THE PRESS,
PUBLISHED DAILY (SUNDAYS EXCEPTED)
BY JOHN W. FORNEY.
OFFICE No. 111 SOUTH FOURTH STREET.

THE DAILY PRESS,
To City Subscribers, is TEN DOLLARS PER ANNUM, in advance; or TWENTY CENTS PER WEEK, payable to the Carrier. Mailed to Subscribers out of the city, NINE DOLLARS PER ANNUM; FOUR DOLLARS AND FIFTY CENTS FOR SIX MONTHS; TWO DOLLARS AND TWENTY-FIVE CENTS FOR THREE MONTHS, invariably in advance for the time ordered.
Advertisements inserted at the usual rates.

THE TRI-WEEKLY PRESS,
Mailed to Subscribers, FIVE DOLLARS PER ANNUM, in advance.

The Press.

VOL. 8.—NO. 277. PHILADELPHIA, TUESDAY, JUNE 20, 1865. FOUR CENTS.

THE WAR PRESS.
(PUBLISHED WEEKLY.)
THE WAR PRESS will be sent to subscribers by mail (per annum in advance) at $2 00
Five copies 10 00
Ten copies 20 00
Larger Clubs than Ten will be charged at the same rate, $2.00 per copy.
The money must always accompany the order, and in no instance can these terms be deviated from, as they afford very little more than the cost of paper.
Postmasters are requested to act as agents for THE WAR PRESS.
To the getter-up of the Club of ten or twenty, an extra copy of the paper will be given.

The Press.

TUESDAY, JUNE 20, 1865.

THE NEWS.

Yesterday, in the conspiracy trial, one of the associate counsel for Mrs. Surratt read the argument of Mr. Reverdy Johnson. It is a very long argument against the trial by military commission, he holding that the accused should have been tried by a civil tribunal. Mr. Stone, Harold's counsel, followed. He contended that his client could only suffer the penalty of aiding Booth to escape, as the evidence failed to prove that he aided or abetted in the murder of the president.

Mr. Cox, the counsel for Arnold and O'Laughlin, then demanded the acquittal of both his clients, as the evidence failed to prove that they were engaged in the conspiracy.

In view of a correspondence between Sir Frederick W. H Bruce and the Secretary of State, in regard to the withdrawal of the pretended concession of belligerent rights to the insurgents, Secretary Seward has suggested to Secretary Welles that our naval officers be informed—first, that Great Britain has withdrawn her concessions of a belligerent character from the rebels; second, that the same nation, not having absolutely withdrawn the twenty-four hours' rule, therefore the customary courtesies are not to be paid by our war vessels to those of the British navy; third, that the right of British vessels, except those operating in the slave trade, is terminated; and fourth, that all insurgent or piratical vessels may be lawfully captured.

From Fortress Monroe we learn that John Mitchel has been imprisoned there, and also that the Virginia Central and Orange and Alexandria Railroads are fast being repaired. Richmond is infested with thieves.

The commanding general of the Department of Washington denies that a party of rebels have destroyed the monuments on the Bull Run battle field.

Governor Brough, of Ohio, is out in a card announcing that he will not be a candidate for re-election. It is therefore certain that Major General J. D. Cox will receive the Union nomination.

The subscriptions to the 7-30 loan yesterday amounted to $3,293,100.

Major Gen. Maury, former rebel commander at Mobile, and Gov. Moore, of Alabama, have arrived at Fort Pulaski, Georgia, under guard.

Col. Gayley, who is charged with offering a million dollars reward for the assassination of President Lincoln, is at Fortress Monroe a prisoner.

All of Jeff Thompson's former army, numbering 7,454 men, are at Cairo on parole.

Two little children, a boy and a girl, aged respectfully twelve and fourteen, were brutally murdered near Roxbury, Massachusetts, on Sunday.

A member of the rebel Congress from Tennessee, named Maury, took the oath of allegiance in Washington yesterday.

Up to yesterday, 149,000 soldiers have left Washington for the North.

B. C. Burnett, of Kentucky, a former M. C., but lately a member of the rebel Congress, took the oath yesterday, in Washington.

Dullness continues to be the characteristic of the stock market. All business is quite at a stand still. Government securities sold yesterday to a very limited extent, at about previous figures. There was however, a better demand for railroad stocks, and with the exception of Reading, prices were generally better. Gold closed in New York last night at 140⅜, and after call at 140.

THE PROGRESS OF THE CONSPIRACY.

The Foot-Prints of the Great Tragedy.

JUDGE HOLT'S REPORT OF OCTOBER, 1864.

THE APRIL ASSASSINATION FORESHADOWED.

Destruction of Public and Private Property Arranged.

THE CREED AND PLEDGE OF THE TRAITORS.

Our correspondent, "Occasional," in his letter of yesterday, calls attention to the report of Hon. JOSEPH HOLT, Judge Advocate General of the United States, made to Secretary STANTON, October 8, 1864, on "the Western Conspiracy," by the Order of "American Knights," or "Sons of Liberty." The fact that the case of the conspirators engaged in the assassination of President LINCOLN, and the attempted murder of Mr. SEWARD and his family, is soon to be disposed of, renders a reference to the report of Judge HOLT, not only valuable as a reminiscence of the designs of these wretched men and women, but is a new proof, if any were necessary, of the damnable guilt of those who carried out the teachings of the authors and agents of this secret combination. Judge HOLT's argument on the testimony before the Military Commission for the trial of the assassins may be hourly expected. We have deemed the republication of the following extracts from his report on the Western conspiracy alluded to, eminently useful and interesting:

WASHINGTON, D. C., October 8, 1864.

Hon. E. M. Stanton, Secretary of War:

SIR: Having been instructed by you to prepare a detailed report upon the mass of testimony furnished me from different sources in regard to the *secret associations and conspiracies against the Government,* formed, principally in the Western States, by traitors and disloyal persons, I have now the honor to submit as follows:

During more than a year past it has been generally known to our military authorities that a secret treasonable organization, affiliated with the Southern rebellion, and chiefly military in its character, has been rapidly extending itself throughout the West.

This secret association first developed itself in the West in the year 1862, about the period of the first conscription of troops, which it aimed to obstruct and resist. Originally known in certain localities as the "Mutual Protection Society," the "Circle of Honor," or the "Circle" or "Knights of the Mighty Host," but more widely as the "Knights of the Golden Circle," it was simply an inspiration of the rebellion, being little other than an extension among the disloyal and disaffected at the North of the association of the latter name, which had existed for some years at the South, and from which it derived all the chief features of its organization.

The "Temples" or "Lodges" of the Order are numerously scattered through the States of Indiana, Illinois, Ohio, Missouri, and Kentucky. They are also officially reported as established, to a less extent, in Michigan and the other Western States, as well as in New York, and also in Pennsylvania, New Hampshire, Rhode Island, Connecticut, New Jersey, Maryland, Delaware, and Tennessee. Dodd, the Grand Commander of Indiana, in an address to the members in that State of February last, claims that at the next annual meeting of the Supreme Council (in February, 1865), every State in the Union will be represented, and adds: "this is the first and only true national organization the Democratic and conservative men of the country have ever attempted." A provision made in the constitution of the Council for a representation from the *Territories* shows, indeed, that the widest extension of the order is contemplated.

It is to be noted that the order, or its counterpart, is probably much more widely extended at the South even than at the North, and that a large proportion of the officers of the rebel army are represented by most reliable witnesses to be members. In Kentucky and Missouri, the order has not hesitated to admit as members, not only officers of that army, but also a considerable number of guerillas, a class who might be supposed to appreciate most readily its aims and purposes. It is fully shown that as lately as in July last several of these ruffians were initiated into the first degree by Dr. Kalfus, in Kentucky.

The "*Declaration of Principles,*" which is set forth in the ritual of the order, has already been alluded to. This declaration, which is specially framed for the instruction of the great mass of members, commences with the following specious proposition:

"All men are endowed by the Creator with certain rights, equal as far as there is equality in the capacity for the appreciation, enjoyment, and exercise of those rights." And subsequently there is added: "In the Divine economy no individual of the human race must be permitted to encumber the earth, to mar its aspects of transcendent beauty, nor to impede the progress of the physical or intellectual man, neither in himself nor in the race to which he belongs. Hence, a people, upon whatever plane they may be found in the ascending scale of humanity, whom neither the divinity within them nor the inspirations of divine and beautiful nature around them can impel to virtuous action and progress onward and upward, should be subjected to a just and humane servitude and tutelage to the superior race, until they shall be able to appreciate the benefits and advantages of civilization."

Here, expressed in terms of studied hypocrisy, is the whole theory of human bondage—the right of the strong, because they are strong, to despoil and enslave the weak! The languages of earth can add nothing to the cowardly and loathsome baseness of the doctrine, as thus announced. It is the robber's creed, sought to be nationalized, and would push back the hand on the dial-plate of our civilization to the darkest periods of human history. It must be admitted, however, that it furnishes a fitting "cornerstone" for the government of a rebellion every pillar of whose body and every throb of whose soul is born of the traitorous ambition and slave-pen inspirations of the South.

To these detestable tenets is added that other pernicious political theory of State sovereignty, with its necessary fruit, the monstrous doctrine of secession—a doctrine which, in asserting that in our federative system a part is greater than the whole, would compel the General Government, like a Japanese slave, to commit hari-kari whenever a faithless or insolent State should command it to do so.

Thus, the ritual, after reciting that the States of the Union are "free, independent, and sovereign," proceeds as follows:

"The Government designated 'the United States of America' has no *sovereignty,* because that is an attribute with which the people, in their several and distinct political organizations, are endowed, and is inalienable. It was constituted by the terms of the *compact,* by all the States, through the express will of the people thereof, respectively—a common agent, to use and exercise certain named, specified, defined, and limited powers which are inherent of the sovereignties within those States. It is permitted, so far as regards its status and relations, as common agent in the exercise of the powers carefully and jealously delegated to it, to call itself 'supreme,' but not '*sovereign.*' In accordance with the principles upon which is founded the *American theory,* Government can exercise only delegated power; hence, if those who shall have been chosen to administer the Government shall assume to exercise powers not delegated they should be regarded and treated as *usurpers.* The reference to 'inherent power,' 'war power,' or 'military necessity,' on the part of the functionary for the sanction of an arbitrary exercise of power by him, we will not accept in palliation or excuse."

To this is added, as a corollary, "it is incompatible with the history and nature of our system of government that Federal authority should coerce by arms a sovereign State."

The declaration of principles, however, does not stop here, but proceeds one step farther, as follows:

"Whenever the chosen officers or delegates shall fail or refuse to administer the Government in strict accordance with the letter of the accepted Constitution, it is the inherent right and the solemn and imperative duty of the people to *resist* the functionaries, and, if need be, to *expel them by force of arms!* Such resistance is not revolution but is solely the assertion of right—the exercise of all the noble attributes which impart honor and dignity to manhood."

To the same effect, though in a milder tone, is the platform of the order in Indiana, put forth by the Grand Council, at their meeting in February last, which declares that "the right to alter or *abolish* their government, whenever it fails to secure the blessings of liberty, is one of the inalienable rights of the people that can never be surrendered."

Such, then, are the principles which the new member swears to observe and abide by in his obligation, set forth in the ritual, where he says: "I do solemnly promise that I will ever cherish in my heart of hearts the sublime creed of the E. K. (Excellent Knights,) and will, so far as in me lies, illustrate the same in my intercourse with men, and will defend the principles thereof, if need be, with my life, whensoever assailed, in my own country first of all. I do further *solemnly* declare that I will never take up arms in behalf of any government which does not acknowledge the sole authority or power to be the will of the governed."

In the same connection may be quoted the following extracts from the ritual, as illustrating the principle of the right of revolution and resistance to constituted authority insisted upon by the order:

"Our swords shall be unsheathed whenever the great principles which we aim to inculcate and have sworn to maintain and defend are assailed."

Again: "I do solemnly promise, that whensoever the principles which our order inculcates shall be assailed in my own State or country, I will defend these principles with my sword and my life, in whatsoever capacity may be assigned me by the competent authority of our order."

And further: "I do promise that I will, at all times, if needs be, take up arms in the cause of the oppressed—in my own country first of all—against any power or government usurped, which may be found in arms and waging war against a people or peoples who are endeavoring to establish, or have inaugurated, a government for themselves of their own free choice."

Moreover, it is to be noted that all the addresses and speeches of its leaders breathe the same principle, of the right of forcible resistance to the Government, as one of the tenets of the order.

Thus, P. C. Wright, Supreme Commander, in his general address of December, 1863, after urging that "the spirit of the fathers may animate the free minds, the brave hearts, and still unshackled limbs of the *true democracy*" (meaning the members of the order), adds as follows: "To be prepared for the crisis now approaching, we must catch from afar the earliest and faintest breathings of the spirit of the storm; to be successful when the storm comes, we must be watchful, patient, brave, confident, organized, *armed.*"

Thus, too, Dodd, Grand Commander of the order in Indiana quoting, in his address of February last, the views of his chief, Vallandigham, and adopting them as his own, says:

He (Vallandigham) judges that the Washington power will not yield up its power, until it is taken from them by an indignant people, *by force of arms.*

These, then, are the written principles of the order in which the neophyte is instructed, and which he is sworn to cherish and observe as his rule of action, when, with arms placed in his hands, he is called upon to engage in the overthrow of his Government. This declaration—first, of the absolute right of slavery; second, of State sovereignty and the right of secession; third, of the right of armed resistance to constituted authority on the part of the disaffected and the disloyal, whenever their ambition may prompt them to revolution—is but an assertion of that abominable theory which, from its first enunciation, served as a pretext for conspiracy after conspiracy against the Government on the part of Southern traitors, until their detestable plotting culminated in open rebellion and bloody civil war. What more appropriate name, therefore, to be communicated as a password to the new member, upon his first admission to the secrets of the order, could have been conceived than that which was actually adopted—that of "Calhoun!"—a man who, baffled in his lust for power, with gnashing teeth turned upon the Government that had lifted him to its highest honors, and upon the country that had borne him, and, even to the very close of his fevered life, labored incessantly to scatter far and wide the seeds of that poison of death now upon our lips! The thorns which now pierce and tear us are of the tree he planted.

But to proceed to the *specific* purposes of the order, which its leaders have had in view from the beginning, and which, as will be seen, it has been able, in many cases, to carry out with very considerable success, the following are found to be most pointedly presented by the testimony:

1. *Aiding Soldiers to Desert, and Harboring and Protecting Deserters.*

2. *Discouraging Enlistments and Resisting the Draft.*—It is especially inculcated by the order to oppose the reinforcement of our armies, either by volunteers or drafted men. In 1862, the Knights of the Golden Circle organized generally to resist the draft in the Western States, and were strong enough, in certain localities, to greatly embarrass the Government.

3. *Circulation of Disloyal and Treasonable Publications.*—The order, especially in Missouri, has secretly circulated throughout the country a great quantity of treasonable publications, as a means of extending its own power and influence, as well as of giving encouragement to the disloyal and inciting them to treason. Of these, some of the principal are the following: "Pollard's Southern History of the War," "Official Reports of the Confederate Government," "Life of Stonewall Jackson," pamphlets containing articles from the *Metropolitan Record,* "Abraham Africanus, or Mysteries of the White House," "The Lincoln Catechism, or a Guide to the Presidential Election of 1864," "Indestructible Organics," by Tirga. These publications have generally been procured by formal requisitions drawn upon the grand commander by leading members in the interior of a State. One of these requisitions, dated June 10th last, and drawn by a local secretary of the order at Centerville, Mo., is exhibited in the testimony. It contains a column of the initials of a number of subscribers, opposite whose names are entered the number of disloyal publications to be furnished, the particular book or books, &c., required being indicated by fictitious titles.

4. *Communicating with, and Giving Intelligence to, the Enemy.*—Smith, Grand Secretary of the order in Missouri, says, in his confession: "Rebel spies, mail-carriers, and emissaries have been carefully protected by this order ever since I have been a member." It is shown in the testimony to be customary in the rebel service to employ members of the order as spies, under the guise of soldiers furnished with furloughs to visit their homes within our lines. On coming within the territory occupied by our forces, they are harbored and supplied with information by the order.

On the other hand, the system of *espionage* kept up by the order, for the purpose of obtaining information of the movements of our own forces, &c., to be imparted to the enemy, seems to have been as perfect as it was secret. The Grand Secretary of the order in Missouri states, in his confession: "One of the especial objects of this order was to place members in steamboats, ferryboats, telegraph offices, express offices, department headquarters, provost marshal's office; and, in fact, in every position where they could do valuable service," and he proceeds to specify certain members who, at the date of his confession (August 2d last), were employed at the express and telegraph offices in St Louis.

5. *Aiding the Enemy, by Recruiting for them, or Assisting them to Recruit, within our lines.*—This has also been extensively carried on by members of the order, particularly in Kentucky and Missouri. It is estimated that 2,000 men were sent South, from Louisville alone, during a few weeks in April and May, 1864. The order and its friends at that city have a permanent fund, to which there are many subscribers, for the purpose of fitting out with pistols, clothing, money, &c., men desiring to join the Southern service; and, in the lodges of the order in St. Louis and Northern Missouri, money has often been raised to purchase horses, arms, and equipments, for soldiers about to be forwarded to the Southern army. In the latter State, parties empowered by Price, or by Grand Commander Hunt as his representative, to recruit for the rebel service, were nominally authorized to "*locate lands,*" as it was expressed, and in their reports, which were formally made, the number of acres, &c., located represented the number of men recruited. At Louisville, those desiring to join the Southern forces were kept hidden, and supplied with food and lodging until a convenient occasion was presented for their transportation South. They were then collected, and conducted at night to a safe rendezvous of the order, whence they were forwarded to their destination, in some cases stealing horses from the United States corrals on their way. While awaiting an occasion to be sent South, the men, to avoid the suspicion which might be excited by their being seen together in any considerable number, were often employed on farms in the vicinity of Louisville, and the farm of one Moore, in that neighborhood (at whose house also meetings of the order were held,) is indicated in the testimony as one of the localities where such recruits were rendezvoused and employed.

6. *Furnishing the Rebels with Arms, Ammunition, &c.*—In this, too, the order, and especially its female members and allies, has been zealously engaged. The rebel women of Louisville and Kentucky are represented as having rendered the most valuable aid to the Southern army, by transporting very large quantities of percussion caps, powder, &c., concealed upon their persons, to some convenient locality near the lines, whence they could be readily conveyed to those for whom they were intended. It is estimated that at Louisville, up to May 1 last, the sum of $17,000 had been invested by the order in ammunition and arms, to be forwarded principally in this manner to the rebels. In St. Louis several firms, who are well known to the Government, the principal of which is Beauvais & Co., have been engaged in supplying arms and ammunition to members of the order, to be conveyed to their Southern allies.

7. *Co-operating with the Enemy in Raids and Invasions.*—While it is clear that the order has given aid, both directly and indirectly, to the forces of the rebels and to guerilla bands, when engaged in making incursions into the border States, yet, because, on the one hand of the constant restraint upon its action exercised by our military authorities, and, on the other hand, of the general success of our armies in the field over those of the enemy, their allies at the North have never thus far been able to carry out their grand plan of a general armed rising of the order, and its co-operation on an extended scale with the Southern forces.

An atrocious plan of concert between members of the order in Indiana and certain guerilla bands of Kentucky, agreed upon last spring, may be recalled upon in this connection. Some 2,000 or 3,000 guerillas were to be thrown into the border counties, and to assume the characters of refugees seeking employment. Being armed, they were secretly to destroy Government property wherever practicable, to control the elections by force, prevent enlistments, aid deserters, and stir up strife between the civil and military authorities.

A singular feature of the raids of the enemy remains only to be adverted to, viz: that the officers conducting these raids are furnished by the rebel Government with quantities of United States treasury notes for use within our lines, and that these are probably most frequently procured through the agency of members of the order. [All this was *before* the St Albans (Vt.) raid!]

Mary Ann Pitman, believed to be a true and faithful witness, states that Forrest, of the rebel army, at one time exhibited to her a letter to himself from a prominent rebel sympathizer and member of the order in Washington, D. C., in which it was set forth that the sum of $20,000 in "greenbacks" had actually been forwarded by him to the rebel Government at Richmond.

8. *Destruction of Government Property.*—There is no doubt that large quantities of Government property have been burned or otherwise destroyed by the agency of the order in different localities. At Louisville, in the case of the steamer Taylor, and on the Mississippi river, steamers belonging to the United States have been burned at the wharves, and generally when loaded with Government stores. Shortly before the arrest of Bowles, the senior of the major generals of the order in Indiana, he had been engaged in the preparation of "Greek fire," which was to be found serviceable in the destruction of public property. It was generally understood in the councils of the order, in the State of Kentucky, that they were to be compensated for such destruction by the rebel Government, by receiving a commission of ten per cent. of the value of the property so destroyed, and that this value was to be derived from the estimate of the loss made in each case by Northern newspapers.

9. *Destruction of Private Property and Persecution of Union Men.*—It is reported by General Carrington that the full development of the order in Indiana was followed by "a state of terrorism" among the Union residents of "portions of Brown, Morgan, Johnson, Rush, Clay, Sullivan, Bartholomew, Hendricks, and other counties" in that State; that from some localities they were driven away altogether; that in others their barns, hay, and wheat-ricks, were burned; and that many persons, under the general insecurity of life and property, sold their effects at a sacrifice, and removed to other places. At one time in Brown county, the members of the order openly threatened the lives of all "Abolitionists" who refused to sign a peace memorial which they had prepared and addressed to Congress. In Missouri also, similar outrages committed upon the property of loyal citizens are attributable in a great degree to the secret order.

In this connection the outbreak of the miners in the coal districts of eastern Pennsylvania, in the autumn of last year, may be appropriately referred to. It was fully shown in the testimony adduced upon the trials of these insurgents, who were guilty of the destruction of property and numerous acts of violence, as well as murder, that they were generally members of a secret treasonable association, similar in all respects to the K. G. C., at the meetings of which they had been incited to the commission of the crimes for which they were tried and convicted.

Assassination and Murder.—After what has been disclosed in regard to this infamous league of traitors and ruffians, *it will not be a matter of surprise to learn that the cold-blooded assassination of Union citizens and soldiers has been included in their devilish scheme of operations.* Green B. Smith states in his confession that "*The secret assassination of United States officers, soldiers, and Government employees has been discussed in the councils of the order and recommended.*" It is also shown in the course of the testimony that at a large meeting of the order in St. Louis, in May or June last, it was proposed to form a secret police of members of the order for the purpose of patrolling the streets of that city at night and killing every detective and soldier that could be readily disposed of; that this proposition was coolly considered, and finally rejected, not because of its fiendish character—no voice being raised against its criminality—but because only it was deemed premature. At Louisville, in June last, a similar scheme was discussed among the order for the waylaying and butchering of negro soldiers in the streets at night, and in the same month a party of its members in that city was actually organized for the purpose of throwing off the track of the Nashville railroad a train of colored troops and seizing the opportunity to take the lives of as many as possible. Again, in July, the assassination of an obnoxious provost-marshal, by betraying him into the hands of guerillas, was designed by members in the interior of Kentucky. Further, at a meeting of the Grand Council of Indiana at Indianapolis, on June 14th last, the murder of one Coffin, a government detective, who, as it was supposed, had betrayed the order, was deliberately discussed and fully determined upon. This fact is stated by Stidger in his report to General Carrington of June 17th last, and is more fully set forth in his testimony upon the trial of Dodd. He deposed, that at the meeting in question, Dodd himself volunteered to go to Hamilton, Ohio, where Coffin was expected to be found, and there "dispose of the latter." He adds that, prior to the meeting, he himself conveyed from Judge Bullitt, at Louisville, to Bowles and Dodd, at Indianapolis, special instructions to have Coffin "put out of the way"—"murdered"—"at all hazards."

The opinion is expressed by Colonel Sanderson, under date of June 12 last, that "the recent numerous cold-blooded assassinations of military officers and unconditional Union men throughout the military district of North Missouri, especially along the western border," is to be ascribed to the agency of the order. The witness, Pitman, represents that it is "a part of the obligation or understanding of the order" to kill officers and soldiers, "*whenever it can be done by stealth,*" as well as loyal citizens, when considered important or influential persons; and she adds, that while at Memphis, during the past summer, she *knew* that men on picket were secretly killed by members of the order approaching them in disguise.

In this connection may be recalled the wholesale assassination of Union soldiers by members of the order and their confederates, at Charleston, Illinois, in March last, in regard to which, as a startling episode of the rebellion, a full report was addressed from this office to the President, under date of July 26 last. This concerted murderous assault upon a scattered body of men, mostly unarmed—apparently designed for the mere purpose of destroying as many lives of Union soldiers as possible—is a forcible illustration of the utter malignity and depravity which characterize the members of this order in their zeal to commend themselves as faithful allies to their fellow-conspirators at the South.

It need only be added that a most satisfactory test of the credibility and weight of much of the evidence which has been furnished is afforded by the printed testimony in regard to the character and intention of the order, which is found in its national and state constitutions and its ritual. Indeed, the statements of the various witnesses are but presentations of the logical and inevitable consequences and results of the principles therein set forth.

In concluding this review, it remains only to state that a constant reference has been made to the elaborate official reports, in regard to the order, of Brigadier General Carrington, commanding District of Indiana, and of Colonel Sanderson, Provost Marshal General of the Department of Missouri. The great mass of the testimony upon the subject of the secret conspiracy has been furnished by these officers; the latter acting under the orders of Major General Rosecrans, and the former co-operating, under the instructions of the Secretary of War, with Major General Burbridge commanding District of Kentucky, as well as with Governor Morton, of Indiana, who, though at one time greatly embarrassed, by a legislature strongly tainted with disloyalty, in his efforts to repress the domestic enemy, has at last seen his State relieved from the danger of a civil war.

But, although the treason of the order has been thoroughly exposed, and although its capacity for fatal mischief has, by means of the arrest of its leaders, the seizure of its arms, and the other vigorous means which have been pursued, been seriously impaired, it is still busied with its secret plottings against the Government, and with its perfidious designs in aid of the Southern rebellion. It is reported to have recently issued new signs and passwords, and its members assert that *foul means will be used to prevent the success of the Administration at the coming election, and threaten an extended revolt in the event of the re-election of President Lincoln.*

In the presence of the rebellion and of this secret order—which is but its echo and faithful ally—we cannot but be amazed at the utter and wide-spread profligacy, personal and political, which these movements against the Government disclose. The guilty men engaged in them, after casting aside their allegiance, seem to have trodden under foot every sentiment of honor and every restraint of law, human and divine. Judea produced but one Judas Iscariot, and Rome, from the sinks of her demoralization, produced but one Catalina, and yet, *as events prove, there has arisen together in our land an entire brood of such traitors, all animated by the same parricidal spirit, and all struggling with the same relentless malignity for the dismemberment of our Union.* Of this extraordinary phenomenon—not paralleled, it is believed, in the world's history—there can be but one explanation, and all these blackened and fetid streams of crime may well be traced to the same common fountain. So fiercely intolerant and imperious was the temper engendered by slavery, that when the Southern people, after having controlled the national councils for half a century, were beaten at an election, *their leaders turned upon the Government with the insolent fury with which they would have drawn their revolvers on a rebellious slave in one of their negro quarters; and they have continued since to prosecute their warfare amid all the barbarisms and atrocities naturally and necessarily inspired by the infernal institution in whose interests they are sacrificing alike themselves and their country.* Many of these conspirators, as is well known, were fed, clothed, and educated at the expense of the nation, and were loaded with its honors at the very moment they struck at its life with the horrible criminality of a son stabbing the bosom of his own mother, while impressing kisses on his cheeks. The leaders of the traitors in the loyal States, who so completely fraternize with these conspirators, and whose machinations are now unmasked, it is as clearly the duty of the Administration to prosecute and punish, as it is its duty to subjugate the rebels who are openly in arms against the Government. In the performance of this duty, it is entitled to expect, and will doubtless receive, the zealous co-operation of true men everywhere, who, in crushing the truculent foe ambushed in the haunts of this secret order, should rival in courage and faithfulness the armies which are so nobly sustaining our flag on the battle-fields of the South.

Respectfully submitted,

J. HOLT, Judge Advocate General.

THE DEAD CONFEDERACY.

England's Concessions to it all Withdrawn.

Secretary Seward's Official Announcement of the Fact.

WASHINGTON, June 19.—The Secretary of State has addressed the following to the Secretary of the Navy:

DEPARTMENT OF THE STATE,
WASHINGTON, June 19, 1865.

Hon. Gideon Welles, Secretary of the Navy:

SIR: I have the honor to transmit for your information a correspondence between Sir Frederick W. H. Bruce and the department, upon the subject of the withdrawal of the pretended concession of belligerent rights to the insurgents.

In view of this correspondence I suggest, therefore, that you communicate to the naval officers of the United States the results following therefrom, namely:

First, Great Britain withdraws her concessions heretofore made of a belligerent character from the insurgents.

Second, That the withdrawal of the twenty-four hours' rule has not been made absolute by Great Britain, and that therefore the customary courtesies are not to be paid by our vessels to those of the British navy.

Third, The right of search of British vessels is terminated. Of course this has no bearing upon the operation of the existing slave-trade treaty.

Fourth, Any insurgent or piratical vessels found on the high seas, may be lawfully captured by vessels of the United States.

I have the honor to be, sir,
Your obedient servant,
WILLIAM H. SEWARD,
Secretary of State.

Convention of Congregationalists.

BOSTON, June 19.—The sessions of the Congregational churches held in the Mount Vernon church, are expected to continue through the present week. Among the subjects considered to-day, were ministerial education, building of new churches, and systematising benevolent contributions.

A series of resolutions were adopted on the state of the country.

Governor Andrew visited the session this afternoon where he was very cordially received.

Rev. Dr. Thompson, of New York, assistant moderator, made a highly complimentary address to the Governor, to which an appropriate response was given.

THE TRIAL.

REVERDY JOHNSON'S ARGUMENT FOR THE DEFENCE.

Denial of the Jurisdiction of the Military Court.

PRECEDENTS, LAWS, THE CONSTITUTION, &c., CITED AND ELABORATED.

The Civil Law held to be Ever Supreme, and Especially in the Case on Trial.

Witnesses for the Prosecution Asserted to be Accessories to the Murder.

THE DEFENCE OF HAROLD, ARNOLD, AND O'LAUGHLIN.

WASHINGTON, June 19.—Mr. Aiken stated to the court that he would not be prepared until Wednesday to read the argument in the case of Mrs. Suratt. The delay was attributable to the voluminous evidence previously to be examined by him.

Reverdy Johnson's Argument.

Mr. Clampitt read the argument addressed to the president and gentlemen of the commission, signed by Reverdy Johnson and concurred in by Frederic A. Aiken and John W. Clampitt as associate counsel for Mrs. Mary E. Suratt.

MR. PRESIDENT AND GENTLEMEN OF THE COMMISSION: Has the Commission jurisdiction of the cases before it is the question which I propose to discuss. That question, in all courts, civil, criminal, and military, must be considered and answered affirmatively before judgment can be pronounced. And it must be answered correctly, or the judgment pronounced is void. Ever an interesting and vital inquiry, it is of engrossing interest and of awful importance, when error may lead to the unauthorized taking of human life. In such a case, the court, and the officer who is to approve its judgment and have it executed, have a concern peculiar to themselves. A responsibility is involved, which, how ever conscientiously and firmly met, cannot fail to awaken a great solicitude and induce the most mature consideration. Even honest error affords no impunity. The legal personal consequences cannot be avoided. This is said with no view to shake your firmness. Such an attempt would be discourteous and unprofitable. The Commission will, I am sure, meet all responsibility as becomes gentlemen and soldiers. My sole object in adverting to it is to obtain a well-considered and matured judgment. So far, the question of jurisdiction has not been discussed. The pleas which specially present it, as soon as filed, were overruled. The commission you are acting under of itself could not and does not decide it. If unauthorized, it is a mere nullity, the usurpation of a power not vested in the Executive, and conferring no authority whatever upon you. To hold otherwise would be to make the Executive the exclusive and conclusive judge of its own powers, and that would be to make that department omnipotent. The powers of the President under the Constitution are amply sufficient to give all needed efficiency to the office. The Convention that formed the Constitution, and the people who adopted it considered those powers sufficient, and granted no other. Danger to liberty is more to be dreaded from the Executive than from any other department of the Government. So far, therefore, from meaning to extend its powers, they were studious to place them beyond that reach of abuse. Before entering "on the execution of his office," the President is required to take an oath "faithfully" to discharge its duties, and to the best of his "ability preserve, protect, and defend the Constitution of the United States." He is also liable to "removal from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." If he violates the Constitution, if he fails to preserve it, and, above all, if he usurps powers not granted, he is liable to his official oath, and liable to be indicted, convicted, and impeached. In such a contingency "he shall be removed" is the command of the Constitution. His powers, all of them, in peace and in war, are only such as the Constitution confers. The character of the men who composed the convention, and the spirit of the American people at that period would prove this. Hatred of a monarchy, from which they had recently separated, and a deep-seated love of constitutional liberty, constituted them a people who could never delegate any executive authority not so carefully restricted as to render its abuse almost impossible. These observations, I suppose, will not be denied. Hence it follows that an executive act, beyond executive authority can furnish no defence against the legal consequences of what are done under it. The question of jurisdiction may be raised by counsel at any stage of the trial, and if it is, not the court only may, but is bound to notice it. Unless jurisdiction, then, exists, the authority to try does not exist, and whatever is done is "*coram non judice,*" and utterly void.

O'Brien tells us the question may be raised by demurrer if the facts charged do not constitute an offence, or not an offence cognizable by a military court, or that it may be raised by a special plea or under the general one of not guilty. (O'Brien, 248.) DeHart says: "The court is the judge of its own competency at any stage of its proceedings, and is bound to notice questions of jurisdiction whenever raised." (DeHart, 111.)

The decision of this question being essential to the validity of its judgment, the commission must decide whether it has jurisdiction over these parties and the crimes imputed to them. That a tribunal like this has no jurisdiction other than military offences, is believed to be self-evident. That crimes defined and punished by the civil law, and whose trial is provided for by the same law, are not the subjects of military jurisdiction, is, of course, true. A military offence must, therefore, be made to appear, and when it is, it must also appear that the military law provides for its trial and punishment, otherwise the case is unprovided for, and, as far as the military power is concerned, is to go unpunished. But, as either the civil, common, or statute law embraces every species of offence that the United States or the States have deemed it necessary to punish, in all such cases the civil courts are clothed with every necessary jurisdiction. In a military court, if the charge does not state a "crime provided for by any of the articles of war," the prisoner must be discharged. (O'Brien, p. 235.) Nor is it sufficient that the charge is of a crime known to the military law. The offender, when he commits it, must be subject to military jurisdiction. The general law has its supreme and undisputed jurisdiction over all. The military law puts forth no such pretension; it aims solely to enforce on the soldier the additional duties he has assumed. It constitutes tribunals for the trial of breaches of military duty only." (O'Brien, pp. 26, 27.)

The provisions of the Constitution clearly maintain the same doctrine. The Executive has no authority "to declare war, to raise and support armies, to provide and maintain a navy," or to make "rules for the government and regulation" of either force. These powers are exclusively in Congress. In England the King has this power, though Parliament has frequently interposed and regulated for itself. But with us it was thought safest to give the entire power to Congress, "since otherwise summary and severe punishment might be inflicted at the mere will of the Executive" (3, Story's Com., sec. 1192.) In respect to citizens not belonging to the army or navy, the power was conferred exclusively on Congress, to prevent that class being made the objects of abuse by the Executive. The existence of such a power being vital to discipline, it was necessary to provide for it, but citizens not belonging to the army or navy were not, under any circumstances, to be deprived of any of the guarantees of personal liberty provided by the Constitution. The very nature of the Government is inconsistent with such a pretension. It is a rule of interpretation coeval with its existence that the Government possesses no powers ungranted by express delegation. This would be the rule incident to the very nature of the Constitution; but to make it an imperative rule, the tenth amendment declares that "the power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The power given to Congress is "to make rules for the government and regulation of the land and naval forces." And these words are to be construed to exclude all others, as if negative words to that effect had been added.

But, so jealous were our ancestors of ungranted power, and so vigilant to protect the citizen against it, they were unwilling to leave him to the safeguards which a proper construction of the Constitution furnished. They determined not only to guard him against executive and judicial, but against Congressional abuse. With that view, they adopted the fifth constitutional amendment, which declares that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger."

This exception is designed to leave in force, not to enlarge, the power vested in Congress by the original Constitution. "The land or naval forces" are the terms used, and, until lately, have been supposed to exclude from military jurisdiction offences committed by citizens not belonging to such forces. Kent, in a note to his 1 Com. p. 341, states, and with accuracy, that "military and naval crimes and offences committed while the party is under the immediate authority of the army and navy, and in actual service, are not cognizable under the common law jurisdiction of the courts of the United States. According to this great authority, every other class of persons is entitled to the protection of the proceeding by presentment or indictment, and a public trial in a civil court. If the Constitutional amendment has not that effect, then the provisions in the sixth amendment are equally inoperative. They, "in all criminal prosecutions," give the accused a right to a speedy and public trial, a right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to compulsory process for his witnesses, and the assistance of counsel. The exception in the fifth amendment, applies, by necessary implication at least, in part to this. For the provisions of the sixth amendment, unless subject to the exceptions of the fifth, would be inconsistent with the fifth. The sixth is, therefore, to be construed as if it in words contained the exception.

If a military commission can deprive a citizen of the benefit of the guarantees secured by the fifth amendment, it can deprive him of those secured by the sixth. It may deny him the right to "a speedy and public trial," information "of the nature and cause of the accusation," of the right "to be confronted with the witnesses against him," of "compulsory process for his witnesses," and of "the assistance of counsel for his defence." That this can be done no one has, as yet, maintained. No opinion, however latitudinarian, of Executive power has to this time been found to go to that extent. No writer has ever maintained such a doctrine. Argument to refute it is unnecessary. It refutes itself. For, if sound, the sixth amendment, which our fathers thought so vital to individual liberty, when assailed by governmental prosecution, is but a dead letter. Against such a doctrine the very instincts of freemen revolt. It has no foundation but in the principle of unrestrained, tyrannic power, and passive obedience. If it be well founded, then are we, indeed, a nation of slaves and not of freemen.

But the Constitution is not so fatally defective. In war and in peace it is equally potential for the promotion of the general welfare, and as involved in and necessary to such welfare for the protection of the individual citizen. Certainly, until this rebellion, this has been the proud and cherished conviction of the country. And it is to this conviction and the assurance that it could never be shaken that our past prosperity is to be referred. God forbid that mere power, dependent for its exercise on Executive will shall ever be substituted in its place. Should that unfortunately ever occur, the sacrifices of our ancestors and the design of the Constitution will all have been in vain.

I proceed now to examine the grounds on which I am informed your jurisdiction is maintained.

I. That it is an incident of the war power.

That power, whatever be its extent, is exclusively in Congress. War can only be declared by that body. With its origin, the President has no concern whatever. Armies, which are necessary, can only be raised by the same body. Not a soldier, without its authority, can be brought into service by the executive. He is as impotent to that end as a private citizen. Armies raised by Congressional authority, can only be governed by "rules" prescribed by the same authority. The Executive possesses no power over the soldier, except such as Congress may confer upon him. If it was true that the creation of a military commission like the present is incidental to the war power, it must be authorized by the department to which that power belongs, and not by the Executive.

And if it be involved in the power "to make rules for the government of the land and naval forces," the result is the same. It must be done by Congress, to whom that power exclusively belongs. Has Congress, then, under either power, authorized such a Commission as this? If it has, let the statute be produced. It is certainly not done by that of the 10th of April, 1806. No military courts are there mentioned or provided for but courts-martial and courts of inquiry. Military Commissions are not only not authorized, but are not even alluded to. The parties who, under that act, can be tried by courts-martial or courts of inquiry, are not made subject to trial by a military commission. Nor is such a tribunal mentioned in any prior statute, or in any subsequent one, until those of the 17th of July, '62, and of the 3d of March, '63. In the 5th section of the first, the records of "military commissions" are to be returned for revision to the Judge Advocate General. But how such commissions are to be constituted, what powers they are to have, how their proceedings are to be conducted, or what cases and parties they are to try, are not provided for. In the 38th section of the second they are mentioned as competent to try persons "lurking or acting as spies."

But, if military commissions can be created, and from their very nature possess jurisdiction to try all alleged military offences, why was it necessary to give them the power, by express words, to try persons "lurking or acting as spies?" What reason can be suggested for conferring the power by express language than that without it, it would not be possessed? Before these statutes were passed a commission called a Military Commission had been named by the Executive, to examine into certain military claims against the Western Department, and Congress, on the 11th of March, 1862, provided for the payment of its awards. Against such a commission no objection can be made.

But, until this rebellion, a military commission like the present, organized in a loyal State or Territory, where the courts are open and the proceedings unobstructed, clothed with the jurisdiction attempted to be conferred upon you, is not to be found sanctioned or even alluded to by any writer on military law in England or the United States. It has its origin in the rebellion, and nothing is more certain than that it will be an almost equally dangerous heresy to constitutional liberty, and, the rebellion ended, perish with the other then and forever.

But such commissions were authorized by Lieutenant-General Scott in his Mexican campaign. On the 17th of September, 1847, he republished, with additions, his order of the 19th of February preceding, declaring martial law. By this order he authorized the trial of certain offences by military commissions. From their jurisdiction, however, he excepts cases "clearly cognizable by courts-martial," and limits the cases to be tried to such as are "not provided for in the act of Congress establishing rules and articles for the government of the armies of the United States."

And he further tells us that even this order, when handed to the then Secretary of War (Mr. Marcy) "for his approval," was "soon silently returned as too explosive for safe handling." "A little later," he adds, "the Attorney General (Mr. Cushing) asked for a copy, and the law officer of the Government, whose business it is to speak on all such matters, was stricken with *legal dumbness.*" (Ib.) How much more paralyzed would these great men have been had they been consulted on such a commission—a commission not to sit in another country and try offences not provided for by any law of the United States, civil or military, then in force, but in their own country, and in a place in which there are laws, and civil courts clothed with ample powers and in the daily and undisturbed exercise of their jurisdiction.

The second clause of the order mentions, among other offences to be so tried, "assassination, murder, poisoning," and in the fourth (correctly, as I submit,) he states that "the rules and articles of war," do not provide for the punishment of any one of the designated offences, "even when committed by individuals of the army upon the persons or property of other individuals of the same, except in the very restricted case of the ninth of the articles." The authority for even this restricted commission, Scott, not more eminent as a soldier than civilian, placed entirely upon the ground that the named offences, if committed in a foreign country by American troops, could not be punished under any law of the United States then in force.

If it be suggested that the civil courts and juries for this district could not safely be relied upon for the trial of these cases, it would be an unjust reflection upon the judges, the people, and upon our civil institutions themselves. If it be suggested that a secret trial, in whole or in part, could not be had before any other than a military tribunal, the answer is that the Constitution, "in all criminal prosecutions," gives the accused the "right to a public trial." So abhorrent were private trials to our ancestors, that these were denounced, and as they no doubt thought, so guarded against as in all future time to be impossible.

But the suggestion also rests on the idea that the only object of the Constitution and laws is to afford means to establish the alleged guilt. That accusation is to be esteemed *prima facie* presumption of guilt, and that the Executive should be armed with all the appliances deemed by him necessary to make the presumption conclusive. Never was there a more dangerous theory. The peril to the citizen from such a prosecution, the elementary principles of constitutional liberty—the spirit and letter of the Constitution itself—repudiate it.

Innocent parties, sometimes by private malice, sometimes from supposed public policy, have been the subjects of criminal accusation. How are such parties to be protected if a public trial can be denied them, and a secret one, in whole or in part, substituted? A trial so conducted, though it may not be intended to procure the punishment of any but the guilty, subjects the innocent to great danger. It partakes of the character of the inquisition, which the civilization of the age has driven almost wholly out of existence. In the palmiest days of that tribunal, heresy suspected was ample ground for arrest; accomplices and criminals were received as witnesses, and the whole trial was secret, and conducted in a chamber almost as silent as the grave.

Can it be that a secret trial, wholly or partially, if the Executive so decides, is all that an American citizen is entitled to? Such a doctrine, maintained by an English monarch, would shake his Government to its very centre. It will be no answer to these observations to say that this particular trial has been only in part a secret one, and that secrecy will never be exercised except in cases of justice. The reply is that the principle itself is inconsistent with American liberty as secured by constitutional guarantees. It makes these guarantees dependent on Executive will.

The patriotic authors of the Constitution intended to place the citizen, in this particular, beyond the power, not only of the Executive, but of every department of the Government. They deemed the right to a public trial vital to his security and his protection. A public trial of all criminal prosecutions they therefore secured in unqualified terms. What would these great men have said had they been asked so to qualify the terms as to warrant its refusal under any circumstances? What would they have said if told that, without such qualification, the Executive would be able to impose it as incidental to Executive power?

II. Let me present the question in another view. If such a commission as this can be legally constituted, can it be done by mere Executive authority?

1. You are a court, if legally existing, endowed with momentous power. By the express words of the Constitution, "an army can only be raised," governed, and regulated by the laws passed by Congress. In the exercise of the power to rule and govern it, the act before referred to, of the 10th of April, 1806, establishing the articles of war, was passed. That act provides only for courts-martial and courts of inquiry, and designates the cases to be tried before each. Military commissions are not mentioned. The jurisdiction of such courts is also exclusively legislative. What cases are to be tried, how judges are to be selected, how qualified, what are the rules of evidence, and what punishments are to be inflicted, belong to the same department. The very element of constitutional liberty is a separation of the legislative, judicial, and executive powers. Article 1st of our Constitution declares that "all legislative powers herein granted shall be vested in a Congress." Article 2d vests "the executive power" in a President, and article 3d "the judicial power in certain designated courts and in courts to be thereafter constituted by Congress." If, then, courts, their laws, modes of proceeding, and judgments, belong to legislation; in the absence of legislation in regard to this court and its jurisdiction to try the present cases, it has no legal existence or authority. The executive cannot confer it. The offences to be tried by it, the punishment it may award, cannot, for the same reason, be prescribed by the executive. These all exclusively belong to Congress. If it be contended that the executive has the powers in question, because they are involved in the war power or in the President's constitutional function as commander-in-chief, then this would follow—that they would not be subject to Congressional control. If this be so, the executive may not only constitute and regulate military commissions, prescribing their laws, but all legislation upon the subject by Congress would be usurpation. That the proposition leads to this result would seem to be clear, and if it does, that result itself is inconsistent with all legislation and executive practice, and so repugnant to constitutional liberty that it demonstrates its utter unsoundness. The end of the power given to Congress to make rules for the government and regulation of the land forces cannot be attained except through uniformity of government and regulation, and this is not to be attained if the power is in two hands. To be effective, therefore, it must be in one, and the Constitution gives it to one—to Congress—in express terms. In the absence, then, of all mention of military commissions in the Constitution, and in the absence of all mention of such commissions in the act of the 10th of April, 1806, how can the power be considered as in the President?

It is stated that the constitutional guarantees referred to are designed only for a state of peace. There is not a syllable in the instrument that justifies, even plausibly, such a qualification. These are secured by the most general and comprehensive language. They are also more peculiarly necessary to the security of personal liberty in war than in peace. All history tells us this. Individual safety in times of war is more in peril than at any other. Constitutional limitations and guarantees are then absolutely necessary. The maxim "*salus populi suprema est lex*" is but fit for a tyrant's use. Under its pretence the grossest wrongs have been committed, awful crimes perpetrated, and every principle of freedom violated, until at last, worn down by suffering, the people have acquiesced in a despotism. Nature without law would be chaos, government without law anarchy, or despotism.

If the power in question is claimed under the authority supposed to be given the President in certain cases to suspend the writ of *habeas corpus,* and to declare martial law, the claim is equally untenable. The first of these powers is given the President "when in cases of rebellion or invasion," he deems the public safety requires it. I think he has this power, but there are great and patriotic names who think otherwise. But if he has it, or it be in Congress alone, its exercise works no other result than the suspension of the writ, or having the cause of arrest passed upon at once by the civil judges.

In what court, or how he is to be tried, what evidence is to be admitted, and what judgment pronounced, are all to be what the Constitution secures and the laws provide, when there is no suspension of the writ. The purpose of the writ is to ascertain the legality of the arrest. If adjudged legal, the party is detained, if illegal, discharged. But, in either contingency, when called to answer any criminal accusation, and he is a civilian and not subject to the articles of war, it must be done by presentment or indictment, and his trial be had in a civil court. The very fact, too, that express power is given in a certain condition of things, to suspend the writ referred to, and no power to suspend, or deny any, of the other securities for personal liberty, is conclusive to show that all the latter were designed to be in force in all cases.

III. I have already referred to the act of 1806 establishing the articles of war, and said that it provides for no military court like this; but, for argument's sake, let it be admitted. I then maintain, that it does not embrace the crimes charged against these parties or the parties themselves.

First, the charge is a traitorous conspiracy to take the lives of the designated persons. Second, that in the execution of the conspiracy the actual murder of the late President, and the attempted murder of the Secretary of State occurred. Throughout the charge and its specifications the conspiracy and its attempted execution are alleged to have been traitorous. The accusation, therefore, is not one merely of murder, but of murder designed and part accomplished with traitorous purpose. If the charge is true and the intent be also true, then the crime is treason and not simple murder.

Treason against the United States, as defined by the Constitution, can "consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." (3d Art.) This definition tells us no other crime than the defined one should be considered the offence. The same section provides "no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court." The offence in the general is the same as in England. In that country, no other treason is recognized. In the pendency of this rebellion it has been alleged that there exists with us the offence of military treason, punishable by the laws of war. It is so stated in [illegible] of General [illegible], commanding officer in [illegible], of the 5th of March, 1863. But Halleck confines it to acts committed against the army of a belligerent, when occupying the territory of the enemy. But the term *military treason* is not to be found in any English work, or military order, or, before this rebellion, in any American authority. It has evidently been adopted during the rebellion, on the authority of continental writers in Governments less free than those of England and the United States.

But if Halleck is right, the cases before you are not cases of "military treason," as he defines it. When the offences alleged are stated to have occurred in this District, the United States were not, in its occupation as a belligerent, nor was it pretended that the people of this District were, in a belligerent sense, enemies. On the contrary, they were citizens, entitled to every right of citizenship. Nor were the parties on trial enemies. They were either citizens of the District or of Maryland, and under the protection of the Constitution. The offence charged, then, being treason, it is treason as known to the Constitution and laws, and can only be tried and punished as they provide. The offence, then, being treason, as known to the Constitution, its trial by a military court is clearly illegal. Under the Constitution, no conviction of such an offence can be had "unless on the testimony of two witnesses to the overt act, or on confession in open court." Under the laws the parties are entitled to have "a copy of the indictment and a list of the jury and witnesses, with names and places of abode, at least three entire days before the trial. They also have the right to challenge peremptorily thirty five of the jury, and to challenge for cause without limitation. And, finally, unless the indictment shall be found by a grand jury, within three years next after the treason done or committed, they shall not be prosecuted, tried, or punished (act 30th April, 1790, 1 Stat., at large, pp. 118, 119). Upon what possible ground, therefore, can this commission possess the jurisdiction claimed? It is not subject to the provisions stated. The safeguards designed by the Constitution, if it has such jurisdiction, are unavailing. Trial by jury our English ancestors deemed "the great bulwark of their civil and political liberties, and watched it with an unceasing jealousy and solicitude." It constituted one of the fundamental articles of Magna Charta, "*nullus liber homo capiatur nec imprisonetur aut exulet, aut aliquo modo, destruatur, &c., nisi per legale judicium parium suorum, vel per legem terræ.*" This great right the American colonists brought with them as their birthright. It landed with them at Jamestown, and on the Rock of Plymouth, and was equally prized by Cavalier and Puritan. At times during the rebellion it has been disregarded and denied. The momentous nature of the crisis brought about by that stupendous crime has caused the people to tolerate such disregard and denial. But the crisis, thank God, has passed. The authority of the Government throughout our territorial limits is reinstated so firmly that reflecting men are convinced that the danger has passed never to return.

The result proves that the principles on which the Government rests have imparted to it a vitality that will cause it to endure for all time, in spite of foreign invasion or domestic insurrection; and one of these principles, the choicest one, is the right in cases of "criminal prosecutions to a speedy and public trial by an impartial jury," and in cases of treason to the additional securities before adverted to.

IV. But to proceed. The [illegible] of war, if they provided for the punishment of [illegible] crimes on trial, and authorized such a court as [illegible] include such parties as are on trial; and, until the rebellion, I am not aware that a different construction was ever intimated. It is the exclusive fruit of the rebellion.

The title of the act declaring the articles is "an act for establishing rules and articles for the government of the *armies of the United States.*"

The first section states that "the following shall be the rules and articles by which the armies of the United States shall be governed," and every other article, except the 56th and 57th, are in words confined to persons belonging to the army in some capacity or other. It is held by some because such words are not used in the articles referred to, it was the design of Congress to include persons who do not belong to the army. This is a wholly untenable construction; but if a correct one, would not justify the use sought to be made of it. The offences charged are a traitorous conspiracy, and murder committed in pursuance of it. Neither offence is embraced by either the 56th or 57th articles of the statute. The 56th prohibits the relieving the enemy with money, victuals, or ammunition, or knowingly harboring and protecting him, the 57th prohibits only the "holding correspondence with, or giving intelligence to, the enemy."

But, in fact, the two articles relied upon admit of no such construction. This is thought obvious, not only from the general character of the act, but because the one immediately preceding, like all those preceding and succeeding it, other than the fifty-sixth and fifty-seventh, include only persons belonging to the "armies of the United States." Its language is, "whosoever belonging to the armies of the United States, employed in foreign parts," shall do the act prohibited, shall suffer the prescribed punishment. Now, it is a familiar rule of interpretation, that unless there be something in the following sections that clearly shows a purpose to make them more comprehensive, they are to be construed as subject to the same limitation.

And when it is considered that the power exercised by Congress in passing the statute was merely to make rules for the government and regulation of the army, it is great injustice to suppose that, in exercising it, they designed to legislate for any other class. The words, therefore, in the fifty-fifth article, "belonging to the United States," qualifying the immediate preceding word, "whosoever," are applicable to the fifty sixth and fifty-seventh, and equally qualify the same word, "whosoever," also used in each of them. And, finally, upon this point I am supported by the authority of Lieutenant General Scott. He placed his right to issue his martial-law order, establishing military commissions to try certain offences in a foreign country, upon the ground that otherwise they would go unpunished. One of these offences was murder committed or attempted, and for such an offence he tells us that the articles of war provided no court for their trial and punishment, "no matter by whom or on whom committed."

V. There are other views which I submit to the serious consideration of the Commission: 1. The character of the pleadings. The offence charged is a conspiracy with persons not within the reach of the court, to commit the alleged crime. The design of the accused and their co-conspirators is averred to have been to aid the rebellion, not only by the murder of the President and Lieutenant General Grant, but of the Vice President and Secretary of State. It is further averred that the President being murdered, the Vice President becoming thereby President, and as such Commander-in-Chief, the purpose was to murder him, and, as in the contingency of the death of both, it would be the duty of the Secretary of State to cause an election to be held for President and Vice President, he was to be murdered in order to prevent a "lawful election" of these officers, and that by all these means "aid and comfort" were to be given "the insurgents engaged in armed rebellion against the United States," and "the subversion and overthrow of the Constitution and laws of the United States" thereby effected.

That such pleadings as this would not be tolerated in a civil court, every lawyer will concede. It is argumentative, and therefore unsound. The continuance of our Government does not depend on the lives of any or all its public servants. As fact or law, therefore, the pleading is fatally defective. The Government has an inherent power to preserve itself. And the result shows the folly of the madman and fiend by whose hands our late lamented President fell. He doubtless thought that the deed would subvert the "Constitution and laws." Not a power of the Government was suspended. All progressed as before the dire catastrophe. There was no halt in the march of the Government. That continued in all its majesty wholly unimpeded. The only effect was to place the nation in tears, and drape it in mourning, and to awake the sympathy and excite the indignation of the world.

But this mode of pleading renders impossible the rules of evidence known to the civil courts. It justifies, in the opinion of the judge advocate and the court, (or what has been would not have been done,) a latitude that no civil court would allow, as, in the judgment of such a court, the accused, however innocent, could not be supposed able to meet it. Proof has been received, not only of distinct offences from those charged, but of such offences committed by others than the parties on trial. Even in regard to the party himself, other offences, alleged to have been previously committed by him, cannot be proved. At one time a different practice prevailed in England; but since the days of Lord Holt (a name venerated by lawyers and all admirers of enlightened jurisprudence) it has ceased. With the same view, and not denying the right of the commission in the particular case I am about to refer to, but to show that the Constitution could not have designed to subject citizens to the practice, I cite the same judge to prove that in a civil court these parties could not have been legally fettered during their trial.

In the case of Canburn, accused as implicated in the "assassination plot," Holt put an end to what Lord Campbell terms "the revolting practice of trying criminals in fetters." Hearing the clank of chains, he said: "I should like to know why the prisoner is brought in ironed. Let them be instantly knocked off. When prisoners are tried they should stand at their ease" (13 State Trials, 221, 2d Campbell Lives Chief Justices, 140.) Finally, I deny the jurisdiction of the Commission on the ground that all the experience of the past is against it. Jefferson, ardent in the prosecution of Burr, from a firm belief of his guilt, never suggested that he should be tried before any other than a civil court. And in that trial the prisoner was granted every constitutional privilege, and no evidence permitted to be given against him but such as a civil court recognizes; and in that case, as in this, the overthrow of the Government was the alleged purpose.

In England, too, the doctrine on which this prosecution is placed is unknown. Attempts were made to assassinate George the Third and the present Queen, and Mr. Percival, then Prime Minister, was assassinated as he entered the House of Commons. And yet, in either case, the parties accused were tried before a civil court, no one suggesting any other, and during the period of the French Revolution, when its principles were being inculcated to an extent that alarmed the Government, and caused it to exert every power it possessed to frustrate their effect, when the writ of *habeas corpus* was suspended, and arrests and prosecutions resorted to almost without limit, no one suggested a trial except in the civil courts.

And yet the apprehension of the Government was that the object of the alleged conspirators was to subvert its authority, bring about its overthrow, and subject the kingdom to the horrors of the French revolution, then shocking the nations of the world.

Can it be that an American citizen is not entitled to all the rights that belong to a British subject? Can it be that, with us, Executive power at times casts into the shade, and renders all other power subordinate? An American statesman, with a world-wide reputation, long since gave an answer to these inquiries. In a debate in the Senate of the United States, in which he assailed what he deemed an unwarranted assumption of Executive power, he said, "the first object of a free people is the preservation of their liberties, and liberty is only to be maintained by constitutional restraints and just divisions of political power." And he added: "Mr. President, the contest for ages has been to rescue liberty from the grasp of executive power. In the long list of the champions of human freedom there is not one name dimmed by the reproach of advocating the extension of executive authority."

Webster, if here, would be heard raising his mighty voice against the jurisdiction of this Commission—a jurisdiction placed upon executive authority alone. But it has been urged that martial law warrants such a Commission, and that such law prevails here. It is not necessary to inquire whether martial law, if it did prevail, would maintain your jurisdiction, as it does not prevail. It has never been declared by any competent authority, and the civil courts, we know, are in full and undisturbed exercise of all their functions. We learn, and the fact is doubtless true, that one of the parties, the very chief of the alleged conspiracy, has been indicted, and is about to be tried before one of those courts. If this, the alleged head and front of the conspiracy, is to be so tried, upon what ground of right, of fairness, or of policy can the parties who are charged to have been his mere instruments, be deprived of the same mode of trial? It may be said that, in acting under this Commission, you are but conforming to an order of the President, which you are bound to obey. Let me examine this for a moment. If that order merely authorizes you to investigate the cases and report the facts to him, and not to pronounce a judgment, and is to that extent legal, then it is because the President has the power himself, without such proceeding, to punish the crime, and has only invoked your assistance to enable him to do it the more justly.

Can this be so? Can it be that the life of a citizen, however humble, depends in any case on the mere will of the President? What more dangerous one can be imagined? Crime is defined by law. What is murder, treason, or conspiracy, and what is admissible evidence are not always and present difficult inquiries. To pass upon the first the Constitution provides courts, consisting of judges selected for legal knowledge, and made independent of Executive power. Military judges are not selected, and, so far from being independent, are absolutely dependent on such power. To pass upon the latter it provides juries, as not being likely to "partake of the wish and opinions of the Government." But if your function is only to act as aids to the President, to enable him to exercise his function of punishment, and, as he is under no obligation, by any law, to call for such aid, he may try and punish upon his own unassisted judgment, and without even the form of a trial. In conclusion, then, gentlemen, I submit that your responsibility, in a proceeding like this, can find no protection in Presidential authority. I have already suggested, in the outset of these remarks, that the responsibility in one contingency may be momentous. I recur to it again, disclaiming, as I did at first, the wish or hope that it would cause you to be wanting in a single particular, of what you may believe to be your duty, but to obtain your best and most matured judgment.

Responsibility to personal danger can never alarm soldiers who have faced death on the battle-field. But there is a responsibility that every gentleman, be he soldier or citizen, will constantly hold before him and make him ponder—responsibility to the Constitution and laws of his country and an intelligent public opinion, and prevent his doing anything knowingly that can justly subject him to the censure of either. Your responsibility is great. If the commission under which you act is void and confers no authority, whatever you do may involve the most serious personal liability. Cases have occurred that prove this. It is sufficient to refer to one. Joseph Wall, at the time of the offense charged against him was committed, was governor and commander of the garrison of Goree, a dependency of England, in Africa.

The indictment was for the murder of Benjamin Armstrong, and the trial was had in January, 1802, before a special court. The crime was committed in 1782, and under a military order of the accused and the sentence of regimental court-martial. The defence relied upon was that the garrison was in a state of mutiny, and the deceased took a prominent part in it. The offence was purely a military one, and belonged to the jurisdiction of a military court, if the facts relied upon by the accused were true, and its judgment constituted a valid defence.

The court, however, charged that if there was no mutiny to justify such a court martial, or its sentence, that they were void and furnish no defence. The jury so finding, found the accused guilty, and he was executed. (28 St. Tr. 51-178). The application of the principle of this case is obvious. Want of jurisdiction in the court martial was fatal, as a defence for the death that ensued under it. In this, if the Commission has no jurisdiction, its judgment, for the same reason, will be of no avail. Again, upon the point of jurisdiction, I beg leave to add, that the opinion I have endeavored to maintain is believed to be the almost unanimous opinion of the profession, and certainly is of every judge or court who has expressed any.

In Maryland, where such commissions have been and are held, the judge of the Criminal Court of Baltimore recently made it a matter of special charge to the grand jury. Judge Bond told them: "It has come to my knowledge that here, where the United States Court has always been unimpeded, and where the marshal of the United States, appointed by the President, selects the jurors, irresponsible and unlawful military commissions attempt to exercise criminal jurisdiction over citizens of this State, not in the military or naval service of the United States, nor in the militia, who are charged with offences either not known to the law, or with crimes for which the mode of trial and punishment are provided by statute in the courts of the land. That it is not done by the paramount authority of the United States, your attention is directed to Article V. of the Constitution of the United States, which says: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger." Such persons, exercising such unlawful jurisdiction, are liable to indictment by you as well as responsible in civil actions to the parties. In New York, Judge Peckham, of the Supreme Court of that State, and speaking for the whole bench, charged their grand jury as follows:

"The Constitution of the United States, Article 5, of the amendments, declares that 'no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger.'

"Article 6 declares that in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial.'

"Article 3, section 2, declares that 'the trial of all crimes, except in cases of impeachment, shall be by jury,' &c.

"These provisions were made for occasions of great excitement, no matter from what cause, when passion rather than reason might prevail.

"A great crime has lately been committed, that has shocked the civilized world. Every right-minded man desires the punishment of the criminals; but he desires that punishment to be administered according to law, and through the judicial tribunals of the country. No star chamber court, no secret inquisition in this nineteenth century, can ever be made acceptable to the American mind.

"If none but the guilty could be accused, then no trial could be necessary; execution should follow accusation.

"It is almost as necessary that the public should have undoubted faith in the purity of criminal justice, as it is that justice should in fact be administered with integrity.

Grave doubts, to say the least, exist in the minds of intelligent men as to the constitutional right of the recent military commission at Washington to sit in judgment upon the persons now on trial for their lives before that tribunal. Thoughtful men feel aggrieved that such a commission should be established in this free country when the war is over, and when the common law courts are open and accessible to administer justice according to law, without fear or favor.

* * * * * * * *

Even in France, during the Consulship of Napoleon, the institution of a military commission for the trial of the prisoner, Duc d'Enghien, for an alleged conspiracy against his life, was, to the irreparable injury of his reputation, ordered by Napoleon.

Upon the whole, then, I think I shall not be considered obtrusive if I again invoke the court to weigh well all that I have thought it my duty to urge upon them. I feel the duty to be upon me as a citizen sworn to do all that I can to preserve the Constitution and the principles on which it rests. As counsel of one of the parties, I should esteem myself dishonored if I attempted to rescue my client from a proper trial for the offence charged against her by denying the jurisdiction of the Commission upon grounds that I did not conscientiously believe to be sound; and in what I have done I have not more had in view the defence of Mrs. Suratt than of the Constitution and the laws. In my view in this respect her cause is the cause of every citizen; and let it not be supposed that I am seeking to secure impunity to any who may have been guilty of the horrid crimes of the night of the 14th of April. God forbid that such crimes should go unpunished.

In the black catalogue of offenses, these will forever be esteemed the darkest and deepest ever committed by sinning man. And, in common with the civilized world, do I wish that every legal punishment may be legally inflicted upon all who participated in them. A word more, gentlemen. As you have discovered, I have not remarked on the evidence in the case of Mrs. Suratt, nor is it my purpose. But it is proper that I refer to her case in particular for a single moment. That a woman, well educated, and, as far as we can judge from all her past life, as we have it in evidence, a devout Christian, ever kind, affectionate, and charitable, with no motive disclosed to us that could have caused a total change in her very nature, could have participated in the crimes in question is it almost impossible to believe.

Such a belief can only be forced upon a reasonable, unsuspecting, unprejudiced mind by direct and uncontradicted evidence, coming from pure and perfectly unsuspected sources. Have we these? Is the evidence uncontradicted? Are the two witnesses, Weichman and Lloyd, pure and unsuspected? Of the particulars of their evidence, I say nothing. They will be brought before you by my associates. But this conclusion in regard to those witnesses must have in the minds of the court, and is certainly impressed upon my own, that if the facts which they themselves state as their connection and intimacy with Booth and Payne is true, their knowledge of the purpose to commit the crimes, and their participation in them, is much more satisfactorily established than the alleged knowledge and participation of Mrs. Suratt. As far, gentlemen, as I am concerned, her case is now in your hands.

REVERDY JOHNSON.

JUNE 16, 1865.

As associate counsel for Mrs. Mary E. Suratt, we concur in the above.

FREDERICK A. AIKEN,
JOHN W. CLAMPITT.

The Defence of Harold.

F. Stone, Esq., counsel for Harold, being necessarily absent, the argument prepared by him was read by Mr. James J. Murphy, one of the official reporters of the court.

It commences by saying, that at the earnest request of the widowed mother and estimable sisters of the accused, he had consented to act as counsel. After denying the jurisdiction of this court, the counsel says, the charge in this case consists of several distinct and separate offences, embodied in one charge. The parties accused are charged with a conspiracy in aid of the rebellion, with murder, with assault, with intent to kill, and with lying in wait. It is extremely doubtful, from the language of the charge and the specification, under which of the following crimes the accused, Harold, is arraigned and now on his trial, viz: First. Whether he is on trial for the crime of conspiracy to overthrow the Government of the United States, or punishable by the act of the Congress of the United States passed the 31st of July, 1861; or, second, whether he is on his trial for giving aid and comfort to the rebellion, as punishable by the act of Congress passed the 15th of July, 1862; or, third, whether he is on trial for aiding or abetting the murder of Abraham Lincoln, President of the United States. His counsel would understand the legal definitions of the three crimes above mentioned, but does not understand that either to the common law or to the laws of war is known any one offence composed of the three crimes mentioned in the charge. He knows of no one crime of a conspiracy to murder and an actual murder, all in aid of the rebellion, distinct and separate from the well-known and defined crimes of murder or conspiracy in aid of the rebellion, as defined by the act of Congress. It is extremely doubtful, from the language of this charge, whether the murder of the President of the United States is not referred to as to the mere means by which the conspirators gave aid and comfort to the rebellion; whether it was not merely the overt act by which the crime of aiding the rebellion was completed.

First. As to the crime of conspiracy, the counsel, after reviewing the testimony for the Government, says: These facts would probably convict fifty people, but they do not give either separately or collectively the slightest evidence that this boy Harold ever conspired with Booth and others in aid of the rebellion and for the overthrow of the Government of the United States. They show nothing that might not have occurred to any one perfectly innocent. The term "confidential communication" is the witness' (Weichman's) own construction. He meant only to say that the three were talking together; that after leaving the theatre, where they had been, they stopped and went into a restaurant, and that he left them there talking together near a store. So much for the conspiracy. Of the fact that this boy Harold was an aider and abettor in the escape of Booth, there is no rational or reasonable doubt. He was clearly guilty of that crime, and must abide by its consequences; but the accused, by his counsel, altogether denies that he was guilty of the murder of Abraham Lincoln, or that he aided or abetted in such murder, as set forth in the specification and charge; but, though Booth exercised unlimited control over this miserable boy, body and soul, he found him unfit for deeds of blood and violence; he was cowardly; he was too weak and trifling, but still he could be made useful. He knew some of the roads through lower Maryland, and Booth persuaded him to act as a guide, foot-boy, and companion. This accounts for their companionship. There was one piece of evidence introduced by the Government that should be weighed by the commission. It is the declaration of Booth made at the time of his capture: "I declare before my *Maker* this man is innocent." Booth knew well enough, at the time he made that declaration, that his hours, if not his minutes, were numbered. There is no evidence that Harold procured, counseled, commanded, or abetted Booth to assassinate the President of the United States. The feeble aid that he could render to any enterprise was rendered in accompanying and aiding Booth in his flight, and nothing beyond. That of itself is a grave crime, and it carries with it appropriate punishment.

The counsel concludes the defence with a quotation from Burnett on military law and courts-martial, where the punishment for particular offences is not fixed by law, but left discretionary, with the courts. The above [illegible] ence of a mandate from a still higher law ought not to be ignored, and that justice should be tempered with mercy.

The elaborate argument, of which the above is a mere notice, is signed by F. Stone, counsel for D. C. Harold.

Defence of Arnold and O'Laughlin.

Mr. Cox next offered his argument in behalf of Arnold and O'Laughlin.

He said that for himself, execrating as he did the odious crime wrought upon the Chief Magistrate of the nation, he would not have been willing to connect his name with this defence until he felt assured that the accused was merely the victim of compromising appearances, and was wholly innocent of the great offence. The evidence, he contended, showed that even if these two accused were even beguiled for a moment to listen to the suggestions of this restless schemer Booth, yet there is no blood on their hands, and they are wholly guiltless of all previous knowledge of and participation in that "arch-deed of malice" which plunged the nation into mourning.

Both the accused and their counsel have, in this trial, labored under disadvantages not incident to the civil courts and courts-martial. The accused receives not only a copy of the charge or indictment in time to prepare his defence, but also a list of the witnesses with whom he is to be confronted; and in the civil courts it is usual for the prosecutor to state in advance the general nature of the charge he expects to establish, and the general scope of the evidence he expects to adduce.

The crime was laid at Washington. The purlieus of Montreal and Toronto had been searched; the city of New York was examined; the sea had been encompassed, and Western waters and yellow fever hospitals had been visited, and this eccentric career had terminated in a New York Wood. [Laughter.] In this case the accused were aroused from their slumbers on the night before their arraignment, and for the first time presented with a copy of the charge. For the most part they were unable to procure counsel, until the trial had commenced, and when counsel were admitted they came to the discharge of their duties in utter ignorance of the whole case, which they were to combat, except as they could gather from the general language of the charge, as well as for the most part wholly unacquainted with the prisoners and their antecedents; and the consequence is that the earlier witnesses for the Government were allowed to depart with little or no cross-examination, which subsequent events showed was of vital importance to elicit the truth, and reduce their vagaries of statements to more of accuracy; and he would add that this testimony has consisted of statements of informers and accomplices, always suspicious, brought from remote places whose antecedents and character it is impossible for the prisoners to trace. He was constrained further to notice the manner in which the trial has been conducted. The accused were arraigned upon a single charge. It described one offence of some kind, but however specific in form, it seems to have been intended to fit every conceivable form of crime which the wickedness of men can devise. The crime is located at Washington, yet we have been carried to the purlieus of Toronto and Montreal, have skirted the borders of New York and Vermont, touching at Ogdensburg and St. Albans, have passed down the St. Lawrence and out to sea, inspected our ocean shipping, have visited the fever hospitals of the British isles, and have returned to the prison pen of Andersonville, and seen the camp at Belle Isle, and the historical Libby, and penetrated the secret councils of Richmond; have passed thence to the hospitals of the West, and ascended the Mississippi, and at length terminated this eccentric career in the woods of New York—under a charge against the prisoners of conspiring to kill the President and others in Washington. Jefferson Davis and his associates have been tried, and in the judgment of many, convicted of starving, poisoning, arson and other crimes too numerous to mention. He had apprehended that the counsel for the accused would appear in a false position by their apparent acquiescence in this wide range of inquiry, and therefore felt it due to himself at least to explain. For his part, he felt no interest whatever in resisting the exposure of the misdeeds of the rebel authorities and agents. His only concern has been to show that his clients had nothing to do with the conspiracy set forth in the charge. To the best of his ability he had scrutinized the evidence of that conspiracy so far as necessary to their defence. With regard to other matters, foreign to this issue, he had to say in the first place the charge was artfully framed with a view to admit them in evidence. It imputes that the accused conspired with Jefferson Davis and others to kill and murder the President, &c., with intent to aid and comfort the insurgents, &c., and thereby aid in the subversion and overthrow of the Constitution and laws of the United States; and on the principle that other acts constituting distinct offences were admitted as proof of intent, these subjects foreign to the main issue have been put in evidence. By no possible ingenuity can these foreign matters be used to the prejudice of the accused. He had supposed that the object of introducing them was to bring to the public in the shape of sworn testimony, information of the practices of the rebel leaders, to which, however irregular the proceedings, he had no objection to interpose. He could not for a moment suppose that the object was to inflame prejudice against the accused, because of their supposed remote connection with the authors of all these evils and for want of higher victims to make them the scapegoats for all the other atrocities imputed to the rebellion—to annihilate them to hush the clamors of the public for a victim, or to appease the Nemesis that has recorded the secrets of the Southern prison houses, or the dark deeds wrought by fire and pestilence.

In regard to the issue before this commission he had intended to confine himself to a simple review of the evidence, but the anomalous character of the charge, the uncertainty with which they were left with reference to the positions to be taken by the Government, and the general course of the investigation pursued, admonished him that he should present some legal considerations, at least of a general character.

Assuming, for argument sake, that the court has jurisdiction to try the accused upon this charge, he proceeded to discuss the power and limits of that jurisdiction, and the mode in which it is to be exercised, submitting some general reflections upon the character of the offences set forth in the charge and specification as they are known to and punishable by the civil law of the land; and proceeded to argue how far this commission, in dealing with them, was to be guided and restrained by that law.

Mr. Cox, in his analysis of the crimes charged, said that, below the grade of treason, crimes are ranged under two general heads—viz: felonies and misdemeanors—and proceeded to deal with the question of a conspiracy to commit a felony, and then of a conspiracy to commit treason, and then proceeded to take up the question of unexecuted conspiracy, and the case of a party involved in a conspiracy who shall withdraw from it, contending that he is not responsible for any act done by the others in prosecution of the objects of the conspiracy. Afterwards, these and other points in this connection were presented by Mr. Cox, with a large array of citations from legal authorities. The question how far tribunals sitting by virtue of martial law can depart from the established law of the land in its distinction between crimes and its scale of punishments was dealt with at considerable length.

Mr. Cox then proceeded to examine the evidence as far as was material to his case, and claimed in his analysis of proof, that no active design against the life of the president was on foot between January and the early part of April; and further, from the evidence of the government, that during that interval, Booth was contriving an entirely different project, the capture of the president and others. It further appeared that the project was abandoned, and that the abandonment is fixed by facts referred to by Booth, to wit: The defection of some of the parties, the sale of horses, &c., and that the date is ascertained to have been about the middle of March. Now, it is clear that if any connection is shown between Booth one one hand, and O'Laughlin and Arnold on the other, it existed only during the period when the absurd project of capture was agitated, and terminated with that. Their fitful stay in Washington was only between February 10th and March 18th. By Arnold's confession, it would appear that he, and if he is not mistaken, O'Laughlin, attended one meeting about the middle of March, to consider the plan of capture, but so immature was that plan, and so slight his connection with it, that he did not even know the names of the others at the meetings, two in number, besides Booth, Suratt, and Atzerott. At that meeting the scheme fell through, and he and O'Laughlin immediately afterwards left for Baltimore. Booth told him he might sell the arms he had given him, and, in fact, it's proved that he gave part of them away shortly after this. His confession, as to O'Laughlin, proves nothing but his presence at this single meeting. This was the beginning and the ending of their connection with Booth in any scheme whatever of a political character; and in this it is evident that he was the arch-contriver, and they the dupes. And when they had escaped his influence, although he still evidently clung to his design, and telegraphed and wrote and called to see them. It is evident that they refused to heed the voice of the charmer, "Charm he never so wisely." From O'Laughlin he received no response at all; from Arnold, only the letter offered in evidence. There are expressions in the letter which look to a continued renewal of their relations in the future, but they were employed to parry his importunities for the present. Certainly, all connection ceased from that time. If, therefore, any conspiracy at all is proved, by the utmost latitude of evidence, against these two accused, it was a mere unenacted, still-born scheme, scarce conceived before it was abandoned—of a nature wholly different from the offence described in this charge, the proof of which does not sustain this charge and of which the accused could not be convicted upon this trial. For this court is bound by the rules of evidence which prevail in others; and one of the most important is that the proof must correspond with the charge of indictment, and show the same offence, or the accused is entitled to acquittal; and there is no evidence which connects these two accused with that dreadful conspiracy which forms the subject of this charge. There is nothing to show that, during their brief intercourse with Booth at Washington, that nefarious design was agitated at all, certainly none that it was ever disclosed to them. And if such conspiracy had any existence, it was in a state of slumbered suspense, awaiting that sanction without which it had no motive, end, aim, or life.

Mr. Cox contended that the following conclusions were established, viz:

First. That the accused, Samuel Arnold and Michael O'Laughlin, had no part whatever in the execution of the conspiracy set forth in this charge and its specifications.

Second. That if they were implicated in such conspiracy, they withdrew from and abandoned it while yet wholly unexecuted and resting merely in intention, and are not responsible for any of the acts subsequently done in pursuance of it.

Third. That there is no legal and competent evidence implicating O'Laughlin in any conspiracy whatever, or implicating either O'Laughlin or Arnold in the conspiracy charged.

Fourth. That if there is any evidence against them of any conspiracy, it is of one wholly different from that set forth in the charge and specification, and upon these they must be wholly acquitted. He, therefore, claimed for them an absolute and unqualified acquittal. That the accused were wrong in ever joining the rebellion against their Government, no one will deny; that they were wrong in ever listening for a moment, if they ever did, to any propositions from that wicked schemer, Booth, inimical to their Government, no one will deny. But it would be to insult the intelligence of this court to waste time in showing that this court are not sitting in judgment on all the errors in the lives of these accused, but to decide the single question whether they are guilty of conspiring to kill and murder the President, Vice President, Secretary of State, and the general in command of the armies of the United States, and of the acts charged against them severally in pursuance of said conspiracy.

The court adjourned till two o'clock to-morrow afternoon, when it is expected that arguments in the case of Spangler and others will be read.

Early in the day Mrs. Suratt was compelled to be taken from the court-room, owing to severe sickness.