The President declares that in his opinion there is no danger to be apprehended. With regard to foreign force, he states his reasons for thinking there is no danger. As the message is in the hands of every gentleman, there can be no necessity for me to read it. But he explicitly declares, from the state of our relations with other nations, there can be no danger from that quarter. This being the deliberate opinion of the executive magistrate, who is more deeply responsible on this occasion than any other member of the government, is it not most extraordinary that we should attempt to take steps which can only be justified in the last resort. Are gentlemen aware of the danger of this precedent? This is the first attempt ever made under this government to suspend this law—if we suspend it when the executive tells us there is no danger, on what occasion may it not be suspended? Let us suppose that it shall be suspended on this occasion—what will be its effect? Parties will probably forever continue to exist in this country. Let us suppose a predominant party to conjure up a plot to avenge themselves. Do not gentlemen see that the personal liberty of all their enemies would be endangered. I mention this to forewarn gentlemen of the dangerous ground before them. I do not say that our country may not at some future day be in such a situation as to justify such a suspension. But I have never yet seen her in such a situation; and at this moment I think it does not exist. When we see the great body of the people so firmly attached to their government ought we to be thus alarmed on beholding a few desperate and unprincipled men attempting to stir up an insurrection? There is another consideration which will induce me to give my hearty negative to this bill. If foreign nations see that we are obliged under such circumstances, to suspend the writ of Habeas Corpus, will it not show that the constitution is incapable of supporting itself, without the application of the most dangerous and extraordinary remedies.

MR. DANA. I understand that the question is, whether the bill shall be rejected on its first reading, without passing through the ordinary forms of proceeding. In such cases the ordinary question is, is there any thing in the bill proper for the House to deliberate upon? If they are of opinion, that it can be modified in such a way as to ensure its passage, it ought to go to a committee of the whole. This was my opinion when the motion was first made to reject the bill. I was disposed to vote against the question, although the bill went to repeal the constitution. I have been accustomed to view the privilege of the writ of Habeas Corpus, as the most glorious invention of man. I was notwithstanding however, from a respect to the other branch of the legislature, disposed to investigate the subject, to examine whether there was any necessity for it. As, on the one hand, I was inclined to believe that the judgment of the Senate had, on this occasion, been tinged by a strong abhorrence of rebellion, so I was willing on the other, to take time to guard myself against an equally strong feeling of abhorrence of dictators. But on one principle I cannot agree to consider this bill as a proper subject of investigation for one moment. I perceive on further examination of the bill, that the Senate have provided for its suspension, in cases where persons have been already arrested. Had it been confined to future arrests, I might have agreed to deliberate on it, but viewing it in the light of an *ex post facto* law, I must give it my instantaneous negative. There is another principle which appears to me highly objectionable. It authorizes the arrest of persons, not merely by the President, or other high officers, but by any person acting under him. I imagine this to be wholly without precedent. If treason were marching to force us from our seats, I would not agree to do this. I would not agree thus to destroy the fundamental principles of the constitution, or to commit such an act either of despotism or pusillanimity. Under this view of the subject I am disposed to reject the bill, as containing a proposition on which I cannot deliberate.

The yeas and nays were then taken on the question "shall the bill be rejected"—Yeas 113—Nays 19—as follow:

YEAS.

Messrs. Alston, junior, Anderson, Bard, Barker, Bassett, Bedinger, Betton, Bibb, Bishop, Blake, junior, Blount, Brown, Brown, Boyle, Burwell, Butler, G. W. Campbell, J. Campbell, Chittenden, Claiborne, J. Clay, M. Clay, Clinton, junior, Conrad, Cook, Covington, Dana, Darby, Davenport, junior, Dawson, Dwight, Early, Elliot, Ellis, Elmer, Eppes, Findley, Fisk, Fowler, [illegible], Goodwyn, Gray, [illegible], Halsey, Hamilton, Hastings, [illegible], Holmes, Hough, Jackson, Jones, [illegible], Lambert, Lewis, junior, [illegible], Lloyd, Lyon, Mac Farland, [illegible], Marion, M'Creery, Meriwether, [illegible] Moore, T. Moore, Jer. Morrow, [illegible] Morrow, Mosely, J. Nelson, R. Nelson, Newton, jun. Pitkin, junior, Porter, [illegible], Quincy, J. Randolph, T. M. Randolph, Rea, (Penn.) Rhea, (Tenn.) Russell, Sailly, Sammons, Schuneman, Seaver, Sloan, Smelt, Smilie, J. Smith, S. Smith, Stanford, Stanton, Stedman, Sturges, Taggart, Tallmadge, Tenney, P. R. Thompson, T. W. Thompson, Tracy, Trigg, Van Cortlandt, Van Rensselaer, Wadsworth, J. Whitehill, R. Whitehill, D. R. Williams, M. Williams, Wilson, Winn, Winston, and Wynns.

NAYS.

Messrs. Alexander, Archer, Bidwell, Chandler, Cutts, Earle, Green, Helms, Masters, Mumford, Olin, Sandford, Southard, Thomas, Varnum, Verplanck, Walton, Wickes, and N. Williams.

WASHINGTON CITY.

WEDNESDAY, FEBRUARY 4.

On Monday the SUPREME COURT of the U. S. commenced its sittings in this city.

APPOINTMENT.

JAMES ANDERSON, agent for seamen and commerce at Havanna, and also agent for the Navy Department in the island of Cuba.

Letters have been received from N. Orleans as late as the 2nd of January. These state the arrest of Lieut. Smith, on a charge of being engaged in Burr's conspiracy, and that six boats had passed Natchez, after an examination.

Letters are received in this city from Nashville, as late as January 15th. They contain nothing material relative to Burr's conspiracy except the universal execration in which the conspiracy and its author are held in the state of Tennessee. The same sentiment exists, and we feel the pride of an American in being able to say so, throughout the whole extent of the western country.

There is not, we believe, the least foundation for the paragraphs taken from British prints, intimating a rupture of the negociations between the United States and Great Britain.

United States
vs.
Messrs. Bollman & Swartwout.

The following opinions were delivered on the 30th ult. in the Circuit Court of the district of Columbia, on the motion to commit the prisoners.

Chief Judge CRANCH delivered the following opinion:

It is the opinion of a majority of the judges that Eric Bollman and Samuel Swartwout should be committed for trial for the crime with which they are charged. It is also the opinion of a majority of the judges that they should not be admitted to bail at present.

Upon the motion heretofore made to this court by the attorney of the U. S. for a warrant to arrest Doctor Bollman and Mr. Swartwout upon the charge of treason against the U. S. I thought myself bound to dissent from the opinion of my brethren on the bench, because I did not think that the facts before us, supported by oath or affirmation, showed probable cause to believe that either of the prisoners had levied war against the U. S.

After further deliberation, and a more mature examination, both of the evidence and the law, my doubts are very much confirmed.

In times like these, when the public mind is agitated, when wars, and rumours of wars, plots, conspiracies and treasons excite alarm, it is the duty of a court to be peculiarly watchful lest the public feeling should reach the seat of justice, and thereby precedents be established which may become the ready tools of faction in times more disastrous. The worst of precedents may be established from the best of motives. We ought to be upon our guard lest our zeal for the public interest lead us to overstep the bounds of the law and the constitution; for although we may thereby bring one criminal to punishment, we may furnish the means by which an hundred innocent persons may suffer.

The constitution was made for times of commotion. In the calm of peace and prosperity there is seldom great injustice. Dangerous precedents occur in dangerous times. It then becomes the duty of the judiciary, calmly to poise the scales of justice, unmoved by the arm of power, undisturbed by the clamor of the multitude.

Whenever an application is made to us in our judicial character, we are bound, not only by the nature of our office, but by our solemn oaths, to administer justice according to the laws and constitution of the U. S.

No political motives,—no reasons of state can justify a disregard of that solemn injunction.

In cases of emergency, it is for the executive department of the government to act upon its own responsibility, and to rely upon the necessity of the case for its justification; but this court is bound by the law and the constitution in all events.

When therefore the constitution declares that "the right of the people to "be secure in their persons," "against "unreasonable seizures," "shall not be "violated," and that "*no warrants* "shall issue but upon *probable cause* "supported by OATH *or affirmation*," this court is as much bound, as any individual magistrate, to obey its command.

The cause of issuing a warrant of arrest, is a crime committed by the person charged. *Probable* cause, therefore, is a probability that the crime has been committed by that person. Of this probability, the court or magistrate, issuing the warrant, must be satisfied *by facts supported by oath or affirmation*. The facts therefore which are stated upon oath, must induce a reasonable probability that all the acts have been done which constitute the offence charged.

The question whether a crime has been committed is a question partly of law, and partly of fact.

What acts constitute the crime, is a question of law.

Whether those acts have been done, is a question of fact.

The crime charged in the present case is *treason against the U. S.*

The question of law is, what acts constitute that crime?

The 3d sect. of the 3d art. of the constitution of the U. S. says, that "treason against the U. S. shall consist ONLY "*in levying war* against THEM, *or*, in "adhering to their enemies, giving them "aid and comfort."

As it is not contended that the prisoners are guilty under the second clause of the definition; if guilty at all, it must be of treason in *levying war* against the U. S.

To a man of plain understanding it would seem to be a matter of little difficulty to decide what was meant in the constitution by *levying of war*; but the subtilties of lawyers and judges, invented in times of heat and turbulence, have involved the question in some obscurity.

It is not my intention, at this time, to say how far the expression ought to be limited, nor how far it has been extended. It is however to be hoped that we shall never in this country adopt the long list of constructive treasons invented in England by the worst of judges in the worst of times. It is sufficient to say that the most comprehensive definition of *levying war* against the king, or against the U. S. which I have seen, requires an assemblage of men, ready to act, and with an intent to do some *treasonable* act, and armed in warlike manner, or else assembled in such numbers as to supersede the necessity of arms.

The advocates for the prosecution have not, as I understand, contended for a more unlimited definition than this.

It is unnecessary, and perhaps would be improper for me at this time, to say more on the question of fact, than, that in my opinion, there is no probable cause, supported by oath or affirmation, within the meaning of the constitution, to charge either Doctor Bollman, or Mr. Swartwout with treason by levying war against the U. S.

From some of the doctrines urged on the part of the prosecution, I must, most explicitly, declare my dissent.

I can never agree that executive communications, not on oath or affirmation, can, under the words of our constitution, be received as sufficient evidence, in a court of justice, to charge a man with treason, much less to commit him for trial.

If such doctrines can be supported, there is no necessity of a suspension of the privilege of the writ of Habeas Corpus, by the authority of the legislature.

As it is admitted that such communications can not be evidence on the trial, and as an opinion on that point, therefore, cannot be considered as prejudging any question which can occur in a subsequent stage of the prosecution, I have thought proper to be thus explicit on that point.—To have said less, I should have deemed a dereliction of duty.

The substance of JUDGE DUCKETT'S opinion.

Mr. D. said he should not make many observations in addition to what he had remarked on granting the district attorney's motion, for a warrant to arrest the prisoners on the charge of treason—Nor should he make *any professions of scrupulous attachment to the right of personal liberty* in the citizens of our country; because, if the whole tenor of his conduct through life, had not evinced such attachment, he felt assured, that no *professions* on his part could *on this point* secure the confidence of the public.

He concurred in the sentiment, that *no reasons of state, no political motive* should be suffered to influence in the slightest degree the decision of the present question;—but while on the one hand, a due regard should be paid *to the right of personal liberty in the citizen*, we should not be entirely forgetful of the duty we owed to the public, *of preserving the constitution and government of the country.*

That on the question then before the court, he would observe, as he had done when the warrant issued, that he would at that time give no opinion, as to what constituted *a levying of war* within the definition of treason in the constitution of the United States. That it appeared to him unnecessary, if not improper to do so, as he might be called upon to decide the law, in reference to the facts that might appear on the trial of the prisoners.

That the only question then to be decided was, whether there was *probable cause* supported by oath or affirmation, as required by the 6th article of the amendments to the constitution, to induce a belief that the prisoners were guilty of the crime for which they had been arrested. This question he said had been deliberately considered by the court before the warrant issued, and he thought every thing in this inceptive state of the business, was regularly an *ex parte* proceeding; he therefore had been against permitting counsel to argue on any question, except, whether the offence was bailable, and whether under the circumstances, the court *in their discretion* ought to bail. They had, however, been allowed to argue *in effect* to the utmost latitude against the propriety of having issued the warrant. To this argument he had given the strictest attention, and could observe with Mr. Fitzhugh, that it would have been well addressed to the jury, if the prisoners had been upon their trial. It had however produced no alteration in his opinion, as he still thought there was *probable cause* appearing to the court to authorise the commitment of the prisoners for trial.

To determine this question said Mr. D. let us take a short view of the evidence.

The depositions of general Wilkinson prove unquestionably, the connection of the prisoners with col. Burr in carrying into effect one common intent or plan, and their knowledge of this view. They indeed shew, from the acts of the prisoners and their own confessions, their immediate agency in the furtherance of this scheme. If then it can be shewn, that Mr. Burr has *probably* committed treason, their agency and connection with him, while possessing this knowledge of his treasonable views, create the same probability against *them*, as in the same treason all in this stage of the business must be considered principals. What then was the intention, the *quo animo* with which Mr. Burr's expedition was undertaken? This by general Eaton's deposition, is proved to be the separation of the western from the Atlantic states, and the establishment of a monarchy there, of which Mr. B. was to be the sovereign. It is probable he had another object also in view, *the invasion of Mexico*; but this does not appear to be distinct from his treasonable plan of dismembering the union. This treasonable intention is also stated in the confessions made to general Wilkinson by one of the prisoners. In the pursuit then of this object, we find that Mr. B. had actually *commenced the expedition*, and that he expected to be at Natchez with an armed force at a certain period. It appears too, from the confessions of the prisoners themselves, that Mr. B *was levying a large body of armed men*, and what may go far to prove their knowledge of and agency in *that* business is, that the officer who was to command the first five hundred men is stated by name. One of the prisoners also says that he had written to colonel Burr for provisions. Should these circumstances, *of themselves*, not amount to *overt acts of levying war*, upon which question Mr. D. said he should at that time say nothing, yet when taken in connection with the situation of the country, the state of alarm existing among the people, and the active preparations of defence against an expected attack, they furnished *strong prima facie evidence* that they had been followed up by the commission of other acts on the part of Mr. Burr and the prisoners, that would amount *to a levying of war* within the strictest definition of the terms. Nor is there any thing in the testimony said Mr. D. that can positively exclude the inference, of an active co-operation on the part of the prisoners in the different measures that are *probably* imputable to Mr. B.

Mr. D. then remarked that an observation made by himself on issuing the warrant, seemed not to have been correctly understood by the prisoners counsel.

He had not said, that *in the present case* it was necessary to resort to public documents to *aid* the depositions in furnishing *probable cause* for the arrest; but he would now observe as he had then done, that altho' the depositions did to his mind establish a probable cause on which he could act, yet that this probability was strongly *corroborated* by the message of the President and other public documents on the subject. That even admitting that the 6th article of the amendments to the constitution which provides against general warrants, may require an oath or affirmation before *any warrant* can issue, yet he could not subscribe to the doctrine, that the circumstances showing the probable cause, must *in all cases* be contained in the oath or affirmation itself. If this principle be once considered correct, it would indeed, when taken in connection with the necessity contended for in the present case, of proving, *on a question of commitment* the positive existence of the offence charged, be the *worst precedent*, as it regarded the public safety that could possibly be established, though at the same time it might be the most convenient *cloak* for treason that could be invented. Under this doctrine, even an authenticated record shewing the conviction of Mr. B. of treason, could it be produced on the present question, would be deemed inadmissible *in corroboration of the probable cause* contained in the affidavits.

Mr. D. concluded by observing, that he was opposed to bailing the prisoners, for although the evidence might also have charged them with a misdemeanor in setting on foot an expedition against a nation at amity with the U. States, yet as they had been arrested on a charge of the highest offence against their country, nothing but their *persons* could be considered an adequate security to the public.

HOUSE OF REPRESENTATIVES.

MONDAY, FEB. 2.

As soon as the Journal of Saturday was read, Mr. *T. Moore* rose and said to his lot had been assigned the painful duty of informing the House of the death of one of its members. His colleague, GENERAL LEVI CASEY, had died yesterday morning.

On which Mr. *Early* offered the following resolutions, which were unanimously adopted:

Resolved, That a committee be appointed to take order for superintending the funeral of general Levi Casey, late a representative of the state of S. Carolina.

Resolved, That the members of this House do testify their respect for the memory of General Levi Casey, by wearing crape for one month.

On motion of *Mr. Holland*, the following resolutions were likewise adopted unanimously:

Resolved, That the members of this House will attend the funeral of the late General Levi Casey this day at 1 o'clock.

Resolved, That a message be sent to the Senate to notify them of the death of General Levi Casey, late a member of this House, and that his funeral will take place this day at one o'clock.

When, on motion of *Mr. Early*, the House immediately adjourned.

TUESDAY, FEB. 3.

Mr. *Brown* presented a petition from Elizabeth Broadhead, the widow of Luke Broadhead, a pensioner of the U. S. praying for relief. Referred to the Committee of Claims.

Mr. Boyle from the committee on public lands presented a bill respecting claims to land in the territories of Orleans and Louisiana, which was made the order for Friday.

Mr. *Boyle* from the same committee, on the petition of sundry officers who served in America in the war between France and G. Britain, made a report, of considerable length, concluding with a resolution that the prayer of the petition ought not to be granted.

Referred to a committee of the whole on Monday next.

Mr. Early, from the committee of commerce and manufactures, moved their discharge from the further consideration of sundry petitions praying for an extension of credit on the payment of duties on goods imported from the W. Indies to the same period allowed on goods imported from Europe.

Mr. Early observed that the committee had been informed by those who presented these petitions that they would be able at the next session to furnish information that would shew the propriety of the measure prayed for.

After a short conversation, the motion of Mr. Early was agreed to.

Mr. *Early* from the committee of Commerce and Manufactures, presented a bill for the relief of Edward Toppan, Wm. Currier and George Jenkins, which was referred to the committee of the whole on Friday.

Mr. Holmes, from the committee of Claims, made a report on the petition of Charles Minifie, unfavorable to its prayer; which was ordered to lie on the table.

The bill authorising the issuing of debentures in certain cases, was recommitted to a committee of the whole—Mr. BASSET in the chair.

After considerable discussion, and amendment, the committee reported the bill—when the House adjourned.

LEGISLATURE OF GEORGIA.

IN THE HOUSE OF REPRESENTATIVES.

Saturday, December 6th, 1806.

On motion, unanimously resolved, That this legislature, composed of the immediate representatives of the people, by them elected to declare their will, viewing the blessings and distinguished political benefits derived in a state and national capacity, from the impartial, wise, and judicious administration of Thomas Jefferson, President of the United States, embrace this opportunity of expressing their full and entire confidence and approbation of his official conduct.

At the present momentous crisis, when the civilized nations of the Old World, to whom we are bound by the ties of interest or political friendship, are convulsed, and either engaged in the prosecution of destructive wars, or forming coalitions which threaten the destruction of nations and dynasties; it is of the utmost importance that our political barque should be directed by the hand of a master, in whose integrity, discretion and wisdom, the people of these United States can with safety rely. We therefore in the name of the people of Georgia, request that Thomas Jefferson will devote four years more of his life to the service of his country, in order more permanently to establish those principles of political liberty, which is the boast and glory of Republican America.

Resolved unanimously, That his excellency the governor, do, without delay, transmit a copy of these resolutions to our members in Congress, by them to be presented to our fellow citizen, Thomas Jefferson.

BEN. WHITAKER, Speaker.
A true copy from the Journal,
Attest,
HINES HOLT, Clerk.
Read, and concurred in unanimously.
EDWARD TELFAIR,
President of the Senate.
WILLIAM ROBERTSON,
Secretary.
EXECUTIVE DEPARTMENT, (Geo.)
Louisville, Dec. 6th, 1806.
Presented, read and approved of,
JARED IRWIN, Gov.
Test,
JAMES BOZEMAN, Sec.

Came to the Plantation of the subscriber near Bladensburg as a trespassing stray, a bay MARE, (in December last) supposed to be 14 years old, 14 hands high, with a small star and snip, no other perceivable brand or flesh mark. The owner is desired to come, prove property, pay charges and take her away.

SAMUEL SHEKLES.

February 4—3t