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THURSDAY, MARCH 12, 1807.

SUPR PAGE COURT OF THE UNITED STATES, FEB. TERM, 1807.

.. Bollmon un! Swartwout) Mabeas Curpus an a commitment for trez-

The United States

Bief Justice MARSHALL on the 21A u't. deliperalebe fullowing opinion of the Court.

The prisoners having ben brough: before this court on a writ of babres empus, and the tellimony on which they were committed having been fully examined and attentively confidered, the court is now to declare the law upon their

This being a mere enquiry which, without deciding upon guilt, precedes the inflitution of a prosecution, the quettion to be determined is whether the necuted thall be discharged or held to trial, and if the latter, in what place they are to be tried, and whether they thall be confined or admitted to bail. " I:," fays a very learned and accurate commentator, " upon this enquiry it manifeills appears that no fuch crime has been committed, or that the fulpicion entertained of the priliner was whilly groundlels, in tuch cases only it is lawful totally to discharge him. Otherwite he must either be committed to prifon or give bail"

The specific charge brought against the prifoner is treason in levying war aginst the United

- As there is no crime which can more excite and agitate the passions of men than treason, no-charge demands more from the tribunal before which it is made a deliberate and temperate enquiry. Wnether this enquiry be directed to the fact or to the law, none can be more solemn, none more important to the citizen or to the government-none can more affect the safety of both.

To prevent the possibility of those calamities which result from the extension of treason to offences of minor importance, that great fundamental law which defines and limits the various departments of our government has given a rule on the subject both to the legislature and the courts of America which neither can be permitted to transcend.

" Treason against the U. S. shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

To constitute that specific crime for which the prisoners now before the court have been committed, war must be actually levied against the U.S. However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war, and ble on the principle that before the accused is accually to levy war, are di tinct offences. The put upon his trial, all the proceedings are exfirst must be brought into operation by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed. So farhas this principle been carried that, in a cale reported by Ventries, and munioned in some modern treatises on criminal law, it has been determined that the :c al enlistment of men to serve against the government does not amount to levying war. It is true that in that case the soldiers enlisted were to serve without the realm, but they were enlitted within it, and if the enlistmen: for a treasonable purpose could amount to levying war, then war had been actually le-

It is not the intention of the court to say - that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually Levied that is if a b dy of men be actually mesembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute or however remote from the scene of action, and who are actually Jeagred in the general conspiracy, are to be considered as traitors Bui there must be an actual assembling of men for the treasonable purpose, to constitute a levying of war.

Crimes so atrocious as those which have for their object the subversion by violence of those laws and those distitutions which have been sordered in order to secure the peace and happy piness of society, are not to escape punishment because they have not ripened into treason. The Wisdom of the legislature is competent to provide for the case; and the framers of our con-Mitution who not only defined and limited the zrine, but with jealeus circumspection aitempted to protect their limitation by providing that mo person should be convicted of it, unless on - The testimony of two witnesses to the same evert act, or on confession in open court, mast have conceived it more lafe that punishment in such cafes mould be ordained by general Laws formed upon deliberation, under the in-Beents of no resentments, and without know-. Sag on whom they were to operate, than that -aft thould to infliered winder the influence of shoes passions which the occasion seldom fails a somethick a flexible definition of the erime, or a conttruction which would render it Mexible, might bring into operation. It is therefore more safe as well, as more consonant to the principles of our conditution that the crime of treaton thousa not be extended by confiruetion to dephe ful cases ; and that crimes not pould receive such punishment as the legisla-

ture in its wisdom may provide, To complete the crine of levying war against the U.S. there mult be an actual affemblage of men for the purpose of executing a treasonable defich. In the case now before the court, a de-SEA to overthem the government of the U. S. in New Orleans by force, would have been unquetglopably a defign which if curried into execution would have been treaton, and the affemiliage of a body of men for the purpose of carrying it into execution, would amount to levying of war against the U.S. but no confpiracy for this ou-Jech, no entitling of mon to effect it, would be an Adpal leyying of war.

In conformity with the principles now hid down have been the decisions heretofore situde by the judges of the U. States. The opinions given by judge Patterson and indica tredell in cales before them imply an acstried to temurk on the purpole to which the the force lefelf. Their opinions however content-Dista the actual employment of force.

Judge Chase in the tijal of Fries was more

He flated the opinion of the court to be " that if a body of people conspire and meditate an insuffection to reuft or oppose the execution of any statute of the U.S. by force, they are only guilty of a high misdenseanor; but if they proceed to carry such intention into execution by force, that they are guilty of the treaton of levying war; and the quantum of the force employed, neither lessens nor increases the crime: whether by one hundred, or one thouland perfons, is wholly immaterial." The court are of opinion, "continued Judge Chale, on that occasion," that a combination or conspiracy to levy war against the U. S. is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such defign to levy war; but it is altogether immaterial whether the force used is sufficient to effectuate the object; any force connected with the intention, will constitute the crime of levying war."

The application of these general principles to particular cases before the court will depend on the testimony which has been exhibited against the accused

The first deposition to oe considered is tilat of general Eaton. This gentleman connects in one flatement the purport of numerous conversations held with col. Burr throughout the last winter. In the course of these conversations were communicated various criminal projects which seem to have been revolving in the mind of the projector. An expedition against Mexico seems to have been the first and most matured part of his plan, if indeed it did not constitute a distinct and separate plan, upon the fuccess of which other schemes itill more culpable, but not yet well digested, might depend. Maps and other information preparatory to its excution, and which would rather indicate that it was the immediate object, had been procured, and for a confiderable time, in repeated conversations the whole efforts of Cel. Burr were directed to prove to the witness who was to have held a high command under him, the practicability of the enterprife, and in explaining to him the means by which it was to be effected.

This deposition exhibits the various schemes of col. Burr, and its materiality depends on connecting the priloners at the bar in such of those schemes as were treasonable. For this purpose the affidavit of gen. Wilkinion comprehending in its body the substance of a letter from col. Burr has been offered and was received by the circuit court. To the admission of this testimony great and serious objections have been made. It has been urged that it is a voluntary, or rather an extrajudicial affidavit made besore a person not appearing to be a magistrate, and contains the substance only of a letter, of which the original is retained by the person who made the affidavit.

The objection that the affidavit is extrajudicial resolves itself into the question whether one magistrate may commit on an affidavit taken before another magistrate. For if he may, an assidavit made as the foundation of a commitment, ceafes to be extrajudicial, and the person who makes it would be as liable to a profe ution for perjury as if the warrant of commitment had been issued by the magistrate before whom the attidavit was made.

To decide that an affidavit made besore one magistrate would not justify a commitment by another might in many cases be productive of great inconvenience, and does not appear fuf-ceptible of abule if the verity of the certificate be established. Such an affidavit seems admiffiparie. The court therefore over-ruied this objection.

That which questions the character of the person who has on this occasion administered the oath is next to be considered.

The certificate from the office of the department of slate has been deemed insufficient by the council for the prisoners, because the law does not require the appointment of magistrates for the territory of New Orleans to be certified to that office, because the certificate is in itself infoffiel, and because it does not appear that the magistrate had taken the oath required by the act of congress.

The first of these objections is not supported by the law of the case, and the second may be so readily corrected that the court has proceeded to consider the subject as if it were corrected, retaining however any final decision, if against. the prisoners, until the correction shall be made. With regard to the third, the magistrate must be presumed to have taken the requisite oaths, suice he is found ading as a magistrate.

On the adm. Ebility of that part of the affida. vit which purports to be as near the substance of the letter from col Burr to gen. Wilkinson as the latter could interpret it, a division of opinion took place in the court. Two judges are of opinion, that as such testimony delivered in the presence of the prisoner on his trial, would be totally inadmissible, neither can it be considered as a foundation for a commitment. Although in making a comm tment the magistrate does. not decide on the guilt of the priloner, yet he does decide on the probable caule, and a long and painful imprisonment may be the consequence of his décision. This probable cause therefore ought to be ploved by testimony in itself legal, and which, though from the nature of the case it must be exparte, ought, in most other respects to be such as a court and jury might hear.

. Two judges are of opinion that in this incipient stage of the prosecution an affidavir stating that the general purport of a letter may be read, particularly where the person in possession of it is at too great a distance to admit of its being obtained, and that a commitment may be founded on it.

Under this embarassment it was deemed necessary to look into the assidavit for the purpose of discovering whether if admitted, it contains matter which would judify the commitment of the prisoners at the bar on the charge of treason.

That the letter from col. Burr to gen. Wilkinfon relates to a military enterprize meditated by the former, has not been quellioned. If this enterprize was against Mexico, it would amount to a high mildemeanor, if against any of the territories of the United States, or if in its progress the subversion of the government of the United States in any of their territories was a mean clearly and necessarily to be employed, if fuch mean formed a substantive part of the plan, the assemblage of a body of men to effect it would be levying war against the U

The letter is in language which furnishes no distinct view of the design of the writer. The co-operation, however, which is flated to have been secured, points firongly to some expedition against the territories of Spain. Af: ter making thele general flatements the writer becomes rather more explicit, and says, " Burr's plan of operations is to move down tapidly from the falls on the 15th of November with the first 500 or 1000 men in light boats, now constructing for that purpose, to be at Natches between the 5th and 15th December, there to meet Wilkinson , then to determine whether it will be expedient in the first instance to seize on or pass by Baton Rouge. The people of the country to

which we are going are prepared to receive us. Their agents now with Burr say that if we will protect their religion and will not lubject shem to a foreign power, inthree weeks all will be settled."

There is not expression in these sentences Ahich would justify a suspicion that any territory of the U.S. was the object of the expedi-

For what purpose seize on Baton Rouge; why engage Spain against this enterprize, it i

was designed against the U. States? "The people of the country to which we are going are prepared to receive us." This language is peculiarly appropriate to a foreign country. It will not be contended that the terms would be inapplicable to a territory of the U States, but other terms would more apily convey the idea, and Burr seems to consider himfelf as giving information of which Wilkinfon-was not possessed. When it is recollected that he was the governor of a territory adjoining that which must have been tireatened, if a territory of the U. States was threatened, and that he commanded the army, a part of which was flationed in that territory, the probability that the information communicated related to s foreign country, it must be admitted, gains urength.

To be continued.

STATE PAPERS, Relative to the Negociations between France and Great, Britain.

No. XXII. The underfigned plenipotentiaries of his Britannic majesty would not have deserred their answer to the note of the 11th August, transmitted to them by their excellencies the plenipotentiaries of the French government; but the repeated solicitations they had made to his excellency he minister of the interior, for passports even for their courier, remaining unantwered, they thought it previously their duty to ascertain whether they were to continue the free and uninterrupted communication with their government, as it has always fubfilled in fuch like cases, amongst all the governments of Eu-

The explanation which the undersigned have received from his excellency the minister for soreign affairs, induces them to hope that whatever circumstances may arise, such a delay will never again take place. After having maturely weighed the note of their excellencies, the underfigned observe that the British government far from pretending to require of the French government, " all the rellitutions which may " be convenient for them without their being "bound to any restitution towards France," have manifested no other delire than that of treating with the French government on the basis proposed by France herfelf, as expressed instord Lauderdale's note, vz. " to treut " generally upon the basis of the uti possidetis, " which ought scrupulously to be observed, ex-" cepting in the case of Hanover, which r. as

" proposed to be ceded wholly to his mijefly." Even were it possible to militake the refuits to be necessarily drawn from this principle, the discussion which took place by word of mouth on the 9th instant, between the French plenipo. tentiaries and the undertigned, left no doubt that the proposal thus brought forward was perseelly understood by these plenipotentiaries. The underligeer, have in consequence only to repear linat, conformably to the instructions of that government, they can do no otherwise than insist upon this principle being previously a knowledged. It is only on this condition that they are allowed to continue the negotia-

As soon as this principle shall be agreed on, the undersigned will be ready to bring on the discussion of the other points mentioned in lord Laudesdale's note.

It remains only for the underligned to add, that if the French government manifest a disposition to adhere to the proposal, such as his Britannic majesty supposes to have been mad: by the French government, they will congratulate themselves on it as a most fortunate event, an event which promiles (according to the fen-

timent of Mr. Fox, quoted by the rex elienci by "an honourable peace for both nations, and at " the same time of a nature to insure the future " repose of Europe."

LAUDERDALE, YARMOUTH. Paris, 12th August, at night, 1806.

No: XXIII. Paris, 14th August, 18c6. two o'clock, at noon. We think it our duty to inform your excel-

lency that very early in the morning of the 12th inft. we transmitted to their excellencies the French plenipotentiaries, a note in answer tothat of their excellencies received on the 11th inst. In that answer we applied ourselves to indicate anew the points, which appeared to require, under any form whatever, a previous explanation, to authorize us in conformity with our infructions to continue the present

The silence of their excellencies the French plenipotentiaries in this respect, gives no reason to presume that in the present moment we are not to expect such an explanation from

Conformable to this idea, we wish to set bounds to the general expectations of both na-, tions, as there is so little appearance of seeing them realized. We feel that the request we make under such eireumstances. for passports for our return, is susceptible of interpretations of a nature to delay the happy moment which the views of the French government shall approximate more to those it was supposed to entertain. It is to prevent even the posfibility of such an inconveniency that we think it our duty to assure your excellency that any step whatever which would have the effect of laying obflacles in the way of the renewal of the negociation would be thence contrary to our intentions a notwithstanding that owing to the reasons we have detailed, we see ourselves bliged to put an end to our mission,

We have now to assure your excellency that f, for the happiness of both nations, it thould happen that we have been deceived in the deduction we have drawn from the silence of the French plenipotentiaries, we thalt wait & reasonable time for the explanation which your ex-

cellency may have to communicate to us. To prevent, bowever, the repetition of a demand as unpleasant for us to make as for your excellency to receive, in case the negociations should have an unsavorable issue, we intreat you to furnish us with the passports for us and our suite, to be made use of as circumftances may require.

LAUDERDALE, YARMOUTH.

NORFOLK, March 3. His B. M's Gigste Melampus, and Bloop of War Halifax, bave arrived in Hampton Hoads -the former from Bermuda, and the latter from Halkar. The British James y Jacket Minches ter, had arrived at Bermuda and failed for I York. Size brought accounts to the zoth Jan. in waich the farmer reports of the fickly thate

of the French army are confirmed. Nextly one thind of the army are affided, and are raid to have died at the rate of 300 per

American,

Commercial Daily Advertiser.

THURSDAY, MARCH 12, 1807.

In the Enterprize, arrived at New York, in 40 days from London, came paffenger John H. PURVIANCE, elq. Secretary of the Legation at the Court of Sti James, bearer of the Treaty of Amity and Commerce between the United States and Great Britain, figned Dec. 31ft, 1806.

VIEWS OF EUROPE.-No. I.

The great expectations formed by the friends to the freedom of mankind at the beginning of the French Revolution having been disappointed, an argument has been thence drawn to prove that a government having for its basis a representative democracy is not suitable for mankind; and that however it may endure for a time it will eventually resolve itself into a limited monarchy or a despotism. This argument has been much cherished by one political sect in this country, and has animated it to fresh esforts against the admirable and free inflitutions of the United States of America. The argument is built more on the milguided views and milconduct of the French people during the prevalence of the revelutionary spirit, than on any inherent defect in their nature which renders them incapable of enjoying the bleffings of a free constitution. Eut whilst one set of politicians cite the failure of the designs of the original revolutionills in France as an instance of the folly of establishing republican governmente, another.cast has denounced Bonaparte as the destroyer of the liserties of Frenchmen; forgetting, it seems, that the people themselves, rushing from the extreme of oppresson to the vortex of the wildest

" In folly only wise, Refue'd the manna sent them from the skies."

Almost any man in Bonaparie's situation, and with his opportunities, would have purfued the same object that he has. It does not lesien the force of this remark that Moreau did not attempt the same thing; for there is no certain proof that he was in possession of the same means; but there is presumptive evidence that this ill-treated exile was never in a posture to control the political destiny of France; and that proof is derived from his well known republican partialities; for, had General Moreau been enabled to fassion the form of the French government agreeably to his own ideas, there is much reason to believe he would have given it the basis of a representative democracy, as was others. We nught to recollect, that

" In every breast there burns an antice stame, " The love of glory, or the dread of frame;"

And that the line of glory is by far the strongeft passion. In pursuing that path, therefore, which led to his elevation and aggrandizement, Bonaparte was only afting in obedience to that quality of human nature which prevails more or lel's in the constitution of every individual. Had he considered it more glorious to rule over a free people, and render them happy by peaceable purtui s, than to seek the phantom renown through blood and flaughter, it would have been a fortunate circumhance for Europe in general and for France in particular: The temper of his mind is too impetuous to take delight in promoting the happiness of the human race, by pacific means; and, accordingly, you have nothing to expect from him more than other conquerors, who have butchered our species, and desolated the earth.

Bonaparte has in all respects proved himself voluntarily entered. a genuine monarch : And it is perfectly idle and ridiculous for men who are attached to royalty! to affest to despise him as an upstart and an usurper; for it is certain, that most of the emperors or kings of Europe who reign at the present day, hold theircrowns & exercise authority by a. less equitable title than the emperor of the French and king of Italy. Whatever might have been the crimes of the revolutionists, hehad little agency in them; and he is entirely innocent of the death of Louis the XVIth. Bonaparte was raised to his present station by that power of the nation which influenced its affairs -the military. He was popular with that body of men. The officers, the foldiery, gloried in a chief who had so often led them to victory, and in his elevation fought their own aggrandizement. Among all the failings of the French emperor, that of ingratitude to those who have served him is not one. Hence prose the new creations of Princes, Grand Dokes, and Legions of Honor.

The king of England himself does not boast So clear a title to his crown as Bonaparte. George the IIId is of the boose of Hanover; a house which came to the throne of England by the alimpation of king William, who was guilty of that crime not only in a kingly point of view, but as z most unnatural-fon-in-law; acting towards his unhappy father in law Impes the Ild, almost in the same way that the vile daughters of Lear are faid to have afted towards him; depriving him of his dominions, and compelling him to feek fafety by flight to the French court. Bonaparte, found no incumbent on the throne, but king William did; and not only a lawful incumbent, but also found the nation in a very llourishing condition. The present emperor Alexander, of Rass, inherits by -virtue of the muider of Paul-and the Danith feenes of oppresson, which before long, are and Swedish successions have been disgraced by about to be aded." What pitiful rant! What affactions and sourpations. Wherefore, those miserable trash is this! who are fond of kings and yet rail at House. parte 2s an alitper, would do well to be a little more tender in that particular ; his little being

not only as just as that of his brother sovereigns but his genius and talents entitling him in a tur greater degree to the flation than any other prince, king, or emperor whatfoever now reigning. What man that could write fuch, a letter as the following amidst the clangor of arms and the turmoil of camp duty, is not entitled to our admiration? Frederick the Great never wrote with so much elegance nor more proprietythe reflections of Voltaire or Rousseau, undilturbed in their meditations, could not have been more excellent on the same topic : And while it is lamented that such a fine genius has been so misguided in its object by the thirst of glory, it must be acknowledged that the pen of Bouaparte is equal to his sword.

It was after the desperate and bloody day of the battle of Arcole, t'at Bonaparte addressed the following consolatory letter

"TO GENERAL CLARK.

" Your pephew, Elliot, was killed in the sield of battle at Arcole. This young man was accustomed to the din of arms. He had often marched to the attack pf places at the head of columns. He would have arrived at the highest summit of military preserment. He is dead, ? but who would regret his death, when it is told he fell fighting valiantly in the face of the enemy? On the contrary, what reasonable man would not envy his death? We live in a world where the shield of reclitude cannot secure us from the envenomed shafts of calumny and detraction; in a world where there is more to be endured than enjoyed; where our comsorts are, at the most, but seeting and evanescent; where our best projects are often blasted by the adverse gale of fortune; where the claim to excellence is disputed, and ambition construed into crime. The career of a life exposed to such numerous vicifitudes is furely well finished in the bed of honor and of glory."

This letter a divine of the sirst talents would not blush to own. The observations are just, and the reflections persuafive. They may vie in excellence with the foothing suggestions of Blair in his sermon " On Death," aud are equally confoling to the mind of man. . .

The emperor of the French has not his fellow among the potentates of Europe Is it. then, matter of astonishment to find him successful in all his wars, intrigues and negociation ons? Wisdom is power; and genius, talentand experience constitute wildom. These be possessin a very rare degrée.

In the course which Bonaparte pursues, it is to be lamented that his talents and acquirements will only serve him to consolidate more firmly a military despotism; which will be the corner stone of a system that must entail innumerable evils on the nations among which it prevails. He has founded a dynasty, which may hereafter produce weak, ignorant, and tyrannical princes, like dynasties that have gone before. It is some originally intended by a irabeau, Condorcet, and relief to the wounded mind of an independent man, that the prince who is absolute over him is wife, generous, and brave s but the chance of a tyrant or an idior's succeeding to the throne, is quite sufficient to make intelligens and reflecting men cling to a republican government, as the only flable barrier against the evils which arise out of bereditary succession and kingcraft.

> Married, on Thursday evening, the 24th of February, by the Reverend Or Handy Mr. Willam G. Black, of Pennsylvania, to Mils Sarab Builey, of Charlestown, Czcil county, finte of Maryland.

The following article of information is copied from the Norfolk Ledger of the 21 instant, and bears an anspect

Not quite to " ALARMING."

We can say from undoubted authority, that orders have been received (by the Janbary packet) by the commander in chief of his Britannic Majelly's naval forces in America, to release every American seaman who has not

The foregoing is corroborated by the following paragraph from the Norfolk Herald of the day following-

We are happy at having it in our power to announce the pleasing intelligence, that orders have been received by the commander of the Britiss naval forces in this country to liverate all Americans who can give proof of their

On Saturday last John Wood, editor of the " Atlantic World," published at the City of Washington, was served with a writ, at the fuit of John Beckley, esq. clerk of the House of Representatives of the United States, for libel. The following paragraph which was published in the 5th No. of Wood's "'World," Geems to be the ground for the profecution:

"In the memoirs of John Beckley will be found several amuling anecdotes, of a certain native of England who affects American patrice otifm in the highest degree; but notwithstandings did not disdain to be an humble tool of governor Blount in his Britist conspiracy.

The reader will perceive that Mr. Beckley is accused of being a conspirator, in terms which any man may comprehend. It therefore became him to vindicate his good name against the foul aspersion; not only as a gentleman, but as an officer of the government. In the pursuit of this vindication Mr. Beckley bas taken the truearle, by appealing to the laws of the land.

Je is quite ludicrous, the manner in which Wood comments on the instinction of this fuit; He says, "The Editor of the Atlantic World has been forced to one of two alternatives. either to give beil, or go to jail. Bleffed diftrict of freedom! Hail Columbia liberty 1. This is Wilkinfonism with a vengeance. We request the citizens of the diffrid to stiend to this effcume flance, for we dread it is only a prelude to the

Charleson, (5,4) Ed. 1, 180%. Mestes. Russell & Curles For the information of your Marchines ha