

# THE WILMINGTON GAZETTE.

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WILMINGTON, N. C. TUESDAY, MARCH 3, 1807.

[11TH YEAR.]

## WASHINGTON CITY, February 12.

On Friday last Mr. ALEXANDER was brought before Judge Duckett, by the officer who had him in charge from General Wilkinson. The officer produced a letter from the Secretary of War, addressed to him, directing him to take Mr. Alexander before one of the Judges of the Circuit Court. Judge Duckett certified on the back of the letter, that the direction of the Secretary had been complied with, and that no evidence had been adduced that seemed to require any proceeding on his part. This the officer considered as a discharge, and of course released Mr. Alexander.

On Monday Mr. Lee delivered a short argument before the supreme court of the United States on his motion for a writ of Habeas Corpus in the case of Samuel Swartwout. Mr. Rodney said it was not his wish in this stage of the business to make any remarks. If it should be the determination of the court to issue a writ of Habeas Corpus he should cheerfully submit to it.

The Chief Justice said the court would give their opinion the next day.

On Tuesday, Mr. Harper observed that as the court had not given an opinion on the motion made by Mr. Lee, it was his wish in connection with Mr. Martin, to be heard as counsel for Dr. Erick Bollman. He said they were induced to make this request, from understanding that the court had some difficulty on certain points, which had not been so fully examined by Mr. Lee as their importance merited.

The Chief Justice said the court would hear Messrs. Harper and Martin to-morrow.

We have received a Nashville paper of the 17th of January, containing an account of the dismissal of the militia discharged by General James Jackson, under the impression that no danger existed for their continuing embodied. These proceedings impressively manifest the patriotism of the state of Tennessee. We shall give them entire in our next.

Extract of a letter from the Governor of Tennessee to a member of Congress, dated Knoxville, Jan. 21.

"You may rest assured nothing is to be apprehended from any misconduct in the people of Tennessee. No doubt some malcontents are among us; but their party is too insignificant to disturb the public tranquility."

Extract of a letter dated Nashville, January 19, 1807.

"I can with pleasure and great confidence assure you that there is no section of the U. States more firmly attached to the government and union of the U. S. than this part of Tennessee. Burr has frequently visited Nashville, has been treated with marked attention by a few individuals; but I hope and believe that this was induced by the motive of hospitality to strangers. However, I am certain that none here would co-operate in such desperate and wicked undertakings, except there might be a few desperate and embarrassed men. As soon as the public mind became informed by the President's proclamation, you can have no conception how high the public indignation rose against all who were even suspected."

Extract of a letter dated Maryville, Ten. Jan. 19, 1807.

"The intrigues of Burr have had no influence in this part of the state, and have only served to excite contempt. I hope we shall be all wise enough to know that our national felicity depends on our union."

Extract from a letter, dated Nashville, January 22.

"On the subject of our united interests, your ideas are altogether correct, and will bear the test of everlasting ages. The dismemberment of the western from the Atlantic states would bring down upon us difficulties that would hardly be repaired in ages. The very idea of such a thing under existing circumstances is one of the most foolish and preposterous that ever entered the brain of a man. It is out of all calculation and reason to suppose that a measure of this kind could be effected, or would be attempted, when there is not one single advocate for such a scheme in all the western country."

The following is the opinion delivered by Judge FITZLICH on the commitment of Messrs. BOLLMAN and SWARTWOUT, on a charge of Treason.

My extreme indisposition has prevented me from preparing any remarks in support of the opinion which I am called on to give; but since it has been thought proper by the members of the court to assign our reasons for the course which has been pursued, I shall express those sentiments which at present occur to me.

This question has been argued, as if it were now before a jury who was called on to convict, or acquit the prisoners, without recollecting that we are at that stage where, in

the language of the constitution probable cause supported by oath or affidavit, is sufficient. This remark is necessary to shew that many of the conclusions of counsel are incorrect. In this incipient state, the evidence is always *ca. parte*, and such as would be inadmissible at the final trial. A warrant goes forth to apprehend and afterwards to commit, on the suggestion of an individual, supported by oath, that a crime has been committed. The affidavit is made in the absence of the supposed offender, and no more certainty is required than probable cause. By a law U. S. vol. 1. p. 100, there must be the confession in open court, or the testimony of two witnesses to the same overt act, to convict one of treason. Whereas probable cause, supported by oath or affirmation, will authorize issuing a warrant. In no case, whether criminal or civil, is an affidavit evidence at the trial; because taken in the absence of the party against whom it is intended to operate; and yet it has always been considered as sufficient to justify issuing a warrant of arrest.

These enquiries obviously occur: 1st. Is there probable cause to believe that any treason has been committed against the U. S. and this supported by oath, &c. 2d. Are the prisoners implicated in the treason? And 3d. How, whether as principals, or only guilty of misprison of treason?

That there is probable cause to believe that treason has been committed by Col. Burr, the public rumour and universal alarm which seems to have convulsed our country; from the extremity to the centre—the President's communications to Congress and to the court, afford at least ground of suspicion; and this is supported by the positive oaths of General Eaton, General Wilkinson, Mr. Donaldson, Mr. Meade, and Mr. Wilson, all going to shew the origin, existence and progress of Burr's treasonable projects and acts. But here the counsel for the prisoners have insisted that none of this mass of evidence criminate B. and have contended that the President's communications are inadmissible. It is not generally by detached parts of evidence, but by a well connected chain of circumstances that we arrive at proof; nor can a crime be made out by the proof of any solitary fact. In a charge of murder it would not be sufficient to shew that a blow was given from which death ensued; but it is necessary to prove and disclose a particular state of mind.—There must be deliberate resentment, or ill will; there must be malice prepense. So in treason (the case now under consideration) no degree of violence, however atrocious, no enlisting or marching men; no injury, if limited in its object to personal rivalry, or even extensive enough in point of locality to contemplate and threaten the opposition and destruction of the laws or government of any one of the U. S. will amount to treason against the U. S. 'Tis the intention alone which fixes the grade of the offence. This intention is only to be collected from circumstances—and though the communications of the President do not of themselves furnish full evidence of Burr's treason against the U. S. yet they must be considered entitled to some weight in leading to the conclusion that there is probable cause; but when in addition to this, it is considered that the most solemn obligation is imposed by the constitution on the President to make communications of this nature to Congress, and that he has also in further discharge of his constitutional duties ordered out the militia, which on ordinary and trivial occasions he is not justifiable in doing, a person must be strangely incredulous who will not admit that there is probable cause of suspicion that a dangerous insurrection or treason exists in our country. A report thus sanctioned by duty and oath, if made to this court by one of its officers, would be respected, and why shall not a communication from the first executive officer of the Union be credited, when he announces to the nation information in the line of his duty?—But this general ground of alarm is rendered more specific by the affidavits which have been exhibited to us. If the persons who have been sworn on this occasion are to be believed, (and no one has yet questioned their credibility) they prove a scheme laid by Burr to usurp the government of the U. S. to sever the western states from the Union; to establish an empire west of the Alleghany mountains, of which he, Burr was to be the sovereign, and New-Orleans the emporium, and to invade and revolutionize Mexico.—That in prosecution of those projects he wrote a letter to General Wilkinson, the commander in chief of the American army, with the avowed object & design of alienating him from his duty, and inviting him to embark in the undertaking, and holding out to him the most flattering and sanguine assurances and prospects of success. Horrid as this attempt was, yet if the information had reached no further, I should have no hesitation in saying that it would have been nothing more than a conspiracy to commit treason, or some other offence. But when Burr assures Wilkinson that he had obtained funds and actually commenced the enterprise; that detachments from various points and under different pretences would rendezvous on the Ohio, the

1st. of Nov.—that his plan was to move down rapidly from the Falls the 15th of Nov. with the first 500 or 1000 men in light boats now constructing for that purpose:—When, in addition to this, Wilson and Meade swear that when they left New-Orleans, the one the fifteenth the other the 22nd December, the strongest apprehension and belief universally prevailed among the inhabitants that Burr and his confederates had prepared an armed force, and were marching to attack and plunder the city; and that they knew that Wilkinson was decidedly of opinion, from the most satisfactory information, that Burr was advancing, and under that belief, he was putting the place in a posture of defence. When this coincidence of circumstances & this strength of testimony appear, there can be little doubt of the existence & the extent of Burr's views, and of his having embodied and enlisted men with views hostile to the government of his country, and that he has done acts which amount to levying war on the United States.

Burr's treason then being established, we are to enquire whether the prisoners were his confederates. They are represented, under oath, to have been the bearers of the duplicates of Mr. Burr's letters in cypher to Wilkinson, and to possess Burr's confidence; they use arguments in addition to those in the letter, to invite Wilkinson to accede to their views; admit that they have corresponded with Burr on the subject since the delivery of the letter: That Swartwout informed Wilkinson that Burr with a powerful association, extending from New-York to New-Orleans, was levying an armed body of 7000 men from New-York and the western states and territories, with a view to carry an expedition against the Mexican provinces, and that 500 men under Colonel Swartwout and major Tyler were to descend the Alleghany, for whose accommodation light boats had been built and were ready—said that New-Orleans would be revolutionized when the people were ready to join them, and that there would be some seizing.

Here then is evidence of a connection with Colonel Burr of a treasonable nature.—What is it? The act of Congress defines misprison of treason to be a neglect to disclose the knowledge of a treason: But the prisoners have not only known of the treason; but carried a treasonable letter, knowing its contents; endeavored to further Burr's views and wishes, and to seduce Wilkinson from his duty. The offence exceeds misprison of treason, and as there is no intermediate class of offence of a treasonable nature between misprison and treason, it must be treason.

It has been observed by the counsel for the prisoners that no judge could commit on an affidavit made before any other judge.—This distinction is certainly new, and I believe unprecedented. In all general warrants for arresting a supposed offender, the direction to the officer is to bring the party before the person issuing the warrant, or some other justice of peace, &c. which would be at least nugatory, if no person could inspect or regard the affidavit except the person before whom it was made. Therefore I conclude that Wilkinson's affidavits made before justices of the peace of New-Orleans, whose commissions appear to be properly authenticated by the secretary of state, are evidence at this stage of our enquiry.

I am therefore of opinion, that the prisoners should be committed for treason against the United States, in levying war against them.

Knoxville, January 21. Extract of a letter from a gentleman in Col. Va. to his friend in this town, dated January 16, 1807.

"The people of Sumner and the adjoining counties are volunteering fast to pursue Burr, and stop him in his career if possible. Captain Bradley, and captain B. Martin have both enlisted full companies and are ready to set out at a moment's warning."

Nashville, Jan. 1.

[The heart of every lover of our country must glow with the most fervent emotions of patriotism on reading the following communications: It will be recollected that the characters who compose the "CORPS OF INVINCIBLES" are old revolutionary veterans, who have fought and bled for the independence of their country, and whose age and decrepitude have almost deprived them of that bodily strength requisite to use the weapons of defence—but when their rights are threatened—with that love of country—with that god-like bravery and virtue which excited them to step forward to establish their independence, have prompted them to offer a sacrifice of their lives and property to preserve it. Let the recollection of their bravery stimulate the youth of our country to tread the path of honor and glory which they have done, and like them become its ornament and its pride.—Rev. Edit.]

TO MAJOR GENERAL ANDREW JACKSON.

At a moment when great sensibility and even fearful apprehension for the welfare of our country, has been excited, from one end

of the continent to the other.—When our government, the best calculated of all others, for the attainment of individual security and happiness, has sounded the tocsin of alarm, to be on the alert in suppressing combinations of men, hostile to the integrity of the union and interest of our country. It behoves all men either aged or youthful, to coalesce in their attachment to their country. In the affections of the citizens our government, exists; not in oppressive and unnecessary coercion, as in other countries. These principles which eminently characterize republican institutions clearly demonstrate, that every citizen, whatever his situation may be, ought to contribute, in some mode, to the support of the government under which these inestimable blessings are enjoyed. The injury, by their opinions and exhortations—to their experience belongs. They know the incalculable blessings of freedom of thought, speech, action—security of person and property. Patriotism is their claim, though not exclusively, in a country of freedom. This is an important crisis, when the limits of legal active exertion, ought not to be sought with a microscopic eye. So far as our bodily powers shall admit, we cheerfully submit to the toils of military institutions. Our country will require nothing unnecessarily of us. The thread of age will not be broken, but it will be used to the extent of its strength.

Under these impressions, we agree to embody ourselves—aged and infirm as we may be, offer our services and our fortunes to our country, in support of its laws and constituted authorities.

- General James Robertson, captain,
- James Henson, surgeon,
- General Thomas Overton, †
- Major Howell Tatum, †
- Major Clem Hall, †
- Captain James Tatum, †
- Major William T. Lewis, †
- Colonel Joel Lewis, †
- Colonel Robert Hays, †
- Captain William Richard, †
- Captain Stephen Cantrell, †
- Captain Robert Edmondson, †
- Major William Walto, †
- Captain William Lyle, sen. †
- Captain Joshua Hadley, †
- Captain John Beck, †
- Captain John Park, †
- Captain Joseph Coleman, major, Nashville,
- William Talbot,
- Thomas Talbot,
- George Poyzer,
- Thomas Dillon,
- William Whorton.

With others, old veterans composing a company, all over fifty years of age.

All those marked thus † were officers in the revolutionary war.

Gen. JAMES ROBERTSON, and the corps of INVINCIBLES, you have the honor to command.

The tender of your services at the serious crisis, when our government has warned us to be watchful, is honorable, not only to yourselves, but the country in which we live. It is interesting and grateful at the present moment. The executive of the union, in whom we all have confidence, will not only receive it with pleasure, as a mark of attachment to the government and laws; but the faithful historian of passing times, cannot avoid noticing it as an instance of patriotism, to be found only in Republics; for their support, they rest on the opinion and affections of the people, and above all governments, union of sentiments and action is necessary.

Though all citizens must be sensible of the inestimable blessings we enjoy, yet your generous expressions of them, has filled me with emotions of ardent affection as the occasion which gave birth to them—may all men cherish such sentiments, in my sincere wish. Age, in a government of laws and freedom, is entitled to a claim of patriotism, but it is equally entitled to the highest respect from youth. The frost of age and experience is as necessary in the moral as in the physical world. The dissipated attention of men is collected, and the natural relaxation of youth invigorated. Hence our union of sentiments in the position, that all men ought to contribute their mite, in some mode, to the public good. But when age, in its wisdom bounds beyond its ordinary limits of counsel and admonition into the hardy field of exertions.—My God! how can I express my sensations!!!

Age, from the immutable principles of the law of nature, is entitled to an exemption; but should the danger which threatens our country, require your services in the field, it is hoped that the occasion may be temporary, and that you will only be wanting in the field of battle, where your years and meritorious services will be duly considered. There your commander well knows, that your former services, presence and bravery, will be equal to a regiment of men.

Accept the thanks of the government, and of your general, to whom you so generously offered your services, with the sentiments of my grateful respect.

ANDREW JACKSON.  
Maj. Gen. 2d Division.