The South.

HABEAS CORPUS.

"Next to personal security," says Mr. Justice Blackstone, "the law of England regards, asserts and preserves the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclinations may direct, without imprisonment or restraint, unless by due course of law.

"By the Petition of Right, 3 Car. 1st, it is enacted that no person shall be imprisoned or detained without cause shown, to which he may make answer according to law. By 16 Car. 1st, ch. 10, if any person be restrained of his liberty by order or decree of any illegal court, or by the command of the KING'S MAJESTY in person, or by warrant of the council board, or of any of the privy council, he shall upon demand of his counsel, have a writ of *habeas corpus* to bring his body before the Court of King's Bench or Common Pleas, who shall determine whether the cause of his commitment be just, and hereupon to do as to justice shall appertain.

"To bereave a man of life or by violence to confiscate his estate without accusation or trial would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole kingdom, but confinement of the person by secretly hurrying him to jail where his sufferings are unknown or forgotten is a less public, a less striking and *therefore a more dangerous engine of arbitrary government*. And yet sometimes, when the State is in real danger, even this may be a necessary measure. BUT THE HAPPINESS OF OUR OWN 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; FOR IT IS THE PARLIAMENT ONLY, OR LEGISLATIVE POWER THAT WHENEVER IT SEES PROPER CAN AUTHORIZE THE CROWN, BY SUSPENDING THE HABEAS CORPUS ACT FOR A SHORT AND LIMITED TIME, TO IMPRISON SUSPECTED PERSONS WITHOUT GIVING ANY REASON FOR SO DOING."—*Commentaries on the Laws of England, Vol. 1. pp. 135—136.*

So our own Chief Justice Marshall, in the case of Bollman, 4 *Cranch*, 100, says: "If at any time the public safety should require the suspension of the power vested by this act (the power to grant writs of *habeas corpus*) in the Courts of the United States, *it is for the Legislature 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*." This was in a case of Treason.

So Judge Story in his *Commentaries on the Constitution*, sec. 1336, says: "It would seem as the power is granted to Congress to suspend the writ of *habeas corpus* in case of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body."

So in 1807, when great alarm existed as to Burr's conspiracy, a bill was brought before the Senate in secret session to suspend the writ of *habeas corpus*. When brought into the House of Representatives, that body refused to consider it in secret session, and by a vote of 113 to 19 rejected the bill on its first reading. On that occasion Mr. Dana of Connecticut used the following language: "This bill authorizes the arrest of persons not merely by the President or other high officers, but by any person acting under him. *I imagine this to be wholly without precedent. If treason was marching to force us from our seats, I would not agree thus to destroy the fundamental principles of the Constitution, or commit such an act either of despotism or pusillanimity.*"

HISTORICAL PARALLELS.

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established, should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their duty, to throw off such government, and to provide new guards for their future security."—*Declaration of Independence.*

Yes, sir, we wish for peace, but how is that blessing to be preserved? I shall repeat here a sentiment I have often had occasion to express. In my opinion there is nothing worth fighting for but national honor; for, in the national honor is involved the national independence. *I know that a State may find itself in such unpropitious circumstances, that prudence may force a wise government to conceal the sense of indignity. But the insult should be engraven on tablets of brass, with a pencil of steel.* AND WHEN THAT TIME AND CHANCE, WHICH HAPPEN TO ALL, SHALL BRING FORWARD THE FAVORABLE MOMENT, THEN LET THE AVENGING ARM STRIKE HOME. It is only by avowing and maintaining this stern principle of honor, that peace can be preserved.—*Gouverneur Morris, Speech in the Senate of the U. S., Feb. 24, 1803.*

"A town meeting of Boston had been called at the Old South Church, in consequence of some new aggression upon the rights of the people. The different orators of the patriot party had in turn addressed the meeting, loud in complaint and accusation, but guarded and cautious on every point which might look like an approach towards treasonable expressions, or direct exhortations to resistance. Adams placed himself in the pulpit, and sat quietly listening to all their harangues; at length he rose and made a few remarks, which he closed with the following pithy apologue: "A Grecian philosopher who was lying asleep on the grass, was suddenly roused by the bite of some animal on the palm of his hand. He closed his hand quickly as he awoke, and found he had caught in it a small field mouse. As he was examining the little animal which had dared to attack him, it bit him unexpectedly a second time: he dropped it, and it escaped. Now, fellow-citizens, what think you was the reflection which this trifling circumstance gave birth to, in the mind of the philosopher? It was this: *That there is no animal, however weak and contemptible, which cannot defend its own liberty, if it will only* FIGHT FOR IT."—*Samuel Adams, Memoir in American Eloquence, Vol. I.*

Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. *Unfortunately, nothing will preserve it but downright force.* WHENEVER YOU GIVE UP THAT FORCE, YOU ARE INEVITABLY RUINED.—*Patrick Henry, Speech in the Virginia Convention, June 4, 1788.*

The honorable gentleman who presided, told us, that to prevent abuses in our government we will assemble in convention, recall our delegated powers, and punish the servants for abusing the trust reposed in them. Oh, sir, we should have fine times, indeed, if to punish tyrants it were only sufficient to assemble the people. *Your arms wherewith you could defend yourselves are gone; and you have no longer an aristocratical, no longer a democratical spirit.* Did you ever read of any revolution in any nation brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. *We may see such an act in America. A standing army we shall have also, to execute the execrable commands of tyranny*, and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be?—*Patrick Henry, Speech in Virginia Convention, June 4th, 1788.*

Where are your checks in this government?—Your strongholds will be in the hands of your enemies. *It is on the supposition that your American Governors shall be honest that all its good qualities are founded, but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs should they be bad men.* And, sir, would not all the world, from the Eastern to the Western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men without a consequent loss of liberty. I say that the loss of that dearest privilege has ever followed, with absolute certainty, any such mad attempt. If your American chief be a man of ambition and abilities, how easy will it be for him to render himself absolute! The army is in his hands, and, if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design. And, sir, will the American spirit solely relieve you when this happens? I would rather, infinitely, and I am sure most of this convention are of the same opinion, have a king, lords and commons, than a government so replete with such insupportable evils. If we make a king, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: *but the president in the field, at the head of his army, can prescribe the terms on which he shall reign master so far that it will puzzle any American ever to get his neck from under the galling yoke.* I cannot, with patience, think of this idea. If ever he violates the laws, one of two things will happen: he will come at the head of his army to carry every thing before him; or, he will give bail, or do what Mr. Chief Justice will order him. If he be guilty will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not, at the head of his army, beat down every opposition?

Away with your president, we shall have a king; the army will salute him monarch; your militia will assist in making him king, and fight against you; and what have you to oppose this force?—What will then become of you and your rights?—WILL NOT ABSOLUTE DESPOTISM ENSUE?—*Patrick Henry, in the Virginia Convention, June, 1788.*

"'The glorious spirit of liberty is vanquished and left without hope but in a miracle,' said desponding patriots. 'I confess,' said Samuel Adams, 'we have, as Wolfe expressed it, a choice of difficulties. Too many flatter themselves that their pusillanimity is true prudence; *but in perilous times like these, I cannot conceive of prudence without fortitude.*' He persevered; but John Adams retired from the service of the people, and devoting himself to his profession, for a time ceased even to employ his pen in their defence. Otis who had returned to the Legislature, disordered in mind, and jealous of his declining influence, did but impede the public cause. In Hancock, also, vanity so mingled with patriotism, that the Government hoped to separate him from its uncompromising opponents."—*Bancroft's U. S., vol. 6, page 402, year 1771.*

"'Here,' said Mayhew, as he lamented the cold adhesion of the timid good, and for himself, trod the thorny path of resistance to the grandeurs of the world—'here, there are many who see the right, and yet the wrong pursue. But it is my fixed resolution, notwithstanding many discouragements, in my little sphere, to do all I can for the service of my country, that neither the republic nor the churches of New England may sustain any injury.' And every where men began to enter into a solemn agreement not to use a single article of British manufacture; not even to wear black clothes for mourning. To encourage the growth and manufacture of wool, nearly all Boston signed a covenant to eat no lamb."—*Bancroft's U. S., vol. 5, p. 206, year 1771.*

The King, in his reply, pledged himself *speedily and effectually to enforce "obedience to the laws and the authority of the supreme legislature."* His heart was hardened. *Having just heard of the seizure of ammunition at the fort in New Hampshire*, he intended that his language should "open the eyes of the deluded Americans." "If it does not," said he to his faltering minister, "it must set every delicate man at liberty to avow the propriety of the most coercive measures." *"The New England governments are now in a state of rebellion. Blows must decide whether they are to be subject to this country or to be independent."*—*Bancroft's U. S., vol. 7, p. 177-227.*

They rushed on with headlong indiscretion, thinking not to involve the empire in a civil war, but to subdue the Americans by fear. The first step towards inspiring terror was, to declare Massachusetts in a state of *rebellion*, and to pledge the parliament and the whole force of Great Britain to its reduction; the next, by prohibiting the American fisheries, to *starve* New England; the next, to call out the savages on the rear of the Colonies; the next, *to excite a servile insurrection.*—*Bancroft's U. S., vol. 7, p. 322.*

In the Congress of 1774, there was not one member, except Patrick Henry, who appeared to me sensible of the precipice, or rather the pinnacle on which we stood, and had candor and courage enough to acknowledge it. America is in total ignorance, or under infinite deception concerning that assembly. To draw the characters of them all would require a volume, and would now be considered as a caricatured print. One-third Tories, another Whigs, and the rest mongrels.

There was a little aristocracy among us of talents and letters. Mr. Dickinson was *primus inter pares*, the bell-wether, the leader of the aristocratical flock.—*John Adams, Letter to Jefferson, Nov. 12, 1813.*

As to the history of the Revolution, my ideas may be peculiar, perhaps singular. What do we mean by the Revolution? The war? That was no part of the Revolution. It was only an effect and consequence of it. *The Revolution was in the minds of the people, and this was effected from 1760 to 1775, in the course of fifteen years, before a drop of blood was drawn at Lexington.* The records of thirteen Legislatures, the pamphlets, newspapers, in all the colonies, should be consulted during that period, to ascertain the steps by which the public opinion was enlightened and informed concerning the authority of Parliament over the colonies. *The Congress of 1774 resembled, in some respects, though I hope not in many, the Council of Nice in Ecclesiastical history.* It assembled the priests, from the east and the west, the north and the south, who compared notes, engaged in discussions and debates, *and formed results by one vote and by two votes which went out to the world as unanimous.*—*John Adams, Letter to Jefferson, August 14, 1815.*

Truth, being known, will prevail over artifice and misrepresentation. In such case *no man, who is worthy of life, liberty or property, will or can refuse to join with you in defending them to the last extremity*, disdaining every sordid view, and the mean, paltry considerations of private interest and present emolument, when placed in competition with the liberties of millions; *and, seeing that there is no alternative but absolute, unconditional submission, and the most abject slavery, or a defence becoming men born to freedom, he will not hesitate about the choice.* Although superior force may, by the permission of Heaven, lay waste our towns and ravage our country, it can never eradicate from the breasts of freemen, those principles which are ingrafted in their very nature. *Such men* WILL DO THEIR DUTY, NEITHER KNOWING NOR REGARDING CONSEQUENCES; but submitting them, with humble confidence, to the omniscient and omnipotent Arbiter and Director of the fate of empires, and trusting that his Almighty arm, which has been so signally stretched out for our defence, will deliver them in a righteous cause.—*John Rutledge, in the South Carolina Assembly, April 11th, 1776.*

It was a maxim of the Roman people, which eminently conduced to the greatness of that State, never to despair of the commonwealth. THE MAXIM MAY PROVE AS SALUTARY TO US NOW, AS IT DID TO THEM. Short-sighted mortals see not the numerous links of small and great events which form the chain on which the fate of kings and nations is suspended.—Ease and prosperity, though pleasing for a day, have often sunk a people into effeminacy and sloth. Hardships and dangers, though we for ever strive to shun them, have frequently called forth such virtues as have commanded the applause and reverence of an admiring world. Our country loudly calls you to be circumspect, vigilant, active and brave. Perhaps, (all gracious heaven avert it,) perhaps the power of Britain, a nation great in war, by some malignant influence, may be employed to enslave you; but let not even this discourage you. Her arms, 'tis true, have filled the world with terror; her troops have reaped the laurels of the field; her fleets have rode triumphant on the sea; and when, or where, did you, my countrymen, depart inglorious from the field of fight? You, too, can show the trophies of your forefathers' victories and your own; can name the fortresses and battles you have won; and many of you count the honorable scars of wounds received, whilst fighting for your king and country.—*Joseph Warren, Boston, March 6th, 1775.*

But, pardon me, fellow-citizens, I know you want not zeal or fortitude. *You will maintain your rights, or perish in the generous struggle. However difficult the combat, you never will decline it when freedom is the prize.* An independence of Great Britain is not our aim. No, our wish is, that Britain and the colonies may, like the oak and ivy, grow and increase in strength together. *But whilst the infatuated plan of making one part of the empire slaves to the other is persisted in*, the interest and safety of Britain, as well as the colonies, require that the wise measures recommended by the honorable the Continental Congress be steadfastly pursued; whereby the unnatural contest between a parent honored and a child beloved, may probably be brought to such an issue, as that the peace and happiness of both may be established upon a lasting basis. *But if these pacific measures are ineffectual, and it appears that the only way to safety is through fields of blood, I know you will not turn your faces from your foes, but will, undauntedly, press forward, until tyranny is trodden under foot.*—*Joseph Warren, Boston, March 6th, 1775.*

Upon the whole it has been the policy of the British authority to oblige us to supply our wants at their market, which is the dearest in the known world, *and to cramp and confine our trade so as to be subservient to their commerce, our real interest being ever out of the question.*—*Chief Justice Drayton, Charge to the Grand Jury, Charleston, May 23, 1776.*

Our liberties and safety cannot be depended upon if the King of Great Britain should be allowed to hold our forts and cannon, or to have authority over a single regiment in America or a single ship of war in her ports. For if he holds our forts he may turn them against us, as he did Boston against her proprietors; if he acquires our cannon he will effectually disarm the colony; if he has a command of troops among us, even if we raise and pay them, shackles will be fixed upon us—witness Ireland and her national army. The most express act of Parliament cannot give us security, for acts of Parliament are as easily repealed as made. Royal proclamations are not to be depended upon, witness *the disappointments of the inhabitants of Quebec and St. Augustine.* Even a change of ministry will not avail us, because, notwithstanding the rapid succession of ministers, for which the British Court has been famous during the present reign, *yet the same ruinous policy ever continued to prevail against America.* In short, I think it my duty to declare, in the awful seat of justice and before Almighty God, that in my opinion the Americans can have no safety but by the Divine favor, their own virtue, and their being so prudent as NOT TO LEAVE IT IN THE POWER OF THE BRITISH RULERS TO INJURE THEM. *Indeed the ruinous and deadly injuries received on our side, and the jealousies entertained, and which in the nature of things must daily increase against us, on the other, demonstrate to a mind the least given to reflection upon the rise and fall of empires, that true reconcilement can never exist between Great Britain and America, the latter being in subjection to the former.*—*Chief Justice Drayton, Charge to the Grand Jury, Charleston, April 23, 1776.*

"Of the inhabitants of Boston, six thousand seven hundred and fifty-three still remained in the town, pining of sorrow; deprived of wholesome food; confined to their houses after ten o'clock in the evening; liable to be robbed without redress; ever exposed to the malice of the soldiers, and chidden for tears as proofs of disloyalty.—*Bancroft's U. S., vol. 8, p. 42, year 1775.*

"They closed their statement in the words of their new member, Jefferson: 'These Colonies now feel the complicated calamities of fire, sword and famine. We are reduced to the alternative of choosing an unconditional submission to irritated ministers, or resistance by force. The latter is our choice. We have counted the cost of this contest; and find nothing so dreadful as voluntary slavery.'"—*Bancroft's U. S. vol. 8, p. 36, year 1775.*

"The loss of officers was observed to be disproportionably great; and the gloom in the quarters of the British was deepened by the reflection that they had fought not against an enemy, but against their fellow-subjects and kindred; not for the promotion of civil or religious freedom, *but for the supremacy of one part of the empire over another.*"—*Bancroft's U. S., vol. 8, pp. 25 26, Battle of Bunker Hill.*

"Here too, as every where else, preparations for resistance had been deferred; no more than four barrels of powder could be found in the city. While Washington was borne toward Cambridge on the affectionate confidence of the people, Congress which had as yet supported its commander-in-chief with nothing beyond a commission," &c., &c.—*Bancroft U. S., vol. 8, p. 24, "Not Prepared for Resistance."*

The wife of Colonel Pinckney is distinguished as one of those heroic and self-sacrificing women of the revolution, "whose intrepidity and fortitude lent so able a support to the cause of their country." An incident in her life is recorded in Garden's interesting *Anecdotes of the Revolution.* "A British officer of rank once said to Mrs. Pinckney—'It is impossible not to admire the intrepid firmness of the ladies of your country. Had your men but half their resolution, we might give up the contest. America would be invincible.'"—*American Eloquence, Vol. 1.*

"But in truth the cry of Dunmore did not rouse among the Africans a passion for freedom. To them bondage in Virginia was not a lower condition of being than their former one; they had no regrets for ancient privileges lost; their memories prompted no demand for political changes; no struggling aspirations of their own had invited Dunmore's interposition; no memorial of their grievances had preceded his offices."—*Bancroft's U. S., vol. 8, p. 225—year 1775.*

"When Washington learned the fate of the rich emporium of his own 'country,' for so he called Virginia, his breast heaved with waves of anger and grief; 'I hope,' said he, 'this and the threatened devastation of other places will unite the whole country in one indissoluble bond against a nation which seems lost to every sense of virtue and those feelings which distinguish a civilized people from the most barbarous savages.'"—*Bancroft U. S., 8 vol., 232—Burning of Norfolk.*

"Yet the majority of Congress, scrupulous not to outrun the convictions and sympathies of their constituents, and pleasing themselves by confiding in the speedy restoration of peace, not only made no adequate preparations for resistance, but would not even consent to relieve the states from anarchy by sanctioning the institution of Governments in the several colonies. The hesitancy of so many members, especially of Dickinson, incensed John Adams, who maintained that the fifty or sixty men composing Congress should at once form a constitution for a great empire, provide for its defence, and, in that safe attitude, await the decision of the King. His letters to New England, avowing these opinions, were intercepted; and so little were the central colonies prepared for the bold advice, they were published by the royalists as the surest way of destroying his influence, and heaping obloquy on his name."—*Bancroft U. S., 8 vol., 55—year 1775.*

"The people of Maryland, happier than that of Pennsylvania, escaped intestine dissensions and insured unanimity, by passing over the proprietary government, and intrusting the conduct of resistance to a series of conventions. The prudent, the slow, the hesitating were allowed an influence; but from the first, all parties acquiesced in the principle of deriving all power from the people; and the province, however its movement was sometimes retarded, proceeded courageously in an unbroken line. In November, 1774, it adhered to the association, adopted in the general Congress, and its patriotism was confirmed by the austerity of religious zeal. At an adjourned session in December, the Maryland convention, fifty-five members being present from sixteen counties, resolved unanimously to resist to the utmost of their power, taxation by Parliament, or the enforcement of the penal acts against Massachusetts. To this end they voted with equal unanimity a well regulated militia, to be composed of all the freemen of the colony, between fifteen and sixty. They resolved also, that all former difficulties about religion or politics from henceforth should cease, and be forever buried in oblivion; and the benign aurora of the coming republic lighted the Catholic to the recovery of his rightful political equality in the land which a Catholic proprietary had set apart for religious freedom. Charles Carroll of Carrollton, who, under the British government, had not had so much as a vote at the polls, was placed unanimously on the committee of correspondence.

"It was throughout the continent a subject of regret that the zeal of Dulany had grown cool. As he kept silent, the foremost man in Maryland was Samuel Chase, like Dulany a lawyer, less circumspect and less careful of appearances; but strong, downright, brave and persevering; capable of error from rashness or self-will, but not capable of faltering in the cause which he approved. Vehement even to a fault, he did not always speak softly or shun coarse invective; but his undaunted spirit, his fierce independence of mind, his unbending energy, his scorn of semblance without substance, of servility, of plausible hypocrisy that glossed servility over, his eloquence, which sprung from his heart and expressed the vigor of his nature, his uncompromising energy, justly won for him the confidence of Maryland."—*Bancroft's U. S., vol. 8, p. 75-7.*