only to destroy that harmony and good understanding which ought to prevail amongst the members of the House. He said he not been consulted on the propriety of introducing the resolution under consideration, but if he had, it must have met his approbation. As the subject was interesting, and calculated to secure from its importance a full and dispassionate investigation, there was no reasonable ground to conclude that the friends of the measure would be charged with unworthy motives, or that gentlemen would so far forget the dignity of their station as to indulge in invective, tending to destroy that unanimity which the present aspect of public affairs, and the interest of our common country imperiously required. Mr. K. said, as this mode of treating the subject had been already sufficiently exposed by gentlemen who had gone before him, he would wave further observations on that score, and proceed to what he considered the real merits of the question then under discussion.

Mr. K. said, from the observations which had been made by many gentlemen, a by stander might conclude that the present was an enquiry into the conduct of general Wilkinson, at New-Orleans, and the legality of the arrests which had been made there, as well as into the degree of guilt which attached to the several prisoners.

One gentleman from Massachusetts (Mr. Bidwell) had gone so far as to say it was too late in the session to enquire into the transactions at Orleans, as the evidence could not now be obtained: for his part he left out of consideration every thing of this nature as foreign to the subject, the prisoners were to stand trial before a proper tribunal, competent to enquire, and do impartial justice, he would therefore give no opinion respecting their merit or demerit, nor would he undertake to censure or approve of the conduct of the commander in chief, as the circumstances under which he acted were not fully known, and if on investigation before a proper tribunal, that officer could justify his conduct, and shew that the exigency of the times, and the safety of our country demanded the measures he adopted, no man in the House or the community at large would rejoice more than himself at so honorable a result, because he considered it of the utmost importance to the safety of the nation, that those who held high and responsible situations should execute their trusts in a manner so dignified and honorable as to avoid suspicion and command respect. It had been said by a gentleman from Virginia, (Mr. Eppes) that the movers of this measure envied the happiness which the people of this country enjoyed, and were sorry that a conspiracy, the ramifications of which were so extensive, was likely to be checked by the vigilance of our government; he trusted a conduct so profligate could not be ascribed to any gentleman on that floor; for his own part, he said, his conduct and votes bore testimony against so unfounded a charge.

He never counteracted the views of the executive, by withholding his vote when required, for supplies necessary for carrying into effect the views of the government. When money for defence or any other purpose had been required by the executive, it had always the aid of his vote; and he had withheld when the executive did not recommend.

But is it necessary to inquire whether any provision ought to be made by law to secure the privilege of the writ of Habeas Corpus in cases of arrest under the authority of the U. S.? One gentleman (Mr. G. W. Campbell from Tennessee) has said that there is no need of farther provision, and has called on gentlemen to shew wherein the existing provisions are defective. A gentleman from Virginia (Mr. Jackson) has said that it would be narrowing the powers of the court and judges to pass a law on the subject, their powers are so extensive under the constitution.

In order to obtain a right understanding of the subject it is necessary to inquire how this inestimable privilege was secured to the subjects of Great Britain by Magna Charta, the great charter of their privileges, which was extorted sword in hand by the lords and barons, from king John at Runnemed, and how far the privilege thus secured, was made more effectual by the statute of Charles the 2d, which was called the 2d great charter of their liberties. This writ of Habeas Corpus ad subjiciendum, which was secured by this charter, became a writ of right not less secured to the subjects of that kingdom, than the same is secured to our citizens by our constitution.

We are informed by Sir Wm. Blackstone in his famous commentaries on the English law, that the inestimable privilege of the writ of Habeas Corpus was of early date in Great Britain, almost coeval with the first rudiments of their constitution. The liberty of the subject could not be abridged in any case without special permission of law, although some times impaired by the usurpation of princes and the ferocity of particular times. It was however established on the firmest basis by the provisions of Magna Charta, and a long succession of statutes under Edward the 3rd, and was recognised by the crown in several after reigns. And it will hardly be contended that this privilege is better secured to the citizens of the U. S. by our constitution than the same was secured to the subjects of the British crown by the provisions of Magna Charta. Yet abuses had crept into daily practice in England, which had in a great measure defeated this great constitutional remedy. The flagrant abuse of power by the crown generally produced a struggle which discovered the exercise of that power to be contrary to law, or restrained it for the future. An obscure individual gave birth to the famous Habeas Corpus act in the reign of Charles the 2d, which was justly called another Magna charta of the kingdom. Francis Jencks was committed by the Council Board for a turbulent speech made at a common hall assembled at Guild Hall, for the purpose of choosing officers. He applied to the then Lord Chief Justice Kaimsford for a habeas corpus, who alledged that he could not grant the writ in vacation. The friends of the prisoner afterwards applied to the Lord Chancellor, who said the King would not grant it without a petition; application was afterwards made to the Court of Quarter Sessions to have him bailed; the court said there was no such name in the calender; upon application to the Jailor, he said he never returned any man committed by the Council Board. When a copy of the commitment was obtained, the Jailor evaded making proof of it by going away, as was believed with the privity of the court; at length the commitment being established, the court doubted their power to act, when the Lord Chief Justice and Lord Chancellor had refused, the court took time to consider of the application until next term. A petition was afterwards presented to the Lord Chancellor, who also took further time to consider; at length the Lord Chief Justice, upon the matter being suggested to the King, issued a habeas corpus and the prisoner was discharged. To prevent similar abuses in future was the famous habeas corpus act passed, which regulated the mode of proceeding upon writs of habeas corpus, and fully insured its benefits and provisions to the subjects.

The several courts were designated, who were authorized and enjoined to issue the writ, and the power extended to certain judges out of term time. The Jailor was bound in a given space of time to furnish a copy of the commitment, under penalty; the court or judge to make the writ returnable as soon as the distance of the party to be brought up would admit, under severe penalty—provision was made that the party should not be removed from place to place to evade the writ, that he should not be transported, &c. Many provisions were made to insure the full effect of the privilege of the writ, and that the prisoner on hearing of his case might be discharged, admitted to bail, or remanded to prison according to law and the nature of his crime, thereby conforming the proceedings on this writ to the true standard of law and liberty. It has been said on this floor that the provisions of this statute extend to this country, and the courts are bound to obey them. This doctrine can never be advanced by any gentleman understanding the subject. Some of its provisions may be adopted by practice, but no gentleman will seriously contend that the penalties under that statute would be inflicted here without a positive law to put them in force. If then it was necessary in England to secure by statute the great constitutional privilege of the subject against illegal imprisonments at the instance of the crown, surely in this land of liberty the reason holds with equal force; and that a law regulating the proceedings on this writ in courts of the U. S. is necessary, must strike every mind present with irresistible force, when we see the highest and most respectable tribunal in the U.S. hearing counsel several days in order to ascertain their powers to issue the writ in the cases now pending before them. A gentleman from Virginia (Mr. Eppes) says that the constitution has secured the right of the writ of Habeas Corpus and in the same manner has secured the trial by jury. The gentleman could not have stated a stronger case to prove the necessity of a law to regulate the proceedings under the writ. What good purpose could the guarantee of the trial by jury answer to the citizens of this country if there was no law constituting and organising courts, and regulating the manner in which the trials shall be had? Without this the provision in the constitution would be unavailing & a dead letter. To designate the courts who shall have power to issue the writ and clearly to regulate the proceedings thereon, and secure its salutary effects is the object of the present resolution. Under every view of the subject the reasons for a law of the U.S. securing the privilege of the writ of Habeas Corpus ad subjiciendum, were strong and unanswerable. He therefore hoped the question would not be postponed, but that the subject might go to a select committee, who would have sufficient time to report a bill giving full efficacy to the writ of Habeas Corpus, in order to secure the liberty of our citizens and prevent abuses in future.

Mr. J. RANDOLPH. When you recollect, Mr. Speaker, the seriousness of the charge preferred against me by a member of this House, and the high quarter whence that charge comes, you may, perhaps, wonder at my audacity in daring again to address you. It is indeed a charge of a most serious nature, and made too by no ordinary person, by a gentleman who acts a most conspicuous part on this floor, a leading member of the majority of the House, and such as really makes me afraid that I shall be considered as pleading guilty if I say nothing. For how can I venture to go home, and meet my constituents after having been denounced by such high authority—Upon my soul, Sir, I am so much affected by the danger of my situation, & the peculiar circumstances of the case, that I can scarcely go on with my remarks. But it is necessary for me to state, not merely for the information of the House, but likewise for the good people of the U. S. that against all the reports of the speeches ascribed to me for twelve months past I protest. I protest as much against them as against certain other reports of speeches delivered on this floor—On this occasion as the gentleman has seen fit to read a part of those speeches I presume they will have the honor of passing to a new edition. But it will be my misfortune that the people who shall read them will not have the advantage of the members of this House—that they will not have a fac simile of their delivery, and that what they have suffered from the inaccuracy of the reporter will not be made up by the accuracy of their recollection.

[The Reporter would be wanting in that duty which he owes to himself and to truth, not to notice *this protest*. In his turn *he protests*, that so far as respects the reports given by him, they have been invariably impartial, and as he believes, in all respects substantially correct. In the discharge of this branch of duty he feels a pride in having in no instance whatever felt either personal or party bias, and a high satisfaction in the conviction that every man who knows him will attest the correctness of this declaration. So much for this protest generally. Considered as applicable to the particular speech delivered by Mr. Randolph and quoted by Mr. Sloan, the Reporter has the same confidence in its correctness as to every important sentiment advanced by the Speaker—a confidence, which if it needed confirmation, has been amply confirmed by the unsolicited assurances of many members of the House of Representatives, of all parties, that it was as accurate a report of a speech as they had ever seen.]

Mr. NEWTON said he wished to amend the resolution, by inserting the word "appellate" before the word "power."

The Speaker said the resolution could not be amended, while a motion for indefinite postponement was depending.

The question on indefinite postponement was then taken, by yeas and nays, and carried—Yeas 60—Nays 58—as follows:

Yeas.—Messrs. Alston, jun. Anderson, Bard, Barker, Bidwell, Blake, jun. Blount, Brown, Chandler, Conrad, Cook, Covington, Cutts, Darby, Earle, Early, Elmer, Eppes, Findley, Fisk, Goodwyn, Gregg, Green, Halsey, Hamilton, Helms, Holland, Jackson, Lambert, Mac Farland, Magruder, Masters, M'Creery, N. R. Moore, Jer. Morrow, Mumford, Porter, Pugh, Rhea, (Tenn.) Sailly, Schuneman, Seaver, Sloan, Smelt, Smilie, S. Smith, Southard, Stanton, D. Thomas, Tracy, Van Cortlandt, Varnum, Verplanck, Walton, J. Whitehill, R. Whitehill, Wickes, N. Williams, Winston, and Wynns.

Nays.—Messrs. Alexander, Archer, Bassett, Bedinger, Betton, Bibb, Broom, Burwell, Chittenden, Claiborne, Dana, Davenport, jun. Elliot, Ellis, Ely, Garnett, Goldsborough, Gray, Hastings, Holmes, Hough, Jones, Kelly, Kenan, Lewis, jun. Livingston, Lloyd, Lyon, Marion, Meriwether, T. Moore, J. Morrow, Mosely, J. Nelson, R. Nelson, Newton, jun. Quincy, J. Randolph, Rea, (Penn.) Richards, Russell, Sammons, Sandford, J. Smith, Stanford, Stedman, Taggart, Tallmadge, Tenney, P. R. Thompson, T. W. Thompson, Trigg, Van Rensselaer, Wadsworth, D. R. Williams, M. Williams, and Wilson.

PENNSYLVANIA LEGISLATURE.

April 3.

On Monday Dr. Leib, chairman of the committee of enquiry, made the following report, which was made the order of the day for Thursday (yesterday.)

REPORT.

The committee to whom was referred several petitions from a number of citizens of the city and county of Philadelphia, praying an enquiry into the official conduct of Thomas M'Kean, governor of this commonwealth, and a resolution to report whether the said Thomas M'Kean hath so acted in his executive capacity, as to require the interposition of this House: submit the following report—

That notwithstanding the shortness of the time allowed them and the consequent narrow range of enquiry, they have been enabled to ascertain the following facts, viz.

1. That the governor did premeditatedly, wantonly, unjustly, and contrary to the true intent and meaning of the constitution, render void the late election of a sheriff in the city and county of Philadelphia.

In having refused, through the secretary of the commonwealth, to permit judge Wolbert, the candidate highest on the return, to come into his presence, when he arrived at Lancaster, to tender his bond and that of his sureties with the certificate of the judges.

In having issued a commission with a blank for the names of the commissioners, to his son Joseph B. M'Kean, who inserted the names of commissioners, who were to take the testimony, and afterwards appeared as counsel for Wm. T. Donaldson, the adverse candidate.

In having rendered void the election, when there was an actual majority of *forty nine votes in favor* of Judge Wolbert, after deducting from his poll all the illegal votes.

In having deducted from Judge Wolbert's poll, four votes given, to W. T Donaldson.

In having declared twenty six freemen and citizens to be unqualified voters who were duly qualified, and having substracted their votes from the poll of Judge Wolbert

In having deducted eleven votes from Judge Wolbert's poll without any evidence of the voters having voted for sheriff.

In having declared eight doubtful votes to be ill[egal], and having substracted them from judge Wolbert's poll.

In having declared seven votes to have been illegally rejected, when only three legal votes had been refused, and in having deducted those seven votes from the poll of judge Wolbert.

In having in certain cases declared votes to be illegal, which had been given by the sons of qualified citizens, between the age of twenty-one and twenty-two years, whose fathers had died more than two years before the election; and in another case having decided that a vote of the same character which had been offered for W. T. Donaldson and had been refused, to be a legal vote, and having substracted it from the poll of Judge Wolbert.

Second. That he the said Thomas M'Kean usurped a judicial authority in issuing a warrant for the arrest and imprisonment of Joseph Cabrera; and interfered in favor of a convict for forgery in defiance of the law and contrary to the wholesome regulations of the prison in Philadelphia, and the safety of the citizens.

By sending for the keeper of the prison, and directing him to permit any victuals, bedding or clothes, that might be sent to this convict to be given to him, although he had been sentenced to two years imprisonment at hard labor, and to be fed and clothed as the law directs.

Third. That contrary to the true intent and meaning of the constitution, and in direct violation of it, he did appoint Dr. George Buchanan, Lazaretto physician of the port of Philadelphia.

By granting him a commission as an officer within the county of Delaware, three or four days before his arrival in this state, although he had been a citizen of Maryland about seventeen years, immediately preceding his appointment.

Fourth. That under a precedent acknowledged to have been derived from the king of Great Britain, and contrary to the express letter of the constitution, did he suffer his name to be stamped upon blank patents for lands, warrants on the treasury, and other public official papers, and that too out of his presence.

Fifth. That contrary to law he did supercede Dr. James Reynolds as a member of the board of health.

By the appointment of Dr. James Hutchinson before the expiration of the year designated in the law as the tenure of his commission, and which was so expressed in the commission itself.

Sixth. That contrary to the obligations of duty and the injunctions of the constitution, did he offer and authorize overtures to be made to discontinue two actions of the commonwealth against William Duane and his surety, for an alleged forfeiture of two recognizances of one thousand dollars each, on condition that William Duane would discontinue civil actions against his son Joseph B. M'Kean and others, for damages for a murderous assault committed by Joseph B. M'Kean and others, on William Duane.

From even this limited enquiry, the committee are led to the conclusion, that the governor considers the constitution, and the laws, as mere instruments of executive convenience, and of so ductile a character as to be moulded into any shape at the suggestion of passion, ambition, or interest. The examination by the commissioners, and the judgment of the governor, upon the testimony taken by them, must be considered a novelty in the principles of evidence. The petitioners complained of an unfair election, and according to the rules of common sense, if not of common law, they ought to have proved affirmatively, that the election was illegal. Negative testimony to invalidate an election, by which the honor, and the integrity of the officers of the election may be impeached, and they become subject to punishment, as well as the rights of suffrage jeopardized, could never have been admitted by any judge, who was not predetermined to render such election void; and yet the election of a sheriff for the city and county of Philadelphia, was set aside upon ground no better, and truly upon ground much worse. The committee have had before them, all the testimony upon which the governor founded his judgment, as well as the list of illegal votes made out by his order, and they inhesitatingly affirm, that there was no shadow of cause, to render void that election,—The governor it seems, could not make up his list with the votes which he supposed to be illegal, and thereby cover the majority of Judge Wolbert; but to reach his object (the setting aside the choice of the majority) he even added thereto votes not given at all as legal votes given, and votes actually given to W. T. Donaldson. The avoidance of an election, under such circumstances, furnishes a melancholy testimonial of the insecurity of our rights, under the administration of the present executive magistrate. The rights of the people, of the city and county of Philadelphia, have been grossly violated and trifled with; and scarcely a veil of the texture of a cobweb, has been thrown over the unjust judgment of the governor, to render void their election and their choice.

The terms of the governor's judgment are, that—"ninety one illegal votes were received and seven legal votes in favor of W. T. Donaldson were rejected;" whereas it appears from the testimony that only 42 bad votes were received, and three legal votes, which would have been given to W. T. Donaldson were rejected. The majority in favor of judge Wolbert was ninety four, and substracting from his poll all the illegal votes and the legal votes which were refused, leaves him a majority of 49 votes.

It appears from the testimony taken by the commissioners, and the terms of the governor's judgment, that no question was made as to the legality of Matthew Lawler's election, and that the governor predicated his judgment upon the assumed want of an actual majority for judge Wolbert, or W. T. Donaldson; it must therefore be evident that the judgment was founded upon unjust data, and in dereliction of every constitutional and legal principle. It was grounded upon a false assumption that ninety one illegal votes had been received, and several legal votes had been rejected, whereas an examination of the testimony will prove demonstratively, that only forty two votes proved to have been illegal, were received, and three votes proved to have been legal, were rejected.

But what will be said, when the glaring injustice is made known, that the governor *deducted four votes* from the poll of judge Wolbert, *which the witnesses themselves*, upon oath declared, *they had given to W. T. Donaldson!* Not only were all the votes that were illegal substracted from the *highest candidate* of three; but even *legal* and *doubtful* votes were substracted likewise; and to consummate the injustice, the votes actually given to W. T. Donaldson were *added to the list of reduction!*

The committee would here ask, what security have the people of Pennsylvania for their rights, should such proceedings pass unpunished? What is the use of constitutional provisions when the executive power can be transferred into the hands of a nephew or a son, and that such an executive substitute can name commissioners to take testimony to invalidate an election, and afterwards appear as counsel (before the same commissioners) for the contending candidate!

The prohibition of the constitution, that "a sheriff shall hold his office three years, and shall not be chosen or appointed twice in any term of six years," may by such a process be rendered completely nugatory; and a favorite and profligate sheriff may continue in office as long as a governor holds his place, and the incumbent will remain the pander of executive appetite or vengeance.

By the laws of this commonwealth, the mayor and two aldermen of the city of Philadelphia, and two justices of the peace of the county of Philadelphia, are authorised to appoint inspectors of the prison; and the inspectors so appointed, are authorised by law, "with "the approbation of the mayor, two "aldermen of the said city, and two "judges of the supreme court, or two "judges of the court of common pleas "of the county of Philadelphia, to "make rules and regulations for the "government of all convicts confined "in the said prison, not inconsistent "with the laws and constitution of this "commonwealth, and to prescribe their "allowance of provisions ascertaining "the quantity by weight and measure "and not by price." The inspectors are further authorised to appoint the keeper of the prison, and he is bound to carry the rules and regulations for the government of the convicts into effect: but in express violation of the law, and in direct repugnance to the rules and regulations established by the inspectors, did the governor send for the keeper of the prison, and direct him to contravene the established rules. The constitution gives to the governor the power of pardoning criminals, but it conveys no authority whatever to constitute himself an inspector or gaoler—neither does it authorise him to contravene the laws, nor to give directions to the keeper of a prison to violate both law and duty. The consequences of such an interference, in favor of convicts, are incalculable; not only as they relate to the criminals themselves but to the citizens. The establishment of such a precedent must tend to loosen the restrictions, by which those depredators on society are made to atone for the injuries done by them, and to furnish them with means to overcome the restraints under which they labor, as well as to elude the penalties of the law. They may thereby be enabled to conspire to effect their enlargement, to attain means to secure it, and society become thus exposed to all the mischiefs of encouraging a band of ruffians, and letting them loose again to depredate upon the commonwealth.

The appointment of a citizen of another state to an important and responsible office in this, not only conveys a bitter sarcasm upon the qualifications of our own citizens for office, but is in total disregard of the provisions of the constitution. The lazaretto physician resides within the county of Delaware, and the constitution emphatically declares "that no person shall be appointed to an office *within* any county who shall not have been a citizen and inhabitant therein one year next preceding his appointment, if the county shall have been so long erected."

Dr. Buchanan had been an inhabitant and citizen of Maryland seventeen years preceding his appointment, and the commission under which he acts, bears date on the 4th of July, 1806, three or four days before his arrival in this state. The constitution forbids any person from exercising the elective franchise, unless after two years residence, and the payment of a state or county tax; even the non payment of a tax a few days beyond the two years, was held by the governor to be a disqualification; and yet a person not a citizen at all, who had manifested no interest