lawn from Massachusetts with all his property in that State; he is indeed in not a similar case between them. The cases of Little and Murray were instances of military men obeying the orders of their military superiors. Mr. Were proposed in the present instance to make the young officers who have made these arrests, those cases might with fairness have been urged—they might tell you that in doing so they obeyed their superior officers, and that they could not stand disputing their power for they should be instantly cut to court martial. Does the gentleman say there is a marketable difference between the cases of Little and Murray, and the case of a commander of your army, supposing him to have acted wrongly, he has yet that he would have the same excuse for such an execution as an inferior officer? Does he mean to persuade this House for a justification of the commander in chief on this ground? I hope and trust not. I may speak at random; but I cannot believe this conduct, such as it has been represented to have been, can have been justified either by the Constitution or the jurisprudence of this superior officer, but even if it is allowed to be the case that he received such instructions from the highest executive authority, the only thing which I can conceive to be the consequence is that he has acted under the orders of his superior, as the officers Little and Murray. But did the House mean to carry the principle of obedience to Little and Murray, for obeying the orders of the executive, in cases where the civil and military authorities were combined, that because this conduct of a military officer was justified by the orders of his superior, there was therefore no blame attached to the executive? I hope not. I trust in God not. I should have been sorry to have seen that principle passed, by your sanction to the departure of the secretary of the navy and the secretary of state from the laws of the land. I do not, therefore, believe, that, because the House exonerated Little and Murray for not culpable, they also considered the conduct of the commander in chief from censure. Let us then hear no more in justification of the commander in chief, of the instructions also of his, instead of acting on his own responsibility, he acted on the instructions of his superior.

I consider the whole of this business as one of the most unfortunate kind that could have happened to the U. S. If we had acquitted Louisiana by force of arms conquest, we could not, we should have inspired the people of that country with great indignation. Under these events, in which it is yet to be seen whether those people are at all emancipated or whether they are contending like sheep, tiff ing the wolves to pass over, we should have contended which must sow the seeds of lasting misfortune, unless healed by a timely interposition of government. I know nothing can have a more fatal effect, than an idea that the laws of the land, on the other part of the government to sanction the conduct of the commander in chief, in this case, for he is as much a creature of the laws, as the meanest of the Hunts, I have to give my opinion of what would restore peace to that country—that would do good. I might not say so. The first step ought to be an immediate recal of every man directly or indirectly concerned in this transaction. You can hardly suppose, sir, that I look forward to any thing like a public reward or desire on my recommendation to introduce a friend to that place. But I have to tell you, sir, that I would not on any account step be taken, the attachment of that country, I should lose it forever. I would take such a step boldly—I would know nothing of their little disputes—I would get with the authority of a venerable parent, the ex-president Jefferson, to be chaired by the states. I would correct them all. I would disconnect at once all such intriguers—I would remove all those who have directly or indirectly participated, or so conceived that I was participated in them—I would in short, rid out and root out, the evil, I would be unfortunate thing to see the people of New-Orleans, for the most part speaking the French language, a great part of them attached to the crown of Spain—attached to the laws of Spain—to have the purchase—told they were about to taste the sweets of a government of laws—still, military commanders, and *letters de cachet* were to be prescribed—what the people would say, if we departed from, but that they were to expiy all the blessings of citizens of the U. S.—I do not know, but unfortunate that New Orleans should be the first place in which a military authority of a nature should be taught. I deem it extremely unfortunate, and I cannot tend to make those people in the U. S.—sit will however have another tendency—will prevent any such change of character from emigrating to that country, and instead of making the inhabitants, with the French, the latter will be kept in a distinct class. Fresh emigrants, having the least regard to their rights, go to a place where he will be cured by a military authority. I suppose, Mr. Speaker, such a thing had taken place in your country or in mine. The military would not at this period be before the court—the spirit of the country would have soon settled the question. I recollect in 1798 or 1799, when the officers of the army were following their legal avocations of enlisting recruits, such was the spirit of detestation in which a standing army was held in my district, that these men were obliged to break up and move off. That spirit would scarcely endure the legal act of a man acting under legal authority, and yet we have now an apology for men acting in direct contravention of legal authority. Will my son point out a good cause for this change?

The gentleman from Massachusetts has moved another case, which I think is applicable. In case a member of this House should be arrested by the civil authority, he says he may obtain redress. There is no doubt of it. But suppose he were proposed to pass a law for the punishment of murder, and the gentleman should get up and say there is no necessity for such a law. The dead man may have redress without it.

The will of Habeas Corpus is the only one sanctioned by the constitution. It is guaranteed by a proviso in a concept by the two Houses of Congress; and it is provided that it shall not be suspended, but in cases specially designated, this second proviso, I think, was intended to be put on the footing of a common trespass. Really when a man tells me that a trespass I may do, I may dare, it requires no ghost to come and tell us that this may be done upon a colour, an error of Habeas Corpus. But will gentlemen point to any legislative sanction by which such a thing is to be guarded? Perhaps an action on the case against the officer who has violated it, but suppose a judge should deny it, suppose he should say, I am sure, sir, gentlemen rely on that. That affords no certain punishment, and an uncertain remedy. Suppose, sir, that we were to state and adequate remedy, I think it would be a most unfortunate, it is equally unfortunate in stating that there is no adequate of punishing with death every person who shall be guilty of infraction of the writ of Habeas Corpus, and of the military authority, I, for small and trivial offences.

Sir, I have thus continued and observed that he had had allusion to the remarks of the gentleman relative to the Habeas Corpus.

Mr. J. RANDOLPH. I stated that the commander in chief was justified in under his own responsibility, acting as commander in chief, punishable with death for such infraction. I did not, by saying so, also say that I would punish the Judge who issued the writ. I do not now deny that a military character ought to be subordinate to the constitution of his country in cases of life or death? I say he is a creature. A creature of the laws, and he is bound to his own responsibility, pass the constitution of his country. I know, sir, I am rare, is a traitor, and supposing the case stated as New-Orleans to be correct, I would not hesitate to say, that he is as much a traitor as any other man who violates the constitution. Are we these traitors? Burr and Co. What is the difference? Burr, I repeat, was the civil authority by military force; and is there any substantial difference whether the authority is exercised on one foot, by Burr and his banditti, or by a commander in chief, with the military army. I will go further. Suppose these measures for putting down Burr shall have been adopted, and the measures for putting up somebody else, in what would be the difference? I ask the House. If the commander of an army, to give himself a false etiol, shall trample the constitution under his feet, shall, in the last length with conspirators, and finding his plaything, he shall, I say, he shall determine to make up in his mind, that he is the constitution, the laws of the country to the constitution and law he is guilty of more—he is guilty of treason. The principle remains the same—the principle of fidelity to each other.

We are told that a continual outcry against public men has a tendency to prejudice them. Gentlemen say, that its family rely tends to lose its effect—that people cease to be alarmed, stepping forward in defence of the privileges of habeas corpus, flagrantly violated (indeed, I think, in the case) is a more precaution, about which the people might not to be alarmed if gentlemen are woefully deceived. The people are not so easily alarmed, as I have stated; and it was the duty of that gentleman and other gentlemen on his side to have stepped forward, and have made an outcry gentlemen have got the start of us, but that is no reason why we should go into what it wrong. On this subject we will go all lengths with them. We will go with them, sir, in the property of amending the laws—we will not be tolerant, we will be as bitter as tea of the constitution. If gentlemen had acted so, there would have been a end of this business at an early day, it is saying they are friends of the measure, and that they are not, sir, I am sure, that produces this distrust.

Sir, a gentleman from Massachusetts, (Mr. Quincy) has called on the difference that exists between the right of the people and the right of the military people. He is correctly stated that it is not in regard as a transgressor, or an action for false imprisonment, but to prevent false imprisonment, and to prevent that it might be guilty of transgression. But the gentleman has omitted to state, the material difference, that in England the writ of habeas corpus issuing is not the sanction of death. And is any such thing in this country? I say that a chief justice of England, I say that a writ of habeas corpus, may be impeached, taken to Tower Hill and decollated. If there had existed the privilege of the writ of habeas corpus in England in 1688, I say the Parliament of Scotland, could there have been a change made? Sir, I say that I would go to do away that privilege? In England absolute is guarded by the power of ministers. Thank God! we have not that feature in our constitution—but if the same spirit prevades this country now which once old, nothing would sooner pass a bill of attainder, through the two Houses of Parliament, than a known and wanton invasion of this privilege. But fortunately our constitution is so dear to us this power!

and it is because we cannot pass bills of attainder, and because judgments on impeachments do not affect the life, that it behoves us to guard this important principle with some more salutary sanctions than it now possesses.

*(To be Continued.)*

*From the Enquirer, 2d. of April.*

## EXAMINATION.

The Editor was represented by his remote position, from collecting the whole of the argument on Tuesday.—He is indebted to a friend for the following sketch.

## COMMUNICATION.

The examination of col. Aaron Burr, which commenced in private at the Eagle-Tavern, in thirteen, on Monday last, was continued on Tuesday at the Capitol, in the Hall of the Senate of the United States, and in presence of an numerous college of the citizens. Col. Burr had been recognized to appear at 10 o'clock. At half past ten he entered himself before the judge, and with some degree of emotion apologized for the apparent delay, declaring that he had indeavoured the hour fixed, which he was bound to appear. The judge then adjourned from the Senate chamber to the Hall of Representatives for the better accommodation of the spectators.

(Gives examination has been made about the *genuine* examination held at the Eagle. Some have branded it with the epithet of a farce, and have expounded proceeding not unlike the proceeds of a Spanish Inquisition."—he has been called a traitor, and the attorney for the district applied to the Chief Justice for a warrant, fame considered the examination of the examination: Mr. Marshall observed that it was indifferent to him whether it was a farce or a tragedy, but that the Judge Hay objected to the latter, that no room was sufficiently large to receive the spectators, and that the Senate would be a fourse of comfortable inconvenience. Mr. Burr said that difficulty could be obviated by having the examination in private. To which Mr. Hay objected, on the ground, that if there were a difficulties by council, they should adjourn to the capitol. Mr. Burr said he was willing to rely rely before the public——On the examination, it was agreed that a difficulty should be obviated by the Senate.

*Mr. Hay*, attorney for the U. S. in the district of Virginia, opened the examination by stating, that the charge was a reale length and great perspicuity, enumerating overt-acts. Burr was charged to believe col. Burr guilty of the charges stated in the indictment against him. These were the overt-acts contained in the last Enquirer, viz: 1st. The raising on Isaac Dunn's island, a body of military expedition against the territories of the U. S. 2d. Burr said, he wanted peace; and 3d. For high treason against the U. S.

Mr. Hay read Burr's Commentaries to show that on a mere question to commit treason, accuse of the crime, nothing more was necessary than to show a probability that he had been guilty of the charge. Burr's conduct in the second stage of the proceeding, particularly in the commencement, was attended by extensive territories as the U. S. would be to be sent on invitation to prepare trade crimes with a view to the rising population. In support of these charges, he mentioned the fact of the deposition of general Wilkinson, and the disclosures made to him by Dollman and Swartwout were relied on. The treasonable *intentions* of colonel Burr, in the commencement of proceeding, appeared to render it highly probable that he would commit treason, if it was required by the constitution to consummate the *design*. In addition to this Wilkinson's letter, was read, the Mobile supplementary, and the evidence of many of the witnesses, which was collected from the Tombigbee, where he was apprehended in this place, stating his attempt to appeal to the sympathies of the state of South Carolina, were adduced to the jury, considered as to prove the guilt.

Mr. Hay adduced other reasons for a commitment; among others that the executives and legislatures of Ohio and Kentucky had assumed by their own acts the probability of some treasonable intentions.

Mr. Burr's attempt to escape from the hands of his escort is thus represented in a letter dated Fort Stoddard, Chocta, in S. C. the first town of any consequence on the road, "I was surprised from his horse, and threw himself among the small crowd, which had collected on the road-side. He then ordered Major Perkins however immediately followed, seized, and replaced him upon his horse. The crowd then dispersed, and we pursued our (M. in the business.)

Mr. Wickham, in behalf of col. Burr, combatted with great ingenuity the sagacious of Mr. Hay. He conceded that facts establishing the guilt of the accused ought to be proved before any inference of a preconcerted design could be drawn, so as even to warrant a judge in committing for trial; that the evidence in this case, was altogether circumstantial, and that it cannot pass bills of attainder, and because judgments on impeachments do not affect the life, that it behoves us to guard this important principle with some more salutary sanctions than it now possesses.

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Fifty, nor should I even require that which should absolutely convince my own mind of the guilt of Burr; I should not, I ought to require, and I should prefer that probable, course, be showed and I should be satisfied, that there is a case made out by proof, presenting good reason to believe that the crime alledged, has been committed by the persons charged with having committed it.

I think this opinion entirely reconcilable with what I have formerly said, in my stones. When that learned and accomplished commentator says, that will upon an enquiry, it manifestly appears that an act was crime, he means, that it is so, or that the suspicion entertained of the prisoner, was wholly groundless. I think with Blackstone, that it is lawful to detain in discharge him; otherwise he must be considered, as the person of a given half," I do not understand him as meaning to say that the hand of a prisoner should be withheld, and against whom its hate may be directed, of whom it may capitulation, voice charge him with some secret crime, and put him on the proof of his innocence. But I understand that the foundation of the prosecution, must be probable cause for believing the guilt, which probable cause is only to be based upon the testimony of the Blackstone. The total failure of proof on the part of the accuser, would be considered by the learned writer as being in itself a legal manifestation of the innocence of the prisoner.

In enquiring, therefore, into the charges exhibited against Colonel Burr, I hold myself bound to consider how far those charges are supported by proof or evidence.

The first charge stands upon the testimony of general Eaton and general Wilkinson.

The witness first examined, proves that Wilkinson, Dunn, and others were criminal, col. Burr meditated an expedition against the Mexican dominions of Spain. This deposition may be considered as introductory to the delivery of general Wilkinson, and as explanatory of the objects of any military preparations which have been made.

I proceed then to that affidavit.

To make the testimony of general Wilkinson bear on col. Burr, it is necessary to show that the intent he had ter stated by the former to be, as merely as he can make it, a transparent, and one received in cypher from the latter, exclude the idea of any treasonable resolves in the testimony, which can be the most remote degree affect col. Burr. Let that be the first consideration of this part of the affidavit, great and important, and which I need not be stated to those who know with how much caution proceedings in criminal cases ought to be conducted, and who know that the highest tribunal of the U States has decided, that the rules of the common law ought to be adopted, and that the rules of the common law ought to be adopted, and that the rules of the common law ought to be adopted, and