WASHINGTON CITY.

MONDAY, FEBRUARY 2.

CIRCUIT COURT of the District of Columbia, in the case of Messrs. Bollman and Swartwout.

24th January, 1807.

The U. S. attorney appeared in court and informed the court that William Eaton and James L. Donaldson, esquires, were material witnesses to support the motion made yesterday for a warrant against Erick Bollman and Samuel Swartwout, and prayed the court to order a summons to be issued for the immediate appearance of the said witnesses and the court directed the summons accordingly.

A short time after, Mr. CALDWELL rose, and addressed the court as follows:

May it please the court,

I hold in my hand a petition, on which I shall ground a motion, relative to the business now before the court. The petition is in these words:

To the Judges of the Circuit court of the U. S. in and for the district of Columbia

Your petitioners Erick Bollman and Samuel Swartwout, respectfully represent that they are confined within the body of Washington county, in the district of Columbia, at the Marine Barracks under a military guard, without just and legal cause, and are deprived of the benefit of counsel, or being confronted with their accusers, and of being informed of the nature of their offence, or of the cause of their commitment. Your petitioners therefore request a writ of Habeas Corpus, in the usual form, directed to Lt. col. Franklin Wharton, or to such other person as may have the custody of your petitioners, that they may be proceeded against as the laws direct, and have an opportunity of being heard in their defence.

For and on behalf of Erick Bollman and Samuel Swartwout,

ELIAS B. CALDWELL,
Attorney.

My motion is for a writ of *Habeas Corpus* to bring the body of these petitioners before this court, that they may be released from their present illegal confinement, that they may have an opportunity of advising with counsel, and that they may be heard on the charges preferred against them. The petition is signed by me on their behalf, because as they have not an opportunity of advising with counsel, this is the only mode in which their complaint could be laid before the court.

All the facts contained in that petition, except one, are already before the court, either by the official information of the district attorney, or in the documents which he has presented. The fact of their being deprived of the benefit of counsel, rests upon the authority of the petition. It could easily be substantiated by affidavit, but I do not consider it material to support the present motion; there being sufficient disclosed by the district attorney for the court to issue the writ prayed for. The court is informed, that the petitioners were arrested by general Wilkinson in New Orleans, that they were sent from thence under the care of an officer of the army, and that they are now in this city, under a military guard at the marine barracks. It does appear to me that the whole of these proceedings from the first military arrest to the present moment of confinement, are illegal. Whatever may be thought however of the first arrest, every one, I believe will agree with me in saying, that the present confinement is illegal. I do not mean by these observations to cast any reflections on the person who arrested, or on those who have had the custody of the petitioners. I am not sufficiently informed on that subject to form an opinion. If the safety of the country depended upon the arrest of a few individuals, I should feel very much disposed to acquit, nay to applaud the man, who should yield to the imperious law of self preservation, without waiting to enquire into the nice forms of law. The principal enquiry in my mind, would then be, did the necessity for such an extraordinary and novel procedure actually exist? Was the safety of the country really endangered by the persons apprehended? Was not the usual course of legal proceedings sufficient to apprehend and punish the guilty,—and had the assumed authority been exercised, with the delicacy, attention and humanity which the danger to be avoided and the public safety permitted? On this point however it is not necessary to dwell. Whatever circumstances may have given rise to the extraordinary commitment of the petitioners, no causes exist here which will justify their confinement under it. The President in his message has given us reason to hope, that the disturbances in the western country, are, by this time, quelled. The gathering storm has burst without our scarcely hearing of it. We have not only been removed from danger, but almost from the apprehension of it. We may now permit the laws to take their regular and quiet course. We may now permit the prisoners to enjoy those invaluable privileges, which are secured by the laws and constitution of our country, to the meanest individual, to the most petty offender.

I am sensible that the proceedings of the district attorney are incipient, and that the parties on their trial will have the benefit of the privileges which it is the object of my motion to give them immediately. They are privileges secured to persons accused, in my opinion, in all stages of proceedings against them, after their being apprehended—and it is of great consequence to the petitioners, that they should enjoy the full benefit of these advantages as early as possible. They have been accused in open court by the United States attorney of a very heinous offence. The public curiosity has been lately awakened on this subject by the President's message. It is therefore of great moment to them, that they should have an early opportunity of meeting the accusation, and of being heard in their defence, before the public mind becomes biassed by the public documents, which have been disseminated throughout the U. S. and the observations to which they have given rise. Let them come fairly before the world, and not have to contend against a torrent of public prejudice, excited by exparte proceedings, and by observations and statements which they have not an opportunity of examining or disproving. It is not my intention, nor will the granting the *Habeas Corpus* have the effect to embarrass the proceedings of the U. S. attorney, or stop the regular course of enquiry. The course of proceeding which I propose is in perfect accordance and harmony with his motion. It will be in aid of that motion. He wishes to take them out of the hands of the military, to place them in the hands of the civil power, and to institute proceedings against them for their trial. This will be precisely the effect of the *Habeas Corpus.* They will be brought before this court,—you will examine into the cause of their commitment—the U. S. attorney will have a full opportunity of being heard on the subject, and if there be sufficient ground you will commit them for their trial. Here is a plain and simple course of proceeding pointed out, which the wisdom of the law, sanctioned by time and experience, approves, and which consults equally the interests of the U. S. and the security of the accused. The character and standing which these gentlemen have hitherto maintained in society, might at least secure to them, those advantages which are solemnly guaranteed to the meanest individual, and which it is the pride and boast of America to enjoy,—should at least preserve their characters from being the sport of idle rumours and vague conjectures, and prevent their being the victims of partial representations and exparte proceedings.

THURSDAY, JAN. 29.

Mr Jones moved for the commitment of Messrs. Bollman and Swartwout on the same charge for which they had been arrested.

A short conversation having taken place between Mr. Dorsey and Mr. Jones, with respect to the counsel entitled to the right of closing the argument, the attorney general (Mr. Rodney) suggested his opinion that the proceedings of the court on this preliminary question ought to be on exparte grounds. That it was neither consistent with the principles of the constitution, the practice of courts, or even with humanity, that an argument should be made by the counsel for the accused in this incipient stage of the business, which would necessarily tend in a certain degree to excite prejudice which might operate ultimately to their disservice.

Mr. Lee went into an argument of considerable length to establish the right of the accused to be heard on the motion to commit. He contended that the right was strictly legal, and that on the ground of humanity towards the accused, as they themselves claimed the right, there could be no objection to their being indulged.

Mr. Rodney replied.

The court then gave it as their opinion that counsel should be heard.

Mr. Key then opened the argument on the part of the accused, against the motion to commit on the charge of treason.

He was followed by Mr. Jones on the other side, who terminated his remarks about 4 o'clock in the afternoon. The court rose for half an hour—when Mr. Lee spoke against the motion to commit until half past ten o'clock, at which hour the court adjourned until the next morning.

ON FRIDAY Mr. Lee adduced a number of additional authorities and made some further remarks.

Mr. Rodney then closed the argument in a speech of about an hour and an half in length.

The volume of matter adduced on this occasion was so great that scarcely a brief outline of it can be expected *at present.* We shall content ourselves with touching on the most prominent points.

The counsel of the accused contended that the messages of the President, on this occasion, were not entitled to the least attention, however worthy of regard by the legislature to whom they were addressed or generally by the people, they could not in a case that required legal evidence, be of any avail. That if, however the court should be of a different opinion, they notwithstanding would be found on examination to be destitute of any specific facts which justified the opinion that any act of treason had been committed by Aaron Burr, and much less by the accused. That they in fact established the commission of no crime whatever, and that at any rate the only offence which could be charged with any color, was the making preparations for an enterprize against the province of a foreign nation in amity with the U. S. The 6th article of the amendments to the constitution says—"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In this case there was no probable cause supported by oath or affirmation; and therefore the messages of the President were entitled to no weight in a court of justice.

With regard to the depositions of gen. Wilkinson it was alledged that they were totally inadmissible in a court of justice. They were taken before individuals who declared themselves to be justices of the peace, of which fact however there was no evidence which could be legally received. Such papers uniformly required a certificate of authentication, proving that the magistrate was duly appointed. This objection was therefore fatal to the reception of these papers as testimony. It was besides an established principle of criminal jurisprudence that none other than the magistrate who examined the accused was competent to arrest him.

But even if this insuperable objection was over-ruled and the depositions received as testimony, it was contended that they did not establish the commission of a single overt act of treason, by Aaron Burr, much less did they establish the implication of the accused in any such act.

The counsel on the part of the prosecution maintained that to a certain extent, in the incipient stages of a prosecution, the information contained in the messages of the President merited credit. Being, as to the discharge of certain duties, the highest organ of the government, specially entrusted with the preservation of the public peace, and with the command of the armed force, obliged under the sanction of an oath to discharge these duties and to give information to Congress of the state of the union, it must be presumed that he would not lightly make known to Congress the existence of acts of a treasonable nature, or call out the militia without the existence of serious danger; and that consequently his communications, connected with other circumstances, conspired to establish the *probable cause* required under the constitution for arrest or commitment. That there was probable cause of the existence of treasonable acts was evinced by the extreme agitation of the public mind, by the march of the army from the Sabine, by the spirited operations conducted at New-Orleans for its defence, and by the energetic measures pursued by the several state and territorial governments in the western part of the union.

This probable cause, it was allowed, must be supported by oath or affirmation. This had been abundantly done in the depositions of gen. Wilkinson, gen. Eaton and other persons. The criminal intent of Aaron Burr was demonstrated by his conversations with general Eaton, and all that was besides necessary was the commission of some overt act, which would constitute levying of war against the U. S. That such acts had been committed there was every reason to infer from the contents of the depositions. No doubt could be entertained that there had been a *bellum levatum,* if not a *bellum percussum.* All that was further necessary to show that there was probable cause that the accused were involved in the treason, was to show that they were the confederates of Aaron Burr. Of this the depositions of general Wilkinson furnished an abundant proof—they had presented letters from Burr to Wilkinson developing his views, with which they appeared to be well acquainted—they had gone further, and stated additional facts and urged additional arguments to seduce Wilkinson from his duty.

They contended that the different territories of the U. S. were in law to be considered as one family, the officers of which were bound to respect and take notice of the acts of each other without any of those authentications required in one state to the official acts of another. They all derived their authority either mediately or immediately from the same source. To remove, however, all objection to the want of authentication to the depositions of general Wilkinson, they produced a certificate from the department of state, proving that the justices of the peace before whom the depositions had been taken were legally commissioned. With regard to the principle of law assumed, that none other than the magistrate who examined the accused was competent to his arrest, it was pronounced altogether untenable.

The court then gave their opinion.

Chief Judge Cranch said it was the opinion of a majority of the court that Erick Bollman and Samuel Swartwout should stand committed of the crime with which they were charged; and it was also the opinion of a majority of the court, that they ought not at present to be admitted to bail. He assigned at some length the reasons which induced him to dissent from the opinion of his brethren.

Justices Fitzhugh and Duckett also delivered their opinions at length in favor of the commitment of the prisoners for treason, and against admitting them to bail.

Mr. Lee moved for a special court to try the accused, and urged their desire to have a speedy trial.

Some converſation enſued between the court and the counſel, as well on the time of trial as on the competency of the circuit court of the diſtrict of Columbia to take cognizance of the crime charged to the accuſed. No decided opinions were expreſſed, though the prevailing ſentiment was that this court had juriſdiction of the caſe.

The court obſerved that they were obliged in April to hold a court at Alexandria, and that as a ſpecial court had been ordered in the county of Waſhington on the 4th Monday of March, they would then take order in the caſe.

Mr. Lee expreſſed a wiſh, as well at the inſtance of the marſhal as of the accuſed, that the court would give directions whether they were to have the privilege of pen, ink and paper. The court declined giving any positive direction on the point. They expreſſed an opinion that they ſaw no objection to the indulgence, but reſted it on the diſcretion of the marſhal, of whoſe humanity and faithful performance of duty there could be no doubt.

DIED—On Wedneſday the 28th inſt. Mrs. ANNE BURNES, widow of the late David Burnes Eſq. of this city, aged 67 years. On Thurſday evening her remains, attended by a number of her relatives and friends, were depoſited in the family grave yard, about five miles from this place. The charitable and benevolent virtues of this lady were well known and highly eſtimated by all who were acquainted with her. She ſuffered a long and painful illneſs—but in her greateſt agony and diſtreſs ſhe was not unmindful of him who created her—and the faith of a chriſtian never forſook her. Shortly before her death ſhe had ſeveral conferences with the Rev. Mr. SAYRE of the epiſcopal church in Georgetown, who confirmed and encreaſed her hopes of an ultimate reception amongſt the ſpirits of the bleſſed.

Extract of a letter from a gentleman in Kentucky of to a member of Congress, dated the 29th December.

"Various have been the rumors and reports relative to col. Burr and his objects. The public mind has been much agitated and has underwent a great change since you left this country. The late reports that his object were inimical to the union, and that his first stroke would be at Orleans, have gained considerable credit, and have rendered him very unpopular in this quarter. You know that it was the opinion of many that col. Burr's views were to take a number of settlers to Washita, and he declared to some that in case of a war, he would carry on an enterprize against Mexico to effect a revolution in that quarter and to secure to the U. S. the Floridas, and that if a war took place that measure would certainly be sanctioned by our government. This was my opinion at first, but *I* must confess it is now materially changed."

Extract of a letter from a gentleman in Paris, Kentucky, to a member of Congress, dated 3d January 1807.

"An act has passed to prevent unlawful warlike enterprises, designed to prevent the expedition of col. Burr. After the arrival of the President's proclamation, J. H. Daviess having gone to the Falls discovered Burr's flotilla in motion, and at the Rapids a number of boxes were put on board in their size and shape resembling such as usually contain musquetry and cartridges. Some things were also put on board resembling artillery. He wrote an official communication to the governor containing the intelligence which with a letter from the Secretary of War was inclosed in a confidential message to the House of Representatives who were immediately engaged part of three days with closed doors. During that time we passed the law last mentioned. This proceeding, on account of its novelty in this country, created a great agitation in the public mind. Mr. Graham, the Secretary of Orleans, was examined before us in a committee of the whole, with closed doors. Parties of militia were immediately posted, by order of the governor, above Limestone, at Louisville and in Livingston county. From all the information we could collect (as the injunction of secrecy is removed) the following facts appear certain: That some agent near Pittsburg, Blannerhasset at Marietta, Comfort Tyler from the Eastward, some influential person in Georgia, two men in this state (their names unknown) have conspired with Burr, each to raise a certain quota of men, accoutred with arms, to descend the river at a fixed period, on some extraordinary enterprise; but their real object is to us unknown, and their destination yet enveloped in obscurity. Conjectures are various; some say Orleans, others Mexico is the scene of action."

Extract of a letter to a member of Congress from Jessamine county, Kentucky, Jan. 8, 1807.

"Burr and his associates are much execrated in this country."

Extract of another, to the same, dated Louisville, Jan. 6.

"It has been reported yesterday by some gentleman coming from the Tennessee country that col. Burr was stationed on Cumberland island and busy in organising his recruits, and that he was very much disappointed in the number, which is very short of his expectation. A few thousand men, commanded by trusty officers, could soon clear the Western country of the Clan."

Extract of a letter from Winchester (K.) dated, Jan. 8, 1807.

"When in Lexington five or six days since I could not enter a shop, private or public room, but Burr was the subject of conversation, and I must confess I felt a little surprised to hear a number who but a few days before appeared his warmest advocates, declare they believed him to be a rascal, villain, thief and highway robber; while report was proclaiming his bills drawn on Smith and Ogden, had been protested for non-acceptance, and their notes laid over in bank for want of payment."

FOR THE NATIONAL INTELLIGENCER.

Fairfax county, Jan. 24, 1807.

MR. SMITH,

SIR—As an improper attempt has been made to induce the public to believe that my quarrel with Dr. Blake was a political one arising out of certain resolutions offered by him to the house of Delegates, I am under the necessity of stating, that the fact is not so, and that those resolutions were no farther the *exciting cause* than any others which Dr. B. might have introduced that could for a moment have made him the subject of conversation. The evening after the introduction of the resolutions in a company where there were several members of the legislature, speaking of Dr. B. in reply to some questions respecting him, I observed that he was "a pitiful liar and malicious scoundrel." Upon this, one of the company said that it was harsh language to apply to any person, particularly behind his back. This observation induced me to repeat to Dr. B. the next morning the language I had used the preceding evening—language flowing not from any opinions I entertained of the resolutions or any other political conduct of his; but used in consequence of certain private misconduct for which I had previously determined to chastise him. In proof of which I refer to the following certificate from a very respectable member of the legislature, and were I at home I could procure others to show that I had expressed a similar determination previous to my departure for Richmond—but Mr. Hunter has stated that Dr. B. and myself travelled to Richmond in *perfect harmony.* I will state the facts, the public will judge of the *harmony*—We left Fredericksburgh in different stages—I in the Accommodation, he in the mail stage—we stopped together to change horses once, and also at breakfast, when he spoke to me as usual, but was received with great coldness. After breakfast we never met, he reaching Richmond that evening, I the next day. Mr. Hunter's candor ought to have induced him to have gone farther, and to have stated that I had explained to him at Richmond the reasons which induced me to refrain from then chastising Dr. B. but if Mr. H. will look at a letter which he has in his possession written by Dr. B. he may there find the *immediate* or *exciting cause* without resorting to the resolutions.

Yours, &c.

A. S. HOOE.

I do hereby certify that several days previous to Dr. Blakes' having offered his resolution to the Virginia house of delegates, I heard Mr. A. S. Hooe express a determination of calling him to account for previous misconduct.

Given under my hand this 14th January, 1807.

JAMES KEMP,
Prince William County.

SEVENTEENTH BULLETIN.

Potsdam, October 25.

The corps of marshal Lannes arrived at Potsdam, on the 24th.

The corps of marshal Davoust made its entry at 10 o'clock in the morning into Berlin.

The corps of marshal Augereau will make its entrance into Berlin to-morrow, the 26th.

The emperor arrived yesterday at Potsdam, and alighted at the palace; in the evening, he went to visit the new palace of Sans Souci, and all the positions which environ Potsdam; he found the situation of the castle of Sans Souci very agreeable; he remained some time in the chamber of the great Frederick, which he found furnished in the same way it was at the time of his death.

Prince Ferdinand, brother of Frederick the great, has remained at Berlin. We have found in the arsenal of Berlin 500 pieces of cannon, many millions of pounds of powder, and an immense quantity of small arms.—General Hullen is named commandant of Berlin. General Bertrand, aid-de-camp of the emperor, has repaired to Spanda; that fortress defends itself; he has made the investment with the division of Dupont.

The grand duke of Berg has repaired to Spandau to put himself in pursuit of a column which defiles from Spandau on Stettin, and which they hope to cut off.

Marshal Le Fevre, commanding the imperial foot guards, and Marshal Bessier commandant of the imperial horse guards, arrived at Potsdam on the 24th; the foot guards made 14 leagues in a day.—The emperor remained the whole day of the 26th at Potsdam.

By Prince George's County Court, September term, 1806.

Whereas upon the application of Greenbury Barnes and wife, two of the repreſentatives of a certain Elijah Wood, deceaſed, certain commiſſioners were appointed to aſcertain whether the eſtate of the ſaid Elijah Wood would admit of diviſion agreeably to the act of aſſembly, entitled an act to direct deſcents, which ſaid commiſſioners have made a return to Prince George's county court. And whereas it has been ſtated that ſome of the repreſentatives of the ſaid Elijah Wood, deceaſed, to wit: Laſhey Wood, Robert Wood and Eleanor Swain, live out of the ſtate of Maryland, it is thereupon adjudged and ordered that notice by publication of this order three ſucceſſive weeks in the National Intelligencer before the firſt day of March next to the ſaid abſent parties to appear in Prince George's county court on the firſt Monday in april next, to ſhew cauſe, if any they have, why the return of the ſaid commiſſioners ſhould not be confirmed.

Teſte,

JOHN READ MAGRUDER, jr. Clk.

February 2, 1807. P. G. Cy Ct.