

SUPREME COURT OF THE U. S.

EX PARTE, LAMBDIN P. MILLIGAN.

STATEMENT OF FACTS.

Lambdin P. Milligan, a citizen of the United States, and a resident and citizen of the State of Indiana, was arrested on the 5th day of October, 1864, at his home in Huntington County in said State, by the order of Brevet Maj. Gen. Alvin P. Hovey, Military Commandant of the District of Indiana, and by the same authority confined in a Military prison, at or near Indianapolis, the capital of said State. On the 21st day of the same month, he was placed on trial before a "Military Commission," convened at Indianapolis, by order of Maj. Gen. Hovey, on the following charges; preferred by Maj. Henry S. Burnett, Judge Advocate of the North-Western Military Department, namely:

First. "Conspiracy against the government of the United States."

Second. "Affording aid and comfort to rebels against the authority of the United States."

Third. "Inciting insurrection."

Fourth. "Disloyal practices."

Fifth. "Violation of the laws of war."

Over his objection to the authority of the Commission to try him, he was found guilty on all of the charges, and sentenced to suffer death by hanging. This sentence was approved May 1865.

On the 10th day of May, 1865, Milligan filed his petition in the Circuit Court of the United States, for the District of Indiana, by which the above facts appeared; and also, the additional facts, namely: that while the petitioner was so held and detained in Military custody (and more than twenty days after his arrest),

a Grand Jury of the Circuit Court of the United States, for the District of Indiana, was convened at Indianapolis, his said place of confinement, and duly empaneled, charged and sworn for said district, held its sittings, and finally adjourned, without having found any bill of Indictment, or made any Presentment whatever against him. That at no time had he been in the military service of the United States, or in any way connected with the land or naval force, or the militia in actual service. Nor had he been within the limits of any State whose citizens were engaged in rebellion against the United States, at any time during the war, but during all the time aforesaid, and for twenty years last passed he had been an inhabitant resident, and citizen of Indiana. The petitioner's claim to be discharged from the military custody in which he is held, is founded upon the provisions of an act of Congress of March 3d, 1863, entitled "An Act relative to *Habeas Corpus*, and regulating judicial proceedings in certain cases."

At the hearing of the petition in the Circuit Court the opinions of the Judges were opposed upon the following questions:

First. "On the facts stated in said petition and exhibits, ought a writ of *Habeas Corpus* to be issued according to the prayer of said petitioner.

Second. "On the facts stated in said petition and exhibits, ought Lambdin P. Milligan to be discharged from custody as in said petition prayed.

Third. "Whether, upon the facts stated in said petition and exhibits, the military commission had jurisdiction legally to try and sentence said Milligan in manner and form, as in said petition and exhibit is stated."

These questions, on motion were certified up for the opinion of this Court.

The main question arises upon the third point stated, namely whether upon the facts stated the "Military Commission" had jurisdiction, legally to try and sentence said Milligan in manner and form as in said petition stated.

POINTS MADE BY THE PETITIONER.

I.

The personal rights of the citizen are secured by the follow-

ing provisions of the Federal Constitution :

Art. 3d, sec. 2, clause 3d ; also arts. 4th, 5th, 6th, 7th and 8th of Amendments.

The chief of these rights are :

First. The right to be secure in person and effects against unreasonable search and seizure.

Second. Not to be subject to trial for any capital or other infamous crime, unless upon presentment or indictment of a Grand Jury, (except in cases arising in the land and naval forces, or in the militia in actual service in time of war or public danger), nor to be deprived of life, liberty or property without due process of law.

Third. In all criminal prosecutions the right to a speedy and public trial before an impartial jury of the State or District wherein the crime shall have been committed, which District shall have been previously ascertained by law.

II.

The suspension of "the privilege of the writ of *Habeas Corpus*, can effect none of these rights, except the right of a speedy trial. Art. 1st, sec. 9th, H. L. Scott, *Military Dictionary*, p. 382, (1st Blk. Com. 136), stat. 57, Geo. III, ch. 3.

III.

The Constitution vests in Congress all legislative power granted by it to the Federal Government. Art. 1st, sec. 1st,

IV.

This power extends only to the passage of such laws as shall be necessary to carry into execution the specific powers granted to Congress, and such others as are vested by the Constitution in the Government of the United States, or in any Department, or Officer thereof. Art. 1st, sec. 8th, clause 18th.

V.

The United States have no unwritten Criminal Code to which resort can be had as source of jurisdiction. Conklings Treatise 3d, ed. p. 168; *ex parte Bollman et al.* 4th, Cranch 32; *United States vs. Henson et al.* 7th Cranch 31; *United States vs. Coolidge*, 1st Wheat 415; *United States vs. Bevans*, 3d Wheat 336; *United States vs. Wiltberger*, 5th Wheat 76.

VI.

The Federal Government possesses no power to define and punish crimes generally, but only such as result from the

violation of some law enacted by Congress, and authorized by the Constitution, or such as arise within the exclusive jurisdiction of the United States, or without the jurisdiction of any State.

VII.

In the exercise of these powers, Congress has defined and provided for the punishment of offenses which may be committed by the citizen against the lawful authority of the Federal Government. All trials for any such crimes or offenses, must be in accordance with the provisions of the Constitution, above cited, relating to the rights and privileges of the citizen.

VIII.

Under the power "to make rules for the government and regulation of the land and naval forces, and for governing such part of the militia as may be employed in the service of the United States," Congress has defined and provided for the punishment of such offenses as are purely military in their character, or committed by persons subject to military jurisdiction.

IX.

In the exercise of the power "to constitute tribunals

inferior to the Supreme Court, Congress has ordained two classes of Courts,—1st. Civil Courts, or ordinary Courts of Justice, in which, under the Constitution, the laws in general of the Federal Government are administered “according to the course of the common law.” 2d. Military Courts, or “Courts Martial,” in which military law (not martial) is administered according to the rule of that law.

X.

No person can be *legally* tried for any offense against the laws of the United States, unless he is tried in one or the other of these Courts; nor can he be *legally* put upon trial unless he is charged in the manner provided in the Constitution and laws, for some offense or crime, defined by Congress under authority of the Constitution.

XI.

The record in this case shows that the petitioner was not tried before either of the tribunals authorized by the Constitution and ordained by Congress, nor was he charged in the manner provided by the Constitution; and, therefore, the pretended finding and sentence of the Military Commission is void.

XII.

A "Military Commission" is no Court "ordained or established by Congress." It is a mere council of war, convened to advise the commanding officer in what cases it might be proper to execute martial law, or the law of force, and can only act in cases where he might execute martial law without its aid or advice.

XIII.

If it be claimed that the President's proclamation of September 4th, 1862, conferred jurisdiction upon the Military Commission, to try the petitioner,—

THE PETITIONER OBJECTS.

First. The proclamation was unauthorized by any act of Congress, and was, therefore, void. Art. 1st, sec. 9, clause 2d, Constitution.

Story on the Constitution, vol. 2d, § 1342; *ex parte Bolman*, 4th Cranch, p. 95; *ex parte Maryman*, opinion of Chief Justice Taney. English precedents—Habeas Corpus act, 31st, Charles 2d, Bill of Rights, 1686.

Second. If not void, it could effect no purpose except to suspend the right to bail or trial. As President, it was his duty "to take care that the laws be faithfully executed." (Art. 2d, sec. 3d.) As commander in chief of the army and navy of the United States, he was bound to govern them in accordance with such rules as Congress should provide for their "government and regulation;" and in neither capacity could he enact laws, or establish rules, or ordain Courts.

Third. The declaration of martial law contained in the proclamation, if authorized, could only operate in those places where military force, as a fact, had suspended the civil functions of the Government, and could only for the time suspend, not abrogate, the rights of the citizen. *Luther vs. Borden*, 7th How. 34, opinion of Woodbury, same case, p. 49, (H. L. Scott's Military Dic., p. 382.)

Fourth. Martial law, as anciently defined, can have no existence in this country. (Blk. Com. book 1st, p. 413.) And other text writers, defining the same.

Fifth. That the proclamation in question has been wholly superseded by the act of Congress of March 3d, 1863, relating to *habeas corpus* (12 Stat. at Large, 775), under the provisions of which the petitioner claims his discharge; and the President's proclamation, based thereon, of September, 15th, 1863.

Seventh. The act of Congress of March 3d, 1863, is the only law of the land relating to this case and under its provisions, the petitioner must be discharged. It sanctions military arrests, but it in effect, inhibits the military trial of citizens, and restores to them the right of the writ of *Habeas Corpus* unless indicted by the proper Grand Jury, within the time specified. And while it protects the citizens against long continued arbitrary confinement, it particularly guards the public safety by suitable provisions to be enforced by the Court.

J. E. McDONALD,

A. L. ROACHE,

For Petitioner.