by many that officers on leave or waiting orders gain more, and are better off, than those doing duty at sea; and this may account, in part, for the great disparity of numbers *not on duty*, before and since 1835, as by the following table:

	Captains.				Commanders.				
	Whole number.	Not on duty.	Waiting orders.	On leave.	Whole number.	Not on duty.	Furlough.	On leave.	Waiting orders.
1816	21	1	-	-	16	2	-	-	-
1818	31	2	-	-	25	3	3	-	-
1819	35	4	-	-	20	-	1	-	-
1820	34	3	-	-	22	-	1	-	-
1821	32	-	-	-	31	-	1	-	-
1822	3.	1	-	-	31	-	2	-	-
1824	30	1	-	-	30	-	2	-	-
1826	32	-	-	-	30	1	3	-	-
1830	31	-	1	2	29	-	2	4	-
1833	32	-	1	3	32	1	2	4	-
1836	31	-	2	11	26	1	-	6	-
1839	40	-	21	8	37	-	-	8	-
1840	52	-	27	1	55	-	1	7	24
1841	55	1 sus'd, 1 on fur	41	4	55	-	-	3	26
1842	68	1 susp'd	26	3	76	1 susp'd	-	2	47

While the country will sustain and sanction all reasonable expenditures for the navy and the naval service, the real friends of both should be careful not to suffer any expenditure not necessary, whereby the favorable feelings towards the navy, now so generally prevalent, should be shaken or dissipated. The estimate for pay to officers in the navy *not on duty*, is $295,000 for this year, and the people will want to understand why this is so. Will they be satisfied when you tell them that it is because you keep so many officers in service who are unable or incapacitated to do duty?

The cry has been raised by interested persons, that there is a disposition in Congress to cut down the estimates, and to refuse appropriations for the navy. The bill from the House, now under consideration, makes as liberal and as great appropriations, both for pay and for gradual increase and repairs, as were ever before made in a time of peace; and there is no disposition to withhold any portion of what the House bill proposes to give; and the appropriations are entirely adequate to the service as it now is, or as proposed in the Secretary's report at the commencement of the session.

It is said that we have lieutenants who have served as such for twenty five or thirty years, and who would not, under this proviso, be promoted for twenty or thirty years to come. This is a mistake; and, by referring to the Register, it will be seen that our oldest commanders were promoted in 1837, the oldest lieutenants in 1821, and the oldest midshipmen were passed in 1832; and should promotions be made as fast as some desire to make them, we must take commanders and passed midshipmen who have not served as such long enough to be entitled to promotion by the rules of the service.

REMARKS OF MR. LINN,

OF MISSOURI,

In Senate, May 18, 1842—In reply to Mr. Conrad, of Louisiana, on the following bill, viz:

The following bill being under consideration, viz:

A BILL to indemnify Major General Andrew Jackson for damage sustained in the discharge of his official duty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, directed to ascertain the amount of the penalty or damages awarded by the district judge of the United States, at New Orleans, in the year eighteen hundred and fifteen, against Major General Andrew Jackson, then commanding in chief of that district, in his official and military capacity, and paid by him at that time; and that the said sum be paid, with interest at six per cent. per annum, be paid to Major General Andrew Jackson, out of any money in the Treasury not otherwise appropriated.

Mr. LINN said he desired to occupy the attention of the Senate a short time by a few observations, in reply to the Senator from Louisiana, [Mr. Conrad.]

If this were the first case of the kind (said Mr. L.) which had occurred in the history of the country, I might, perhaps, be induced to pause while in the act of extending sheer justice to an injured citizen. But, sir, our statute-books abound in precedents—cases in which military and naval officers, as well as other agents in almost *every* department of the Government, having, in the discharge of their duty, incurred the penalty of the law, and been obliged to pay fines, have called upon us for relief, and have seldom, or never, called in vain.

In the case now presented to the Senate, what are we required to do? Nothing, sir—nothing but a simple, naked, and unencumbered act of *justice* to a citizen who has been fined by a court for an act done while in the performance of his duty, and while rendering most valuable and important services to his country. This is the only true and proper light in which the subject can be viewed; and it can serve no good object to introduce extraneous matters, as proposed in the amendment, with the plain question. It is not necessary to make any allusion to the judge by whom the fine was imposed; and the bill is, therefore, silent as to Judge Hall. It neither condemns his motives nor his acts. It is possible, as I remarked the other day, that the Judge and the General, in the discharge of their peculiar duties, may have both been right. *We all know that the General was right.* In regard to the former, we are not called upon, and it is worse than useless now to express an opinion directly or indirectly; and as to the latter, should we now refuse to extend to him the simple act of justice which the bill provides, or clog it with derogatory amendments, we would trample upon every generous emotion which moved the bosoms of the fair daughters of New Orleans when they gathered their jewels to ward off the blow aimed at their gallant preserver by an indignant judiciary—every noble and generous impulse which has moved a free people to elevate him, by their suffrages, above the sentence of the court.

I repeat, an investigation into the motives or the acts of Judge Hall is uncalled for, and I will not contribute to such an investigation. The question has but one bearing or point to which we must look. It is confined to this inquiry: Was the declaration of martial law *necessary* to the safety of New Orleans? It would be a waste of time to seek, here or elsewhere, for a man who will give a negative answer to *this* question; for all, I believe—even the Senator [Mr. Conrad] himself—will admit that General Jackson had good and sufficient ground for believing that martial law was necessary; that his imperative duty was, to *save the city*—and, as a means, that duty required him to establish martial law. But if, at this day, it should be contended that the grounds of the General's belief were insufficient, to what source, I would ask, must the error be traced? There was no error in the case; many good reasons existed, and they were communicated to General Jackson by the *highest civil authorities of the State*—Governor Claiborne among the number; and were by those authorities deemed to be of such a nature as to render the establishment of martial law indispensably necessary to its safety.

Of this indispensable necessity, the most incredulous will be convinced by reading the letters of Governor Claiborne to General Jackson. In that of the 5th of August, 1814, he says:

"On a late occasion I had the mortification to acknowledge my inability to meet a requisition from General Flournoy; the corps of this city having, for the most part, resisted my orders, 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 and oppressive, and the House of Representatives having rejected a proposition to approve the measure. How far I shall be supported in any late orders, remains yet to be proved. I have reason to calculate upon the patriotism of the interior and western counties. 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 force under your command, and the militia of the Western States and Territories. At this moment, we are but very unprepared and defenceless; 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 General was told—

"On the native Americans, and a great 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 exertion shall be wanting on my part; but I cannot disguise from you that I have a very difficult people to manage: to this moment, an 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; there are persons themselves that Spain will soon repossess 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, Frenchmen and Spaniards, with some Englishmen, compose the mass of the population—among them there exists much jealousy, and as great differences in political sentiments as in their language and habits. But nevertheless, sir, if we are 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 able to make but a feeble resistance."

If there be any upon whose minds there lingers a doubt upon this question, let them look at the picture which New Orleans presented at that day. A quarter of a century ago, the organization of the society of that city was peculiar; in its composition there was much that was foreign to our institutions, in fact and in feeling; for in it was infused a mixture from the continent of Europe, of men not native to our soil—from France, Spain, Portugal, Britain, and Germany—many of whom felt a deep gratitude to England for the overthrow of Bonaparte. Indeed, when we reflect upon the situation of New Orleans as it then was, in regard to this portion of its population *alone*, we might well be justified in lauding the declaration of martial law by General Jackson, even aside from the fact that he was urged to do so by the civil authorities of the State, and by others of its most gallant and patriotic sons.

If, sir, my memory serves me, something fell from the gentleman from Louisiana, which indicated a desire, on his part, that the friends of Gen. Jackson should *establish* the fact that he was justified, on legal constitutional grounds, for adopting the course which he pursued at New Orleans. He would require us to point out the law under which the General acted. I trust the Senator will be satisfied with the fact, that many emergencies arise in war—and, indeed, some in peace—in which the high civil and military servants of the people are, from *necessity*, compelled to "take the responsibility" of doing some act, for the safety of the country, which is beyond the pale of their ordinary duties, and, if the Senator pleases, beyond the law. Again: I would refer the Senator to the cases in which Generals Wilkinson, Brown, and other officers on the frontiers of the State of New York, have been amerced for arresting and imprisoning persons on *suspicion* of being spies or traitors.

There are precedents innumerable where officers have been found guilty of breaches of law in the discharge of their duty, and, therefore, calling for the interference of a just Government. Of these, it is only necessary to introduce a few, where the Government did interpose and give relief to the injured officer. These cases commenced as early as August, 1790, and have continued down to the present time. Thus, in April, 1816, Major General Jacob Brown was indemnified for damages sustained under sentence of civil law, for having confined an individual found near his camp, suspected of traitorous designs.

At the same session, Captain Austin and Lieutenant Wells were indemnified against nine judgments, amounting to upwards of $8,000, for having confined nine individuals suspected of treachery to the country. In this case it was justly remarked by the then Secretary of War, [John C. Calhoun,] that "if it should be determined that no law authorized" the act, "yet I would respectfully suggest that there may be cases, in the exigencies of war, in which, if the commander should transcend his legal power, Congress ought to protect him, and those who act under him, from consequential damages," in which the committee of the House of Representatives, as stated by their chairman, the lately deceased member from North Carolina [Mr. Williams] concurred.

In the case of General Robert Swartwout, in 1818, the committee by whom it was reported stated that "it is considered one of those extreme cases of necessity in which an overstepping of the established legal rules of society stands fully justified."

In May, 1820, General James Wilkinson was indemnified for damages recovered against him by General Adair, on account of false imprisonment.

In March, 1823, Colonel Robert Purdy was indemnified for damages, for having arrested and imprisoned an individual found near his garrison,

government. Even in time of war, the private citizen, the non-combatant, cannot be subjected to the code which governs those engaged in warfare, without a manifest violation of his civil rights. A person not enlisted in the service of the United States, either in the army or the navy, or in the militia when in actual service, cannot be subjected to the operation of martial law, because Congress could confer no such power. It is limited in its powers. The Constitution says, Congress shall have power to declare war, to raise armies, to provide a navy, to provide arms and munitions of war, and to make rules for the government of the land and naval forces. On these limited and specific powers, it has been inferred that Congress may declare martial law. To avoid this very conclusion, there is an express provision in the very next section, among the restrictions on the power of Congress, declaring that the remedy of the writ of *habeas corpus* shall not be suspended, unless in cases of rebellion or invasion.

A state of war, then, authorizes the suspension of the privilege of the writ of *habeas corpus*, which is the sacred instrument of liberty in the hands of the State authorities; but does not give the right of declaring martial law, as applicable to the community generally, subjecting the citizen to a code which is summary in its proceedings, and arbitrary in its judgments. No citizen, unless with his own consent, is amenable to the military code, and that occurs when he enlists in the army or navy, or is called into action as part of the militia. There is an express provision in the 5th article of the amendments to the Constitution, which guards against such a result, by declaring that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger." The only power Government has to establish a code of martial law, is in relation to those who are enlisted in its land and naval forces, including the militia. It is to be regretted that such erroneous notions, avowed in relation to martial law, should prevail in a country boasting of its civil liberty. All Congress can do, even in the cases of war and invasion, is to suspend the privilege of the writ of *habeas corpus*; and that can be done by Congress only—not by an officer of the Government without its authority. But that suspension of the writ, although it may leave the individual subject to the inconvenience of temporary restraint, does not subject him to be tried and punished by the military code. If an individual, no matter how high in commission, or how much impelled by necessity, usurps the power, he cannot be said to act rightfully, though he may be excused. A high and imperious necessity may exist, which can alone form his excuse; and wherever such a case is presented, he (Mr. B.) would sustain the officer. Whether such was the fact in the case of General Jackson, should be distinctly settled. And the report of the committee, presenting all the facts of the case, would place the matter on the right footing, and prevent any erroneous conclusions in relation to this question of martial law.

He had dwelt on this point, because he conceived these views too important to be overlooked. He had been induced to go thus minutely into the matter, with a view of showing that it contains a grave and most important question, involving not only individual life, liberty, and property, but the liberties of this country, its dearest rights, and its safeguards against the exercise of the most perilous and tyrannous power—a power such as this Government, much less its commissioned officer, has, and can have, no right to assume for a moment. He trusted that he had shown the propriety of the reference, and that it would be made.

Mr. LINN remarked that he should not have said one word more at present—wishing to reserve his remarks for the regular discussion of the measure—had not the Senator from Delaware made use of some extraordinary observations, which demanded immediate notice. That Senator says: "It has been argued by General Jackson's friends that he (General Jackson) acted in conformity with the letter of the Constitution." If there was any individual among the friends of General Jackson who made use of any such argument during the discussion of this bill last session, or at any other time, he had not heard it; and certain he was that he had not himself used one expression to that effect. What he and his friends did say was, that General Jackson, under the circumstances in which he was placed, acted nobly, and merited the approval and gratitude of the whole country, so fully, unequivocally, and repeatedly awarded to him then, and ever since the transaction. He was not the man voluntarily to abandon his duty to his country in such a crisis, and take refuge behind the letter of the Constitution for his excuse, after both country and Constitution were destroyed by an invading enemy. He was not the man for any such line of conduct.

He had not sought to place the bill on any ground different from that on which bills heretofore had been placed for refunding officers in the public service fines incurred, or judgments awarded against them, for official acts done for the benefit of the country. Money paid by them, in compliance with the mandates of the law, had been refunded by Congress; and upon the same ground he placed this bill—that of restoring to the public servant money paid by him for the public good. He had no wish to go any further with the subject than this; and would not, unless compelled by the remarks of others. He had no desire to discuss the question of the constitutionality of the matter. The question was, simply, whether General Jackson shall have the same measure of justice extended to him, which has been extended to other officers of the Government—even to the lowest in grade of your revenue officers. The cases of Generals Brown and Wilkinson, Colonel Purdy, &c., will present themselves at once to the memory of Senators; they being of a high military character. This bill must pass. The American people have willed it. It is not with them a party question. All go for it—Jew and Gentile, Democrat and Whig; and it should be done promptly.

He should repeat, that the friends of this measure had not argued it on the ground of the act for which the fine was incurred being constitutional. He apprehended not one of his friends had taken that position, and that therefore the Senator from Delaware was in error in supposing it was so advocated. The constitutional question was a reserved question. The friends of the bill never urged it on that ground; they never said aught about the Judge being right or wrong. There might have been those who disapproved of the course pursued by the Judge, and so condemned it. But, whether they did so or not, it had nothing to do with the bill now before the Senate, which was disconnected from any question of that kind. And, as to the record referred to by the Senator from Delaware, he knew not what it contained; but he hoped the Senator would move to have it printed. Let it come to light, and not be kept floating about in holes and corners. If there is anything in it of such importance as is supposed, it is right it should be made known—right that the country should see it.

It has been intimated by the Senator from Louisiana [Mr. CONRAD] that this bill, after so long a delay on the part of General Jackson and his friends, was a popularity-hunting scheme. It may be so: if doing justice to a venerable patriot soldier and statesman would gain him favor with his countrymen, he must confess he desired it, for he coveted the popularity which would spring from doing right; he desired no other.

It would be obvious to the most casual observer, that General Jackson could not, in the plenitude of power, ask that this money should be refunded as a mark of approbation of his conduct; nor Mr. Van Buren and his friends—as the first was accused of subserviency, and the latter of wearing "collars." No; it is reserved for the Whigs—to his political opponents—to act with justice and magnanimity, and do the deed themselves: the most magnanimous, from the bitter political war that has been waged for so many years.

He frankly confessed that it had escaped his attention. It was first excited by the debates in the Legislatures of the States of New York and Ohio; and of the presentation of instructions to the House of Representatives in favor of this measure from the State of Michigan; in which latter, remarks were uttered by an individual alike injurious to himself and to Gen. Jackson, for he stated (as Mr. L. understood) that the General had not paid the amount of the fine himself—it being paid by others. Could there be a harsher reflection upon the honor and integrity of the man who had perilled all for his country? It was, then, important to the General's fame that all doubt should cease upon that point; that the historical fact of the payment of the amount of the fine out of his own funds should be placed beyond cavil or dispute, whilst he was yet in the land of the living.

Mr. BAYARD did not know that the Senator from Missouri [Mr. LINN] had, in debating the subject last session, put the claim on that ground; but he (Mr. BAYARD) had a distinct recollection that some one on his [Mr. LINN'S] side of the question did, and that the general gist of the argument urged by the friends of the bill, was, that General Jackson was perfectly justified in reviving the Judge's mandate. Now, he was ready to admit that it might have been a case of the strongest necessity. All he wanted was, that this point should be settled. Let a report of the committee be made, putting the matter on its true foundation. Let it be shown that it was a case of high necessity—that, under the circumstances then existing, General Jackson was excusable; and that, therefore, the fine ought to be refunded to him. But let not a bill, which is susceptible of a different construction, be passed, in the form of a construction which all know is intended to be put upon it.

Mr. HUNTINGTON observed that he rose merely to make an explanation. He understood that, when the bill last session was referred to the Committee on the Judiciary, and it made its report, all the facts were not before it. Now, a different state of facts was presented. In referring the bill to the same committee, it would be accompanied by an authenticated document, affording information to enable the committee to make a satisfactory report. The document he alluded to was that in the hands of the Senator from Delaware. He was of opinion that the bill ought to take the ordinary course of reference.

Mr. BAYARD remarked, that he had been handed the paper to which he had referred by the Senator from Louisiana, [Mr. CONRAD,] to whom he would restore it.

Mr. WRIGHT hoped the Senator from Louisiana [Mr. CONRAD] would present it to the Senate, and ask that it be printed. It is alluded to as a paper containing important facts, and it was therefore desirable that it should be printed.

Mr. CONRAD observed, that, owing to the peculiar position in which he stood in regard to the bill—which had procured him the honor of a controversy partaking somewhat of a personal character with the distinguished individual for whose benefit it is intended—he had determined to take no part in this debate, but, having already fully expressed his views, to give a silent vote. He should not now depart from this resolution, except to reply to an observation which fell from the Senator from Missouri, [Mr. LINN.] That Senator remarked that the copy of the record referred to by the Senator from Delaware was dealing about in holes and corners of the Senate. He did not know exactly what meaning to attach to the expression.

Mr. LINN interposed to assure the Senator from Louisiana that he did not intend by it anything offensive or personal to him.

Mr. CONRAD hoped not; but the expression was calculated to convey the idea that there was some mystery or secrecy connected with this document; and, as the Senator from Delaware had received it from him, he would beg leave to inform the Senate how, and for what purpose, he had procured it.

Shortly after the rejection of this bill, last summer, finding it reconsidered in the House, and supposing it would probably be his duty again to vote on it, he determined to procure all the information he could in relation to the facts of the case. He accordingly wrote to the clerk of the court, before which the proceedings had taken place, requesting

him to cause an authenticated copy of this record to be made, and forwarded to him. This was done. Meantime, however, a friend in New Orleans had sent him the copy now in the hands of the Senator from Delaware, which he brought to the Senate a few days ago, when this bill was last up, and exhibited it to several members as a document ascertaining the proceedings connected with the imposition of the fine on General Jackson. By a singular chance, it is a copy made out shortly after the proceedings occurred, and is certified by the clerk who officiated in them. It is dated in December, 1815. The gentleman who sent it to him stated (as well as he recollected) that it had been found among the papers of some person deceased, by the notary who made the inventory of his estate, and had been preserved as a curiosity.

So far had it been from his (Mr. CONRAD'S) intention, or that of any other Senator, to suppress this document, that it was determined to lay it before the committee to which the bill should be referred, if it were referred, or to submit it to the Senate if the bill were not referred. In the meantime, it had been shown to many Senators, who had expressed a curiosity to see it; and it was now at the service of the Senator from Missouri, if he desired to examine it. Perhaps, indeed, it would be well to adopt the suggestion of that Senator, and have it printed for the use of the Senate.

On the question now pending before the Senate, he would only say that it was entirely indifferent to him what course the bill might take. It must be recollected, however, that in fact there had been, as yet, no report on the bill—the committee to which the former bill was referred having had no evidence before it upon which it was considered a report could be based. If the object of the Senator from Missouri was really to have this money refunded to General Jackson on terms honorable to him, (and he did not doubt that this was his object,) and not to make political capital out of the question, it appeared to him that the only way in which his object could be attained would be by the reference of the bill. What was the Senator now attempting? To have the bill adopted by the identical body which, after a protracted discussion, rejected it by a large majority, only five months ago. He submitted to that Senator's candor, whether he could expect the Senate to reverse its former decision, except on such evidence as should satisfy the majority they were wrong? On the other hand, if the bill were referred to a committee, the facts might be reported, and some mode might be suggested in its report by which the money could be refunded to General Jackson, without doing any injustice to the character of others, or encouraging the exercise, by future military commanders, of powers not conferred by the Constitution, and dangerous to the lives and liberties of our citizens.

Mr. BUCHANAN had but a few words to say on this subject. The Senator from Delaware (Mr. BAYARD) had been discharging his heavy artillery against nothing. He had not even a target to aim at. It had never been contended on this floor that a military commander possessed the power, under the Constitution of the United States, to declare martial law. No such principle had ever been asserted on this (the Democratic) side of the House. He had been induced to make this disclaimer in consequence of an attack which had been made upon him, in a well-written pamphlet signed "A Kentuckian," for having advocated such a doctrine, in conjunction, strangely enough, with the Senator from Georgia (Mr. BERRIEN) and a distinguished member of the other House, (Mr. ADAMS.) He did not know who might be the author of this pamphlet; but he must express his surprise how any candid man, who had read his remarks at the last session of Congress on the subject of the remission of General Jackson's fine, could have fallen into such an error. He had then expressly declared (and the published report of the debate, which he had recently examined, would justify him in this assertion) that we did not contend, strictly speaking, that General Jackson had any constitutional right to declare martial law at New Orleans; but that, as this exercise of power was the only means of saving the city from capture by the enemy, he stood amply justified before his country for the act. We placed the argument not upon the ground of strict constitutional right, but of such an overruling necessity as left General Jackson no alternative but the establishment of martial law, or the sacrifice of New Orleans to the rapine and lust of the British soldiery. On this ground Mr B. had planted himself firmly at the last session of Congress; and here he intended to remain.

In the history of every nation at war, cases might occur of such extreme and overpowering necessity, that, in order to save the country, a military commander might be compelled to resort to the establishment of martial law. Emergencies might exist, in which he would be guilty of culpable negligence, if he refused to adopt this expedient. This was eminently the position of General Jackson at New Orleans. If, knowing, as he did, that a traitorous correspondence was carried on with the enemy, and that no other means of arresting it existed, he would justly have exposed himself to the severest censure, had he suffered the city to be sacked, rather than save it by declaring martial law. But, in every such case, the commanding general acted upon his own responsibility, and at his own peril; and must afterwards appeal to his country for his justification. To that country he had made his appeal, and it had nobly justified his conduct. It was an act of the most heroic patriotism—of the sternest duty. Most fortunate had it been for us, that a man commanded in that city who never shrunk from personal responsibility when his country was in danger.

General Jackson's situation at New Orleans presented the case *par excellence* for such an exercise of power. If we were to search the history of the world for examples—if imagination were permitted to take the widest range, we could not present, or even fancy, a case more strongly justifying, in every particular, the declaration of martial law, than that which existed at New Orleans. All the attendant circumstances are now matters of undoubted history. General Jackson was sent to defend our great Western commercial city against the British forces. He was almost destitute of regular soldiers. A few thousand raw militia, suddenly brought together, constituted nearly his whole army. All that he had to rely upon was their native but undisciplined courage. He had to organize them, to discipline them, to infuse into them his own indomitable spirit, and then to lead them to battle and to victory.

And what was the condition and character of the enemy against whom he had to contend? The British General commanded a numerous and well-provided army of regulars, in a perfect state of discipline, and flushed with victory over the conquerors of Europe. Such were the fearful odds against General Jackson! We can all remember that, for a time, despair sat on almost every countenance, and we have been informed that when the news of the victory reached Congress, there was such a burst of enthusiastic joy as had never been witnessed before in these halls. This was the effusion of patriotic hearts upon the delivery of their country from fearful and impending danger.

By what means did the General achieve this great and glorious victory?

Louisiana had been a Spanish province but a few years before. Its ancient inhabitants had not become warmly attached to our Constitution and laws, as they are at present. Besides, there were many discontented foreigners within the city of New Orleans. Whilst a very large majority of the inhabitants displayed their patriotism and their courage on the field of battle, the city harbored within its bosom a number of traitors, who were in correspondence with the enemy. The General's weakness and his plan of defence were in this manner communicated to the British commander, who was thus instructed in the best mode of attack.

General Jackson was then placed in a position of awful responsibility. On the one hand, he was aware that the letter of the Constitution conferred upon him no authority to declare martial law; whilst, on the other, he knew that the establishment of martial law was the only human means of arresting this traitorous correspondence with the enemy, and saving the city. Before this act was performed, he had consulted the leading inhabitants of New Orleans, who entirely approved the measure.

Suppose General Jackson had refused to establish martial law, and the city had been captured: how could he then have justified his conduct to his country? Could he have said, "I knew there was a band of traitors within the city, who were in correspondence with the enemy; I knew that, in this manner, all my plans for its defence would be defeated; I knew that, by declaring martial law, the city could have been saved: I knew all this, but such was my reverence for the letter of the Constitution, that, rather than violate it, I determined that New Orleans should be surrendered to the possession and pillage of the enemy? I would not, even for a few days, restrain the constitutional liberty of the citizens, even to secure the permanent salvation of the city."

No, sir, no. Excusable is not the word. General Jackson stands justified—amply justified—in the judgment of his whole country, for his conduct. This is no party question; at least, so far as I am acquainted with the feelings of the people. Posterity has already decided the question; because more than a quarter of a century has elapsed since the event. The passage of this bill, therefore, is only important as it will embody public sentiment, and place upon the records of the nation the vindication of their General.

Mr. B. had confidently hoped that, in this era of good feeling, the bill might have been permitted to pass without a word of comment. It was destined to pass; it would pass; it must pass, and that at no distant day. This act of justice towards General Jackson would as certainly be performed as that the American people were grateful to their distinguished benefactor. Then why delay it? Let the healing balm of our approbation go home to him whilst he was yet in the land of the living. Mr. B. strongly appealed to his patriotic and gallant political enemies in the Senate to suffer the bill to pass without farther delay.

Mr. ALLEN made some remarks against the reference, and argued in justification of the declaration of martial law by General Jackson at New Orleans. He maintained that its declaration was indispensable to the safety of that city, and that the necessity was a full justification of the act.

Mr. CRITTENDEN followed in reply to Mr. ALLEN.

Mr. BERRIEN observed that his remarks had been misconceived in the report quoted by the author of the pamphlet signed "A Kentuckian." I said (continued Mr. B.) in the debate which took place at the last session, I gave no opinion as to the right of a military commander to establish martial law, unless the expression of my belief, that Judge Hall was bound to issue the writ of *habeas corpus*, may be considered as a denial of it; for the very obvious reason that that right and that obligation could not co-exist. If martial law was rightfully established in New Orleans, superseding, in the extent which was practically given to it, all civil authority, Judge Hall, thus stripped of authority, could have been under no obligation to issue this writ. When, therefore, I asserted this obligation, (which I did expressly in that debate,) I denied inferentially the right to establish martial law.

I did, however, say on that occasion, and now repeat it, that, if Gen. Jackson believed (and I did not question the sincerity of his belief) that the safety of New Orleans required the confinement or removal of Louallier, and persons similarly situated, he was excusable in disobeying the writ of *habeas corpus*, relying upon the country to absolve him from a responsibility which he had assumed, by adopting a measure which he deemed necessary for its defence, when the responsibility of making that defence was thrown upon him. I do not recollect that any gentleman asserted in that debate that General Jackson had a right, under the Constitution and laws of the United States, to establish martial law in the military district under his command—that is, to subject its inhabitants to the rules and articles of war. There were those who maintained that he was justifiable in doing so; which I did not. When it was admitted that the Constitution and laws of the United States gave no such authority, the legal question was at an end;

because the authority of General Jackson as the military commander of that district was derived, and could be derived, only from that Constitution and laws; and beyond these, he could have no rightful authority. I held, however, that the act of disobedience to the writ of habeas corpus was excusable, if it was done under a belief that it was indispensable to the safety of the city with the defence of which he was intrusted.

Mr. PORTER said he would not have detained the Senate a moment at this stage of the discussion, but for the fact that he considered himself as called out by the allusion made by the Senator from Missouri [Mr. Linn] to certain resolutions adopted by the Legislature of Michigan a year ago, purporting to instruct the Senators from that State on this floor how to vote on this bill. It is true, that such resolutions were sent to me, and were in my hands pending this bill during the last session. It is also true, that I did not present them to the Senate. I regarded them as a legislative expression of opinion, addressed to myself only, and not to this body. They assumed to control my action here, but not that of anybody else. They related merely to a private claim of small pecuniary amount, and not to any great measure of national policy. It was not necessary they should be presented, in order that their moral effect should be felt here; for the fact that this legislative movement had been made, was sufficiently notorious. Whether the Legislature of Michigan be entitled to the honor, in this instance, of first imparting warmth to national gratitude, which had lain cold for more than a quarter of a century, I am not prepared to say. It would seem, however, from the remarks of the Senator, that the arrival of these resolutions in this city first prompted him to action here. That action was the introduction of a bill, at the last session, precisely like the one now before us. The fate of that bill is well known. An amendment was offered, which directed the refunding of this fine, with costs and interest; with the proviso, "that this act should not be construed as an expression of the opinion of Congress upon any judicial proceeding or legal questions growing out of the declaration of martial law by General Jackson during the defence of New Orleans." I voted for this amendment, and it was adopted by the Senate. On the question which next presented itself, viz: the engrossment of the bill, I voted in the affirmative. But that vote was rendered ineffectual by that of the Senator and his friends. The bill was lost.

It will be seen, from this reference to the history of the case during the last session, that my course has been strictly in conformity with the wishes of the Legislature of Michigan, as expressed in these resolutions. Had I been disposed to regard them as mandatory on me, I could not have acted differently. In saying this, however, I mean not to be understood as admitting myself to have been under any obligation, constitutional or otherwise, to yield the right which they assumed to exercise.

Mr. WOODBRIDGE said: It will not have escaped observation, Mr. President, that I, too, stand in the same relation to this matter with my friend and colleague from Michigan. It is true, sir, that resolutions, such as have been described by the honorable Senator from Missouri, passed the Legislature of Michigan, and were sent duly certified to us here; nor was it at all necessary, I think, that we should thus have been reminded of the fact.

The gentleman from Missouri has been pleased, also, to draw into notice our omission to present those resolutions to the Senate. For the present occasion, at least, I am satisfied, so far as regards myself, with the brief but general exposition made by my colleague, of the motives which may have induced the course we each of us pursued.

It will be observed, sir, that my name, too, is registered among those who, last summer, voted for a bill, the object of which was, without casting reproach upon the distinguished judge who passed the sentence, to remit the pecuniary fine imposed upon General Jackson. Nor am I prepared to say that I have since had occasion to vary the opinions I then entertained in the matter. With regard to the degree of respect in which I should hold the expressed wishes or opinions of the authorities of Michigan, on any subject, as well as with respect to my own estimate of the extent of the obligation which such resolutions as are alluded to may be deemed to impose, I am certainly not without some opinions of my own—and opinions I have no disposition to conceal. And I assure my friend from Missouri that I will feel myself at all times ready, if he desire it, to explain them very fully and frankly to him; or, when a fit occasion shall occur, to expose them *in extenso* here in the Senate. But now, at this late hour, I do not desire to delay the Senate by entering upon an exposition which would consume so much time. Indeed, after what my colleague has said, I should hardly have risen now, but for his omission—accidental, I presume—to notice the imputations I was very sorry to hear, but which the Senator from Missouri allowed himself to cast upon the gentleman who has the honor, in the other wing of the Capitol, to represent the interests of Michigan. I do not know in what terms that gentleman thought proper to announce the resolutions in question, in the other House, nor do I at all remember to have read the newspaper which, we are informed, contained the account of that procedure.

But, relatively to the animadversions in which the gentleman from Missouri has been pleased to indulge, and waiving all comment upon the competency or propriety of making thus the action of the other House, or of any of its members there, the subject of comment or criticism, much more of censure, here, I ask leave to say that the Representative from Michigan in the other House is, I have no doubt, abundantly competent, and on any proper occasion will be equally willing, fully to justify and defend his course, whatever it might have been in this regard; and I only regret that the gentleman from Missouri should here, in another forum, have permitted himself thus to impugn the conduct of an absent person.

The further consideration of the bill was then, on motion to that effect, postponed to the succeeding Tuesday.

Mr. LINN hoped there would be no objection to the publicity of the document in the possession of the Senator from Louisiana, and that the Senator would consent to lay it before the Senate in the proper manner to warrant that course.

Mr. CONRAD had no objection.

The copy of the record was then presented in form to the Senate; and, on motion of Mr. LINN, ordered to be printed.

The Senate then adjourned.

REMARKS OF Mr. WELLER,

OF OHIO.

In the House of Representatives, January 3d, 1843.

The bill to repeal the bankrupt law being under consideration, and the debate having taken a wide range—

Mr. WELLER rose, and said he had not risen with any disposition to discuss the question really before the House. This, indeed, was required by the parliamentary law; but the common usage since he had the honor of a seat here, had been to discuss anything else except the question upon which we were called to vote. In this instance, he found it more convenient to observe the usage than the rules of the House; and he should, after a few remarks upon the question, allude to other topics introduced by other gentlemen in this debate.

Mr. W. said he was opposed to the passage of the bankrupt law at the extra session, because he then believed, as he still does, that such a law was neither sanctioned by the Constitution, nor called for by the voice of the people. After a careful examination of that instrument, he could not find that it authorized Congress to pass a law sanctioning the violation of contracts—he attended to the retrospective feature in the law. For himself, he was in favor of a strict construction of the Constitution, and he denied to Congress the exercise of any power not expressly delegated, or absolutely necessary to the exercise of a delegated power. But gentlemen infer, because the States are in express terms forbidden to pass any laws violating contracts, and the General Government is not, that therefore Congress may violate contracts! Are we, then, to assume the power, because it is not forbidden by the Constitution? Did not the framers of that instrument intend that this should be a Government of limited, of delegated powers? If the latitudinous construction claimed by gentlemen be given to that Constitution, then the General Government is omnipotent. The States are prohibited from passing laws violating contracts; the Federal Government is not. Why is this? Simply because the States would have had the power, if not prohibited, to pass laws of that character; and because the Federal Government, deriving all its legislative power directly from the Constitution, can do nothing except that which it is expressly authorized to do. If in this he was correct, the only question which remained to be decided, was, whether Congress could exercise the power conferred to pass uniform laws on the subject of bankruptcy, without violating contracts. If this could be done, then he held we had not the power to violate contracts. That it can be done, must be obvious to all. A prospective bankrupt law, to operate on contracts made *after* its passage, would be a uniform law upon the subject of bankruptcy, and no violation of the Constitution. To such a bill, properly guarded against fraud, and so framed as to include your banks and all other incorporations, he might not be disposed to object. Then individuals would make their bargains with a full knowledge of the law. He could easily see that such a measure might operate beneficially upon the country, in checking excessive credit, and, by drawing the banks within its influence, save the people from the immense losses heretofore sustained by the frauds of those institutions.

This law, (said Mr. W.,) which we are now called on to repeal, was passed under very peculiar circumstances. At the extra session, after the bill had been laid on the table (where every one supposed it was destined to sleep the sleep of death) by a decisive majority, the Whig members here were entertained that evening at a certain board, where the sparkling champagne flowed pretty freely, and where rumor said an agreement was made to reconsider the vote next morning. Sure enough, when morning came, the identical same men came into this hall, reconsidered the vote of the previous day, and, in the twinkling of an eye, this bill, with all its acknowledged imperfections, was passed. A majority of this House actually very time was opposed to it; but it was passed to secure the enactment of another bill, in which certain Western Whigs felt a deep interest—he means the land bill: for it is well known that all the laws passed at that session were passed by compact. Not one of them had merits of its own sufficient to secure its passage, if standing alone. It therefore became necessary, in order to carry one bill, to pass several. The land bill has been virtually repealed; and now the friends of that, seeing the contract has been violated, demand the repeal of the bankrupt law. And hence we find the very men who aided by their votes in passing this bill, now clamorous for its repeal! What wonderful stability and harmony there is in Whig legislation!

But why could not the law be repealed? Could it be pretended that the people were in favor of its retention on the statute-book? Would any gentleman rise in his place and tell him that? No, sir, no one has the hardihood to hazard such a declaration. Why not, then, pass this bill instantly? Was it not the duty of this House first to ascertain public sentiment, and then make legislation conform to it? When our masters the people have clearly (as in this case) expressed their will, are we not bound to bow submissively to it? But we have been told that the people in 1840, by electing a majority of Whigs to this House, decided in favor of a bankrupt law! He denied this *in toto*. No such issue had been presented—no such decision made. The act was passed by the Whig members here, without consulting with their constituents; or else why is it that you now find some twenty or thirty of the very men who voted for it in favor its repeal? Again. It has been said that the people do not understand this bill—that their hostility to it grows out of their ignorance! It is the practice of a certain class of politicians to denounce the people as ignorant whenever they do not act in conformity with their particular opinions. At one time you will hear them demanding that a law shall be passed, because the people desire it; but when the people are found to be opposed to it, then it is said their opposition grows out of their ignorance! Well, (said Mr. W.) I am inclined to the opinion that the honest farmers in my district, who have lost large amounts by the bankrupt law, know