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United States Supreme Court.

MILITARY TRIALS OF CIVILIANS.

The Indiana Conspiracy Case.

ARGUMENT OF HON JEREMIAH S. BLACK.

In September, 1664, L. P. Milligan, W. A. Bowles, Stephen Horsey, and others, were arrested and brought before a military commission at Indianapolis, Indiana, charged with being members, of the order of "American Knights," or "Sons of Liberty," in League with armed rebels, and with having conspired to release the rebel prisoners of war confined in the United States military prisons at Indianapolis, Chicago and Rock Island. The three parties named, after a protracted trial, were found guilty of the charges and specifications preferred against them, and condemned to death. The findings and sentence were approved by the President and promulgated by the War Department on the 2d of May, 1865 and the 19th day of the same month was fixed for the execution. On the 10th of May, however, they applied by petition to the circuit court of the United States for the district of Indiana (Judge Davis and McDonald) for a writ of habeas corpus, or for an order of discharge, under the act of Congress approved March 3, 1863, entitled "An act relating to *habeas corpus*, and regulating judicial proceedings in certain cases." The judges of the circuit court were divided in opinion upon this application, and certified the following questions, on which they differed, to the Supreme Court for decision.

1. "On the facts stated in said petition and exhibits, ought a writ of *habeas corpus* to be issued according to the prayer of said petition?"

2. "On the facts stated in said petition and exhibits, ought the said parties to be discharged from custody, as in said petition prayed?"

3 "Whether, upon the facts stated in petition and exhibits, the military commission mentioned therein had jurisdiction legally to try and sentence said parties in manner and form as in said petition and exhibits is stated?"

After the action of the circuit court, certifying the case to the Supreme Court for final decision, the President commuted the sentence of the petitioners to imprisonment for life.

The argument of those questions, which commenced on the 5th and terminated on the 13th of March, 1866, was conducted on the part of the petitioners by J. E. McDonald, Esq., of Indiana, Hon. J. A. Garfield, of Ohio, Hon. J. S. Black, of Pennsylvania, and David Dudley Field, of New York; and on behalf of the United States by B F Butler, of Massachusetts, Hon H. Stanberry, of Ohio, and Hon. James Speed, Attorney General of the United States. The argument of Mr. BLACK, for the petitioners [taken in short-hand by Mr. D. F. Murphy, one of the conductors of THE REPORTER,] was as follows:

May it Please your Honors:

I am not afraid that you will underrate the importance of this case. It concerns the rights of the whole people. Such questions have generally been settled by arms. But since the beginning of the world no battle has ever been lost or won upon which the liberties of a nation were so distinctly staked as they are on the result of this argument. The pen that writes the judgement of the Court, will be mightier for good or for evil than any sword that ever was wielded by mortal arm.

As might be expected from the nature of the subject, it has been a good deal discussed elsewhere, in legislative bodies, in public assemblies, and in the newspaper press of the country. But there it has been mingled with interests and feelings not very friendly to a correct conclusion. Here we are in a higher atmosphere where no passion can disturb the judgement or shake the even balance in which the scales of reason are held. Here it is purely a judicial question; and I can speak for my colleagues as well as myself, when I say that we have no thought to suggest which we do not suppose to be a fair element in the strictly legal judgment which you are required to make up.

In performing the duty assigned to me in the case, I shall necessarily refer to the mere rudiments of Constitutional law; to the most commonplace topics of history, and to those plain rules of justice and right which pervade all our institutions. I beg your honors to believe that this is not done because I think that the Court, or any member of it, is not familiar with these things than I am, but lest sensible of their value; but simply and only because, according to my view of the subject, there is absolutely no other way of dealing with it. If the fundamental principles of American liberty are attacked, and we are driven behind the inner walls of the Constitution to defend them, we can repel the assault only with those same old weapons which our ancestors used a hundred years ago. You must not think the worse of our armor because it happens to be old-fashioned and looks a little rusty from long disuse!

The case before you presents but a single point, and that an exceedingly plain one. It is not encumbered with any of those vexed questions that might be expected to arise out of a great war. You are not called upon to decide what kind of a rule a military commander may impose upon the inhabitants of a hostile country which he occupies as a conqueror, or what punishment he may inflict upon the soldiers of his own army or the followers of his camp; or yet how he may deal with civillians in a beleaguered city or other place in a state of actual siege which he is required to defend against a public enemy. This contest covers no such ground as that. The men whose acts we complain erected themselves into a tribunal for the trial and punishment of citizens who were connected in no way whatever with the army or navy. And they did in the midst of a community whose social and legal organization had never been disturbed by any war or insurrection, where the courts were wide open, where judicial process was executed every day without interruption, and where all the civil authorities, both State and national, were in the full exercise of their functions.

My clients were dragged before this strange tribunal, and after a proceeding, which it would be mere mockery to call a trial, they were ordered to be hung. The charge against them was put into writing and is found on this record, but you will not be able to decipher its meaning. The relators were not accused of treason, for no act is imputed to them which, if true, would come within the definition of that crime. It was not conspiracy under the act of 1861, for all concerned in this business must have known that conspiracy was not a capital offense. If the commissioners were able to read English, they could not help but see that it was made punishable even by fine and imprisonment, only upon condition that the parties should first be convicted before a circuit or district court of the United States. The judge advocate must have meant to charge them with some offense unknown to the laws, which he chose to make capital by legislation of his own, and the commissioners were so profoundly ignorant as to think that the legal innocence of the parties made no difference in the case. I do not say what Sir James Mackintosh said of a similar proceeding, that the trial was a mere conspiracy to commit willful murder upon three innocent men. The commissioners are not on trial, they are absent and undefended, and they are entitled to the benefit of that charity which presumes them to be wholly unacquainted with just principles of natural justice, and quite unable to comprehend either the law or the facts of a criminal cause.

Keeping the character of the charges in mind, let us come at once to the simple question upon which the court below divided in opinion: Had the commissioners jurisdiction—were they invested with legal authority to try the relators and put them to death for the offense of which they were accused? We answer, no; and therefore the whole proceeding from beginning to end was utterly null and void. On the other hand, it is absolutely necessary for those who oppose us to assert, and they do assert, that the commissioners had complete legal jurisdiction both of the subject matter and of the parties, so that their judgment upon the law and the facts is absolutely conclusive and binding, not subject to correction nor open to inquiry in any court whatever. Of these two opposite views, you must adopt one or the other, for there is no middle ground on which you can possibly stand.

I need not say, (for it is the law of the horn books,) that where a court, (whatever may be its power in other respects,) presumes to try a man for an offense of which it has no right to take judicial cognizance, all its proceedings in that case are null and void. If the party is acquitted, he cannot plead the acquittal afterwards in bar of another prosecution; if he is found guilty and sentenced, he is entitled to be relieved from the punishment. If a circuit court of the United States, should undertake to try a party for an offense clearly within the exclusive jurisdiction of the State Courts, the judgement could have no effect. If a county court in the interior of a State should arrest an officer of the Federal navy, try him, and order him to be hung for some offense against the law of nations, committed upon the high seas or in a foreign port, nobody would treat such a judgment otherwise than with mere derision. The Federal courts have jurisdiction to try offenses against the laws of the United States, and the authority of the State Courts is confined to the punishment of acts which are made penal by State laws. It follows that where the accusation does not amount to an offense against the law of either the State or the Federal Government, no court can have jurisdiction to try it. Suppose for example that the judges of this Court should organize themselves into a tribunal to try a man for witchcraft, or heresy, or treason, against the Confederate States of America, would anybody say that your judgment had the least validity?

I care not, therefore, whether the relators were intended to be charged with treason or conspiracy, or with some offense of which the law takes no notice. Either or any way, the men who undertook to try them had no jurisdiction of the *subject-matter*.

Nor had they jurisdiction of the *parties*.—It is not pretended that this was a case of impeachment, or a case arising in the land or naval forces. It is either nothing at all or else it is a simple crime against the United States, committed by private individuals not in the public service, civil or military. Persons standing in that relation to the Government are answerable for the offenses which they may commit only to the civil courts of the country. So says the Constitution, as we read it; and the act of Congress of March 3, 1863, which was passed with express reference to persons precisely in the situation of these men, declares that they shall be delivered up for trial to the proper civil authorities.

There being no jurisdiction of the subject matter or of the parties you are bound to relieve the petitioners. It is as much the duty of a judge to protect the innocent as it is to punish the guilty. Suppose that the Secretary of some department should take it into his head to establish an ecclesiastical tribunal here in the city of Washington, composed of clergymen "organized to convict" everybody who prays after a fashion inconsistent with the supposed safety of the State. If he would select the members with a proper regard to the *odium theologicum* I think I could insure him a commission that would hang every man and woman who might be brought before it. But would you, the judges of the land, stand by and see their sentences executed? No; you would interpose your writ of prohibition, your *habeas corpus*, or any other process that might be at your command, between them and their victims And you would do that for precisely the same reason which requires your intervention here—because religious errors like political errors, are not crimes which any body in this country has jurisdiction to punish, and because ecclesiastical commissions, like military commissions, are not among the judicial institutions of this people. Our fathers long ago cast them both aside among the rubbish of the dark ages, and they intended that we, their children, should know them only that we might blush and shudder at the shameless injustice and the brutal cruelties which they were allowed to perpetrate in other times and other countries.

But our friends on the other side are not all impressed with these views. Their brief corresponds exactly with the doctrines propounded by the Attorney General, in a very elaborate official paper which he published last July, upon this same subject. He then avowed it to be his settled and deliberate opinion that the military might "*take and kill, try and execute*," (I use his own words) persons who had no sort of connection with the army or navy. And though this be done in the face of the open courts, the judicial authority, according to him, are utterly powerless to prevent the slaughter which may thus be carried on. That is the thesis which the Attorney General and his assistant counsellors are to maintain this day, if they can maintain it, with all the power of their artful eloquence.

We, on the other hand, submit that a person not in the military or naval service cannot be punished at all until he has had a fair, open, public trial before an impartial jury, in an ordained and established court, to which the jurisdiction has been given by law to try him for that specific offense.—There is our proposition. Between the ground we take and the ground they occupy there is and there can be no copromise.—It is one way or the other.

Our proposition ought to be received as true without any argument to support it; because if that, or something precisely equivalent to it, be not a part of our law, this is not what we have always supposed it to be, a free country. Nevertheless I take upon myself the burden of showing affirmatively not only that it is true, but that it is immovably fixed in the very framework of the Government, so that it is utterly impossible to detach it without destroying the whole political structure under which we live. By removing it you destroy the life of this nation as completely as you would destroy the life of an individual by cutting the heart out of his body. I proceed to the proof.

In the first place, the self-evident truth will not be denied that the trial and punishment of an offender against the Government is the exercise of judicial authority. That is a kind of authority which would be lost by being diffused among the masses of the people. A judge would be no judge if everybody else were a judge as well as he. Therefore in every society, however rude or however perfect its organization, the judicial authority is always committed to the hands of particular persons, who are trusted to use it wisely and well; and their authority is exclusive; they cannot share it with others to whom it has not been committed. Where, then, is the judicial power in this country? Who are the depositaries of it here? The Federal Constitution answers that question in very plain words, by declaring that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Congress has, from time to time, ordained and established certain inferior courts; and in them, together with the one Supreme Court to which they are subordinate, is vested all the judicial power properly so called, which the United States can lawfully exercise. That was the compact made with the General Government at the time it was created. The States and the people agreed to bestow upon that Government a certain portion of the judicial power which otherwise would have remained in their own hands, but gave it on a solemn trust and coupled the grant of it with this express condition that it should never be used in any way but one; that is, by means of ordained and established courts. Any person, therefore, who undertakes to exercise judicial power in any other way not only violates the law of the land, but he treacherously tramples upon the most important part of that sacred covenant which holds these States together.

May it please your honors, you know, and I know, and everybody else knows that it was the intention of the men who founded this republic to put the life, liberty and property of every person in it under the protection of a regular and permanent judiciary, separate, apart, distinct, from all other branches of the Government, whose sole and exclusive business it should be to distribute justice among the people according to the wants and needs of each individual. It was to consist of courts, always open to the complaint of the injured, and always ready to hear criminal accusations when founded upon probable cause; surrounded with all the machinery necessary for the investigation of truth, and clothed with sufficient power to carry their decrees into execution. In these courts it was expected that judges would sit who would be upright, honest and sober men, learned in the laws of their country, and lovers of justice from the habitual practice of that virtue; independent because their salaries could not be reduced, and free from party passion because their tenure of office was for life. Although this would place them above the clamors of the mere mob and beyond the reach of executive influence, it was not intended that they should be wholly irresponsible. For any willful or corrupt violation of their duty, they are liable to be impeached; and they cannot escape the control of an elightened public opinion, for they must sit with open doors, listen to full discussion, and give satisfactory reasons for the judgments they pronounce. In ordinary tranquil times the citizen might feel himself safe under a judicial system so organized.

But our wise forefathers knew that tranquility was not always to be anticipated in a republic; the spirit of a free people is often turbulent. They expected that strife would rise between classes and sections, and even civil war might come, and they supposed, that in such times judges themselves might not be safely trusted in criminal cases—especially in prosecutions for political offenses, where the whole power of the Executive is arrayed against the accused party. All history proves that public officers of any government when they are engaged in a severe struggle to retain their places, become bitter and ferocious, and hate those who oppose them, even in the most legitimate way, with a rancor which they never exhibit towards actual crime. This kind of malignity vents itself in prosecutions for political offenses, sedition, conspiracy, libel, and treason, and the charges are generally founded upon the information of hireling spies and common delators, who make merchandise of their oaths, and trade in the blood of their fellow men. During the civil commotions in England, which lasted from the beginning of the reign of Charles I to the revolution of 1688, the best men, and the purest patriots that ever lived, fell by the hand of the public executioner. Judges were made the instruments for inflicting the most merciless sentences on men, the latchet of whose shoes the ministers that prosecuted them were not worthy to stoop down and unloose. Let me say here, that nothing has occurred in the history of this country to justify the doubt of judicial integrity which our forefathers seem to have felt. On the contrary, the highest compliment that has ever been paid to the American bench, is embodied in this simple fact: that if the executive officers of this Government have ever desired to take away the life or the liberty of a citizen contrary to law, they have not come into the courts to get it done, they have gone outside of the courts, and stepped over the Constitution, and created their own tribunals, composed of men whose gross ignorance, and supple subservience could always be relied on for those base uses to which no judge would ever lend himself. But the framers of the Constitution could act only upon the experience of that country whose history they knew most about, and there they saw the brutal ferocity of Jeffreys and Scroggs, the timidity of Guilford, and the base venality of such men as Saunders and Wright. It seemed necessary therefore, not only to make the judiciary as perfect as possible, but to give the citizen yet another shield against the wrath and malice of his Government. To that end they could think of no better provision than a public trial before an impartial jury.

I do not assert that the jury trial is an infallible mode of ascertaining truth. Like everything human, it has its imperfections. I only say it is the best protection of innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better than any other legal institution that ever existed among men. England owes more of her freedom, her grandeur, and her prosperity to that, than to all other causes put together. It has had the approbation not only of those who lived under it, but of great thinkers who looked at it calmly from a distance, and judged it impartially; Montesquieu and DeTocqueville speak of it with an admiration as rapturous as Coke and Blackstone. Within the present century, the most enlightened states of continental Europe have transplanted it into their countries; and no people ever adopted it once and were afterwards willing to part with it. It was only in 1830 that an interference with it in Belgium provoked a successful insurrection which permanently divided one kingdom into two. In the same year, the revolution of the Barricades gave the right of trial by jury to every Frenchman.

Those colonists of this country who came from the British Islands, brought this institution with them, and they regarded it as the most precious parts of their inheritance. The immigrants from other places where trial by jury did not exist became equally attached to it as soon as they understood what it was. There was no subject upon which all the inhabitants of the country were more perfectly unanimous than they were in their determination to maintain this great right unimpaired. An attempt was made to set it aside and substitute military trials in its places, by Lord Dunmore, in Virginia, and General Gage, in Massachusetts, accompanied with the excuse which has been repeated so often in late days, namely, that rebellion had made it necessary; but it excited intense popular anger and every colony from New Hampshire to Georgia, made common cause with the two whose rights had been especially invaded. Subsequently the Continental Congress thundered it into the ear of the world, as an unendurable outrage, sufficient to justify universal insurrection against the authority of the Government which had allowed it to be done.

If the men who fought out our revolutionary contest, when they came to frame a government for themselves and their posterity, had failed to insert a provision making the trial by jury perpetual and universal, they would have covered themselves all over with infamy as with a garment: for they would have proved themselves basely recreant to the principles of that very liberty of which they professed to be the special champions. But they were guilty of no such treachery. They not only took care of the trial by jury, but they regulated every step to be taken in a criminal trial. They knew very well that no people could be free under a government which had the power to punish without restraint. Hamilton expressed in the Federalist, the universal sentiment of his time, when he said, that the arbitrary power of conviction and punishment for pretended offenses, had been the great engine of despotism in all ages and all countries. The existence of such a power is utterly incompatible with freedom. The difference between a master and his slave, consists only in this:—that the master holds the lash in his hands and he may use it without legal restraint, while the naked back of the slave is bound to take whatever is laid on it.

But our fathers were not absurd enough to put unlimited power in the hands of the ruler and take away the protection of law from the rights of individuals. It was not thus that they meant "to secure the blessings of liberty to themselves and their posterity." They determined that not one drop of the blood which had been shed on the other side of the Atlantic, during seven centuries of contest with arbitrary power, should sink into the ground, but the fruits of every popular victory should be garnered up in this new government. Of all the great rights already won they threw not an atom away. They went over *Magna Charta*, the *Petition of Rights*, the *Bill of Rights*, and the rules of the *common law*, and what ever was found there to favor individual liberty they carefully inserted in their own system, improved by clearer expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the Executive, nor party rage in the Legislature could change them without destroying the Government itself.

Look for a moment at the particulars and see how carefully everything connected with the administration of punitive justice is guarded.

1. No *ex post facto* law shall be passed.—No man shall be answerable criminally for any act which was not defined and made punishable as a crime by some law in force at the time when the act was done.

2. For an act which is criminal he cannot be arrested without a judicial warrant founded on proof of probable cause. He shall not be kidnapped and shut up on the mere report of some base spy who gathers the materials of a false accusation by crawling into his house and listening at the keyhole of his chamber door.

3. He shall not be compelled to testify against himself. He may be examined before he is committed, and tell his own story if he pleases; but the rack shall be put out of sight, and even his conscience shall not be tortured; nor shall his unpublished papers be used against him, as was done most wrongfully in the case of Algernon Sydney.

4. He shall be entitled to a speedy trial, not kept in prison for an indefinite time without the opportunity of vindicating his innocence.

5, He shall be informed of the accusation, its nature, and grounds. The public accuser must put the charge into the form of a legal indictment, so that the party can meet it full in the face.

6. Even to the indictment he need not answer unless a grand jury, after hearing the evidence, shall say upon their oaths that they believe it to be true.

7. Then comes the trial, and it must be before a regular court, of competent jurisdiction, ordained and established for the State and district in which the crime was committed, and this shall not be evaded by a legislative change in the district after the crime is alleged to de done.

8. His guilt or innocence shall be determined by an impartial jury. These English words are to be understood in their English sense, and they mean that the jurors shall be fairly selected by a sworn officer from among the peers of the party, residing within the local jurisdiction of the court. When they are called into the box he can purge the panel of all dishonesty, prejudice, personal enmity, and ignorance by a certain number of peremptory challenges, and as many more challenges as he can sustain by showing reasonable cause.

9. The trial shall be public and open, that no under-hand advantage may be taken. The party shall be confronted with the witnesses against him, have compulsory process for his own witnesses, and be entitled to the assistance of counsel in his defense.

10. After the evidence is heard and discussed, unless the jury shall, upon their oaths, *unanimously* agree to surrender him up into the hands of the court as a guilty man, not a hair of his head can be touched by way of punishment.

11 After a verdict of guilty he is still protected. No cruel or unusual punishment shall be inflicted, nor any punishment at all, except what is annexed by the law to his offense. It cannot be doubted for a moment that if a person convicted of an offense not capital were to be hung on the order of a judge, such judge would be guilty of murder as plainly as if he should come down from the bench, tuck up the sleeves of his gown, and let out the prisoner's blood with his own hand.

12. After all is over, the law continues to spread its guardianship around him.—Whether he is acquitted or condemned he shall never again be molested for that offence. No man shall be twice put in jeopardy of life or limb for the same cause.

These rules apply to all criminal prosecutions. But, in addition to these, certain special regulations were required for *treason*—the one great political charge under which more innocent men have fallen than any other. A tyrannical government calls everybody a traitor who shows the least unwillingness to be a slave. The party in power never fails, when it can, to stretch the law on that subject by construction, so as to cover its honest and conscientious opponents. In the absence of a constitutional provision it was justly feared that statutes might be passed which would put the lives of the most patriotic citizens at the mercy of the basest minions that skulk abount under the pay of the Executive.—Therefore a definition of treason was given in the fundamental law, and the legislative authority could not enlarge it to serve the purpose of partisan malice. The nature and amount of evidence required to prove the crime was also prescribed, so that prejudice and enmity might have no share in the conviction. And lastly, the punishment was so limited that the property of the party could not be confiscated and used to reward the agents of his persecutors, or strip his family of thier subsistence.

If these provisions exist in full force, unchangeable and irrepealable, then we are not hereditary bondsmen. Every citizen may safely pursue his lawful calling in the open day; and at night, if he is conscious of innocence, he may lie down in security and sleep the sound sleep of a freeman.

I say they are in force, and they will remain in force. We have not surrendered them, and we never will. If the worst comes to the worst we will look to the living God for His help, and defend our rights and the rights of our children to the last extremity. Those then who think we can be subjected and abjected to the condition of mere slaves are wholly mistaken. The great race to which we belong has not degenerated so fatally.

But how am I to prove the existence of these rights? I do not propose to do it by a long chain of legal argumentation, nor by the production of numerous books with the dog-eared and the pages marked. If it depended upon judicial precedents, I think I could produce as many as might be necessary. If I claimed this freedom, under any kind of prescription, I could prove a good long possession in ourselves and those under whom we claim it. I might begin with Tacitus and show how the contest arose in the forest of Germany more than two thousand years ago; how the rough virtues and sound common sense of that people established the right of trial by jury, and thus stared on a career which has made their posterity the foremost race that ever lived in all the tide of time. The Saxons carried it to England, and were ever ready to defend it with their blood. It was crushed out by the Danish invasion; and all that they suffered of tyranny and oppression during the period of their subjugation resulted from the want of trial by jury. If that had been conceded to them the reaction would not have taken place which drove back the Danes to their frozen homes in the North. But those ruffian sea-kings could not understand that, and the reaction came. Alfred, the greatest of revolutionary heroes and the wisest monarch that ever sat on a throne, made the first use of his power, after the Saxons restored it, to re establish ancient laws. He had promised them that he would, and he was true to them because they had been true to him. But it was not easily done; the courts were opposed to it, for it limited their power—a kind of power that everybody covets—the power to punish without regard to law. He was obliged to hang forty-four judges in one year for refusing to give his subjects a trial by jury. When the historian says that he hung them, it is not meant that he put them to death without a trial. He had them impeached before the grand council of the nation, the Wittenagemete, the parliament of that time. During the subsequent period of Saxon domination no man on English soil was powerful enough to refuse a legal trial to the meanest peasant. If any minister or any king, in war or in peace, had dared to punish a freeman by a tribunal of his own appointment, he would have roused the wrath of the whole population; all orders of society would have resisted it; lord and vassal, knight and squire, priest and penitent, boethan and socman, master and thrall, copyholder and villain, would have risen in one mass and burnt the offender to death in his castle, or followed him in his flight and torn him to atoms. It was again trampled down by the Norman conquerors; but the evils resulting from the want of it united all classes in the effort which compelled King John to restore it by the Great Charter. Everybody is familiar with the struggles which the English people, during many generations, made for their rights with the Plantaganets, the Tudors, and the Stuarts, and which ended finally in the revolution of 1688, when the liberties of England were placed upon an impregnable basis by the Bill of rights.

Many times the attempt was made to stretch the royal authority far enough to justify military trials; but it never had more than temporary success. Five hundred years ago Edward II closed up a great rebellion by taking the life of its leader, the Earl of Lancaster, after trying him before a military court. Eight years later that same king, together with his lords and commons in Parliament assembled, acknowledged with shame and sorrow that the execution of Lancaster was a mere murder, because the courts were open and he might have had a legal trail. Queen Elizabeth, for sundry reasons affecting the safety of the State, ordered that certain offenders not of her army should be tried according to the law martial. But she heard the storm of popular vengeance rising and, haughty, imperious, self-willed as she was, she yielded the point: for she knew that upon that subject the English people would never consent to be trifled with. Strafford, as Lord Lieutenant of Ireland, tried the Viscount Stormont before a military commission, and cut off his head. When impeached for it, he pleaded in vain that Ireland was in a state of insurrection, that Stormont was a traitor, and the army would be undone if it could not defend itself without appealing to the civil courts. The Parliament was deaf: the King himself could not save him: he was condemned to suffer death as a traitor and a murderer. Charles I issued commissions to divers officers for the trial of his enemies according to the course of military law. If rebellion ever was an excuse for such an act, he could surely have pleaded it: for there was scarcely a spot in his kingdom, from sea to sea, where the royal authority was not disputed by somebody. Yet the Parliament demanded in their petition of Right, and the King was obliged to concede, that all his commissions were illegal. James II clamied the right to suspend the operation of the penal laws—a power which the courts denied—but the experience of his predecessors taught him that he could not suspend any man's right to a trial. He could easily have convicted the seven bishops of any offense he saw fit to charge them with if he could have selected their judges from among the mercenary creatures to whom he had given commands in his army. But this he dared not do. He was obliged to send the bishops to a jury and endure the mortification of seeing them acquitted. He, too, might have had rebellion for an excuse, if rebellion be an excuse.

The conspiracy was already ripe which a few months afterwards made him an exile and an outcast; he had reason to believe that the Prince of Orange was making his preparations on the other side of the channel to invade the kingdom, where thousands burned to join him; nay, he pronounced the bishops guilty of rebellion by the very act for which he arrested them.—He had raised an army to meet the rebellion, and he was on Hounslow Heath reviewing the troops organized for that purpose, when he heard the great shout of joy that went up from Westminister Hall, was echoed back from Temple Bar, spread down the city and over the Thames, and rose from every vessel on the river—the simultaneous shout of two hundred thousand men for the triumph of justice and law.

If it were worth the time, I might detain you by showing how this subject was treated by the french Court of Cassation in Geoffry's case, under the Constitution of 1830, when a military judgment was unhesitatingly pronounced to be void, though ordered by the King after a proclamation declaring Paris in a state of seige. *Fas est ab hoste doceri*: we may lawfully learn something from our enemies—at all events we should blush at the thought of not being equal on such a subject to the courts of Virginia, Georgia, Mississippi, and Texas, whose decisions my colleague, General Garfield, has read and commented on.

(*Continued next week.*)