NATIONAL INTELLIGENCER,

& WASHINGTON ADVERTISER.

VOL. VII. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. No. 998.

FIVE DOLLARS PER ANNUM. MONDAY, MARCH 9, 1807. PAID IN ADVANCE.

CONGRESS

HOUSE OF REPRESENTATIVES.

WEDNESDAY, FEB. 18.

Debate on the resolution offered by Mr. Broom to make the provisions by law to secure the privilege of the writ of Habeas Corpus to persons in custody under or by virtue of the authority of the United States.

MR. BROOM. It will be recollected by the House, that I had the honor of submitting a resolution to make further provision by law for securing the privilege of the writ of Habeas Corpus to persons in custody under or by virtue of the authority of the United States.—It was then my wish that it should be up on the table in order that members might have an opportunity of considering the subject, being fully persuaded that the more it was considered the more evident would be the importance of the subject. At this moment it is my duty to call the attention of the house to the subject, I believe that the resolution be referred to a committee or the whole house—and I should not offer a single observation in support of it unless it is for the minute search, which has been suggested by several members, of the necessity and propriety of a resolution on the question to the house. I trust this refer, and I shall be indulged in pointing out the necessity and importance of the provision which it is contemplated to make. I am sensible that this subject is not familiar to the majority of this house; for until now we circumscribed has searcely in this country which could make us duly appreciate the value of the privilege of the writ of habeas corpus. In ordinary times the laws which allowed a trial may be suspended, for in such times there is no temptation to transgress the limits of constitutional or legal power begets but in times of turbulence and commotion, when the least transgression of rights will afford no resistance, barrier against the influence of power, and the rights of individuals, or of the people, or of the states, or any other interest of party rancor or individual aspiration, it could have scarcely been at any period, but never occurred which would make it necessary to fortify, in point here, the constitutional privilege of habeas corpus, and that the whole nation from the least to the least have greater, it with such religious veneration that no officer either military or civil would have dared to violate it—But recent circumstances have proved that such a wish would have been vain, and have demonstrated more powerfully than any abstract reasoning the necessity and importance of further legislative provision.

This privilege of the writ of habeas corpus has been deemed so important that by the 3d, sec. of the 1st, of the constitution, it is declared that it shall not be suspended unless when in cases of rebellion or invasion, the public safety may require it. Such is the value of this privilege that even the highest legislative body of the nation, the legislature representative of the nation, are not entrusted with the gubernatorial of it, or authorized in their hands upon it, unless, when, in cases of extreme danger the public safety shall make it necessary.

The suspension of this privilege upon slight occasion, it is easily foreseen would destroy its efficacy, and it is deprived to be one of the evils which it would become, in the hands of the majority, the most certain and convenient agent to accomplish the principles of party persecution or gratify political or personal rancor or spite. This constitutional provision was only intended as a check upon the power of congress in abridging the privilege; but was never intended to prevent them from extending it, or, in unison with sound and wholesome laws; congress were prohibited from impairing or in whole or part, this privilege; but it would be as far out of origin impertinency, and by exercise laws contrary to the spirit, and the direction of the judiciary law, 1 vol. L. 3, page 81, power is given to inferior courts and judges, to grant the writ of habeas corpus; and this is all the provision made by any act of Congress to secure this privilege. Thus the constitution constitutes writ, and the act of Congress gives the judges power to grant it; but, there is no law of the United States which compels the judge to grant it, or the officer to obey it—and the only remedy left to the subject is that which he derives from the common law of England (if, indeed, gentlemen will allow to that law any operation in the United States) and that very law upon which we now rely to enforce the privilege, was found, during the reign of Charles the 2d, utterly ineffectual, and has ever since the 31st year of that reign, been considered in England, as only auxiliary in securing the privilege of the writ of habeas corpus.

The speaker was sorry to interrupt the gentleman from Delaware, but must observe, that it was not in order to debate the motion until the house should agree to consider it.

MR. SMILIE hoped the gentleman from Delaware would be permitted to proceed, as the subject was a very important one.

MR. BROOM then moved to consider the motion of reference, to which was seconded upon the table.

MR. BROOM. I am sorry that I have trespassed upon the time of the House; I assure the House that it was not intentional, and long leave to refer to the gentleman from Pennsylvania (Mr. Smilie) my acknowledgment for this liberality, which I have now agreed to consider the motion, I will proceed to consider it. The 9th sec. Ch. 2, was designed to remedy, and did effectually remedy, the defect in the common law provision on this subject. By that statute severe penalties were imposed on the officer who refused to grant the writ of Habeas Corpus and on all parties refusing to obey it. In most of the states, laws have been made upon the principle of the statute of Charles and so far as that extend are found to have the most beneficial effect in securing the privilege of the writ, and they do not extend to inflicting penalties on judges and officers of the United States. If the privilege of the writ of Habeas Corpus, and the laws of the laws be defective, it is surely our duty to apply the remedy. All the important laws, I presume, have had but little experience in our own country. In Europe, from experience we derive our knowledge of it, they have proved its value, they have tried it and it has not been found wanting. In England this inestimable privilege has been for ages the jewel in the crown of liberty, and they worshipped it as a talisman, which alone, under the grace of God, is the strongest prison and dissolve in an instant every chain of bondage. The laws in Englishmen as a nation are by might slashing them from the arbitrary sway of tyrants, and, it is, perhaps, the great palladium of that English civil liberty which is so justly the pride of which character. Of the power and influence of civil liberty, the laws of the people of England we need no stronger evidence than the situation of our country, which, we, all, know and acknowledge. Let us go back to less ancient times, and we shall see the same freedom then in the most abject state of society, suffering oppression in every shape, and groaning under every private earth was sacred and inviolable protection—here that the rights of the people must illustrious as well as the meanest were secured, and the spirit of the peasant, as of a tyrant. Even the petty landing held as it were the sheriff of the land, and as pleasure the thread of the life of his vassals—a letter de caption could confine the unhappy victim of power for life in the loathsome walls of a dungeon, and, in spite of all the affection or blood, friends must forget each other or share a common fate. Not never could the tyrant's condition chilled the soul with horror, and the blooms of the meanest peasant, and the lighten his dim eye, whenever the thought of the tyrant, and the