

Chronicle office

THE WILMINGTON GAZETTE.

Published every Tuesday, by ALLMANN HALL, at Three Dollars a Year, payable in advance, or Four Dollars if not paid within a Year.

[NUMBER 528.]

WILMINGTON, N. C. TUESDAY, FEBRUARY 17, 1807.

[11TH YEAR.]

WASHINGTON CITY, January 29.

We lay before the public the following sketch of proceedings in the circuit court of the U. S. for the district of Columbia. We shall endeavour to present in our next paper a more comprehensive statement.

On FRIDAY Mr. Jones, the attorney of the District, invited the attention of the court to the situation of Erick Bollman and Samuel V. Swartwout, and the crimes laid to their charge. He made a number of remarks going to show that they had been guilty of treasonable acts against the peace and union of the United States. Evidence to this effect he said would be adduced at a future period. He rose, however, merely to move that the court would issue a warrant directing the marshal of the district to take the prisoners, at present in the hands of military authority, into his custody. He grounded this motion on the affidavits of General Wilkinson, already published. He did this in obedience to instructions received from the executive of the United States, whose wish it was that they should be surrendered into the hands of the civil authority. Mr. Jones then read the affidavits of General Wilkinson, and went into an argument of some length in support of this motion.

Various questions were submitted by the court, the object of which principally was to ascertain the specific offence charged, and the grounds on which the attorney supported it.

The attorney in reply, made an argument to show that the offence charged was treason; but contended that if it were of inferior hue, still the arrest and commitment were proper to be made.

The court took time further to examine the case. Their hesitation to grant the motion of the attorney arose chiefly from the uncertainty of the offence charged against the prisoners in the affidavits of General Wilkinson; and from the necessity of specifying some specific offence in the warrant of arrest.

ON SATURDAY, on the opening of the court, Mr. Jones observed that it was his wish, previous to a decision on his motion, to submit the evidence of General Eaton and Mr. James Lowry Donaldson, for whom he moved subpoenas.

The court ordered subpoenas to be issued for these witnesses.

Mr. Caldwell then said that he held in his hand a petition signed by him in behalf of Messrs. Bollman and Swartwout, whose signatures could not be obtained, as access was denied to them. Mr. C. read the following petition:

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.

After offering this petition Mr. C. made a concise speech in support of its prayer.

Mr. Jones opposed allowing the prayer of the petition, principally on the ground of its collision with the motion made by him, then depending before the court, the effect of which he contended would be the same as that produced by the writ of Habeas Corpus, if allowed.

Mr. Dorsey replied in support of the petition.

Mr. Caldwell again spoke; and, Mr. Jones replied.

Some further conversation ensued between the counsel—when chief justice Cranch declared it the opinion of the court, that before in strictness a right existed to claim a writ of Habeas Corpus, it must appear on affidavit that the warrant of commitment, or other authority, under which the confinement had taken place, had been refused, together with the grounds of refusal. Judge Cranch added that this decision was made under the 51st of Charles Second, which applied to this case.

A faint objection was made by Messrs. Caldwell and Dorsey to the application of this statute, which was over-ruled by the court.

A short time after this General Eaton and Mr. Donaldson appeared in court.

Mr. Jones said that the testimony of General Eaton would be lengthy, and in order to allow time for his drawing it out, he requested that he might be indulged until Monday.

This course was acquiesced in by the court a respect to both the witnesses.

Mr. Caldwell then offered the following affidavit:

District of Columbia—Washington County, ss.

On the 24th day of January, in the year of our Lord, 1807, personally appeared Elias B. Caldwell, who being duly sworn, deposed and said that he called on Lt. Col. Franklin Wharton, commandant of the Marine corps, and requested of him a copy of the warrant or cause of commitment of Erick Bollman and Samuel Swartwout, to which the said col. replied that he had no warrant of commitment, but that they were delivered to him in the usual military mode, and that they were merely under his care for safe keeping.

Sworn to before me the day and year above written.

Wm. BRENT, Clk.

Mr. Caldwell added that he had not seen Mr. Bollman, and did not know whether it was his wish to apply for a writ of Habeas Corpus. He would, therefore, only move for a writ of Habeas Corpus for Mr. Swartwout.

Mr. Jones intimated a hope that some days should be allowed for making out the return to the writ, which might require deliberation and legal advice.

This was opposed by Messrs. Caldwell and Dorsey.

When the court ordered a writ of Habeas Corpus, in the case of Samuel Swartwout, returnable on Monday at 1 o'clock.

January 28.

Our dates by the last western mail are to the 30th of December from Natchez, and to the 8th of January from Nashville. From the latter place letters are received, which state that Burr had passed fort Massac, on the Ohio, with ten boats, on board each of which there were six men. It is said there was no appearance of military stores or apparatus.—General Jackson, who had for some time held a body of militia in readiness, had, in consequence of this information, discharged them.

On Friday the following bill was passed in the SENATE with closed doors, and, as we understand, without division.

AN ACT

To suspend the privilege of the writ of Habeas Corpus, for a limited time in certain cases.

BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where any person or persons charged on oath with treason, or other high crime or misdemeanor, or endangering the peace, safety, or neutrality of the United States, have been, or shall be arrested and imprisoned by virtue of any warrant or authority from the President of the United States, or from the chief executive magistrate of any state, or territorial government, or from any person acting under the direction or authority of the President of the United States, the privilege of the writ of habeas corpus shall be, and the same hereby is suspended for and during the term of three months from and after the passage of this act and no longer.

January 23, 1807. Read three times and passed the Senate.

Attest,

SAMUEL A. OTIS, Secretary.

On Monday it was communicated in confidence to the House of Representatives.

When read, it was immediately determined by a great majority to open the doors.

The bill having been read a first time—Mr. Burwell moved to reject it.

On this motion a debate ensued, which occupied the day.

Messrs. Burwell, Elliot, Eppes, R. Nelson, Sloan, J. Randolph, Smilie and Dana supported; and Messrs. Varnum, and Bidwell opposed the motion.—The former gentlemen all on the ground of hostility to the bill;—of the two latter, Mr. Varnum declared himself in favor of the bill, and Mr. Bidwell in favor of permitting it to go through the usual forms of discussion, instead of deciding upon it on a first reading.

When a vote was taken by yeas and nays on the question—shall the bill be rejected? Which was carried in the affirmative—Yeas 113—Nays 19.

We have been obliged to defer to our next paper much interesting matter, to give room for the important Message of the President containing a further development of the conspiracy, and the depositions of General Eaton, Mr. Donaldson, Lieut. Wilson and Ensign Mead, in the Circuit Court of the district of Columbia, on the motion of the attorney of the district, to commit Messrs. Bollman and Swartwout into the custody of the marshal on a charge of treason. The same circumstance precludes the insertion of a detailed statement of the proceedings of the court in this case, and an highly interesting debate in the House of Representatives on the bill, received from the Senate, to suspend the privilege of the writ of Habeas Corpus, for a limited time, in certain cases.

The outline of the proceedings in the court follow:

On MONDAY, Mr. Jones, the attorney of the district, produced the depositions of Wil-

liam Eaton, and James L. Donaldson, as given in our paper of this day.

On the arrival of this hour of one, Mr. Caldwell moved for an attachment against Lieut. Col. Wharton and Ensign Mead, for contempt of court, in not making a return to the writ of Habeas Corpus.

This motion was supported by Messrs. Caldwell, Dorsey, and F. S. Key, on the usual legal grounds; it opposed by Mr. Jones on the ground, that there was as yet no disobedience to the orders of the court—that three days at least were allowed to make a return, which would be made in due time.

The court, after advisement, delivered the following opinion:

The Court is satisfied that although the practise at common law, before the Statute of the 31st Charles II. was that an alias and pluries should issue before the party to whom a Habeas Corpus was directed—should be attached, yet that the practise since that statute has been to issue an attachment without an alias and pluries in cases not within the statute. That the practise has been founded upon the statute, the judges supposing it furnished a good rule of proceeding in cases out of the statute, and that in adopting the statute as a guide in one respect, viz. in doing away the necessity of an alias and pluries, they also adopted it as a rule as to the time of the return, viz. in allowing three days to make it, and that therefore an attachment ought not to issue until the expiration of the three days from the service of the writ of Habeas Corpus.

On TUESDAY, the depositions of Lieut. Wilson, and Ensign Mead were adduced by the attorney of the district.

About two o'clock the opinion of the court was delivered on the motion of the attorney of the district.

Chief Justice Cranch stated that the members of the court differed in opinion. He said that his opinion was, that so far as regarded Erick Bollman and Samuel Swartwout, there was no testimony given on oath, that induced him to think there was probable cause that they had levied war against the U. States.

Justices Ducket and Fitzhugh concurred in opinion, that there was probable cause to believe that the accused had committed treasonable acts.

On which it was ordered that a bench warrant issue for the arrest of Samuel Swartwout and Erick Bollman, on the charge of treason, which warrant issued accordingly, returnable immediately.

Whereupon the said Erick Bollman and Samuel Swartwout, having been arrested and brought into court, it was upon their motion ordered, that they be heard by their counsel to-morrow at 10 o'clock A. M. to shew cause why they should not be committed for trial on the charge aforesaid; and in the mean time that they stand committed; and that their counsel shall have free access to them.

Return was then made to the writ of Habeas Corpus.

The court enquired whether the counsel had any motion to make.

Mr. Key replied that they had none, that they considered any further proceedings under the writ of Habeas Corpus as entirely superceded by the allowance of the motion to arrest.

The following are the depositions made in open court and alluded to in the foregoing statement.

THE DEPOSITION

Of William Eaton, Esq.

Early last winter, col. Aaron Burr, late vice-president of the United States, signified to me, at this place, that, under the authority of the general government, he was organizing a secret expedition against the Spanish provinces on our south-western borders; which expedition he was to lead, and in which he was authorized to invite me to take the command of a division. I had never before been made personally acquainted with col. Burr; and having for many years been employed in foreign service, I knew but little about the estimation this gentleman now held in the opinion of his countrymen and his government; the rank and confidence by which he had so lately been distinguished left me no right to suspect his patriotism. I knew him a soldier. In case of a war with the Spanish nation, which from the tenor of the President's message to both Houses of Congress seemed probable, I should have thought it my duty to obey to honorable a call of my country; and, under that impression I did engage to embark in the expedition. I had frequent interviews with col. Burr in this city—and, for a considerable time, his object seemed to be to instruct me by maps, and other information, the feasibility of penetrating to Mexico—always carrying forward the idea that the measure was authorized by government. At length, some time in February, he began by degrees to unveil himself.—He reproached the government with want of character, want of gratitude, and want of justice. He seemed desirous of irritating resentment in my breast by dilating on certain injuries he felt I had suffered from reflections

made on the floor of the House of Representatives concerning my operations in Barbary, and from the delays of government in adjusting my claims for disbursements on the coast during my consular agency at Tunis; and he said he would point me to an honorable mode of indemnity. I now began to entertain a suspicion that Mr. Burr was projecting an unauthorized military expedition, which to me was enveloped in mystery, and, desirous to draw an explanation from him, I suffered him to suppose me resigned to his counsel. He now laid open his project of revolutionising the western country, separating it from the union, establishing a monarchy there, of which he was to be the sovereign, New-Orleans to be his capital; organizing a force on the waters of the Mississippi, and extending conquest to Mexico. I suggested a number of impediments to his scheme—such as the republican habits of the citizens of that country, and their affection towards our present administration of government; the want of funds; the resistance he would meet from the regular army of the United States on those frontiers; and the opposition of Miranda in case he should succeed to republicanise the Mexicans.

Mr. Burr found no difficulty in removing these obstacles—he said he had, the preceding season, made a tour through that country, and had secured the attachment of the principal citizens of Kentucky, Tennessee and Louisiana to his person, and his measures—declared he had inexhaustible resources to funds; assured me the regular army would act with him, and would be reinforced by ten or twelve thousand men from the above mentioned states and territory and from other parts of the union; said he had powerful agents in the Spanish territory—and, as for Miranda, said Mr. Burr, we must hang Miranda. He now proposed to give me the second command in his army. I asked him who should have the chief command? He said, General Wilkinson. I observed it was singular that he should count on Gen. Wilkinson; the elevated rank and high trust he now held as commander in chief of our army and governor of a province, he would hardly put at hazard for any precarious prospects or aggrandizement. Mr. Burr said, general Wilkinson balanced in the confidence of government, was doubtful of retaining much longer the consideration he now enjoyed, & was consequently prepared to secure to himself a permanency. I asked Mr. Burr, if he knew general Wilkinson? He answered yes, and schooled the question. I said I knew him well. "What do you know of him?" said Mr. Burr.—I know, I replied, that general Wilkinson will act as Lieutenant to no man in existence. "You are in an error," said Mr. Burr.—"Wilkinson will act as lieutenant to me." From the tenor of repeated conversations with Mr. Burr, I was induced to believe the plan of separating the union which he had contemplated had been communicated to and approved of by general Wilkinson (though I now suspect it an artful argument of seduction) and he often expressed a full confidence that the general's influence; the offer of double pay and double rations; the prospect of plunder and the ambition of achievement would draw the army into his measures.—Mr. Burr talked of the establishment of an independent government west of the Alleghany as a matter of inherent, constitutional right of the people; a change which would eventually take place, and for the operation of which the present crisis was peculiarly favourable. There was, said he, no energy in the government to be dreaded, and the divisions of political opinions throughout the union was a circumstance of which we should profit. There were very many enterprising men among us who aspired to something beyond the dull pursuits of civil life and who would volunteer in his enterprise, and the vast territory belonging to the United States, which offered to adventurers, and the mines of Mexico would bring strength to his standard from all quarters. I listened to the exposition of col. Burr's views with seeming acquiescence. Every interview convinced me more and more that he had organized a deep laid plot of treason in the west, in the accomplishment of which he felt fully confident. Till, at length, I discovered that his ambition was not bounded by the waters of the Mississippi and Mexico, but that he meditated overthrowing the present government of our country. He said, if he could gain over the marine corps, and secure the naval commanders, Truxton, Preble, Decatur, &c. others, he would turn Congress neck and heels out of doors; assassinate the President; seize on the treasury and the navy, and declare himself the protector of an energetic government. The honorable trust of corrupting the marine corps, and of sounding commodore Preble and captain Decatur col. Burr proposed confiding to me. Shocked at this proposition, I dropped the mask, and exclaimed against his views. He talked of the degraded situation of our country, and the necessity of a blow by which its energy & its dignity should be restored—said, if that blow could be struck here at this time, he was confident of the support of the best blood of America. I told col. Burr he deceived himself in presump-