from any lawful authority.

The commander of the Fort, General George Cadwalader, by whom he is detained in confinement, in his return to the writ, does not deny any of the facts alleged in the petition. He states that the prisoner was arrested by order of Genl Keim of Pennsylvania, and conducted as a prisoner to Fort M'Henry by his order, and placed in his (Gen. Cadwalader's) custody to be there



detained by him, as a prisoner.
 A copy of the warrant, or order, under which
 the prisoner was arrested, was demanded
 by his counsel, and refused. And it is not
 alleged in the return that any specific act,
 constituting any offence against the laws
 of the United States, has been charged against
 him upon oath; but he appears to have
 been arrested upon general charges of
 treason and rebellion, without proof, and
 without giving the names of the witnesses,
 or specifying the acts, which, in the
 judgment of the military officer, consti-
 tuted these crimes. And having the prisoner
 thus in custody upon these vague and
 unsupported accusations, he refuses to obey
 the writ of Habeas Corpus, upon the ground
 that he is duly authorized by the President
 to suspend it.

The case, then, is simply this. A military
 officer, residing in Pennsylvania, issues an
 order to arrest a citizen of Maryland, upon
 vague and indefinite charges, without
 any proof, so far as appears. Under this



order his house is entered in the night, he is seized as a prisoner, and conveyed to Fort Mifflin, and there kept in close confinement. And when a Habeas Corpus is served on the commanding Officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of the imprisonment, the answer of the Officer is, that he is authorized by the President to suspend the writ of Habeas Corpus at his discretion, and, in the exercise of that discretion, suspends it in this case, and on that ground refuses obedience to the writ.

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of Habeas Corpus himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.



No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise. For I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended, except by act of Congress.

When the conspiracy of which ~~of which~~ Aaron Burr was the head, became so formidable, ~~and~~ and was so ^{extensively} ~~intensely~~ ramified, as to justify, in Mr Jefferson's opinion, the suspension of the writ, he claimed, on his part, no power to suspend it - but communicated his opinion to Congress, with all the proofs in his possession, in order that Congress might exercise its discretion upon the subject, and determine whether the public safety required it. And in the debate which



took place upon the subject no one suggested that Mr Jefferson might exercise the power himself, if, in, his opinion, the public safety demanded it.

Having therefore regarded the question as too plain and too well settled to be open to dispute, if the commanding officer had stated that upon his own responsibility, and in the exercise of his own discretion he refused obedience to the writ, I should have contented myself with referring to the clause in the constitution, and to the construction it received from every jurist and statesman of that day, when the case of Burr was before them. But being thus officially notified that the privilege of the writ has been suspended under the orders, and by the authority of the President, and, believing as I do, that the President has exercised a power which he does not possess under the constitution, a proper respect for the high office he ~~holds~~ fills requires me to state plainly and fully the grounds of my opinion, in order to show



that I have not ventured to question the legality of his act without a careful and deliberate examination of the whole subject.

The clause of the Constitution, which authorizes the suspension of the privilege of the writ of Habeas Corpus, is in the 9th section of the first Article.

This Article is devoted to the legislative department of the United States, and has not the slightest reference to the Executive department.

It begins by providing "that all legislative powers therein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the legislative Department shall be chosen, it proceeds to enumerate specifically the legislative powers which it thereby grants, and ^{the} legislative powers which it expressly prohibits.



And at the Conclusion of this specification
 a Clause is inserted giving Congress "The
 power to make all laws which may be
 necessary and proper for carrying into
 Execution the foregoing powers; and
 all other powers vested by this Constitu-
 tion in the Government of the United
 States or in any Department or office
 thereof."

The power of legislation granted by
 this latter Clause is by its words carefully
 confined to the specific objects before enu-
 merated. But as this limitation was
 unavoidably somewhat indefinite it was
 deemed necessary to guard more effectually
 certain great cardinal principles essential
 to the liberty of the Citizen and to the rights
 and equality of the States by denying to
 Congress in express terms any power of
 Legislation over them. It was appre-
 hended, it seems, that such Legislation
 might be attempted under the pretext
 that it was necessary and proper to
 carry into Execution the powers granted;



And it was determined that there should
 be no room to doubt where rights of
 such vital importance were concerned.
 And accordingly this Clause is im-
 mediately followed by an Enumeration
 of certain subjects to which the powers
 of legislation shall not extend; and the
 great importance which the framers
 of the Constitution attached to the privi-
 ledge of the writ of Habeas Corpus to
 protect the liberty of the Citizen is proved
 by the fact that its suspension except
 in Cases of invasion and rebellion is first
 in the list of prohibited powers, and even
 in these Cases the power is denied and its
 exercise prohibited unless the public safety
 shall require it. It is true that in the
 Cases mentioned Congress is of necessity
 the Judge of whether the public safety does
 or does not require it, and their judgment
 is conclusive. But the introduction of these
 words is a standing admonition to the
 Legislative body of the danger of suspending
 it, and of the extreme Caution they shall



Exercise before they give the government of the United States such power over the liberty of a citizen.

It is the 2nd Article of the Constitution that provides for the organization of the Executive Department and enumerates the powers conferred on it and prescribes its duties. And if the high power over the liberty of the citizen now claimed was intended to be conferred on the President it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of the power.

The Article begins by declaring that the Executive power shall be vested in a President of the United States of America who holds his office during the term of four years, and then proceeds to prescribe the mode of election, and to specify in precise and plain words the powers delegated to him and the duties imposed upon him. And the short term for which

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he is Elected, and the narrow limits to which his power is Confined show the jealousy and apprehensions of future danger which the framers of the Constitution felt in relation to that Department of the Government; and how carefully they withheld from it many of the powers belonging to the Executive Branch of the English Government which were considered as dangerous to the liberty of the subject - and conferred (and that in clear and specific terms) those powers only which were deemed essential to secure the successful operation of the Government.

He is elected, as I have already said, for the brief term of four years and is made personally responsible ^{by impeachment} for malfeasance in office. He is from necessity and the nature of his duties the Commander in Chief of the Army and Navy, and of the Militia when called into actual service. But no appropriation for the support of the Army can be made by



Congress for a longer term than two years, so that it is in the power of the succeeding House of Representatives to withhold the appropriation for its support and thus disband it, if, in their judgment the President used or designed to use it for improper purposes. And although the Militia when in actual service are under his Command, yet the appointment of the officers is reserved to the States, as a security against the use of the Military power for purposes dangerous to the liberties of the people or the rights of the States.

So too his powers in relation to the Civil duties and authority necessarily conferred on him are carefully restricted, as well as those belonging to his military character. He cannot appoint the ordinary officers of Government nor make a treaty with a foreign Nation or Indian Tribe without the advice and consent of the Senate, and cannot ap-



-point Even ~~the~~ inferior officers unless he is authorized by an act of Congress to do so. He is not empowered to arrest any one charged with an offence against the United States, and whom he may from the evidence before ^{him} believe to be guilty - nor can he authorize any officer, civil or military, to exercise this power, for the 5th Article of the Amendments to the Constitution expressly provides that no person "shall be deprived of life liberty or property without due process of law" - that is judicial process. And even if the privilege of the writ of Habeas Corpus were suspended by act of Congress and a party, not subject to the rules & articles of war, was afterwards arrested and imprisoned by regular judicial process - he could not be detained in prison or brought to trial before a military Tribunal, for the article in the Amendments to the Constitution immediately following the one above referred to, that is the 6th Article, provides that - "In all Crim-



inal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence"

And the only power therefore which the President possesses, where the "life liberty or property" of a private citizen is concerned, is the power and duty prescribed in the 3rd section of the 2nd Article, which requires "That he shall take care that the laws shall be faithfully executed." He is not authorized to execute them himself or through agents or officers civil or military appointed by himself - but he is to take care that



They be faithfully Carried into Execution as they are expounded and adjudged by the Co-ordinate Branch of the Government to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial Authority - if it shall be resisted by a force too strong to be overcome without the assistance of the Executive arm. - But in exercising this power he acts in subordination to judicial Authority - assisting it to execute its process & enforce its judgments.

With such provisions in the Constitution expressed in language too clear to be misunderstood by any one I can see no ground whatever for supposing that the President in any Emergency or in any state of things can authorize the suspension of the privileges of the writ of Habeas Corpus or arrest a citizen except in aid of the judicial power. He certainly does not



faithfully execute the laws if he takes
 upon himself legislative power by sus-
 pending the writ of Habeas Corpus
 and the judicial power also by arresting
 and imprisoning a person without
 due process of law. Nor can any
 argument be drawn from the nature
 of sovereignty or the necessities of Govern-
 ment for self defence in times of tumult
 and danger. The Government of the
 United States is one of delegated and
 limited powers. It derives its existence
 and authority altogether from the Con-
 stitution, and neither of its branches
 Executive Legislative or Judicial, can
 exercise any of the powers of Government
 beyond those specified and granted.

For the 10th Article of the Amendments to
 the Constitution in express terms pro-
 vides that "The powers not delegated
 to the United States by the Constitution
 nor prohibited by it to the States are
 reserved to the States respectively or to
 the people".



Indeed the security against imprisonment by Executive Authority provided for in the 5th article of the Amendments to the Constitution which I have before quoted is nothing more than a copy of a little provision in the English Constitution which had been firmly established before the Declaration of Independence.

Blackstone in his Commentaries (1st Vol. 137) states it in the following words:

"To make imprisonment lawful it must be either by process of law from the Courts of Judicature or by warrant from some legal officer having authority to commit to prison." And the people of the United ^{Colonies} ~~States~~ who had themselves lived under its protection while they were British Subjects were well aware of the necessity of this safeguard for their personal liberty. And no one ~~...~~



† can believe that in framing a government intended to guard still more efficiently the rights and liberties of the citizen against Executive Encroachment and oppression, they would have conferred on the President a power which the history of England had proved to be dangerous and oppressive in the hands of the Crown, and which the people of England had compelled it to Surrender after a long and obstinate Struggle on the part of the English Executive to ~~retain~~ usurp and retain it.

The right of the Subject to the benefit of the writ of Habeas Corpus, it must be recollected, was one of the great points in Controversy during the long Struggle in England between arbitrary Government and free institutions, and must therefore have strongly attracted the attention of the Statesmen engaged in framing a new, and as they supposed, a freer government than the one which they had thrown off by the Revolution. For from the earliest history of the Common Law, if a person were imprisoned - no matter by what authority - he had a right to the writ of Habeas Corpus to bring his Case before the King's Bench; and if no specific offence was charged against him in the Warrant of Commitment, he was entitled to be forthwith discharged: and if an offence was charged which was bailable in its character, the Court was bound to set him at liberty on bail. And the most exciting contests between the



Crown and the People of England from the time of Magna
 Charta were in relation to the privilege of this writ, and
 they continued until the passage of the Statute of the
 31st ~~Charter~~ Charles the 2nd. Commonly known as the great
 Habeas Corpus act. This Statute put an end to the
 + Struggle, and finally and firmly secured the liberty of
 the Subject against the usurpation and oppression of
 the Executive branch of the Government. It nevertheless
 conferred no new right upon the Subject, but only se=
 =cured a right already existing. For although the right
 could not justly be denied, there was often no effectual
 remedy against its violation. Until the Statute of 13
 William the 3rd, the Judges held their offices at the
 pleasure of the King, and the influence which he exer=
 =cised over timid, time-serving, and partizan judges
 often induced them, upon some pretext or other, to refuse
 to discharge the party although entitled by law to his
 discharge, or delayed their decisions from time to time
 so as to prolong the imprisonment of persons who were
 obnoxious to the King for their political opinions, or
 had incurred his resentment in any other way. The
 great and inestimable value of the Habeas Corpus
 Act of the 31st Charles 2nd is, that it contains provisions
 which compel Courts and Judges and all parties



Concerned to perform their duties promptly in
the manner specified in the Statute.

A passage in Blackstone's Commentaries
Shewing the Ancient State of the Law on this
Subject, and the abuses which were practised
through the power and influence of the Crown, and
a short extract from Hallam's Constitutional
History of England stating the Circumstan-
ces which gave



rise to the passage of this statute,
 explain briefly, but fully, all
 that is material to this subject.
 Blackstone, in his Commentaries
 on the Laws of England (3 vol., 133, 134)
 says "To assert an absolute exemp-
 "tion from imprisonment in all
 "cases is inconsistent with every
 "idea of Law, and political Society,
 "and in the end would destroy all
 "civil Liberty, by rendering its pro-
 "tection impossible. But the glory
 "of the English Law consists in clearly
 "defining the times, the causes and
 "the extent, when, wherefore, and to
 "what degree the imprisonment of
 "the subject may be lawful. This
 "it is which induces the absolute
 "necessity of expressing, upon every
 "commitment the reason for which
 "it is made, that the Court upon
 "a Habeas Corpus may examine into
 "its validity, and according to the
 "circumstances of the case, may discharge,



"admit to bail, or remand the
 "prisoner. And yet early in the
 "reign of Charles I. the Court of
 "Kings Bench, relying on some
 "arbitrary precedents (and those per-
 "haps misunderstood) determined
 "that they would not, upon a Habeas
 "Corpus, either bail, or deliver a
 "prisoner, though committed without
 "any cause assigned, in case he
 "was committed by the special com-
 "mand of the King, or by the Lords
 "of the Privy Council. This drew on
 "a Parliamentary inquiry and pro-
 "duced the Petition of Right. 3 Chas I
 "which recites this illegal judgment,
 "and enacts that no freeman here-
 "after shall be so imprisoned or
 "detained. But when in the follow-
 "ing year Mr Selden and others
 "were committed by the Lords of the
 "Council in pursuance of his Majesty's
 "special command, under a general
 "charge of "notable contempts, and

"stirring up sedition against the King
 "and government," the judges delayed
 "for two terms (including also the
 "long vacation) to deliver an opinion
 "how far such a charge wasailable.
 "And when at length they agreed
 "that it was, they however annexed
 "a condition of finding sureties for
 "their good behaviour, which still pro-
 "tracted their imprisonment; the Chief
 "Justice, Sir Nicholas Hyde, at the
 "same time declaring that "if they
 "were again remanded for that cause
 "perhaps the court would not afterward
 "grant a Habeas Corpus, being already
 "made acquainted with the cause of
 "the imprisonment." But this was
 "heard with indignation and aston-
 "ishment by every lawyer present,
 "according to Mr Selden's own account
 "of the matter, whose resentment was
 "not cooled at the distance of four-
 "and-twenty years."

It is worthy of remark,



That the offences charged against the prisoner in this case, and relied on as a justification for his arrest and imprisonment, in their nature and character, and in the loose and vague manner in which they are stated, bear a striking resemblance to those assigned in the warrant for the arrest of Mr. Selden. And yet even at that day, the warrant was regarded as such a flagrant violation of the rights of the subject, that the delay of the time-serving Judges to set him at liberty, upon the Habeas Corpus, issued in his behalf, excited the universal indignation of the Bar. The extract from Hallam's Constitutional History ~~*(volume 1, p. 19) to be found in 3 Blackstone 133 War. Jell's Edition)~~ is equally impressive, and equally in point. ~~It is a very common mistake,~~

"It is a very common mistake, and not only among foreigners, but many from whom some knowledge of our Constitutional Laws

* Here insert

(3 Vol. pag. cited about length in the note to 3 Blackstone 136. 137. War. Jell's Edition)



" might be expected, to suppose,
 " that this statute of Charles II. en-
 " larged in a great degree our
 " liberties, and forms a sort of
 " epoch in their history. But though
 " a very beneficial enactment, and
 " eminently remedial in many cases
 " of illegal imprisonment, it intro-
 " duced no new principle nor confer-
 " red any right upon the subject.
 " From the earliest records of the
 " English law no freeman could be
 " detained in prison except upon
 " a criminal charge, or conviction
 " or for a civil debt. In the former
 " case it was always in his power
 " to demand of the Court of Kings
 " Bench a writ of habeas corpus, ad
 " subiiciendum directed to the person
 " detaining him in custody, by which
 " he was enjoined to bring up the body
 " of the prisoner with the warrant of
 " commitment that the Court might
 " judge of its sufficiency, and remand

"the party, admit him to bail, or
"discharge him, according to the
"nature of the charge. This writ
"issued of right, and could not
"be refused by the court. It was
"not to bestow an immunity from
"arbitrary

"imprisonment, which is abundantly pro-
 "vided for in Magna Charta (if indeed
 "it is not more ancient) that the statute
 'of Charles 2nd was enacted, but to cut off
 "the abuses by which the governments lust
 "of power, and the servile subtlety of crown
 "lawyers had impaired so fundamental
 "a privilege."

While the value set upon this writ in
 England has been so great that the
 removal of the abuses which embar-
 rassed its enjoyment have been looked
 upon as almost a new grant of liberty
 to the subject, it is not to be wondered at
 that the continuance of the writ thus
 made effective should have been the
 object of the most jealous care.

Accordingly, no power in England, short
 of that of Parliament can suspend, or
 authorize the suspension of, the writ of
 Habeas Corpus. I quote again from
 Blackstone (1 Comm. 136) "But the
 "happiness of our Constitution is, that it is
 not left to the executive power to determine

"when the danger of the state is so great
 "as to render this measure expedient. It is
 "the Parliament only, or legislative power,
 "that whenever it sees proper can authorize
 "the Crown, by suspending the Habeas
 "Corpus for a short and limited time,
 "to imprison suspected persons without
 "giving any reason for so doing". And,
 if the President of the United States may
 suspend the writ, then the Constitution
 of the United States has conferred upon
 him more regal and absolute power
 over the liberty of the citizen, than the
 people of England have thought it safe
 to entrust to the Crown - a power which
 the Queen of England cannot exercise
 at this day, and which could not have
 been lawfully exercised by the Sovereign
 even in the reign of Charles the First.

But I am not left to form my
 judgment upon this great question, from
 analogies between the English Government
 and our own, or the Commentaries of
 English Jurists, or the decisions of



English Courts, although upon this subject they are entitled to the highest respect, and are justly regarded and received as authoritative by our Courts of Justice. To guide me to a right conclusion I have the ~~common~~ Commentaries on the Constitution of the United States of the late Mr Justice Story, not only one of the most eminent jurists of the age, but for a long time one of the brightest ornaments of the Supreme Court of the United States, and also the clear and authoritative decision of that Court itself, given more than half a century ~~ago~~ since, and conclusively establishing the principles I have above stated.

Mr Justice Story, speaking ~~in~~ in his Commentaries of the Habeas Corpus clause in the Constitution, says

"It is obvious, that cases of a peculiar emergency may arise, which may justify, nay even require, the temporary suspension of any right to the writ. But as it



"has had frequently happened in foreign
 "countries, and even in England, that
 "the writ has, upon various pretexts and
 "occasions been suspended, whereby persons
 "apprehended upon suspicion have suffered
 "a long imprisonment, ^{from designs, and} sometimes, ~~because~~
^{sometimes because} they were forgotten, the right to suspend
 "it is expressly confined to cases of rebellion
 "or invasion, where the public safety
 "may require it. A very just and whole-
 "some restraint, which cuts down at a
 "blow a fruitful means of oppression,
 "capable of being abused in bad times
 "to the worst of purposes. Hitherto no
 "suspension of the writ has ever been
 "authorized by Congress, since the estab-
 "lishment of the Constitution. It would
 "seem, as the power is given to Congress
 "to suspend the writ of Habeas Corpus
 "in cases of rebellion or invasion, that
 "the right to judge, whether the exigency
 "had arisen, must exclusively belong to
 "that body" (3 Story's Com. on the Con-
 "stitution, section 1336).



And Chief Justice Marshall, in delivering the opinion of the Supreme Court in the case of *Ex parte Bollman and Swartwout*, uses this ~~same~~ ~~and~~ decisive language in 4 Branch-95.

"It may be worthy of remark, that this act (speaking of the one under which *Dam* proceeding) was passed by ~~the~~ the first Congress of the United States, sitting under a Constitution which had declared 'that the privilege of the writ of Habeas Corpus should not be suspended, unless, when in cases of rebellion or invasion, the public safety might require it.' Acting under the immediate influence of this injunction they must have felt, with peculiar force, the obligation of providing efficient means by which this great constitutional privilege should receive life and activity; for, if the means be not in existence, the privilege itself would be lost, although no law for its suspension should be enacted.



Under the impression of this obligation
 "they give, to all the courts, the power
 "of awarding writs of Habeas Corpus."
 And again, in page 101 -

"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 legis-
 "lature to say so. That 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"

I can add nothing to these clear and
 emphatic words of my great predecess-
 =or.

But the documents before me
 show that the military authority, in this
 case, has gone far beyond the mere
 suspension of the privilege of the writ
 of Habeas Corpus. It has, by force of
 arms, thrust aside the judicial au-
 thorities and officers to whom the



Constitution has confided the power and
 duty of interpreting and administering
 the laws, and substituted a military
 government in its place, to be administered
 and executed by military officers. For
 at the time these proceedings were had
 against John Merryman, the District
 Judge, ^{of Maryland,} the Commissioner appointed
 under the act of Congress; the District
 Attorney, and the Marshal, all resided
 in the city of Baltimore, a few miles
 only from the home of the prisoner.
 Up to that time there had never been the
 slightest resistance or obstruction to the
 process of any Court, or judicial
 officer of the United States in Maryland
 except by the military authority. And if a
 military officer, or any other person,
 had reason to believe that the prisoner
 had committed any offense against
 the laws of the United States, it was his
 duty to give information of the fact,
 and the evidence to support it, to the District
 Attorney; and it would then have become



the duty of that officer to bring the matter before the District Judge or Commissioner, and if there was sufficient legal evidence to justify his arrest, the Judge, or Commissioner would have issued his warrant to the Marshal, to arrest him; and upon the hearing of the case would have held him to bail, or committed him for trial, according to the character of the offence as it appeared in the testimony, or would have discharged him immediately, if there was not sufficient evidence to support the accusation. There was no danger of any obstruction, or resistance, to the action of the civil authorities, and therefore no reason whatever for the interposition of the military. And yet under these circumstances a military officer, stationed in Pennsylvania, without giving any information to the District Attorney, and without any application to the judicial authorities, assumes to himself the judicial power, in the District

of Maryland, undertakes to decide what constitutes the crime of treason, or rebellion; what evidence (if, indeed, he required any) is sufficient to support the accusation, and justify the commitment; and commits the party, without a hearing even before himself, to close custody in a strongly garrisoned Fort, to be there held, it would seem, during the pleasure of those who committed it.

The Constitution provides, as I have before said, that "no person shall be deprived of life, liberty or property, without due process of law." It declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation; and particularly describing the place to be searched, and the persons or things to be seized"

It provides that the party accused



shall be entitled to a speedy trial, in a court of justice.

And these great and fundamental laws, which Congress itself ~~cannot~~ ^{could not} suspend, have been disregarded and suspended, like the writ of Habeas Corpus, by a military order, supported by force of arms. Such is the case now before me, and I can only say, that if the ~~power~~ authority, which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, ~~be~~ upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army officer, in whose military District he ^{happened} may be found.

In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution



and laws confer upon me, but that power has been resisted by a force too strong for me to ~~be~~ overcome.

It is possible, that the officer, who has incurred this grave responsibility, may have misunderstood the instructions, and may feel that they were intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed, and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that in fulfillment of his Constitutional obligation to ~~and~~ "take care that the laws be faithfully executed," and the measures he will take to cause the civil process of the United States to be respected, and enforced.

R. B. Taney

Chief Justice of the
Supreme Court of the U. S.

