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THE MERRYMAN CASE.

Decision of Chief Justice Tancy

Before the Chief Justice of the ez parts John MERRYMAN. Supreme Court of the United States, at Chambers.

The application in this case for writ of habeas corpus is made to me under the 14th section fectual for the citizen the constitutional privi-That act lege of the writ of habeas corpus. to hear it in the latter city, as obedience to the ment or office thereof." writ, under such circumstances, would not withdraw General Cadwalader, who had him in charge, from the limits of his military com-

from any lawful authority.

if, in his opinion, the public safety demanded ties and authority necessarily conferred on him

Having, therefore, regarded the question as ing to bis military character. He cannot aptoo plain and too well settled to be open to dis- point the ordinary officers of government, not pute, if the commanding officer had stated that make a treaty with a foreign nation or Indian upon his own responsibility, and in the exercise tribe, without the advice and consent of the of his cwn discretion, he refused obedience to Senate, and cannot even appoint even inthe writ, I should have contented myself with ferior officers, unless he is authorized by an act atoppage of a newspaper without the payment of are reatages, is prima facis evidence of fraad and is a criminal offence. referring to the clause in the Constitution, and to the construction it received from jurists and states men of that day when the constitution areas and of Congress to do so. He is not emphased to arrest any one charged with an offence a state statesmen of that day, when the case of Burr the United States, and whom he may, from the was before them. But being thus officially no- evidence before him, believe to be guily; nor tified that the privilege of the writ was suspen- can be authorize any officer, civil or military, ded under the orders, and by the authority of the President, and believing, as I do, that the amendments to the Constitution expressly pro-President has exercised a power which he does vides that no person "shall be deprived of life, not possess under the Constitution, a proper re-liberty or property, without due process of law" spect for the high office he fills requires me to that is, judicial process. s'ate plainly and fully the grounds of my opin-And even if the privilege of the writ of haion, in order to show that I have not ventured beas corpus was suspended by act of Congress, to question the legality of his act without a and a party not subject to the rules and articles

> The clause in the Constitution, which au- tained in prison or brought to trial before a milthorizes the suspension of the privilege of the itary tribunal, for the article in the Amendments corpus act of the 31st Charles 2, is that it conthe first article.

This article is devoted to the legislative de-partment of the United States, and has not the accused shall enjoy the right to a speedy and slightest reference to the Executive department. public trial by an impartial jury of the State A passage in Blackstone & Comment tries, show-It begins by providing "that all legislative pow- and district wherein the crime shall have been ers therein granted shall be vested in a Con- committed, which district shall have been pregress of the United States, which shall oonsist viously ascertained by law, and to be informed of the Judiciary Act of 1789, which renders ef- of a Senate and House of Representatives .- of the nature and cause of the accusation; to And after prescribing the manner in which be confronted with the witnesses against firm; these two branches of the legislative depart- to have compulsory process for obtaining witgives to the Courts of the Unit-d States, as well ment shall be chosen, it proceeds to enumerate nesses in his favor, and to have the assistance as to each Justice of the Supreme Court, and to specifically the legislative powers which it of counsel for his defence." every District Judge, power to grant writs of thereby grants, and legislative powers which it habeas corpus for the purpose of an inquiry expressly prohibits; and, at the conclusion of President possesses, where the "life, liberty or cause of commitment. The pe- this specification, a clause is inserted giving property" of a private citizen is concerned, is tition was presented to me at Washington un- Congress "the power to make all laws which the power and duty prescribed in the third secder the impression that I would order the may be necessary and proper for carrying into tion of the second article, which requires " that prisoner to be brought before me there, but as execution the foregoing powers, and all other he shall take care that the laws be faithfully exhe was confined in Fort McHenry, at the city powers vested by this Constitution in the Govecuted." He is not aut horized to execute them of Baltimore, which is in my circuit, I resolved ernment of the United States or in any depart-

charge, from the limits of his military com-mand. The petition presents the following case: The petitioner resides in Maryland, in Balti-more county. While peaceably in his own house, with his family, he was, at 2 o'clock, on the morning of the 25th of May, 1861, arres-ted by an armed force, professing to act under military coders. He was then commelled to the specific abjects before enumerated. But as this limitation was unavoidably somewhat in-definite, it was deemed necessary to guard more effectually certain great cardinal principles es-sential to the liberty of the citizen, and to the ights and equality of the States, hy denying to congress, in express terms, acy power of legis-lating over them. It was apprehended it seems military coders. He was then commelled to that such legislation might be attempted under military orders. He was then compelled to that such legislation might be attempted under enforce its judgments. rise from his bed, taken into cu-tody. and con-veyed to Fort McHenry, where he is imprison-carry into execution the powers granted; and proper to pressed in language too clear to be misundered by the commanding officer, without warrant it was determined that there should be no room stood by any one, I can see no ground whatevto doubt, where rights of such vital importance er for supposing that the President, in any

The Commander of the Fort, General George were concerned, and accordingly, this clause is emergency or in any state of things, can author-

ty required it. And in the debate which took place upon the subject, no one suggested that Mr. Jefferson might exercise the power himself So, too, his powers in relation to the civil duand they continued until the passage of the are carefully restricted, as well as those belongstatute of 21st Charles 2d, 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 subect from the usurpation and oppression of the Executive branch of the Government. It nevetheless conferred no new right upon the subt, but only secured a right already existing. , although the right could not be justly de-, there was no effectual remedy against its slation. Until the statute of the 13th cf William 31, the Judges held their offices at the easure of the King, and the influences which he exercised over timid, time-serving and partisan judges often induced them, upon some pretext or another, to refuse to discharge the party although he was entitled to it by law, or delay-

ed their decisions from time to time, so as to authorize the Crown by suspending the habeas prolong the imprisonment of persons who were careful and deliberate examination of the whole of war was afterwards arrested and imprisoned ions, or had incurred his resentment in any othobnoxious to the King for their political opiner way.

The great aad inestimable value of the habeas writ of habeas corpus, is in the 9th section of to the Constitution immediately following the mins provisions which compel courts and judges and all parties concerned, to perform their duties promptly, in the manner specified in the statute.

juct, and the abuses which were practiced thro' the power and influence of the Crown, and a short extract from Hallam's Constitutional Histo the passage of this statute, explain briefly, but fully, all that is material on this subject. Blackstone, in in his commentaries on the

Laws of England (3d vol., 133 134), says : "To assert an absolute exemption from imlog its protection impossible.

himself, or through agents or officers civil or military, appointed by himself, but he is to take extent, when, wherefore, and to what degree he imprisonment of the subject may be lawful. This it is which induces the absolute necessity

bitrary precedents (and those perhaps 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-The Commander of the Foit, General George Cadwalader, by whom he is d-tained in confine-ment, 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 General Keim, of Pennsylvania, and conduc-tion the frames of the constitution attached General Keim, of Pennsylvania, and conduc-tion the privilege of the writ of *habeas corpus* to the privilege of the writ of *habeas corpus* to the privilege of the writ of *habeas corpus* and the judicial power. He certainly does not faithfully execute the laws if he takes upon himself legislative power by suspending the writ of *habeas corpus* and the judicial power. mand of the King or by the Lords of the Privy ted as a prisoner to Fort McHenry by his order, protect the liberty of the citizen is proved by writ of nabens corpus - and the judicial power lowing year Mr. Selden and others were comand placed in his (General Cadwalader's) custo- the fact that its suspension, except in case of in- also by arresting and imprisoning a person with- mitted by the lords of the Council in pursuance dy to be there detained by him as a prisoner. A copy of the warrant or order under which hibited powers- and even in these cases the ment be drawn from the nature of sovereignty, a general charge of "notable contempts. " notable contempts. the Constitution. It would seem, as the powthe return that any specific act, constituting It is true that in the cases mentioned Con- ernment of the United States is one of delegated two terms (including also the long vacation) that the right to judge whether the exigency an offence against the laws of the United States gress is of necessity the judge of whether the powers. It derives its existence and authority to deliver an opinion how far such a charge had arisen must exclusively belong to that has been charged against him upon oath, but he public safety does or does not require it ; and altogether from the Constitution, and neither was bailable. And when at length they agreed body." 3 Story's Com, on the Constitution, appears to have been arrested upon general their judgment is conclusive. But the intro- of its branches, Executive, Legislative or Judi- that it was, they, however, annexed a condition section 1, 336. charges of treason and rebellion, without proof, duction of these words is a standing admonition cial, can exercise any of the powers of Govern- of finding sureties for their good behavior, which still protracted their imprisonment, the or specifying the acts which, in the judgment pending it, and of the extreme caution they the 10th article of the amendment to the Con- Chief Justice, Sir Nicholas Hyde, at the same should exercise before they give the trovern- stitution, in express terms provides that " the time declaring that 'if they were again remandpowers not delegated to the United States by ed for that cause perhaps the Court would not the Constitution, nor prohibited by it to the afterwards grant a haheas corpus, being already It is the second article of the Constitution States, are reserved to the States respectively, made acquainted with the cause of the imprisonment.' But this was heard with indignation and astonishment by every lawyer present, ac-And by executive authority, provided for in the fifth cording to Mr. Selden's own account of the distance of four and twenty years."

ute of Charles II, was enacted, but to cut off other person, had reason to believe that the

abuses which embarrassed its enjoyments have cer to bring the matter before the District Judge been looked upon as almost a new grant of lib- or commissioner, and if there was sufficient leerty to the subject, it is not to be wondered at gal evidence to justify his arrest, the Judge or that the contiunance of the writ thus made effective should have been the subject of the most the Marshal to arrest him; and upon the hearealous care. Accordingly, no power in Eng- ing of the party would have held him to bail and short of that of Parliament can suspend or or committed him for trial, according to the authorize the suspension of the writ of habeas character of the offence as it appeared in the corpus. 1 quote again from Blackstone(1 Comm, 136); "But the happiness of our Con-stituton is that it is not left to the Executive to support the accusation. There was no danpower to determine when the danger of the State is so great as to render this measure ex-pedient. It is the Parliament only or legislative power that whenever it sees proper, can military.

corpus for a short and lunited time, to imprison suspected persons without giving any rea-son 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 or rebellion: what evidence (if indeed, he re-England have thought it safe to entrust to the quired any) is sufficient to support the accusa-Crown-a power which the Queen of England cannot exercise at this day, and which could not have been lawfully exercised by the ing the ancient state of the law upon this sub- sovereign even in the reign of Charles the risoned fort, to be there held, it would seem, First.

But I am not left to form my judgment upon this great question from analogies between the tory, stating the circumstances which gave rise | English Government and our own, or the commentaries of English jurists, or the decisions of 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 ery idea of law and political society, and in the Constitution of the United States of the late end would destroy all civil liberty by render- Mr. Justice Story, not only one of the most em-"But the glory of the English law consists of the brightest ornaments or the Supreme in clearly defining the times, the causes, and the Court of the United States and also the clear court of justice. and authoritative decision of that Court itself given more than half a century since, and conclusively establishing the principles I have above stated.

Mr. Justice Story, speaking 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, orea require the temporary suspension of any right to the writ. But as it has frequently happened foreign countries, and even in England, that the writ has, upon various pretexts and occasions, been suspended, whereby persons apprehended upon supicion have suffered a long imprisonment, sometimes from design, and metimes 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 wholesome estraint, which cuts down at a blow a fruitful means of oppression, capable of being abused in

the abuses by which the Government's lust of prisoner had committed any offences against power, and the servile subtlety of Crown law-yers, had impaired so fundamental a privilege." the laws of the United States, it was his duty to give information of the fact, and the evi-While the value set upon this writ in Eng-land has been so great that the removal of the would then have become the duty of that offi-Commissioner would have issued his warrant to testimony, or would have discharged him imger of any obstruction or resistance to the action of the civil authorities, and therefore no reason whatever for the interposition of the

> And yet, under these circumstances a miltary 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 quired any) is sufficient to support the accusation and justify the commitment; and commit the party, without having a hearing even before himself, to close custody in a strongly garduring the pleasure of those who committed him.

The Constitution provides, as I have before said, that "no person shall be deprived of life mentaries of English jurists, or the decisions of liberty or property, with due process of law." English courts, although upon this subject they 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 po warrant shall isprisonment in all cases is inconsistent with ev- conclusion, 1 have the commentaries on the sue, but upon probable cause, supported by oath or affirmation, and particularly describing the Mr. Justice Story, not only one of the most em-inent jurists of the sge, but for a long time one to be seized." It provides that the party accused shall be entitled to a speedy trial in a

And these great and fundamental laws, which Congress itself 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 1 can only say that if the authority which the Constitution has confided to the judiciary department and judicial officers may thus upon any pretext or under any circomstan-ces be usurped by the military power at its dis-cretion, 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 placement of the army officer in the will and pleasure of the army officer in whose military district he may happen to 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 on me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer who has incurred this grave responbad times to the worst of purposes. Hitherto no suspension of the writ has ever been authorized by Congress since the establishment of be given him. I shall, therefore, order all the and direct the Clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfilment of his constitutional obligation to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced.

and without giving the names of the witnesses, of the military officer, constituted these crimes. And having the prisoner thus in custody upon these vague and unsupported accusations, he liberty of a citizen. refuses to obey the writ of habeas corpus, upon President to suspend it.

The case, then, is simply this :-- A military 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 habeos corpus at his discretion, and, in the exercise of that discretion, suspends it in this case, and on that ground refuses obedience to the

As the case comes before me, therefore, 1 unright to suspend the writ of habeas corpus himself, at his discretion, but to delegate that discretionary power to a military officer, and to will not obey judicial process that may be served upon him.

of justice, or to the public, by proclamation or ment. otherwise, that the President claimed this power, and had exercised it in the manner stated in of Congress.

When the conspiracy of which Aaron Burr

to the legislative body of the danger of sus- ment beyond those specified and granted. For ment of the United States such power over the

the ground that he is duly authorized by the that provides for the organization of the Execu- or to the people." tive Department, and enumerates the powers

conferred on it, and prescribes its duties. officer, residing in Pennsylvania, issues an order if the high power over the liberty of the citi- article of the Amendments of the Constitution, matter, whose resentment was not cooled at the to arrest a citizen of Maryland, upon vague and zens now claimed was intended to be conferred indefinite charges, without any proof so far as on the President, it would undoubtedly be found than a copy of a like provision in the English appears. Under this order, his house is enter- in plain words in this article. But there is not ed in the night ; he is seized as a prisoner, and a word in it , that can turnish the slightest before the Declaration of Independence. conveyed to Fort McHenry, and there kept in 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, to hold his office during the term of four years -- and then pro- or by warrant from some legal officer having den. And yet, even at that day, the warrant ceeds to prescribe the mode of election, and to authority to commit to prison." And the peospecify in precise and plain words the powers ple of the United Colonies, who had themselves rights of the subject that the delay of the timedelegated to him and the duties imposed upon lived under its protection while they were him lected, and the narrow limits to which his pow- sity of this safeguard for their personal liberty. sal indignation at the bar. The extract from Hall er is confined, show the jealousy and appre- And no one can believe that in framing a gov-

of the Constitution felt in relation to that de- ly the rights of the citizens against executive 14. derstand that the President not only claims the partment of the Government -- and how careful- encroachment and oppression, they would have ly they withheld from it many of the powers be- conferred on the President a power which the longing to the Executive branch of the English history of England had proved to be dangerous cretionary power to a military officer, and to leave it to him to determine whether he will or ous to the liberty of the subject—and conferred which the people of England had compelled it (and that in clear and specific terms) those pow- to surrender after a long and obstinate struggle ers only which were deemed essential to se- on the part of the English Executive to usurp No official notice has been given to the courts cure the successful operation of the Govern- and retain it.

the return. And I certainly listened to it with responsible, by impeachment, for malfeasance ing the long struggle in England between arbisome surprise, for I had supposed it to be one of in office. He is from necessity and the nature trary government and free institutions, and there was no difference of opinion, and that it my and navy, and of the militia, when called tention of statesmen engaged in framing a new

by regular judicial process-he could not be de-

one above referred to-that is, the 6th article-

Indeed, the security against imprisonment which I have before quoted, is nothing more Constitution, which had been firmly established

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

And the short term for which he is e- British subjects, were well aware of the neces-

The right of the subject to the benefit of the

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 imprison-

ment, in their nature and character, and in the loose and vague manner in which they are "To make imprisonment lawful, it must be stated, bear a striking resemblance to those as United States of America, to hold his office either by process from the Courts of Judicature signed in the warrant for the arrest of Mr. Selwas regarded as such a flagrant violation of the serving judges to set him at liberty upon the habeas corpus issued in his behalf excited univerlam's Constitutional History is equally impresbensions of future danger which the framers ernment intended to guard still more efficient- sive and equally in posnt. It is in vol. 4: p.

> " It is a very common mistake, and not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected, to suppose that this statute of Charles Il. enlarged in a great degree our liberties, and forms a sort of epoch in their bistory. But though a very beneficial enactment, and eminently remedial in many cases of illegal impris-

onment, it introduced no new principle, nor He is elected, as I have already said, for the writ of habeas corpus, it must be recollected, conferred any right upon the subject. From brief term of four years, and is made personally was one of the great points in controversy duz- the earliest records of the English law, no free- arms, thrust aside the judicial authorities and man could be detained in prison except upon a officers to whom the Constitution has confided criminal charge or conviction, or for a civil the power and duty of interpreting and adminthose points of constitutional law upon which of his duties the commander-in-chief of the ar- must therefore have strongly attracted the at- debt. In the former case it was always in his istering the laws, and substituted a milipower to demand of the Court of King's Bench tary government in its place, to be adminiswas admitted on all hands that the privilege of into actual service. But no appropriation for and, as they supposed, a freer government than a writ of habeas corpus ad subjiciendum direct- tered and executed by military officers, for at the writ could not be suspended, except by act the support of the army can be made by Con- the one which they had thrown off by the rev- ed to the person detaining him in custody, by the time these proceedings were had against gress for a longer term than two years, so that olution. For from the earliest history of the which he was enjoined to bring up the body of John Merryman, the District Judge of Maryit is in the power of the succeeding House of common law, if a person was imprisoned-no the pusoner with the warrant of commitment when the conspiracy of which Aaron Burr was the head became so formidable and was so extensively ramified as to justify, in Mr. Jeff-its support, and thus disband it, if in their judg-extensively ramified as to justify, in Mr. Jefferson's opinion, the suspension of the writ, he ment the President used, or designed to use, the King's Bench ; and it no specific offence charge him.according to the nature of the charge. claimed, on his part, no power to suspend it - it for improper purposes. And although the was charged against him in the warrant of com- This writ issued of right, and could not be rebut con.municated his opinion to Congress with militia, when in actual service, are under his ment, he was entitled to be forthwith discharg- fused by the Court. It was not to bestow an slightest resistance or obstruction to the pro-

subject, and determine whether the public safe- the use of the military power for purposes dan- to set him at libety on bail. And the most ex- indeed, it were not more ancient), that the stat- authority. And if a military officer, or any

And Chief Juctice Marshall, in delivering the opinion of the Supreme Court in the case of ex parte Bollman and Swartwout, uses this decisive language in 4 Cranch 95 : It may be

worthy of remark that this act (speaking of the one under which I am proceeding) was passed by the first Congress of the United States sitting under a Constitution which had declared "that the privilege of the writ of habeas cornus 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 consti-tutional 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 all the Courts the power of awarding writs of habeas corpus.

And again, in page 101 :

"If at any time the public safety should reuire the suspension of the powers vested by this act 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."

I can add nothing to these clear and emphatic words of my great predecessor.

But the documents before me show that the us believe, on the part of the Governor! A military authority in this case has gone far be- slight mistake, indeed ! Do you hear of such yond the mere suspension of the privilege of blunders in other States ! No. it was caused the writ of habeas corpus. It has, by force of by the ignorance and neglect of those having charge of the matter, and we do not wonder that the soldiers became disgusted and out of heart, and that they determined to march home. The Governor, doubtless, is principally to blame, but there are parties nearer home who will be held responsible.

The companies from this county were one month in camp, and after being called there land, the Commissioner appointed under the by what purported to be an order from the Governor of the State, they are very coolly told that unless they enlist for three years they will few miles only from the home of the prisonget no pay for the time already lost. Is such er. Up to that time there had never been the treatment right ?

The men composing these Companies speak but consuminated his opinion to Congress with all the proofs in his possession, in order that Congress might exercise its discretion upon the streament of the States as a security against bailable in its character, the congress might exercise its discretion upon the streament of the blame for the states as a security against bailable in its character, the congress might exercise its discretion upon the states in Maryland, except by the states i attaches t) them .- Fulton Demosrat.

R. B. TANEY, Chief Justice Supreme Court of the United States.

THE RETURNED VOLUNTEERS.

It was with surprise and mortification that we met the volunteers from this county, on Friday of last week, on their return from camp McAllen, near Chambersburg, where they had been encamped for the past month. It was with regret that our citizens witnessed their return by broken squads, their clothing tattered and torn, but their hardy sun-burned countenances radiant with health. These men have been outrageously treated by the authorities of the State, or at least by those who professed to act the impression of this obligation they give to by authority of the Governor. They were recruited for three months, and were positively assured that the regiment to which they were to be attached on arriving at Chambersburg, was already accepted by the Governor for three months service, unconditionally. They were told that they need not take a supply of clothing along with them, but that they would be uniformed, armed and equipped in a few days, hence most of the men took with them the worst clothing they had, and in a few days they de-served to be called the "ragged Militia." Of Of course, in this matter like the treatment of our organized regiments, "nobody's to blame !" It was only a slight mistake, as some would have