Habeas Corpus shall not be suspended, except when in cases of invasion or rebellion the public safety shall require it." Will gentlemen deny that there exists in the U. S. at present a rebellion? I presume not, said Mr. V it is too notorious to admit of doubt. Will they deny that the conspiracy has been formed with deliberation, and has existed for a long time? Is it not evident that it has become very extensive? If then this is the case, and the head of the conspiracy has said that he is aided by a foreign power; if this is true, are we justified in considering the country in a perfect state of safety until it is brought to a close? I conceive not. I consider the country in a degree in a state of insecurity, and if so, the power is vested in the Congress of the U. S. under the constitution, to suspend the writ of Habeas Corpus. I am also apprehensive that we shall not be able to trace the conspiracy to its source without such a suspension. We have had an instance in which the head of the conspiracy has been brought before a court of justice and where nothing has been brought against him. It is not my wish to insinuate that any court or public functionary is contaminated by this conspiracy; yet it is possible, that this may be the case, and the very existence of the country may depend on tracing it to its source. I am not disposed to advocate sanguinary punishments, but I think they ought to be exemplary in regard to the chiefs of the conspiracy; for which purpose we ought to adopt those measures which will tend to a full discovery of those concerned in it. I am sensible that the government of the U. S. has not hitherto resorted to this measure; but I know a particular state of the union who did consider the measure necessary, in the case of an insurrection which occurred within her limits, and I think it very doubtful whether that insurrection would have so happily closed, if it had not been for her suspension of the writ of Habeas Corpus. Have we had any insurrection or rebellion in the United States like this? We have had one insurrection in Massachusetts, but whence did it arise? Not from a design to subvert the government, but from the burthen of taxes—taxes which perhaps exceeded those laid in any country since the formation of society. I do not mean by these observations, by any means to justify that insurrection, and I believe, from the circumstances with which I am acquainted, that the insurrection which took place in Pennsylvania did not go to the subversion of the government. But let us look at this conspiracy. While the nation from one extreme to the other enjoys a degree of prosperity and happiness unparalelled in any other nation, and not a single individual within our limits has any reason to complain of oppression, an insurrection is fomented, subversive of the government and destructive of the rights of the people. It appears to me that this insurrection is the most aggravating of all insurrections which history gives us an account of. There is not the least oppression or the least pressure of circumstances to induce any individual to rise up against the government of his country; and it consequently betrays the greatest turpitude of mind in those who either lead or unite in it. For these reasons I think it ought to be traced to its source, and I think it very doubtful whether this can be effected, without in the first instance suspending the Habeas Corpus. Will gentlemen say that any innocent man will have a finger laid upon him, should this law pass? No—there is no probability of it—it is scarcely possible. But even if it be possible, if the public good requires the suspension of this privilege, every man attached to the government and to the liberty he enjoys, will be surely willing to submit to this inconvenience for a time, in order to secure the public happiness. The suspension only applies to particular crimes, the liberties of the people will not therefore be touched. I do think a great responsibility will rest on this branch of the legislature in case they refuse to pass this act. Suppose the head of this conspiracy shall be taken in a district of country where no evidence exists of the crime charged to him, and he shall consequently be set at liberty by the tribunal of justice—where will the responsibility rest but upon this branch of the legislature? It is too great for me as an individual member to bear. I shall therefore vote for this bill under the impression that it will not have the injurious effects that some gentlemen seem to apprehend, and that it will only more effectually consign the guilty into the hands of justice.

Mr. R NELSON. As the motion to reject the bill meets my most hearty approbation, and as I consider it involving a great national question, I cannot reconcile it to my duty to give a silent vote on it. I shall however, in order to avoid an unnecessary consumption of the time of the House, offer my remarks in as concise a compass as possible. I shall first consider the nature of the writ of Habeas Corpus; afterwards examine its effects, not only on the individual, but on the community at large, taking into view the mode of proceeding under it, to show, as I conceive, that no danger can ensue, on the refusal to pass this bill.

What is a writ of Habeas Corpus? It is a writ directing a certain person in custody to be brought before a tribunal of justice, to enquire into the legality of his confinement. If the judge is of opinion that the confinement is illegal, the person will of course be discharged; if on the contrary from the evidence, he shall be of opinion that there is sufficient grounds to suspect that he is guilty of some offence, he will not be discharged. Now to me it appears that this is a proper and necessary power to be vested in our judges, and that a suspension of the writ of Habeas Corpus is in all cases improper. If a man is taken up, and is denied an examination before a judge or a court, he may, although innocent in this case, continue to suffer confinement. This in my opinion is dangerous to the liberty of the citizen. He may be taken up on vague suspicion and may not have his case examined for months, or even for years. Would not this bear hard upon the rights of the citizen?

Let us turn over leaf, and see how the government stands. If the person accused is legally committed, or if it shall be proved that he has committed any offence, the judge will say that he shall not be released. If he has committed an offence there can be no grounds for this suspension, because without such suspension he will not be discharged because it does not follow that inasmuch as a man has a right to demand that he be brought before a judge by a writ of Habeas Corpus, he shall therefore be discharged. He is only bound to examine him, and if he finds there is strong reason to believe he has committed a crime, he may remand him to confinement.

This is a writ of right, which ought to exist under all governments on earth. What right? The right of being examined by the tribunals of his country, to determine whether there is any ground for the deprivation of his liberty. Is this a right which ought to be suspended merely to gratify the apprehensions of gentlemen? I think not. The framers of the constitution have said "the privilege of the writ of Habeas Corpus shall not be suspended, except when in cases of invasion or rebellion the public safety shall require it." Well, but says the gentleman from Mass. can any one deny that this is a rebellion? It may perhaps be, but I think it does not deserve the name of a rebellion—it is a little, petty, trifling contemptible thing, led on by a desperate man, at the head of a few desperate followers—a thing which might have been dangerous, if the virtue of the people had not arrested and destroyed it. But admit that it is a rebellion. Will every rebellion justify a suspension of the writ of Habeas Corpus? The constitution says, 'The privilege of the writ of Habeas Corpus shall not be suspended, except when in cases of invasion or rebellion the public safety shall require it." Does then the public safety require this suspension? Does the constitution justify it? And under present circumstances confining a man in prison without a cause—There is no danger, the enemy is not at our door—there is no invasion—and yet we are called upon to suspend the writ of Habeas Corpus. This precedent, let me tell gentlemen, may be a ruinous, may be a most damnable precedent——a precedent which hereafter may be most flagrantly abused. The Executive may wish to make use of more energetic measures than the established laws of the land enable him to do—he will resort to this as a precedent, & this important privilege will be suspended at the smallest appearance of danger. The effect will be that whenever a man is at the head of our affairs, who wishes to oppress or wreak his vengeance on those who are opposed to him, he will fly to this as a precedent—it will truly be a precedent fraught with the greatest danger—A precedent which ought not to be set except in a case of the greatest necessity——indeed I can hardly contemplate a case, in which in my opinion it can be necessary.

In my opinion this is a measure which ought never to be proposed unless when the country is so corrupt that we cannot even trust the judges themselves. This I consider the cause of the frequent suspension of this privilege in England. Whenever the whole mass of society becomes contaminated and the officers of the judicial court are so far corrupted as to countenance rebellion and release rebels from their confinement, it may be then time to say they shall no longer remain in your hands——we will take them from you. But I apprehend there is no such danger here, and I repeat it, we are at once creating one of the most dangerous precedents and passing one of the most unjust acts that was ever proposed.

Mr. SLOAN. At the same time that I express my purpose to vote on the same side with the gentleman from Md. I shall take the liberty of assigning very different reasons for my vote from those offered by him. The gentleman from Virg. has mentioned two preceding insurrections, which he considers of much greater magnitude than this. I am of a different opinion. Compared to this, I consider them as only a drop to the bucket. For a moment let me ask the attention of gentlemen to those insurrections, or as I think they might with more correctness be termed, oppositions to government. In consequence of certain citizens thinking themselves aggrieved by certain acts, in which they have been in some measure justified by their subsequent repeal, a handful of people raised in opposition to their execution. What analogy do those oppositions bear to this rebellion. I consider the late or present conspiracy to be of greater magnitude than any we know of in history. Under what authority has it been created? Under that of a man of great abilities and experience, who states that he expects encouragement from foreign nations. I do not pretend to say that this is a fact—but what has he done? Has he not drawn resources from every part of the union? I therefore consider it of great magnitude, & it is certainly excited against the best government on earth under which the people enjoy the greatest happiness. I shall, however, vote against the bill, under the belief that we may confidently rely on the love and affection of the people for their government, to which we are already probably indebted for its suppression. Had this measure been brought forward a month or six weeks ago, I should have voted for it.

(To be CONTINUED.)

WASHINGTON CITY.

FRIDAY, JANUARY 30.

A more detailed statement of the proceedings in the CIRCUIT COURT of the District of Columbia.

Mr. JONES, the U. States attorney, prefaced his motion on Friday with an address to the following effect.

He requested leave to interrupt the ordinary business of the court by introducing a motion relative to a subject calculated, from its importance, to fix the most earnest attention, and to excite the profoundest interest.

Two persons have been arrested in a distant territory of the United States, and brought within the jurisdiction of this court, charged with being principal actors in the execution of an abominable plot against the Union, and in a treasonable and atrocious enterprize of hostility against the territory and citizens of these states. The city of New Orleans appears to have been the most important point of attack meditated in the first instance by the conspirators. General Wilkinson, the commander in chief, hastens with his army to defend the place. While exerting all the zeal and activity of a vigilant and able commander, of a brave and faithful soldier, to make every requisite military preparation against assaults from without, he detects certain emissaries within the very walls of his fortress, engaged in the most criminal and mischievous acts of co-operation with the expected assailants;—he orders Erick Bollman and Samuel Swartwout, two of those emissaries who were supposed to have demonstrated their treasonable purpose by the most unequivocal acts, to be seized and sent to the seat of government under a military guard. Immediately on their arrival it is determined by the executive government to transfer the custody of the prisoners from the military to the civil power.

There is no reason to doubt the authority of a military commander, actually engaged in the suppression of a treasonable enterprize against the U. States, to seize upon traitors whom he detects, *flagrante delicto*, and to detain them securely till they can be subjected to judicial process and examination, but that authority arising from necessity and the exigencies of the public safety, must cease when an opportunity offers for the quiet and convenient, and at the same time efficient administration of justice in the ordinary way. It is therefore that, without hesitation or delay, instructions are given instantly to move this court for a judicial warrant to arrest those persons and place them in the custody of the law. In support of this motion two depositions, solemnly sworn to by Gen. Wilkinson, would be read to the court. Those documents will explain the grounds upon which he proceeded to arrest and detain the prisoners.

Mr. Jones observed that owing to the sudden and unexpected manner in which this task had devolved upon him, he had not even perused these documents and could therefore apprise the court of their contents in no other way than by reading them in evidence.

[Two depositions of Gen. W. were then read to the court, both of which have been published in the National Intelligencer, accompanied by the President's messages of the 22d and 24th of January.]

The court, after examining the depositions, enquired of Mr. Jones with what specific offence he proposed the prisoners should be charged in the warrant?

He answered, "I accuse them of the crime of treason against the U. States, and move that they be arrested upon that charge."

The court suggested that the depositions, read in evidence, might apply either to a charge of treason, of misprision of treason, or to a charge of violating the act of Congress which prohibits the setting on foot military expeditions against foreign nations. If treason be made the specific charge, is there any evidence of an actual *levying of war* against the U. States, within the meaning of the constitution?

Mr. Jones said, it was with the utmost diffidence he could presume to answer the suggestions of the court upon a topic so important, so difficult, and so little explored as the doctrine of treason under the constitution. It was obvious to the court how entirely unpremeditated his remarks must be. He could pretend to no accuracy or depth of research, as he had never been placed in circumstances to render the study of that branch of criminal jurisprudence, an object of any particular attention. Thus suddenly and unexpectedly called upon, he could hazard only such desultory remarks upon the constitutional definition of treason, as might tend to set up a construction of that instrument consonant to the plain understanding and common sense of mankind, and applicable to the purposes of practical utility. He could derive little aid from the learning extant on the subject, but must rely upon some unexamined impressions and recollections from general reading.

The fact to be ascertained in the first place, is the treasonable *intent*. The evidence is conclusive to that point, for although the conquest of the Spanish province of Mexico is avowed as the *ultimate* object of the enterprize, yet the seizure and plunder of New Orleans, as an intermediate step for supplying the means of accomplishing that object, is as explicitly avowed. The only active participation of the treason, in which the two emissaries Bollman and Swartwout appear to have been clearly detected at New Orleans, is an infamous and abortive attempt upon the honor and fidelity of the commander in chief.—This, however criminal, may be said to be, in itself, no overt act of treason,—no *levying of war* against the United States.—Agreed;—it is not necessary to contend otherwise in order to shew that the prisoners should be arrested and committed as traitors.—It is clear from the evidence that they are leagued and confederated, in his atrocious projects, with Aaron Burr, the notorious head and leader of the conspirators. They are active and acknowledged agents and participators in the plot. Then suppose they are detached, from the main body, to execute, at New Orleans, a quiet and noiseless scheme of treachery & corruption;—suppose them to be *personally* engaged in no attempt of open violence;—yet, while they are thus employed, their confederates assembled in arms, some hundred miles higher up the Mississippi at Natchez, or on the banks of the Ohio near Marietta, commit a clear act of treason by levying war against the United States, in the strictest sense of the phrase. Could it be doubted that the spies and emissaries employed at a distance from the scene of action, however secret and bloodless the immediate object of their mission, if it be a part-executive of the same treasonable plot, would be involved in the guilt of their confederates?—The question is not in what degree the mere insulated act of attempting to seduce a high military commander from the allegiance of honor and the fidelity of patriotism, is criminal or punishable;—but what lengths have their known confederates proceeded in the co-execution, by more overt acts, of the same treasonable conspiracy?

The constitutional definition of treason should not be construed to restrict that offence to cases only of actual violence or assault.—The terms, "levying war," have been long used in a more extensive sense both in common parlance and in the language of jurists.—The words of the English statute of Ed. 3. are literally adopted in our constitution. The ablest and most impartial commentators upon that statute, the most approved jurists who have written upon the law of nations, in explaining what acts of the subject against the sovereign, or what acts of one sovereign against another, constituted an actual *levying* of war, have never considered the shock of battle, the encounter of armies, or the interchange of blows to be indispensible or essential.—War may be *levied*, in the received sense of the term, and not a blow be struck,—not a town invested,—nor an inch of territory invaded or usurped.—What shall constitute a *levying of war* depends upon so many and such various facts and circumstances, that it would be vain to attempt an enumeration of every supposable case. It seems never to have been questioned, however, that such unequivocal acts as the enlisting soldiers, appointing officers, preparing military equipments, warlike stores and provisions, or the assembling in considerable numbers in warlike array, armed with military weapons, for a hostile purpose, constituted a levying of war, in fact. It is sufficient if they present what is termed the *speciem belli*,—if they shew themselves in the posture of war; an intelligible and rational distinction (though expressed in rather barbarous language) is made between the *Bellum levatum*, and the *Bellum percussum*. It is the *Bellum levatum* that is intended by our constitution to be fixed as the least demonstration of that species of treason.—When the bare fact of levying war is ascertained, it is then to be enquired quo animo? With what intent and against whom?—In England, if the intent be to levy war against the king it is high treason under the statute of Ed. 3.—In this country if the intent be to levy war against the United States, it is treason against them under the constitution. Under either of those laws, a levying or actual waging of war between any number of individuals, if with no intent to levy war or carry on any other treasonable design against the state, amounts not to treason, but will be misdemeanor or felony, according to what lengths they proceed, from a riot and breach of the peace to murder.—There is no real difference in the meaning of the same phrase as respectively used in the English statute and in the American constitution.—If any false glosses have been put upon it in the one case, let them at once be rejected, and a sound, a rational and a legitimate construction be adopted.—There is no pretence for supposing that the criterion referred to, as to what acts have been determined to constitute a levying of war within the meaning of the English statute, is the result of any of those criminal compliances by which their courts have been reproached with sacrificing victims to royal vengeance by means of arbitrary, forced and unnatural constructions. On the contrary, it is sanctioned by the most unexceptionable precedents, and by the authority of their ablest jurists.

So if one state arms in an extraordinary manner, and draws together her forces so as to assume the posture of war;—the instant it is manifested that the armament is destined against another state, it is denominated a levying of war by one against the other, before a single act of violence or open hostility is committed; and the state, so menaced, may anticipate the blow and lawfully attack the other.—Yet the one that first *levied war*, though sustaining the first open attack, would be deemed the aggressor.

To this doctrine it is conceived that a legislative construction almost coeval with the constitution and acquiesced in by the nation, has added a most respectable corroboration. In the year 1794, Congress pass an act punishing, with fine and imprisonment, persons guilty of the offence—1st, of fitting out and arming any vessel with intent to cruise and commit hostilities against any foreign nation in amity with the United States. 2ndly, Of *setting on foot and preparing the means* for a military expedition against a *foreign* state in amity with the U. States. Yet these acts, perpetrated by their own citizens against the *U. States*, are no where expressly forbidden,—no where enumerated among the crimes prohibited or rendered penal by act of Congress. At the very first session, held under the present constitution, a law was passed for punishing treason, piracies and various other crimes,—but no mention is made of any such offences, as *fitting* out *armed* ships, and *setting on foot* military expeditions with intent to commit hostilities against the *U. States*. It follows either that those acts may be committed with unquestioned impunity, or that they amount to *levying of war*, and so constitute the crime of treason. That the same indications of hostility should be made highly penal, when directed against a *foreign* nation, but be deemed innocent or remediless when directed by their own citizens against the *U. States*, would be an absurdity too monstrous to be supposed of our penal code. The more rational conclusion is that they are comprehended, *ex vi termini*, in the crime of 'levying war against the U. States,'

As to the question of fact whether any treason, consisting of a levying of war against the U. States, has been committed by the prisoners or their confederates; it is presumed sufficient evidence appears to warrant an arrest and commitment. An existing state of belligerency, whether of a war de facto, or proclaimed by manifesto; a war of rebellion, or between two sovereign states; a war merely *levied*, or flagrant war accompanied by open violence and actual hostility; under any of these modifications it is generally so far a matter of public notoriety that all the functionaries of the state engaged must take notice of it *ex officio*. The common report and public notoriety of a matter, in which the state in its sovereign capacity and every individual citizen are so intimately concerned, furnish a *prima facie* presumption sufficient to warrant the incipient process preliminary to a prosecution. It was in fact a matter of public notoriety that the conspirators, of whom the prisoners are the active confederates, have enlisted soldiers, issued commissions, set on foot a military expedition, and in fact have assumed the posture of war—or in other words, have 'levied war.' In confirmation of this, the chief magistrate, who is constitutionally authorised to give official information to congress of the state of the nation, has in a formal message to both Houses of Congress, announced the existence of such a state of things. That communication alone furnished to the courts and officers of the U. S. *prima facie* evidence (of an actual levying of war) for all purposes except of conviction and condemnation.

[Mr. Jones mentioned that his occupations had not yet allowed him to peruse the President's message—it being published only that morning. He could only state its general import from hearsay. The message was at length produced and read by him to the court.]

The chief judge, doubted in the first place, whether the President's message did in fact annouce a levying of war; and if it did, whether the court could proceed in any manner upon such information, without infringing the 6th article of the amendments to the constitution, which declares that 'no warrants shall issue, but upon probable cause, supported by *oath or affirmation*,' &c.

Mr. Jones. The President's message does surely import that there has been an actual levying of war. He announces the setting on foot of a military expedition;—the preparation of warlike stores and equipments; the actual assemblage of from 100 to 300 of the desperadoes engaged in the conspiracy, and their descent down the river towards the place of their destination. Above all, he announces that he has called forth the militia to suppress this enterprize, and ordered them to every interesting point on the Ohio and Mississippi from Pittsburg to New-Orleans, for the purpose of seizing the boats and stores and arresting the persons of the conspirators. For the same object the states of Kentucky and Ohio have embodied and sent out large detachments of their militia. There can scarcely be a case, short of flagrant war and actual battle, that combines stronger or more numerous circumstances essentially constituting a state of belligerency. The very fact of the President's calling forth the militia for any purpose of do-