

"Cum ferro, cum metu, cum privilegio, at vinctis, servatit signum pascuatum tenentem. Libertatis signum pascuatum tenentem, quod ad libertatem impendit, quam ad simulatorem non relinquit."—Cicero, orat. pro domo sua ad Pontifices—sectio 51.

It is with a regret which I am unable to express, that I find myself constrained to meet the public eye, in the following narrative, which I submit to the serious attention of the reader; and reluctantly acknowledge the superior advantages which my accuser derives from rank and patronage, whilst I have nothing but truth and honor to support me.

Some few days after general Wilkinson had denounced Aaron Burr as a traitor, at the government-house in New-Orleans, and when he himself had become an object of ridicule and distrust, I was informed that Dr. Bollman was then under arrest at the instance of the general, and without any other than his own arbitrary authority—Not being sufficiently intimate with the Doctor to feel any thing like friendship for him, I yet felt that as a man, and particularly as a stranger in the country, he had claims upon my professional exertions to arrest, if I could, the strong arm of military power which had been raised apparently to crush him, and being at the same time particularly requested by the lady with whom he lived, to do what I could in his behalf, I immediately presented an affidavit of the fact to the senior judge of the superior court, and requested him to allow a writ of habeas corpus; this, from a fear of disobliging so great a man as the general, of being actuated by some other prudential motive, judge Sprigg refused to do unless he had the approbation of his brother judge, and expressed a wish that I would defer it until the next day, when the court would be in session—I told him that something ought to be done immediately; that in the morning it might possibly be too late; and at last prevailed upon him to accompany me to the lodgings of Judge Mathews.

Mathews was not within—I waited for him a considerable time, whilst his learned brother of the court was incessantly exploring the pages of Bacon's Abridgement, in order to comprehend the mysterious nature of a writ of habeas corpus; and at the same time making shrewd remarks upon the inapplicability of British statutes and English doctrines to the writ (which, as he wisely observed, was not the statute of habeas corpus in the United States, or their dependencies. I was confounded—indignation, mingled with contempt and astonishment, possessed me entirely—I went home and delayed me matter until the next morning.

The next day, when the judges had resumed the hearing of an old cause, I entered the court-room, and taking advantage of a short interval of suspense, rose, and told the judges "That I must beg leave to interrupt their present business, as I had a motion of great urgency to make—one of more moment than had ever been presented to their consideration before; that it was no less than to assert the sacred right of the subject to the writ of habeas corpus; and that it was grounded upon the affidavits, which I then read to them—I also quoted the general doctrine from Blackstone, showing that the common law writ, is entitled to all the advantages of the provisions of the several statutes; and after hinting at the probable consequences of such an outrage in a territory but newly acquired by the United States, I finally expressed a strong hope that the court possessed sufficient firmness to grant my motion."

Mr. Livingston, at my request seconded me, and as it was prophetically observed, "That he well knew the miserable attempt which would be made to mislead himself and me in some base suspicion, for what we had done that day, but he thanked God! that he had a heart and a mind to despise it."

Another affidavit was then added, by way of supplement, and even then, with it credited to the court's attorney for the Orleans district, for his opinion; and hearing from him, that the law was too clear to admit of a doubt, they at last ventured to allow the writ, altering the time of the return from instant to eleven o'clock the next day. It was then delivered to the sheriff who was directed to serve it.

Eleven, twelve and one o'clock elapsed the next day, and no return was made to the writ. I then addressed the following letter to the general:

Sir, I take the liberty of informing you, that unless a return to the writ of habeas corpus allowed by the court, and directed to you, be made within a reasonable time after the receipt of this letter, I shall consider it as my indispensable duty to move the court against you. I give myself this trouble, to the end that you may be perfectly apprized of the measure, and am, sir, Your obedient servant, JAMES ALEXANDER, To gen. James Wilkinson.

After dinner I returned to court, and Mr. Livingston handed me a letter addressed by the general to the judges. It stated in substance, that he had no intention of resisting the civil authority, but that business of the highest consequence to their "common country" would prevent him from making any return to the writ before the next morning.

Mr. Lewis Kerr having obtained a writ of habeas corpus from Judge Workman, in behalf of Mr. Peter V. Ogden, who had also been put under arrest, by a similar illegal order of the general, and who was detained on board the bomb-ketch *Aetna*, and being himself indisposed, requested me by note to attend to that business for him. I did so accordingly; and lieutenant Jones, and commander on board the *Aetna*, and commodore Shaw, both appearing in obedience to the writ, and having declared that they had no charges to exhibit, the judge ordered Mr. Ogden to be set at large. This gentleman accompanied me home, and spent the night with his friend Mr. Williamson. Upon leaving my house I gave him a brace of pistols, and told him that if an attempt should be made to arrest him a second time, without the sanction of any civil authority, and the force should be such as he could resist without shedding blood unnecessarily, he ought to defend himself.

From Mr. Ogden I learnt that Mr. Swartwout was also a prisoner on board the ketch, I took his affidavit to that effect, and applying to Judge Workman, obtained his allowance to the other writ of habeas corpus. This I served myself upon Mr. Shaw, and waited at the judge's for the return. About ten o'clock at night lieutenant Jones came to the judge's, and informed me, that during his absence on shore, Mr. Swartwout had that very evening been removed from the *Aetna*, in consequence of an order from general Wilkinson to that effect, counter-signed by commodore Shaw.

The next morning I went on board the ketch, where I obtained an affidavit of the fact from the officer who had delivered Mr. Swartwout up, and ascertained that he had been conveyed across the river. I immediately obtained writs of habeas corpus, & delivering one of them to the sheriff to serve upon the general, I went across the river & found Mr. Swartwout at the magazine, in the custody of an officer, to whom I delivered one of them, and required his obedience to it. He said that having positive orders from the general, he could not act but under his direction, and then sent off a boat in order to inform the general of what had taken place & to know his pleasure. I waited there until this officer was relieved; and the one who succeeded, having no instructions with regard to the writ of habeas corpus, I served another upon him: he told me that he could not receive it; upon which I informed him of its nature and left it in the guard-room.

When I returned to town, I was informed of the general's oratorical and patriotic flourish to the return made to a writ of habeas corpus, as stated by Mr. Livingston in his address to the public; and now that I notice that address, I beg leave to express my entire conviction of the innocence of that gentleman. I most sincerely lament that his generous efforts in my favor should have again disturbed the subsiding malice of the general; and I blush for human nature itself, when I see the guilty hand present the poisoned chalice to the unoffending lips of innocence.

The next morning, steady to my duty, & not in the least discomposed by the general's denunciation, finding that no return had been made to the habeas corpus in the case of Mr. Swartwout, and the sheriff having informed me that he had twice called it, but had been refused admittance, I applied to Judge Workman for an attachment. He directed the sheriff to go once more to the general and inform him of the nature of his business.

On the same day, after dinner, as if it were the necessary consequence of performing my duty, captain Bradish, with a troop of horse, arrested me, by virtue of an order from general Wilkinson, unacted by any civil authority. After drinking a glass of wine with me, he asked me whether I would consider myself as under arrest, and was about to dismiss his troop; I requested him to shew me his orders, and having perused them, told him that an illegal order was no order, and that I could not consider myself as under arrest. I also expressed a wish that he would retain his troop, observing that I should be unwilling to shed his blood, but that I was prepared. I then remarked to the troop that I was unable to resist them, and after a few minutes I was conducted to the general's quarters, where I found Mr. Ogden who had been sent there a short time before. The general never condescended to visit us, but as he passed by averted his head, as if afraid to meet the looks of those whom he had injured: here upon the ground floor, in a place infested by rats, we passed the night together; and the next morning before sunrise, in order to prevent any generous effort from being made for our rescue, we were hurried across the river, to the miserable shed, which had just before been occupied by Mr. Swartwout.

Upon my arrival there, I wrote two notes, one addressed to Mr. Philip Jones, and the other to the collector of New-Orleans; the former contained this unparliamentary sentence, "as it regards myself, internally all is well, and I enjoy a tranquility of soul which is truly enviable;" and the other concluded with the following words, "if you have ever entertained a favorable opinion of me I request that you will retain it, for I pledge myself to come out in the sun-shine of integrity." These letters, I am convinced, were never delivered, and let me add, that I never received Mr. Livingston's note or the supplies which he was so good as to put up for me.

Here we learnt that Mr. Swartwout had been removed down the river to Fort St. Philip, the preceding night. No person was permitted to visit us, and even the common offices of nature could not be performed without the superintendance of a corporal and a file of men. We continued in a cork about a week, when we were sent down to Fort St. Philip—thence I was transported to this city, without money, in a vessel badly found as it regards sails and rigging, exposed to the danger of a winter voyage and the inclemency of the season, described to be a "man of great art and address and of daring courage," prohibited the use of pen and ink, and forbid to speak to any one but a commissioned officer.

And yet all this has happened, not in the heart of a despotic empire, not at a period of foreign war, or intestine trouble, but at a moment of profound peace and domestic tranquility: in a country where the constitution of the United States is the primary and transcendental law, where the writ of habeas corpus has been given to the subject, as a boon of inestimable value; in a land said to be reclaimed from servitude, where the civil power of the magistrate alone is felt, and military force is a stranger—and it has happened too, under the eye of an American governor, appointed to his magistracy by the president of the United States, and one of the members of this unheeded outrage, is a young object of the bar, acquainted with very few of the inhabitants of N. Orleans, a stranger to their language, without influence or authority of any kind, either to excite or aid an insurrection, and well known, so far as any knowledge of him extends, to be from principle attached to a firm and energetic government, and utterly to detest all the despicable arts by which grovelling ambition would ascend to power.

"Can such things be, And overcome us like a summer cloud, Without our special word?"

JAMES ALEXANDER, Baltimore, Feb. 13, 1807.

THIRTY-FOURTH BULLETIN.

Berlin, November 22. No intelligence has yet been received that the suspension of arms, signed on the 17th, has been ratified by the king of Prussia, and that the exchange of ratifications has taken place. In the mean time hostilities continue to go on, as they are not to cease till the period of exchange.

General Savary, whom the emperor appointed to direct the siege of Hameln, had a conference on the 20th with general Lecoq, and the Prussian general, and made him sign a capitulation. 9000 prisoners, amongst whom are six thousand men for six months, stores of all kinds, a company of horse artillery, and 300 cavalry are in our power.

Savary set off immediately for Nieuburg, in order to make that fortress capitulate, in which it is thought there is a garrison of from two to three thousand men.

A Prussian battalion of 8000 men, in garrison at Czentoschau, at the extremity of Polish Prussia, capitulated on the 18th before 150 light-horse of the 2d regiment, united to 300 Polish confederates, who appeared before the fortress. The garrison are prisoners of war; considerable magazines have been found in it.

THIRTY-NINTH BULLETIN OF THE GRAND ARMY.

Posen, December 7, 1806. General Savary, after having taken possession of Hameln, proceeded to Nieuburg; the governor hesitated to surrender. General Savary entered the place, and after several conferences he concluded the articles of capitulation.

A courier has just arrived with the news that the emperor of Russia has declared war against the Porte; that Choczin and Bender are surrounded by his troops; that they have passed the Dniester and posted themselves from that to Jassy. General Michelson commands the Russian army in Wallachia.

The Prussian army, commanded by gen. Benisen, has evacuated the Vistula, which marshal Davoust has passed and established his head-quarters before Praga; the grand duke of Berg continues at Warsaw.

The emperor's head-quarters are still at Posen.

FORTIETH BULLETIN OF THE GRAND ARMY.

Posen, 20th December, 1806.

Marshal Ney has crossed the Vistula, and entered Thorn on the 6th. He bestows particular praise on colonel Savary, who, at the head of the 4th regiment of infantry, with the grenadiers and voltigeurs of the 96th and the 6th light infantry, crossed the Vistula, the first. He had an engagement at Thorn with the Prussians, whom he forced, after a slight battle, to evacuate the town. He killed some of their men, and took twenty prisoners.

This affair exhibits a remarkable trait.—The river 400 fathoms across, was covered with floating ice: the boat which carried our advanced guard, being stopped by the ice, could not advance; on the opposite bank, some Polish boatmen rushed forward under a shower of balls to clear the boat. The Prussian boatmen attempted to oppose them, upon which a scuffle with fists ensued. The Polish boatmen threw the Prussians into the water, and piloted our boats to the right bank. The emperor has inquired the names of these brave men, for the purpose of rewarding them.

The emperor received to-day the deputation of Warsaw, consisting of Messrs. Gatoskouski, grand chamberlain of Lithuania, knight of the orders of Poland; Gorzeuski, lieutenant-general, knight of the orders of Poland; Lubanski, knight of the orders of Poland; Alexander Potocki; Rzetkowski, knight of the order of St. Stanislaus; Luszkewski.

FORTY-FIRST BULLETIN OF THE GRAND ARMY.

Posen, 14th December, 1806.

The general of brigade Belair, of the corps of marshal Ney, set off from Thorn, the 9th of this month, and marched towards Galup. The 6th battalion of light infantry and the chief of squadron Schoeni, with 60 men of the 8d Hussars, met a party of 400 of the enemy's cavalry. The two advanced posts had a skirmish. The Prussians lost an officer and five dragoons made prisoners, and thirty men killed, whose horses remained in our possession. Marshal Ney bestows great praise on the chief of squadron Schoeni. Our advanced posts on that side reach as far as Strasburg.

The 11th, at six o'clock in the morning, a cannonade was heard on the side of the Bug.—Marshal Davoust made the gen. of brigade Gauthier, cross the river Bug, at the mouth of the 25th, opposite the village of Okoum.

The 15th of the line and the 89th, having crossed, and covered themselves by a *tete de pont*, and had advanced to the village of Pomikuwo, when a Russian division presented itself to carry this village; it made only useless efforts, was repulsed and lost a great many men. We had twenty men killed or wounded.

The bridge of Thorn, which is upon pillars, is repaired; the fortifications of this place are repairing. The bridge from Warsaw to the suburbs of Praga is finished; it is a bridge of boats. A fortified camp is throwing up at the suburbs of Praga; the general of engineers Chasseloup has the chief direction of these works.

On the 10th, marshal Augereau crossed the Vistula, between Zakroczyn and Utrata. His detachments are working upon the right bank to cover themselves with entrenchments. The Russians appear to have forces at Posen.

Marshal Bessieres is stretching out from Thorn with the second corps of the reserve of cavalry, consisting of the division of light cavalry of general Tilly, of the dragoons of general Grouchy and Sabuc, and of the Cuirassiers of general d'Haoutpout.

Messrs. de Lacchesini and de Zastrow, plenipotentiaries of the king of Prussia passed on the 10th, through Thorn to repair to Konigsberg to their master.

A whole Prussian battalion of Klock has deserted from the village of Brok. It took its way by different roads to our posts. It partly consists of Prussians and of Poles.—They are all indignant at the treatment they receive from the Russians. "Our prince has

sold us to the Russians," say they, "we will not go with them."

The enemy have burnt the two suburbs of Breslaw, many women and children perished in the fire. Prince Jerome has succoured these unfortunate inhabitants. Humanity prevailed over the laws of war, which prescribe to drive into a besieged place the useless mouths—the enemy should endeavor to remove from it. The bombardment was begun.

General Gouvion is appointed governor of Warsaw.

FORTY-SECOND BULLETIN OF THE GRAND ARMY.

Posen, 15th December, 1806. The bridge upon the Narew, at its mouth in the Bug, is finished. The *tete de pont* is finished and mounted with cannon.

The bridge upon the Vistula, between Zakroczyn and Utrata, near the mouth of the Bug is in like manner finished. The *tete de pont*, armed with a great number of batteries, is a very formidable work.

The Russian armies are coming in the direction of Grodno and in that of Bielik, along the Narew and the Bug. The head-quarters of one of their divisions was on the 10th at Puttusk upon the Narew.

General Dolauloi is appointed governor of Thorn.

The 8th corps of the grand army commanded by marshal Mortier, is advancing; it has its right at Stettin, its left at Restock, and its head-quarters at Anklam.

The grenadiers of the reserve of gen. Oudinot are about to arrive at Custrin.

The division of cuirassiers, newly formed under the command of general Espagne, is coming to Berlin.

The Italian division of gen. Lecchi is assembling at Magdeburg.

The corps of the grand duke of Baden is at Stettin; in a fortnight it will be able to enter into the line. The hereditary prince has constantly followed the head-quarters and has been present at every engagement.

The Polish division at Zayonschek, which has been organized at Hagenau, and 6000 strong is at Leipzig for the purpose of being clothed.

His majesty has ordered a regiment to be raised in the Prussian states beyond the Elbe; it will assemble at Munster. The prince of Hebenzeller Sigmaringen, is appointed colonel of the corps.

A division of the army of reserve of marshal Kellerman, is set off from Mentz. The head of this division is already arrived at Magdeburg.

Peace with the elector of Saxony and the duke of Sax-Weimar, was signed at Posen.

All the princes of Saxony have been admitted into the confederation of the Rhine.

His majesty has disapproved of the levy of contributions laid upon the states of Sax-Gotha and Sax-Meiningen, and has ordered what has been received, to be restored. These princes had furnished no contingent to Prussia, ought not to be subject to war contributions.

The army has taken possession of the country of Mecklenburg. This is a consequence of the treaty signed at Schwerin, the 23rd October, 1806. By this treaty the prince of Mecklenburg had granted a passage over his territories to the Russian troops commanded by gen. Tolstoy.

The season astonishes the inhabitants of Poland. It does not freeze. The sun appears every day, and it is still autumnal weather.

The emperor sets off to-night for Warsaw.

From the NATIONAL INTELLIGENCER.

UNITED STATES, 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 United States, for a warrant to arrest Dr. Bollman and Mr. Swartwout upon a charge of treason against the United States, 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. States.

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 rumors 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 quietude there is seldom great injustice. Dangerous precedents occur in dangerous times. It then becomes the duty of the judiciary, calmly to become 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. States.

No political motives—no reasons of state can justify a disregard to 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 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 United States.

The question of law is what acts constitute that crime?

The third section of the third article of the constitution of the United States says, that "no warrant against the United States 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 United States.

To a man of plain understanding it would seem to be a matter of little difficulty to declare what was meant in the constitution by levying war; but the subtleties 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 United States, 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 supercede 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 United States.

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

I can never agree that the 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 cannot 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