Cambridge Democrat.

"Resistance to Tyrants is Obedience to God."

Volume 17. CAMBRIDGE, MD., WEDNESDAY MORNING, DECEMBER 18, 1861. Number 4.

[Original.]

TO MARSHAL KANE.

BY A LADY OF BATIMORE.

Not only on the battle field,
But in the Prison's gloom,
Faith in a holy cause is sealed,
And Heroes meet their doom.

All honor to the brave who rise,
And to their country lend
Their lives a toiling sacrifice,
Her freedom to defend.

But not less due the meed of praise
To prisoners of State:
A grateful monument we raise,
"They also serve who wait."

For man, no easy task to learn,
When evils he would cure,
From base, unlawful means to turn
And patiently endure.

Firm be your faith, with cheerful heart,
Trust God who is our stay;
Then having well performed your part,
There'll come a glorious day

When the foul stain from our blest land
Shall wholly be removed,
And we, a firm, united band,
In times of trial prove,

Shall by His mighty aid restore
Those rights to freemen dear,
With justice rule forevermore,
So shall we banish fear.

Judge Carmichael's Charge to the Grand Jury of Talbot County.

In consequence of the malignant of attacks which have been made upon Judge Carmichael by the Administration papers of the State and the false interpretations that have been put upon his charges to the Grand Jury of Talbot county; the Easton *Star* has procured a copy of that document. We subjoin all that portion of the document which refers to the troubles of the country, growing out of our present lamentable civil war.

CHARGE TO THE JURY.

Having now explained to you Gentlemen, the duty specially imposed by this law, and having charged you generally of the duties of your high office, here I would dismiss you to your chamber if my duty did not require me to invite your notice to acts of outrage and violence unusual in this quarter.

Through the public papers and otherwise, it has come to my knowledge, that violations of law have been committed by persons holding themselves above the law and which by tacit accord, for some reason, have as yet escaped the cognizance of the authorities. Violent and dangerous injuries have been committed upon your citizens, while the process of law has been forbidden to reach the offender. Arrests have been made, utterly groundless as it turned out, but whether with cause or not, by persons having no legal competency to make arrests, without 'warrant of law,' or process form legal authority. A squad of soldiers, with no pretense of authority but their arms, it is said have invaded the homes of our fellow citizens, and dragged them to their camp. There they have been detained as long as it suited the pleasure their captors.

These are the cases to which your attention is directed—now a word about the law And but for the peculiar state of affairs, I should be content to leave you to the counsels of the State. But it belongs to every department to bear its share of duty in the administration of the law. Yours is imperative, mine is not the less so.

Is there one in your panel here, where the law has been held supreme, where, twice in every year, from time immemorial, its ministrations have been conducted, who does not know that facts stated constitute offenses against the law?

I have told you that your duties extend to every case of public wrong The mandate of your solemn obligation requires that you make "true presentment of all such matters as shall come to your knowledge," and if all, then there is no exception, and your cognizance must be exercised over the cases mentioned unless you find some dispensing power, of which I have found no mention in the law.

Offenses are the acts of persons Every person, public or private, high or low, is subject to the visitation of the law. Whether invested with the robes of power, or covered with humble rags, all are alike amenable to its sanctions —that "the law only is supreme in this land," you have heard proclaimed by my honored predecessors, from this place, at every term. Heretofore I have so pronounced,—my duty still bids me to repent the same to you, Gentlemen of the Grand Inquest, its chosen ministers.

Violent and dangerous breaches of the public peace—such as I have alluded to—have occured here aforetime. With such offenses you are not unfamiliar.—They have received the prompt cognizance of your department, and have met the speedy and certain punishment which the law denounces, upon all, without distinction. They are now no less obnoxious. In regard to these I need not add another word.

But arbitrary, illegal, and false imprisonments, have been unknown to our modern history. In a practice of more than six and twenty years at the bar, throughout this circuit, and a service of a few years upon the bench, I have never known such a case—either by criminal presentment, or by civil action.—Almost every crime and misdemeanor, with this exception, have found persons wicked enough to commit them. It will strike you, how sacred the right of personal freedom has been held, within this jurisdiction for more than a quarter of a century. And, you will be assured there is ample redress for its invasion—that it has been preserved thus inviolate. It is the hereditary right of America freemen. It was the right of their ancestors, before the American Independence

Before that day, a British subject could not be arrested, but under process of law.

An arrest and detention of his person was unlawful unless made under process from the Courts or under process from legal officer, having the power to commit under his hand and seal."

This process was required to be founded on oath, disclosing the cause of arrest and to express the cause. Indeed, so jealously was the liberty of the subject guarded, that it was held at a very early day, by high authority, such as Coke that A FELON could not be arrested upon the warrant of a Justice, until "after indictment actually found." This strictness was afterwards relaxed, and was combatted when held. But from that day to the date of the American Independence the arrest of a British subject could not lawfully be made, unless under the authority of Judicial or Justicial warrant. Made otherwise, it was "false imprisonment," an offense which an eminent English jurist denominates "a heinous public crime," for which the same author says, "the law demands public vengeance." Every arrest without "due process" was regarded arbitrary, illegal and despotic, and such as the ministers at the date of American Independence, dare not claim for the British crown.—The assertion at this day, of such a power for the crown, would shake the British throne to its very foundations.

Exemption with the exercise of such power, is the birthright of Americans. They trace it back in the musty scrolls of the mother country for ages long past.

It is inscribed, in letters of light, in the Constitution of Maryland. This right may yet be found in the Constitution of the United States—the Supreme law—before which every person, potentate, and power in the United States must give place.

I will read it there, Gentlemen. But first indulge me whilst I read a resolution of the first Congress, which explains why this, with other privileges of the citizen were inscribed there The reading will be both instructive and profitable.—"The Convention of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added. And as extending the grounds of public confidence in the Government will best insure the beneficent ends of its institution; Resolved by the State and House of Representatives of the United States in Congress assembled, two-thirds of both Houses concurring. That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States," &c. By this reading you will observe that the Constitution as originally adopted by the Federal Convention, was without those "restrictive and declaratory clause." The Government had been imbued with all the powers intended to be delegated. Its framers had designed that these powers—all of them—should be exerted as occasion required, and none others But they had not expressed the prohibitions, which were supposed to be implied. When, however, it came about, that the sovereign will was to breathe life into its being, you find a law or limit was imposed upon its powers, simultaneously. When the Constitution was referred to the States for ratification, with one accord they required the insertion of these articles, "to prevent misconstruction and abuse of the powers" already expressed.

There were some things they were not willing to leave to construction, for fear of *misconstruction*. There were powers which they regarded dangerous to put to use, without restriction, from their liability to *abuse*. Therefore it was, that the first Congress submitted these restrictive clauses to the States, for their adoption. Twelve were submitted to the States. Ten of them were adopted. They are *the Ten Commandments*, forever forbidding any and all the powers of the Government to infringe the rights of the citizen—to do by construction anything herein forbidden in express terms. There is no power to suspend any of these commandments, as in regard to the habeas Corpus, There is no conflict of Jurisdiction as now claimed between the Executive and legislative departments in regard to this great right. Here all powers of Government are forbidden.

These are the ten Articles in addition to, and amendment of the Constitution of the United States, proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

ARTICLE 2.

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

ARTICLE 3.

No soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

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.

ARTICLE 5.

No person shall be held to answer for a capital or otherwise infamous crime, unless upon a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself nor be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation.

ARTICLE 6.

In all criminal 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 compulsary process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

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.

The 4th Article forbids the arbitrary arrest and false imprisonment of the citizen. It guarantees to him the right heretofore enjoyed under the British Constitution. It prohibits "unreasonable seizure," prohibits a warrant for seizure except upon "probable cause" and requires such cause to be shown under the sanction of "oath or affirmation."

Here is no room for misconstruction. The supreme law is express in its terms. It is set up, by its declared terms, as a barrier to the *powers to be* in the State. It remains to us as a barrier against "the powers *that be*."

It has never been repealed, nor can be lawfully repealed, except by the power which created the government and in the manner provided by the Constitution itself.

This freedom from imprisonment without "due process," is absolute in the citizen, with two only exceptions: One, in which he is found in the very act of committing a felony, which obtains alike in England and this country—the other, where he has exchanged the citizen for the soldier—"in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger."

Your inquiries will enable you to ascertain if the arrests reported have in fact been made, and if you find they have been made, whether they come under the excepted cases just stated.

If they have been made, and are not within the rule of these exceptions, then they are public wrongs. It is my duty so to charge you. And so I do charge you.

The circumstances in which we are, instruct me to remind you, that your inquiries into, and action upon, this subject, are to be conducted unmoved by prejudice, unswerved by favor and unawed by fear.

I cannot doubt that you will not be warped by prejudice on the one side, nor by favor on the other. As you are *freemen*, you are required to swear that you will not be restrained by fear in the discharge of your duty: A freeman should have no fear but of God The law is ordained by him. It commands what is right and forbids what is wrong. It would be mockery, and I would not permit you to take the oath to act without fear, if there was an earthly power to restrain your free will.

There may be others besides the persons who committed the violations of law heretofore considered, who may be obnoxious to presentment. If any of your citizens have instigated these groundless arrests, they are more guilty than those upon whom they have imposed. And it is hardly to be supposed that strangers amongst you, would wantonly and without suggestions by mischievous persons, molest and harass your people. Such persons are liable for conspiracy. But your diligent and impartial inquiry will ascertain the truth.

I am admonished, gentlemen, by former misconstruction, to say to you that my instructions to you are not moved by political or partizan bias.

If I have declared to you the law "as I understand it," you will remember it is under the same solemn sanction by which you are bound.—If there is a class or party of persons who are banded together to oppose or violate the laws, it is my duty to animadvert upon their acts. If the facts to which I have alluded are true, their obvious tendency is not only to disturb the peace of society, but to subvert the very foundations of the government whose laws both you and myself are sworn to administer.

With the condition of our unhappy country, the evils which exist, their causes, and those who are to be blamed, I have nothing to say here. I have my own—a very strong opinion. Others entertain another opinion They are entitled to their own, and I am equally entitled to mine I would not trespass upon my own sense of propriety by allusion to them here. But I should feel myself, and should be regarded by others, unworthy this place, if I should fail to charge you of offences against law, be the offenders whom they may.

THEY who went about to marry seek their happiness in the mere gaining of fortune and personal beauty, evince a heartless disposition and their folly is often punished in their success.

If you and your sweetheart vote upon the marriage question, you for it and she against it, don't flatter yourself as to it's being a tie.

In the end all men find the devil's work the hardest they ever undertook.

An angry woman, like an angry snake, makes a terrible exhibition of tongue.

What a burthen is leisure to a mind unprepared for its enjoyment.

Speech of Mr. Pendleton, of Ohio, on the Discharge of the Baltimore Police Commissioners.

Mr. Bingham, of Ohio, requested that the Committee on the Judiciary be discharged from the further consideration of the petition of Messrs Howard, Gatchell and Davis, of the Board of Police of Baltimore, now confined in Fort Warren, asking the institution of measures for their relief.

Mr. Pendleton objected, and moved that the petition be re-committed to the committee, with instructions to report a resolution, in effect that Congress alone has the right of suspending the writ of *habeas corpus*, and that the petitioners be handed over to the United States Marshal, in order that they may have an immediate trial in the district court, under whose jurisdiction they resided. He said that the memoralists had been members of the Board of Police Commissioners of the city of Baltimore. That on the 1st day of July last, at the dead hour of the night, they were arrested and conveyed to Fort McHenry by a detachment of U. S. soldiers. They were, at the time of their arrest, in the due performance of the duties assigned them by the laws of their State. The peace of the city of Baltimore was unbroken, the Federal Courts were in full operation, the Judges of the Courts were also untramelled and unrestricted in the performance of their duties and accustomed functions. The process of the Courts had never been interfered with, except in one memorable instance. It was at this time that the President of the U. States, by his own authority alone, suspended the privileges of the writ of the *habeas corpus* act. These gentlemen were arrested without warrant, detained without authority, and deprived of their liberty without process of law. They had not, on any occasion, been even confronted with witnesses or accusers Nor had they been informed even of the nature of the crime alleged against them.

Thus they had been detained, and though they demanded a trial before an impartial jury, it was denied them. Since their arrest they had been taken from their first place of confinement and conveyed to Fort Warren, where they were at present detained by force of military power. They were there entirely helpless in the hands of their jailors, and therefore it was that they presented their memorial to Congress asking that Congress may examine into their case, and that it may be sent to the judicial tribunal of their country to be heard and determined by the proper authorities. The right of *habeas corpus* was invented for the purpose of meeting the exigencies of just such a case as this. The provisions of the *habeas corpus* act had never been invaded by the Executive of the Government till now.

Notwithstanding the expressed tenderness of the President for the safety and liberty of the citizen, he declared that the object of the suspension of the act—the effect of that suspension—is to prevent inquiry into the legitimacy of the imprisonment of whoever might be suspected. The object of the suspension was to enable the military power to arrest and imprison men who committed no crime against the laws of the land to entitle them to the punishment the law prescribed It he rightly construed the message of the President, he (the President) claimed the right to hold, seize and imprison all persons not engaged in the land or naval forces, and to detain them without regard to the provisions or process of law. He (the President) also claimed the authority of the Constitution for this act—in violation of the Constitution—to act in this despotic way whenever, in his judgment, it was necessary to preserve the Government.

The only clause in the Constitution which referred to the subject, was that which declared that the right of the *habeas corpus* shall never be suspended except in case of rebellion or invasion, when the public safety so demands it. But who shall so suspend the provision of the act, is the main question. The right was not invested in the President exclusively nor in Congress exclusively; but it could only be exercised by all the departments of the Government. The power of suspension was attempted to be exercised by Charles the First, of England, but the result of such a despotic act threatened his throne, and the King was compelled to assent to the Bill of Rights, by which he bound himself never to imprison a man without process of law. Charles did not stand by his own explanation of an overt constitutional law; and after ten years of struggle, he lost his throne and his life as the penalty of his tyranny.—For one hundred years before the adoption of the Constitution of the United States, up to this hour, no English monarch had dared to suspend the writ of *habeas corpus*, or claim he had the power to imprison a citizen without due process of law. But by this novel theory of the Government, the President may suspend the Constitution and the laws of the United States, and may supersede them, disregarding all Constitution and injunctions—may, in fact, abolish all the laws of the land and substitute in their stead his own will; may abolish the whole system of government bequeathed to us by our fathers;—and all this he may do rightfully by his own interpretation. This was a time for wise action. At this moment they might imagine the spirit of American Independence and American Freedom was hovering over their heads, tearfully praying that it might not be added to the list of victories of a nation's surrender of its principles. This argument of state necessity always proceeds from the executive power. It is the voice which issues from the throne itself. It was it which raised an imperial throne upon the ruins of a Republic. —The oath which bound the ambitious aspirant violated—liberties swept away—rights trampled on, and a nation oppressed to destruction. These were but familiar results which the records of the single idea of state necessity exhibited. They were told also that in times of great public peril all persons should combine to sustain and strengthen the hands of their rulers by a confidence in their integrity, and dependence on their wisdom and patriotism of action. Yes, sir, the hands of rulers should be sustained by public confidence while they adhere to the provisions and principles of the Constitution. But they might be paralyzed and dishonored whenever their acts tended to usurpation. It was Demosthenes, in his divine philippic, who told the Athenians that the surest defence of a free people against tyranny was distrust. The Athenians did not heed his lesson, and from that hour to the present, Grecian Independence and Grecian liberty was but a name. William, the Prince of Orange, taught the people of the Provinces the same lesson when Philip of Spain sought their confidence. The lesson in that case was wisely acted on; instead of confidence he met with nothing but distrust, and the immortal glories which clustered for two hundred years around the Dutch republic attested the wisdom of the people. He spoke not in behalf of the memorialists alone—honest and upright men, and unconstitutionally deprived of their liberty as they were. He spoke in behalf of the Constitution. He spoke in behalf of the liberties of the nation. He spoke in behalf of his constituents. He spoke in behalf of himself, and of every other man on that floor; and he declared that the proposition of the President, that he had the power to suspend the writ of *habeae corpus*, was wholly and entirely untenable.

It became the House and every member, in virtue of the oath he had taken, to support and preserve the Constitution, and solemnly within the face of Heaven to protest against the acts of the President.

Mr. BINGHAM, of Ohio, replied, that the right of suspension of the writ of *habeas corpus* had been fully and ably settled by the Attorney-General. He then moved to lay the whole subject on the table. Upon which the Yeas 108; nays 26. Laid on the table.

IS ANYBODY HIT?—The correspondent of the Boston Journal, writing from Hilton Head, tells the following story:

A politician who had struck pretty high at first, but who failed of success at every point, found himself a little time since very hard pushed for cash, and was found by the administration to be not only a very seedy individual but a very great bore. The President endured until he could endure no longer. One day as a cabinet meeting was about to break up, the President called his Secretaries to attend to one thing more. "Gentlemen," quoth he, "something must be done for this man Johnson. He ain't got money enough to get out of town with, and if he had he wouldn't go—unless the rebels began to shell the place. He's got to be maintained somehow; now what d'ye say?"

Mr. Seward shook his head. Mr. Chase had nothing Mr. Blair had long since disposed of the subject. Mr. Smith had no employment, and so everybody turned to the War Secretary for an answer to the President's question.

"Well," said Mr. Cameron, I don't see but we will have to take the usual course. I'll make him a Paymaster!"

©Maryland State Archives, msa_sc6044_1_63-0738.jpg