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LOUISIANA.

ANSWER

Tendered to the District Court of the United States, by Maj. Gen. JACKSON, on a rule to shew cause why an attachment should not issue against him, for a contempt of that court, in sundry particulars relative to a writ of HABEAS CORPUS, directed to the General, during the late invasion of the enemy.

THE Hon. Dom. A. Hall having cited Gen. Jackson to appear in his court to shew cause why an attachment should not issue against him for a contempt of that court in sundry particulars relative to a writ of habeas corpus directed to the general during the late invasion of the enemy, the general appeared in obedience to the rule, and tendered to the court his reasons in a written answer verified by his oath.—But judge Hall refused to hear the answer, although he knew not what it contained, other than that he was assured in behalf of the general that there was nothing in it indecorous or improper for the ear of the court, and that it was fully embraced by the rules that he himself had prescribed for its introduction. He decided without hearing the defence, and finally proceeded to impose a fine of one thousand dollars; the general, therefore, thinks it due to himself to publish the answer he had prepared; first observing, that even judge Hall, although he now expresses his disapprobation of martial law, did not only approve it when first declared, but openly asserted that short of the exercise of all the rigor incident thereto, the country would certainly be lost. His honor did not even feel secure under the guardianship of martial law; he fled from the city, and suffering his discretion to yield to his fears, indulged himself, in his route to Bayou Saah, in manifesting apprehensions as to the fate of the country, equally disgraceful to himself and injurious to the interest and safety of the state. Should his honor judge Hall deny this statement, the general is prepared to prove it fully and satisfactorily.

Cause shewn by A. Jackson, Major-General in the Army of the United States, commanding the Seventh Military District, on the rule hereunto annexed.

The respondent has received a paper purporting to be the copy of a rule of this district court of the U. S. for the Louisiana district, in a suit entitled "The United States vs. A. Jackson, commanding him to shew cause why an attachment should not issue against him for divers alleged contempts of the said court." Before he makes any answer whatever to the said charges he deems it necessary to protest, and he does hereby protest against, and reserve to himself all manner of benefit of exception to the illegal, unconstitutional, and informal nature of the proceedings instituted against him: it appearing by the said proceeding—

I. That witnesses have been summoned by process of subpoena, in a suit or prosecution of the U. States against him, when in fact and in truth there was not then any such suit pending, nor is there now any such suit or prosecution legally pending in said court.

II. That the said rule was obtained at the instance of the attorney of the U. S. for the district of Louisiana, who had no right officially to ask for or obtain any such rule, the duties of the attorney for the U. S. being, by law, confined to the prosecution of "all delinquents for crimes and offences cognizable under the authority of the U. States, and all civil actions in which the U. S. shall be concerned." As this proceeding is not pretended to be a civil action, it brings it within the purview of

the duties of the attorney for the U. S. it must be a prosecution for a crime or offence cognizable under the authority of the U. States. But the facts stated in the rule do not constitute any "crime or offence cognizable under the authority of the U. States." The courts of the U. States have no common law jurisdiction of crimes or offences; if, therefore, the facts stated in the rule are not made such by a statute of the U. States, they are not cognizable by its courts; but the statutes have been searched, and no such provision can be found; therefore the facts charged are not offences which are either cognizable by this court, or liable to be prosecuted by the attorney for the U. States.

III. That the said rule is a crime or offence cognizable under the authority of the U. States, the mode of proceeding is both unconstitutional and illegal, the 7th and 8th amendment to the constitution containing many provisions directly contrary to the mode of proceeding by attachment for contempt; particularly the provision of the 7th amendment, that no person shall be deprived of life, liberty or property, without due process of law; and of the 8th, that in all criminal prosecutions, the accused shall enjoy the right of a speedy trial by an impartial jury; and in the 32d section of the law for punishing certain crimes against the United States, containing a conclusive implication, if not an express provision, that no offence can be prosecuted except by information or indictment, neither of which have been filed in this instance: The respondent, therefore, concludes those heads of exceptions by the dilemma that, if the proceeding be a prosecution for a crime or offence, cognizable by the authority of the U. States, it is both unconstitutional and illegal in its present form; and if it be not such a prosecution, that the attorney of the United States had no right to institute it; his ministry by law extending only to them.

IV. That this court has no right to issue any attachment for any contempt whatever, or to punish the same by fine and imprisonment, in any other case than those prescribed by the 17th section of the judiciary act, which confines such authority to the punishment, by fine and imprisonment, of contempt in any cause or hearing before the same—whereas neither by the rule nor the affidavits, does it appear that any of the alleged contempts were offered in any cause or hearing before the said District Court; on the contrary, all the acts alleged as contempts are stated to have been done in relation to an ex parte application made to the judge of the said court at his chambers, at a time when his court was in vacation, and not in a cause or hearing before the same—whereas neither by the rule nor the affidavits does it appear that any of the alleged contempts were offered in any cause or hearing before the said District Court; on the contrary, all the acts alleged as contempts are stated to have been done in relation to an ex parte application made to the judge of the said court at his chambers, at a time when his court was in vacation, and not in a cause or hearing before the court.

V. That no attachment ought to issue for neglecting or refusing a return to a habeas corpus, issued and returnable out of court; all the statutes on the subject, both in England and in the United States, wherever they have been re-enacted, containing express penalties for this offence; and this, for the very reason that such neglect or refusal in relation to an act done, not in a cause or hearing pending in court, but in an ex parte proceeding at a judge's chambers, could not be punished by attachment as a contempt.

VI. That no act in relation to the writ of habeas corpus or the allowance of the same, in the case mentioned in the said rule, can be considered as a contempt, because the judge of this honorable court, by the 14th section of the judiciary act of the United States, is expressly inhibited from issuing any writ of habeas corpus, except in cases of prisoners "in custody under or by colour of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify; neither of which circumstances appear, either in the writ, the allowance of the same or the affidavit on which the same was founded. The court then having no jurisdiction of the case, this respondent had a right to consider the service of the same as a trespass, according to a decision of the supreme court of the U. States.

VII. That, as to so much of the said rule as charges the respondent with the imprisonment and detention of the judge of this honorable court, the said imprisonment and detention appear by the said affidavits, on which the rule was granted to have been made, or the

allegation of a military offence committed by the said judge individually. The defence of this respondent may require the investigation of the truth of the said allegation; a proceeding which could not take place in this court without violating one of the first and clearest maxims of all law.

VIII. That it appears by the said writ that no place whatever was designated, at which the same should be returned.

IX. That the said writ was served long after the return thereof, on the respondent, by reason whereof he could not comply with the tenor had he been so disposed.

X. That the said writ of habeas corpus issued in an irregular manner, and that the respondent was in no wise compelled by law to obey the same; inasmuch as the name of the judge allowing the same was not signed with the proper hand writing of the judge allowing the same, on the writ; nor were the words "according to the form of the statute" marked thereon—both which are positively required by the statutes regulating the issuing writs of habeas corpus; and without which they need not be obeyed. Should it be objected that the English statutes are not binding here, it is answered that the United States are without a statutory provision on the subject, and that the introduction of the habeas corpus generally must introduce it as it stood at the time of the making of the constitution.

XI. That if the allowance on the back of the affidavit, contrary to the express words of the statute, be deemed sufficient, yet the respondent was not bound to pay any attention to the writ of habeas corpus, for the same was not made in conformity with the allowance, which was given first on the fifth day of March, for a writ returnable on the next morning, and afterwards altered in the date so as to bear date on the sixth of the same month, returnable next morning, which would have been the 7th, whereas the writ issued, bore date the sixth, and was returnable the same day—varying from the allowance materially: and this circumstance is an excellent illustration of the wisdom of the statutory provision which requires that the writ itself be signed by the judge.

Under all of which protestations, and saving all which exceptions, & not submitting to the jurisdiction of the said court, or acknowledging the regularity of the said proceedings; but expressly denying the same.—This respondent, in order to give a fair & true exposition of his conduct on every occasion in which it may be drawn into question—saith,

"That the respondent previous to, and soon after his arrival in this section of the seventh military district, received several letters and communications putting him on his guard against a portion of the inhabitants of the state—against the legislature thereof; and foreign emissaries in the city; the population of the country was represented as divided by political parties and national prejudices, a great portion of them attached to foreign powers and disaffected to the government of their own country, and some as totally unworthy of confidence. The militia were described as resisting the authority of their commander in chief, and encouraged in their disobedience by the legislature of the state. That legislature characterised as politically rotten, and the whole state in such a situation as to look for defence principally from the regular troops and the militia from the other states. Among those representations, the most important, from the official station of the writer, were those of the governor of the state. On the 8th of August, 1814, he says:—

"On a late occasion I had the mortification to acknowledge my inability to meet a requisition from Gen. Flournoy; the corps of the city having for the most part resisted my orders, and being encouraged in their disobedience by the legislature of the state, then in session; one branch of which, the senate, having declared the requisition illegal, unnecessary, and oppressive, and the house of representatives having rejected a proposition to approve the measure, how far I shall be supported in my late orders remains yet to be proven. I have reason to calculate on the patriotism of the interior and western counties of the state. I know also that there are many faithful citizens in New-Orleans, but there are others in whose attachment to the United States I ought not to confide.—Upon the whole, sir, I cannot disguise the fact that, if Louisiana should be attacked, we must principally depend for security upon the prompt movements of the regular troops under your command and the militia of the western states and territories. At this moment

we are in a very unprepared and defenceless condition; several important points of defence remain unoccupied, and in case of a sudden attack this capital would, I fear, fall an easy sacrifice."

On the 12th of the same month the respondent was told—

"On the native Americans and a vast majority of the Creoles of the country, I place much confidence, nor do I doubt the fidelity of many Europeans who have long resided in the country; but there are others much devoted to the interest of Spain, and whose partiality to the English is not less observable than their dislike to the American government."

In a letter of the 24th the same ideas are repeated—

"Be assured, Sir, that no exertions shall be wanting on my part; but I cannot disguise from you that I have a very difficult people to manage; to this moment no opposition to the requisition has manifested itself, but I am not seconded with that ardent zeal, which in my opinion the crisis demands. We look with great anxiety to your movements, and place our greatest reliance for safety on the energy and patriotism of the western states. In Louisiana there are many faithful citizens: these last persuade themselves that Spain will soon re-possess herself of Louisiana, and they seem to believe that a combined Spanish and English force will soon appear on our coast. If Louisiana is invaded I shall put myself at the head of such of my militia as will follow me to the field, and on receiving shall obey your orders. I need not assure you of my entire confidence in you as a commander, and of the pleasure I shall experience in supporting all your measures for the common defence; but, sir, a cause of indescribable chagrin to me is, that I am not at the head of a willing and united people: native Americans, native Louisianians, Spaniards & Frenchmen, (with some Englishmen) compose the population—among them there exists much jealousy, as great differences in political sentiment as in their language and habits. But nevertheless, sir, if Louisiana is supported by a respectable body of regular troops, or of western militia, I trust I shall be able to bring to your aid a valiant and faithful corps of Louisiana militia; but if we are left to rely principally on our own resources, I fear existing jealousies will lead to distrust, so general, that we shall be enabled to make but a feeble resistance."

On the 8th of September the spirit of disaffection is said to be greater than was supposed—the country is said to be filled with Spies and Traitors. "Inclosed you have copies of my late general orders. They may and I trust will be obeyed; but to this moment my fellow-citizens have not manifested all that union and zeal the crisis demands, and their own safety requires. There is in this city a much greater spirit of disaffection than I had anticipated, and among the faithful Louisianians there is a despondency which palsies all my preparations; they see no strong regular force around which they could rally with confidence, and they seem to think themselves not within the reach of seasonable assistance from the western states. I am assured, sir, you will make the most judicious disposition of the forces under your command; but excuse me for suggesting, that the presence of the 7th regiment, now at Chifonct, at or very near New-Orleans, will have the most salutary effect. The garison here at present is alarmingly weak, and which is cause of much regret, from the great mixture of persons and characters in this city we have as much to apprehend from within as well as without. In arresting the intercourse between N. Orleans and Pensacola you have done right. Pensacola is, in fact, an enemy's post, and had our commercial intercourse with it continued, the supplies furnished to the enemy would have so much exhausted our own stock of provisions as to have occasioned the most serious inconvenience to ourselves. I was on the point of taking on myself the prohibition of the trade with Pensacola: I had prepared a proclamation to that effect, and would have issued it the very day I heard of your interposition.—Enemies to the country may blame you for your prompt and energetic measures; but, in the person of every Patriot you will find a supporter.—I am very confident of the lax police in this city, and indeed throughout the state, with respect to the visits of strangers. I think with you that our country is filled with spies and traitors: I have written pressingly on the subject to the city authorities and parish judges.—I hope some efficient regulations will speedily be adopted by the

first, and more vigilance exerted for the future by the latter."

On the 19th of September, speaking of the drafts of militia, he says:

"The only difficulty I have hitherto experienced in meeting the requisition has been in this city, and exclusively from some European Frenchmen, who, after giving their adhesion to Lewis XVIII. have through the medium of the French consul, claimed exemption from the drafts, as French subjects. The question of exemption however, is now under discussion before a special court of enquiry, and I am not without hopes that these ungrateful men may yet be brought to a discharge of their duties."

And practising on the necessity of securing the country against the machinations of foreigners, he on the 14th of November informed the respondent:

"You have been informed of the contents of an intercepted letter written by Colonel Coliel, a Spanish officer to captain Morales of Pensacola. This letter was submitted for the opinion of the attorney general of the state, as to the measures to be pursued against the writer. The attorney general was of opinion that the court could take no cognizance of the same; but that the governor might order the writer to leave the state, and, in case of refusal, to send him off by force. I accordingly sir, ordered Colonel Coliel to take his departure, in forty eight hours, for pensacola, and gave him the necessary passports. I hope this measure may meet your approbation. It is a just retaliation for the treatment lately observed by the governor of Pensacola toward some American citizens, and may induce the Spaniards residing among us to be less communicative on subjects which relate to our military movements."

With the impressions this correspondence was calculated to produce, the respondent arrived in this city where in different conversations, the same ideas were enforced, and he was advised not only by the Governor of the State but very many influential persons to proclaim martial law as the only means of producing union, overcoming disaffection, detecting treason, and calling forth the energies of the country for its defence. This measure was discussed and recommended to the respondent, as he well recollects in the presence of the Judge of this honorable Court, who not only made no objection, but seemed by his gestures and silence to approve of its being adopted. These opinions respectable in themselves, derived greater weight from that which the Governor (as appears by the annexed documents) expressed of the Legislature then in session. He represented their fidelity as very doubtful, seemed suspicious of some bad design at their prolonged session, and appeared extremely desirous that they should adjourn. The respondent had also been informed that in the house of Representatives, the idea that a very considerable part of the State belonged to the Spanish government, and ought not to be represented, had been openly advocated and favorably heard. The co-operation of the Spaniards with the English was at that time a prevalent idea.—This information therefore appeared highly important. He determined to examine, with the utmost care, all the facts that had been communicated to him; and not to act upon the advice he had received until his own observation should have determined its propriety. He was then nearly a stranger in the place he was sent to defend, and unacquainted with the language of a majority of its inhabitants. While these circumstances were unfavorable to his obtaining information on the one hand, on the other, they precluded the suspicion that his measures were dictated by personal friendship, private animosity or party views. Uninfluenced by such motives, he began his observations. He sought for information, and to obtain it communicated with men of every description. He believed even then he discovered those high qualities which have since distinguished these brave defenders of their country—that the variety of language, the difference of habit, and even the national prejudices which seemed to divide the inhabitants, might be made, if properly directed, the source of the most honorable emulation. Delicate attentions were necessary to foster this disposition, and measures of the highest energy, to restrain the effects that such an assemblage was calculated to produce; he determined to employ them both, he called to his aid the impulse of national feeling, the higher motives of patriotic sentiment, and the noble enthusiasm of valor.—They operated in a manner in which history will record: and all who could be influenced by these feelings rallied