

CONGRESS.

HOUSE OF REPRESENTATIVES.

MONDAY, January 26.

DEBATE

On the Bill from the Senate for suspending the writ of HABEAS CORPUS.

[CONTINUED]

Mr. Bidwell said, although he was not satisfied of the necessity of passing this bill, he was not prepared to reject it, in its present stage. As it had received the sanction of the Senate, he was disposed to treat it as a subject worthy of discussion and deliberation, by referring it, in the usual course, to a committee of the whole House.

Before the passing of any bill of this nature, the House ought to have satisfactory proof that a rebellion in fact existed (for there was no pretence of an insurrection) and that the public safety required a suspension of the privilege of Habeas Corpus. By the terms of the constitution, both these pre-requisites must concur to authorize the measure. The first inquiry would naturally turn upon the existence of a rebellion. On that point he had no doubt. To constitute a rebellion, in the sense of the constitution, he did not think it necessary that a battle should have been fought, or even a single gun fired. If troops were enlisted, armed, organized and armed, for the purpose of effecting a treasonable object, it amounted to an actual rebellion. Such was the existing state of things. The public safety required the measure, perhaps, sufficient evidence, for the legislature to act upon, if necessary; but they had also the official statement of the President to that effect. He had, therefore, no doubt of the existence of a rebellion, and that, too, of a more wanton and malignant character, than any insurrection which had heretofore been raised against our government; for it had not been occasioned by any grievances, real or imaginary, but must have originated in motives of personal ambition or some more unworthy passion.

An existing rebellion, however, even of this aggravated description, was not alone sufficient to justify a suspension of the writ of Habeas Corpus. To bring it within constitutional justification, it must be required by the public safety. He was convinced that the proposed suspension was not requisite for the purpose of suppressing the conspiracy; for, by the vigilance and energy of our executive government, fortified and supported by the exertions of patriotic States and territories and the army, this deep-laid conspiracy was already in a good measure suppressed, and he trusted the means now in operation would complete the suppression. A suspension of the Habeas Corpus could not be necessary, except for the detection and conviction of the conspirators. A thorough investigation might undoubtedly be made. If any persons, concerned in the conspiracy, were arrested in situations which precluded an immediate production of such evidence, as would warrant their confinement, justice would require that they should be detained until the proper evidence could be procured; but in the mean time they might be discharged by virtue of a Habeas Corpus; for, though he agreed with the gentleman from Maryland (Mr. Nelson) in the importance and utility of this writ, he could not subscribe to the doctrine which he understood that gentleman to maintain, that it would entitle a person to a discharge only for causes of irregularity in the arrest. Want of legal evidence to show, by oath or affirmation, probable cause for detention, would be a ground of discharge. In ordinary cases, indeed, the release and escape of a guilty person for such want of evidence, was esteemed a small evil, than a denial of a constitutional privilege. If it were so, in respect to this conspiracy, there was, in his opinion, no good reason for passing this bill. That was a point, which appeared to him worthy of some deliberation.

It had been mentioned, in the debate, that in the whole history of our government, notwithstanding two insurrections, the Habeas Corpus had, in no instance, been suspended. It was true. But an instance had been cited from one of the States. During the insurrection in Massachusetts, there was such a suspension, in pursuance of a constitutional provision; and it was generally acknowledged to have been necessary and salutary measure. He had never understood that it was abused, or that it was considered by the people of that State a dangerous example. It was justified by the occasion. But it did not, therefore, follow that a similar suspension would be justifiable on this occasion. That must depend on the present state and circumstances of the nation. Although a rebellion existed, he was not satisfied that the public safety required so strong and severe a measure. But, as it was an important question, on which the House had not yet taken time to deliberate, he was willing that the bill should go, according to the usual course of proceeding, to a committee of the whole; and therefore, he should not give his vote for rejecting it in the present stage.

Mr. J. Randolph. I shall give my vote in a very different manner from the gentleman who has just sat down. I was extremely happy to witness the very prompt and decided opposition to this measure received in the House, and from the quarter whence that opposition originated; and I subscribe with great pleasure to the constitutional doctrine, which the gentleman from Pennsylvania advanced this morning before our doors were opened. We are now told that this bill at its first reading, will be to depart from the usual course of proceeding in this House, and an attempt is made to enliven the feelings of members so far as to permit the bill to progress one step farther, than we may avoid violating that decorum which ought to be observed between the two Houses. I do not, however, consider the subject in this light. I conceive, on the contrary, it is as important to us to reject the bill on its first as on any other reading. I well recollect that about eight years ago an important bill was smuggled through the House in that fastidious mode of proceeding. Gentlemen were allured from their honest opinions, and finally by force and management the bill was carried through the House. I understand that this course is pursued by the other branch of the legislature on bills carried from this House; and I believe it will be found that with regard to the passage of bills between the two Houses, the course of procedure on the part of this House is more liberal

than that pursued in the other. For I do not recollect a single instance in which the veto of a single member can stop the passage of a bill in this House received from the other branch of the legislature. I, therefore, feel no scruples on this score. I think it just as well to say, that we will permit this bill to pass to a second or third reading, as to say that though we are opposed to the principle contained in the resolution which may originate in this House, we will nevertheless permit a committee to bring in a bill to carry it into effect, because we may desire to be a strange course of reasoning. It is like permitting ourselves to be bound in chains that you may be loosed again, or going into prison that you may afterwards come out. Gentlemen talk of the propriety of discussing this subject, but when a subject is so clear that every man has made up his mind upon it, where is the need of discussion? If it is not so clear, will any gentleman say that the discussion now had, in which every member has a right to speak twice, which is once more in my opinion than is necessary, will not be sufficient to develop all the merits and demerits of the bill? Will gentlemen undertake to say if every member shall give the measure, or as it may be, create suggestions of his mind, that the subject will not be sufficiently discussed, and lead to the formation of a correct judgment? I believe it will. And therefore on this ground, a bill may as well be decided in its present stage as before a committee of the whole.

Some gentlemen to whom I have listened with considerable gratification, tell us that out of respect to the other branch, we ought not at this time to reject the bill. I however feel no such respect on this occasion, and shall express none. On the contrary, I am free to declare, that when a measure, tending to impose a burden on the people, or to detract from the privileges of the citizen, comes from that quarter, I shall always view it with jealousy. The inequality of the representation in that branch, the long tenure of office, and the custom to which they are so familiar of conducting their proceedings in seclusion—(The House will recollect how long it was after the adoption of the constitution before the public could get admission even into their two-penny gallery)—render all their proceedings, touching the public burdens, or the liberties of the people, highly suspicious. And to say the truth, I am not at all surprised that they did clothe their doings on this occasion, that they might not be under the inspection of the public eye, while they were passing the bill on the table. I say so, because I am willing to abide by the good old principle of judging all men by myself, and if I had introduced such a bill, I should have been glad my name did not appear on the journals, that the public might not know to whom they were indebted for such a precedent.

I have another objection to the bill, besides that of the quarter from which it originated, or the manner in which it has been presented to the House. It appears to my mind like a legislative attempt to cover a certain department from an established law of the land, and a certain violation of the constitution of the United States, which we are told have been committed in this country. Sir, recollect that Congress met on the 5th of December—that the President had information of the incipient stage of this conspiracy about the last of September—that the proclamation issued before Congress met, and yet that no suggestion either from the executive or from either branch of the legislature was transmitted concerning the propriety of suspending the writ of Habeas Corpus on this insurrection. It was taken place. I will never agree in this way to cover up such a violation, by a proceeding highly dangerous to the liberty of the country, or to agree that this insurrection should be suppressed, because it has been already suppressed, and suppressed too after the usual, if any there was, for it has ceased to exist. And I say to be true to the principles which I have constantly maintained, and God willing, ever will maintain so long as I have a seat on this floor, or have life. It has heretofore been the glory of those with whom I have acted, that in all our battles we have combated for the principles of the constitution and the laws of our country, in the person of those in which they have been attempted to be violated, however important and contemptible. When those principles were prostrated under the felonian law, what did we say? That the character of the man a case could not change the laws of the land, or deprive his rights—that he would support the constitutional rights of the citizen, in the person of the meanest reptile, as well as in the persons of those who occupy the highest stations in society. We have done so—let us continue to do so, regardless of popular clamor or odium, and we shall still continue to find ourselves on the true ground. We never enquired what kind of a man Calender was—we laid in it is the law and the constitution—let justice take its course. I could quote other examples equally strong—but in reference to the feelings of the House I shall desist from doing it.

I beg pardon for detaining the House so long. I will, however, endeavor to express the remaining ideas I have to offer in a few words. There is another consideration which renders this bill highly objectionable. A consideration the case as now at issue, where the United States is under a military or civil government, or in other words, whether the military government is subject to the civil power, or the civil authority to the military. I conceive that a case has occurred, in which the military has not only usurped the civil authority, but in which it has usurped nothing short of omnipotent power; and I consider this bill as calculated to give a softening and smoothing over to this usurpation; and on this ground I cannot assent to it. Suppose this bill either to pass or not to pass, what has been the practice under the constitution? By the expression under the constitution, I do not mean conformably to it. Men have been taken up by a military tribunal, and have been transported contrary to law. I say transported, for if a man can be transported from the district where the offence with which he is charged was committed, he may also be deported to Cayenne, or transported to Boracay Bay. And even you yourself, (addressing the Speaker) if such acts be sanctioned by this bill, in your passage from this House to your lodgings, may be arrested, put on board a vessel, and carried whithersoever the military authority may choose. To this I will never give my consent. It has been very well remarked by my colleague, that this is not the first case in which an insurrection has occurred in the United States, but that it is the first case, in which an attempt has been made to suspend the precious privilege of the writ of Habeas Corpus. I put it to any man, whether now that we have received information of the extent of this conspiracy, and when we find that Cataline, Cethegus and Lentulus have not as many brother conspirators as themselves, this conspiracy is equal to that in Pennsylvania in 1795 or 1797? In physical force it is not comparable to it, however, in intellectual talent it may be. I conceive then that according to the constitution of the United States there is but one case in which the writ of Habeas Corpus can be suspended, and I should not go into this view of the subject, if it had not been mistified by all those who have preceded me in the debate. My view of the subject

is this—that this privilege can only be suspended in cases, in which, not merely the public safety requires it, but that the case of the public safety requiring it, must be united with actual insurrection or actual rebellion. Now with whatever epithets gentlemen may dignify this conspiracy, I am not even of the opinion of the gentleman from Maryland (Mr. Nelson)—I think it nothing more or less than an insurrection—and I am happy that I can declare on the honor, not of a soldier, but of a citizen, that I believe it to be a foreign intrigue, availing itself of domestic materials for advancing its purposes, and poor indeed must be the fil of this, or of any other like or society, which would not furnish such materials.

A gentleman from Massachusetts has stated to the House that the organization and administration of the government at this time forbids the apprehension of any insurrection made of the powers delegated under this law. Surely, Sir, the gentleman could not mean to urge this as any thing new. He must have known, if he had consulted history, as doubtless he has, that the king de facto and the administration de facto is always above suspicion—that there never was a proposition brought forward, that did not find a majority ready to say—there is surely no danger of any improper use of this power in our time, for we are all honorables men, and we would not delegate it, if an improper use could be made of it; and that if we reject a measure, we ought not to do so on account of ourselves, as on account of those who come after us. And what will those who come after us say of us? They will follow our example, and declare that the character of their forefathers was as every day and every suspicion. Now, for myself, I beg leave to be permitted to disclaim every argument of this kind. I do not indeed consider it fair to introduce such an argument. Let us take up the question on its own merits and demerits, without any allusion or reference to our own virtues or the degeneracy of posterity. For myself I have no hesitation in saying, that I will not grant this power at any time, except under the most imperious necessity; and that without any disrespect to this honorable body, or to any of the public functionaries. Take man as he is, and in his best estate, you find him an animal prone to abuse and to corruption. There does not exist a single constitution or law in the world, that does not enforce this salutary truth.

I shall consider this bill, if it passes, as establishing a new era in the government. When I was a boy I recollect to have consulted such chronological tables as I could get access to. I recollect to have read that at a certain time money was abolished in Rome—a little while after the first dictator was named—then the second dictator—and I believe, as in a case of apoplexy, she scarcely got over the first fit. I believe a suspension of the writ of Habeas Corpus might have here the same effect as the establishment of the first dictator—disrupt Rome. In what situation would it place ourselves and the citizens of this country? It would leave them as the man, not merely of a state of the peace, but at the mercy of any tyrant in the field of the army and navy. I believe it would convert as much into the safety and interest of this country as to give me power to send the people off, as to put the power in the hands of a tyrant, we should be as trust-worthy as they. And let me ask what compensation to an innocent man, to a man of honor and feeling, to a man of character, whose head he would be kneeling and bowing to in New Orleans, and I should utterly refuse to be proved to be innocent, I ask what compensation it would be to him to bring an indictment against a man? Against whom? A man without visible property—and what act of a tyrant on the most necessary principle, to be committed in his fancy, by soldiers, sailors and marines. The injury would be irreparable. At present all stand under the law. If any man would, let him be brought under it. But in this way, to put a man in an oyster boat or sloop, and transport him to a distance from the place of his arrest, and then say he shall have a remission, in case of his innocence, is not an inferior officer, is it not? If we pass such a bill, which God forbid, it should be a large appropriation, and government should be obliged to make good the injury done—to afford him redress. I say they should grant a large appropriation, for it is not for men with paddles and gold buttons to make reparation. If the bill passes, we are told it will be but temporary. Why, the session law was but temporary; and I think, Sir, (addressing the Speaker) you were one of those who aided its passage much against your will, by being present at the altar when it was more than once re-nacted. As to its three months continuance, I consider that as one of the most objectionable features of the bill. As a bait to the trap—as the entering wedge, if it is made removable to the interests and feelings of this House to pass it for three months, do you think we will then feel the same lively repugnance to it that we now do? No—it has been truly said that no man became perfectly wicked at once—and it may be affirmed with equal truth, that a nation is never enslaved at once. Men must be initiated by degrees and their repugnance must be gradually overcome. Let me state a case. This proposed to extend the time of service of the executive magistrate from four to five or eight years, or for life. If it be prolonged for a term, do you believe we shall stop at its expiration? No—Once extended for life, he will then claim the power to choose his successor, and the hereditary principle will follow. This is the old trick. Let me however tell gentlemen that old birds are not to be caught with chaff, though unfortunately for them, the mass of rankling does not consist of old birds. Pass one tier law, and I would quit the country. A twin brother to this same bill was introduced into the British parliament in 1834, and that bill to prevent sedition and insurrection, was brought forward for about as good reasons as this. According to it, if four or five persons assembled and refused on the notice of a magistrate to disperse, they were considered guilty of sedition and were dispersed by force. These two bills form a complete tyranny, and tyranny of the most odious kind, because established under the mark of liberty.

Was the tyranny of R. hesperis less intolerable, oppressive or odious because inflicted in the name of the people, than a like tyranny in Turkey under the grand seignior and his muftis? Take one other thing along with you. These two fatal wounds inflicted on the liberties of the English nation, were inflicted by the man who came forward in the character of a reformer—by the man who came forward as the advocate of a parliamentary reform, from which circumstance he acquired that popularity, which enabled him to inflict those deadly wounds on the liberty of his country.

Having said so much with regard to the principle, permit me to add one word on the details of the bill. There is a departure in it from the known, accustomed and received language of the constitution in the use of the word authority—the words are, "warrants or authority"—the expression is in my opinion too lax. Perhaps we may be told that the bill may be amended on the third reading. But my objection to

the principle contained in it is such, that I will not content to carry to a third reading that which under no amendment can be rendered palatable to my taste. Mr. Randolph concluded by observing that he had for far exhausted himself, that he was unable to go on. (To be Continued.)

The twenty-second Bulletin of the Grand Army.

BERLIN, Oct. 16.

Events succeed each other with rapidity. The Grand Duke of Berg arrived on the 25th, at Hasleben, with a division of dragoons. He had sent to Boitzenburg Gen. Milhaud, with the 15th regiment of Light Horse, and the brigade of Light Cavalry under General Lasalle, to Prentzow. Informed that the enemy was in force at Boitzenburg—he struck off to Wignandorff. He had barely arrived there when he perceived that a brigade of the enemy's cavalry struck to the left, with the intention of cutting off General Milhaud. To see, charge, and drive the King's Gendarmes into the lake was the affair of a moment. This regiment, seeing that all was over with it, asked to capitulate. The Prince, at all times generous, granted their wish. Five hundred men were taken and delivered up their horses. The officers returned home on their Parols. Four stand of colors belonging to the Guards, all of gold, were the trophies of the petty engagement of Wignandorff, which was only the prelude to the splendid one of Prentzow.

Prince Hohenzollern, with the wrecks of the battle of Jena, attempted to reach Stettin. He had been obliged to change his route, because the Grand Duke of Berg was at Templin before him. He was obliged to open out from Boitzenburg to Hasleben, but he was deceived in his movement. The Grand Duke of Berg imagined that the enemy would endeavor to reach Prentzow; the conjecture was well founded. The Prince marched all night with the division of dragoons under Generals Beaumont and Grouchy, which was preceded by the Light Cavalry under the command of Gen. Lasalle. The first posts of our horsemen arrived at Prentzow, at the same time as the enemy, but were under the necessity of falling back on the 26th in the morning, before the superior forces under Prince Hohenzollern. At nine the Grand Duke of Berg arrived at Prentzow, and at ten saw the enemy's army in full march. Without losing time in vain motions, the Prince ordered General Lasalle to charge in the suburbs of Prentzow, and sent to support him Generals Grouchy and Beaumont with their six pieces of Light Artillery. He gave orders for three regiments of dragoons to cross over the small river at Gohnitz which leads to Prentzow, to attack the enemy's flank, and gave directions to his other brigade of dragoons to turn the town. Our brave cannoniers on horseback placed their pieces so well, and fired with such assurance, that they rendered uncertain in the enemy's motions. At this moment General Grouchy received orders to charge, and his brave dragoons did so with the greatest intrepidity. Cavalry, infantry, artillery all were overthrown in the suburbs of Prentzow. Our troops might have entered the town pell-mell with the enemy, but the Prince preferred sending him a summons by General Bolland. The gates of the town were already burst open. Deprived of all hope, Prince Hohenzollern, one of the principal fire brands of this impious war, capitulated, and defiled before the French army with 16,000 infantry, almost all guards or grenadiers, six regiments of cavalry, 45 stands of colors, and 64 pieces of harnessed artillery. All the King of Prussia's Guards, who had escaped from the battle of Jena, have fallen into our power. We are in possession of all the stands of colors of the King's Horse and Foot Guards.—Prince Hohenzollern, commander in chief, after the wound of the Duke of Brunswick, a Prince of Mecklenburgh Schwerin, & several Generals, are our prisoners.

But nothing is done, whilst there remains any thing to be done," wrote the emperor to the grand Duke of Berg. "You have outstripped a column of 8000 men commanded by Gen. Blucher; let me soon learn that they have experienced the same lot."

Another of 10,000 men has passed the Elbe, commanded by the Duke of Weimar. According to all appearance both he and his whole column will be surrounded. Prince Augustus Ferdinand's brother to Prince Louis, killed at Saalfeldt, and son of Prince Ferdinand, brother of the Great Frederick, has been taken in arms, by our Dragoons.

Thus this grand and fine Prussian army has disappeared—like an Autumnal fog at sunrise. Generals in chief, Generals commanding the separate Corps of the army, Princes, Infantry, Cavalry, Artillery, none remain.—Our posts have entered Frankfurt on the Oder, the King of Prussia has gone further.—He has not 15,000 men left; and for such a result, we have scarcely met with any loss.

General Clarke, Governor of Erfurth, has made a Saxon battalion capitulate, which was wandering without direction. The Capitulation is heretofore annexed. On the 28th, the Emperor reviewed the Corps of Marshal Davoust, under the walls of Berlin. He filled up the vacancies, and rewarded the brave.—He then assembled the Officers and Petty-

Officers in a circle, and thus addressed them:

"Officers and petty Officers of the 51 corps of the army, you covered yourselves with glory at the battle of Jena; I shall preserve the eternal recollection of it. The brave fellows who were killed, died with glory. We ought to wish to die under such glorious circumstances."

NEW-YORK, February 3.

Last night the Editors of the N. York Gazette received the following interesting News from N. Orleans, by the brig Neptune.—

That on the 6th ult. general Wilkinson received a letter from Burr, who was at Natchez, requesting to know if the general would suffer him to PASS New-Orleans. The general stuck his determination to oppose Burr's passage on the coffee-house books, and at the same time requested the Merchants to order the vessels down to Plaquemine, to prevent Burr from using them to aid in his plans. The general's Note on the coffee-house books threw the city into confusion.

The force which Burr had with him was not accurately known—but it was said his advanced guard under Adair consisted of 20 cavalry, and Burr was at the head of 600 troops, all arrived at the Natchez.

All the gun-boats, two ketches, and the schooner Revenge, had sailed up the river under the command of Commodore Shaw.

The militia and volunteers were all put under arms the 6th ult. and were on duty when the Neptune sailed.

Mr. Ogden was in confinement at Fort St. Philip. Alexander had been sent on to Washington. Edward Livingston was at large—he was believed to be innocent.

Lieut. Small, of the United States army, and a Mr. Herderson, who had lately resigned his commission in the army, had been arrested as participators in Burr's conspiracy.

Extract of a letter from Trinidad, dated Dec. 30, received by a mercantile house in this city.

"Bonaparte had overrun nearly the whole Continent, but his late defeats by the combined armies of Russia and Prussia near Posen, will, I trust, give such a turn to his affairs as may procure him a passage to Siberia. He is said to have lost in the 3 battles, 3 days successively, 60,000 men killed, wounded and prisoners. In short he was completely routed. Orders were issued for marching the conscripts from every part of France. Great commotions it is said, prevail at Paris; this we have also from Martinique, where the news had also arrived express. This will change the face of all Europe."

PHILADELPHIA, February 4.

Yesterday sailed the Sch'r Chance for the West Indies, and many others were preparing to depart this day, but it is to be feared the North-wester that has blown for six and thirty hours past, has had an embargo for a few days.

By the Ann, arrived at New-Castle, we learn that a civil war rages in the devoted empire of Hayti.—The rival Chiefs are Christophe and Pétion. Several bloody wars had taken place.—It is stated that in the election of President, Christophe had 60 out of 75 votes; and that Pétion, though in so weak a minority, had raised the standard of revolt, and was determined to contest by arms, Christophe's pretensions to one-Business, of course, was in a most unsettled situation. Assassinations ploude a, &c were frequent.—The plantations were entirely neglected.

The report from New-Orleans, by capt. Bowen, we believe to be groundless.—Letters of the 3d of Jan. from New-Orleans, received by this arrival, merely state as a rumour, that some of Col. Burr's boats had been seized at Natchez, and it was understood—that General Adair, (not with an army however) had reached that place.

Extract of a letter from a respectable Commercial house at Liverpool, (Eng.) dated 1st.

Liverpool, 6th Dec. 1847. "The unforunate progress of the campaign on the continent, occasions a considerable degree of gloom in this country. Markets were partially affected on the first days of the Prussians, but the seizure of Hamburg by the French, has produced an increased dullness, and apprehensions with respect to individual credit, which will probably continue to be felt in some degree, until our intercourse with the continent assumes an appearance of greater security. In articles not directly connected with the continental demand we look pretty confidently for more business during our Christmas, when the caution of the moment will probably in part have subsided.

"The import of Aches in November, was about 1400 barrels. The stock in the market remains somewhere we compute about 1000 barrels. The import of this year, now stands about 1100 barrels; and there being yet about 1200 barrels expected this month, the total import seems likely to exceed last year's about one-half. In this view of the supplies, there is less ground for confidence than was looked to some time back, but feeling that the market continues tolerably steady in the present general depression, we do not look for any material variation at this time; the remainder of the supplies is likely to be in few hands, which will favor the article.