

statistic evidence which supports this affirmation. But, in addition to the circumstance that the positive assertion of the fact ought not, perhaps, in this stage of the inquiry to be disregarded, the nature of the case furnishes that evidence.

The letter was in cypher. Gen Wilkinson it is true, does not say that a cypher had been previously settled between Col Burr and himself in which they might correspond on subjects which though innocent, neither of them might wish to be subject to the casualties of a transportation from the Atlantic to the Mississippi, but when we perceive that Col Burr has written in cypher, and that Gen Wilkinson is able to decipher the letter, we must either presume that the bearer of the letter was also the bearer of its key, or that the key was previously in possession of the person to whom the letter was addressed. In stating particularly the circumstances attending the delivery of this letter, Gen. Wilkinson does not say that it was accompanied by the key, or that he felt any surprise at its being in cypher. For this reason, as well because there is not much more security in sending a letter in cypher accompanied by its key, than there is in sending a letter not in cypher, I think it more reasonable to suppose that the key was previously in possession of Wilkinson. If this was the fact, the letter being written in a cypher previously settled between himself and Col. Burr, is, in this stage of the enquiry at least, a circumstance which sufficiently supports that the letter was written by Col. Burr.

The enterprise described in this letter is obviously a military enterprise, and must have been intended either against the United States, or against the territories of some other power on the continent, with all of whom the United States were at peace.

The expressions of this letter must be admitted to furnish at least probable cause for believing that the means for the contemplated expedition were provided. In every part of it we find declarations indicating that he was providing the means for the expedition; and as these means might be provided in secret, I do not think that further testimony ought to be required to satisfy me that there is probable cause for committing the prisoner in this charge.

Since it will be entirely in the power of the attorney-general to prefer an indictment against the prisoner for any other offence which he shall think himself possessed of testimony to support, it is in fact immaterial whether the second charge be expressed in the warrant of commitment or not; but as I hold it to be my duty to insert every charge alleged on the part of the United States, in support of which probable cause is shown, and to insert none in support of which probable cause is not shown, I am bound to proceed in the enquiry.

The second charge exhibited against the prisoner is High Treason against the United States in levying war against them.

As this is the most atrocious offence which can be committed against the political body, so is it the charge which is most capable of being employed as the instrument of those malignant and vindictive passions which may rage in the bosoms of contending parties struggling for power. It is that of which the people of America has been most jealous; and, therefore, while other crimes are unnoticed, they have refused to trust the national legislature with the definition of this; but have themselves declared in their constitution that "it shall consist only in levying war against the United States, or in adhering to their enemies giving them aid and comfort." This high crime consists of overt acts, which must be proved by two witnesses, or by the confession of the party in open court.

Under the amount of this constitutional regulation, I am to enquire whether the testimony laid before me furnishes probable cause in support of this charge. The charge is that the fact itself has been committed; and the testimony to support it must furnish probable cause, for believing that it has been actually committed; or it is insufficient for the purpose for which it is adduced.

Upon this point too, the testimony of general Eaton is first to be considered. That part of his deposition which bears upon this charge, is the plan disclosed by the prisoner for seizing upon New Orleans, and revolutionizing the western states.

That this plan, if consummated by overt acts would amount to treason, no man will controvert. But it is equally clear that an intention to commit treason is an offence entirely distinct from the actual commission of that crime. War can only be levied by the employment of actual force. Troops must be embodied, men must be assembled, in order to levy war. If Col. Burr had been apprehended on making these communications to general Eaton, could it have been alleged that he had gone farther than to meditate the crime? Could it have been said that he had actually collected forces, and had actually levied war? Must certainly he could not. The crime really completed was a conspiracy to commit treason, not an actual commission of treason.

If these communications were not treason at the instant they were made, no lapse of time can make them so. They are not in themselves acts. They may serve to explain the intention with which acts were committed; but they cannot supply those acts, if they be not proved.

The next testimony is the deposition of general Wilkinson, which consists of the letter already noticed, and of the communications made by the bearer of that letter.

This letter has already been considered by the supreme court of the United States, and has been declared to import, taken by itself, or in connection with Eaton's deposition, rather an expedition against the territories of Spain than the United States. By that decision I am bound, whether I concurred in it or not. But I did concur in it. On this point the court was unanimous.

It is, however, urged that the declarations of Swartwout may be connected with the letter, and used against Col. Burr.

Although the confession of one man cannot criminate another, yet I am inclined to think that, on a mere enquiry into probable cause, the declarations of Swartwout, made on this particular occasion, may be used against Col. Burr. My reason for thinking so is that Col. Burr's letter authorizes Mr. Swartwout to speak in his name. He empowers Mr. Swartwout to make to general Wilkinson verbal communications explanatory of the plans and designs of Burr, which Burr adopts as his own explanations. However inadmissible, therefore, this testimony may be on trial in chief, I am inclined to admit it on this enquiry.

If it be admitted, what is its amount? Upon this point too, it appears that the supreme court was divided. I therefore hold myself at liberty to pursue my own opinion which was that the words "this territory must be revolutionized," did not so clearly apply to a foreign territory, as to reject that sense which would make them applicable to a territory of the United States; at least so far as to admit of further enquiry into their meaning; and, if a territory of the United States was to be revolutionized, though only as a means for an expedition against a foreign power, the act would be treason.

This reasoning leads to the conclusion that there is probable cause for the allegation that

reasonable designs were entertained by the prisoner, so late as July last, when this letter was written.

It remains to enquire, whether there is also probable cause to believe that these designs have been ripened into the crime itself by actually levying war against the United States.

It has been already observed that to constitute this crime, troops must be embodied, men must be actually assembled; and these are facts which can not remain invisible. Treason may be machinated in secret; but it can never be perpetrated only in open day, and in the eye of the world. Testimony of a fact which in its own nature is so notorious ought to be unequivocal. The testimony now offered has been laid before the supreme court of the United States, and has been determined, in the case of Bollman and Swartwout, not furnish probable cause for the opinion that war had been actually levied. Whatever might have been the inclination of my own mind in that case, I should feel much difficulty in departing from the decision then made; unless this case could be clearly distinguished from it.

I will however, briefly review the arguments which have been urged, and the facts which are now before me, in order to shew more clearly the particular operation they have on my own judgment.

The fact to be established is that, in pursuance of these designs previously entertained, men have been actually assembled for the purpose of making war against the United States, and on the showing of probable cause that this fact has been committed, depends the issue of the present enquiry.

The first piece of testimony relied, to render this fact probable, is the declaration of Mr. Swartwout, that "Col. Burr was levying an armed body of 7000 men from the state of New York, and the western states and territories, with a view to carry on an expedition against the Mexican provinces." The term "levying," has been said, according to the explanations of the Lexicons, to mean the embodying of troops, and therefore to prove what is required, it is not necessary to show that Col. Burr had conspired a Dictionary, I have looked into Johnson for the term, and find its first signification to be "to raise"; its second, "to bring together." In common parlance it may signify the one or the other. But its sense is certainly decided by the fact. If when Mr. Swartwout left Col. Burr, which must be supposed to have been in July, he was actually embodying men from New-York to the Western States, what could veil his troops from human sight. An invisible army is not the instrument of war, and had these troops been visible, some testimony relative to them could have been adduced. I take the real sense then in which this term was used to be, that Col. Burr was raising, or in other words, engaging or enlisting men through the country described, for the enterprise he meditated. The utmost point to which this testimony can be extended, is that it denotes a future embodying of men which is more particularly mentioned in the letter itself, and that it affords probable cause to believe that the troops did actually embody at the period designated for their assembling, which is sufficient to induce the justice to whom the application is made to commit for trial.

I shall readily avow my opinion, that the strength of the presumption arising from this testimony, ought to depend greatly on the time at which the application is made. If soon after the period at which the troops were to assemble, when full time had not elapsed to ascertain the fact, these circumstances had been urged as the ground for a commitment, on the charge of treason, I should have thought them entitled to great consideration. I will not deny that in the cases of Bollman and Swartwout, I was not perfectly satisfied that they did not warrant an enquiry into the fact. But I think every person must admit, that the weight of these circumstances daily diminishes. Suspicion may deserve great attention, when the means of ascertaining its real grounds are not yet possessed; but when those means are or may have been acquired, if facts to support suspicion be not shown, every person I think must admit, that the ministers of justice at least ought not officially to entertain it. This I think must be conceded by all, but whether it be conceded by others or not, it is the dictate of my own judgment, and in the performance of my duty I can know no other guide.

The fact to be proved in this case, is an act of public notoriety. It must exist in the view of the world, or it cannot exist at all. The assembling of forces to levy war is a visible transaction, and numbers may witness it. It is therefore capable of proof; and when time is collected, his proof has been given, it ought to be adduced, or the suspicion becomes ground too weak to stand upon.

Several months have elapsed since this fact did occur, if it ever occurred. More than five weeks have elapsed since the opinion of the supreme court has declared the necessity of proving the fact if it exists. Why is it not proved?

To the executive government is entrusted the important power of prosecuting those whose crimes may disturb the public repose, or endanger its safety. It would be easy in much less time than has intervened, since Col. Burr has alleged to have assembled his troops, to procure affidavits establishing the fact. If in November or December last, a body of troops had been assembled on the Ohio, it is impossible to suppose, that affidavits establishing the fact could not have been obtained by the last of March. I ought not to believe, and I do not believe, that there has been any remissness on the part of those who prosecute, on this important and interesting subject; and consequently, when at this late period, no evidence that troops have been actually embodied is given, I must say, that the suspicion, which, in the first instance, might have been created, ought not to be continued, unless the want of proof can be in some manner accounted for.

It is stated by the attorney for the United States that as affidavits can only be voluntarily, the difficulty of obtaining them accounts for the absence of proof.

I cannot admit this position. On the evidence furnished by this very transaction of the attachment felt by our western for their eastern brethren, we justly felicitate ourselves. How inconsistent with this fact is the idea that no man could be found who would voluntarily depose that a body of troops had actually assembled, whose object must be understood to be hostile to the union, and whose object was detected and defeated by the very people who could give the requisite information.

I cannot doubt that means to obtain information have been taken on the part of the prosecution; if it existed cannot doubt the practicability of obtaining it, and its non-production at this late hour does not, in my opinion, leave me at liberty to give to those suspicions which grow out of other circumstances, that weight to which at an earlier day they might have been entitled.

I shall not therefore insert in the commitment the charge of high treason. I repeat

that this is the less important, because it detracts nothing from the right of the attorney to prefer an indictment for high treason should he be furnished with the necessary testimony.

FEDERAL GAZETTE.

TUESDAY, APRIL 7.

Captain Long, of the ship Fame, from Liverpool, politely furnished us with a file of London papers—Containing no dates later than those which we received by the Hercules, these papers afford no news. Captain L. sailed on the 15th February.

List of vessels left at Liverpool, and sailed in company with, by the Fame, captain Seth Long, on the 14th February.

Liverpool, Hamilton, of and for Philadelphia, sailed in co.; Rover, Coffin, of N. York, for New-Orleans, Feb. 25; Halcyon, Read, of and for Philadelphia, ditto; Wm. Penn, Sherry, of N. York, uncertain; Cincinnati, Matlock, of and for ditto, Feb. 20; Abona, Hobson, of and for Baltimore, 18th; Austin, Macey, of New-York, to be sold; John Adams, Callender, of Boston, for Baltimore, March 1; President Adams, Wood, of and for Boston, Feb. 20; New Packet, Trot, ditto, ditto; Charles, Cranden, of New-Bedford, for New-York, ditto; Sally, Lewis, of and for Boston, ditto; Packet, Scot, ditto, sailed in co.; Ceres, Webber, of Boston, for Charleston, ditto; Diana, Holbrook, of and for Baltimore, ditto; Alexander, Moores, of and for New-York, Feb. 20; Nankin, Rickertson, ditto, sailed in co.; Sally, Ashby, ditto; Adriana, Hartshorn, ditto, for Baltimore, March 10; Hudson, Tombs, of and for New-York, 1st; Liberty, Chew, ditto, uncertain; Romp, Chew, ditto, ditto; Eliza, Waterman, do. Feb. 25; United States, Harding, of Boston, uncertain; Mentor, Waterman, of N. York, for St. Michaels; Robert Burns, Waite, of & for do, Feb. 20; Julius Caesar, Hall, ditto, 25th; Belvidere, Lovel, of and for Boston, sailed in co.; Lydia, Turner, of ditto; Susan and Sarah, Williams, of Augusta, for Boston, sailed in co.; Ploughboy, Collard, of and for Baltimore, Feb. 25—And a great number of others, names not recollect.

On the 26th February, capt. Long spoke brig Betsy, of and from Boston, for Amsterdam, 28 days out, all well, in lat. 50, long. 22, 30. March 2, in lat. 48, 2, long. 36. ship Factor, of and for N. York, from Greenock, 14 days out. 11th, in lat. 40, long. 57, 20, brig Telemachus, of and from Boston, for Lisbon, 6 days out, all well. 23d, lat. 36, long. 69, snow George, of and from Baltimore, 3 days out—had lost two men—Strong gales from W. N. W. 27th, in lat. 38, 10, long. 71, 30, schr. Friendship, of and for Philadelphia, for St. Thomas, 37 days out. Same day, ship Roper, of and from Portsmouth N. H. for ditto. 28th, sloop, from Tortola, 26 days for New-London. April 4, brig, captain Vickery, left Portucan, bound down the bay, wind W. N. W.

Captain Gorham, of the schr Federal Republican, arrived at Boston, on the 25th ult. from New-Orleans, spoke, on the 14th Feb. off the Dry Tortugas, the ship Thomas, capt. Charles, of Philadelphia from Jamaica for New-Orleans, who informed that a schooner with dispatches from Mr. BURR, had arrived at Jamaica, but soon sailed again.

HAMBURG, December 6. The privateer Creole, arrived here in 85 days from the Isle of France. She brought dispatches from the governor-general (Decaen) of the East-India colonies. The Isle of France and Reunion encountered two severe hurricanes, one on the 21st February, the other on the 10th March; the most serious consequence was the destruction of the crops of grain, but through the care and prudence of the administration, a sufficient quantity of rice was provided as a substitute.

His majesty the emperor's privateers and ships of war have been very successful in the India Seas, in capturing a number of the enemy's ships and carrying them safe into port. Among the number of these prizes is the East-India company's ship Warren Hastings, with a full cargo from China, another English company's ship, name unknown, of 800 tons, also from China. These vessels besides one other that had not yet arrived were taken by the frigate Semillante. Four other East-Indians have been burnt or sunk by the same frigate.

The ship Henry Addington, and ship Kibles, both cargoes estimated at 500,000 francs—the Experiment, with a load of tea—two whalers, the Viper and Phoenix, valued at 700,000 francs, have all been carried into the Isle of France by the privateers off that place.

The ship Henry from Liverpool, Melville, from Calcutta, Endeavor, of Basora, Princess of Gallies, from Bencool; Diamond, from London; Hercules, from Bombay; Woldgrave from China; Robust and Commerce, from Calcutta, and Betsey from Pegu, have all been captured and carried into the Isle of France within the last three months.

December 10. His excellency general Michaud, who arrived here yesterday is appointed by his majesty the emperor and king Napoleon, as governor of the Hanse-Towns, Hamburg, Bremen, and Lubeck, of which our senate had received previous information.

His excellency will make this city his place of residence.

SWABIA, December 11. In the course of last week, several respectable Jews from Constantinople, and other cities in Turkey, passed through this country on their way to the grand congress of Israelites to be held at Paris.

The following gentlemen were appointed directors of the Marine Insurance Company, for the ensuing year:

- Robert Gilmor,
- John Soons,
- Mark Pringle,
- Christopher Johnston,
- John Carruthers,
- John Skerlock,
- George Grundy,
- Robert Oliver,
- Hugh Thompson,
- Stewart Brown,
- Samuel Hollingsworth,
- Daniel Howland,
- James Hindman.

And at a meeting of said directors Robert Gilmor was elected as president, and David Stewart secretary and treasurer.

At a meeting of the "Baltimore Equitable Society for the Insuring of Houses from Loss by Fire," held April 6th, 1807, the following persons were elected officers for the said society the ensuing year, viz.

- DIRECTORS.
- William Wilson,
 - Mark Pringle,
 - James Mosher,
 - George Decker,
 - Henry Stouffer,
 - Adam Fonderden,
 - Michael Diffenderfer,
 - William Trimble,
 - John Ogston,
 - William Hawkins,
 - William Norris,
 - Nathan Tyson.
- JOSEPH TOWNSEND, Treasurer.

PORT OF BALTIMORE.

ENTERED.

Schr Mason's Daughter, Willett, St. Thomas

Eliza, Sever, Norfolk

Ann, Jackson, do.

CLEARED.

Ship Mary, Faherty, New-Orleans

Sale by Auction.

Is just landed from the schooner Adheral, and will be sold on WEDNESDAY afternoon, at half past 3 o'clock, on O'Donnell's wharf, near the head of Frederick-street dock, on a liberal credit.

100 hds. of very prime New-Orleans Sugar,

25 bales Sarsaparilla,

37 tons Campeachy Logwood.

ALSO,

80 boxes Havana white Sugar,

15 do. brown do. and

5 pipes of choice Port Wine, remaining from the ship Eliza's cargo.

THOMAS CHASE, Aucr.

April 7.

Sale by Auction.

On THURSDAY, The 9th instant, at 4 o'clock in the afternoon, will be sold at the Coffee-house wharf, Fell's-Point,

The Ship FAIR AMERICAN, With all her tackle and apparel as she arrived from sea.—She is about 4 years old, burthen 186 tons & will carry about 1600 barrels. A inventory may be seen on board, or at the Vendue office previous to the sale.

THOMAS CHASE, Aucr.

April 7.

Sheriff's Sale.

The sale of the Schooner TRIMMER, Now lying at Frederick-street Dock, near to Wright and Price's Lumber-Yard, which was to have taken place on Thursday last will positively take place on Saturday next, the 11th inst. at 10 o'clock, for cash, at the aforesaid place.

JOHN HUNTER, Shff.

d4t

April 7.

The ship Edward,

Captain LEWIS, Will take Freight on very low terms for Savannah, (Geo.) if immediate application is made to the master on board at Chase's wharf, Fell's-Point, or to

PATSON & SMITH,

Who have received from Charleston, ten tons Nicaragua Wood, which will be sold on reasonable terms, if taken from the vessel.

April 7.

217 bags Coffee,

Of a good quality, entitled to drawback on exportation, for sale on liberal terms by

ROBERT BARRY.

d4t

April 7.

Fresh Teas.

500 leads superior quality Imperial Tea, 100 do. Hyson do. each lead containing 2 lb. suitable for family use. For sale by

JACOB & WM. NORRIS.

Who have in Store,

Imperial Tea, in chests and small boxes;

Young Hyson, in chests and small boxes;

Hyson Skin, in chests and small boxes.

All of which are fresh, and selected particularly for retailing.

April 7.

eo10t

Just Received,

Per brig Antelope, Gray, master, via Charleston S. C.

70 hds. first quality New-Orleans Sugar.

On hand,

305 boxes white Sugar, from Trinidad de Cuba,

5500 first quality Spanish Cigars,

Sail Cloth,

Hyson Tea,

100 dozen embroidered Silk Fans.

For sale, apply to

JOHN B. LAUFFRET,

No. 42, North Gay-street.

eo4t

April 7.

Notice is hereby given,

THAT the subscriber hath obtained from the Orphan's Court of Baltimore county in Maryland, letters of administration on the personal estate of Thomas Grees, late of the city of Baltimore, deceased: All persons having claims against said estate, are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, on or before the 6th day of October next, they may otherwise by-law be excluded from all benefit of said estate. Given under my hand this 6th day of April 1807.

COLIN MACKENZIE, Adm'r.

April 7, 1807.

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ONE HUNDRED PAIR OF BOOTS,

(Particularly for the New-Orleans market) for sale by

GIDDINGS & POPE,

No 83, Market-street.

ALSO.

A general assortment of SHOES, on moderate terms.

April 7

DANCING.

P. L. DUPONT respectfully informs the Ladies and Gentlemen of this city, that his SCHOOL WILL COMMENCE On Tuesday the 14th instant, at Mr. Bryden's Light-street, at three o'clock.

Applications for the season must be made previous to the above date, as scholars cannot be admitted after the School is opened. For further particulars apply to

GEORGE HILL.

With whom the subscription List is left, where their names will be received till that time.

April 7.

eo4t

The subscriber offers at private Sale,

A small FARM, in good repair and usefully improved; containing about three hundred acres of Land. It is distant from Baltimore city in the nearest direction about twelve miles and near to the North West Turnpike Road, is well watered, which has been conducted by a ditch to advantage, has about fifty acres of Meadow, great part of which is now in grass; also, a considerable proportion of valuable wood, in a good neighborhood, and adjacent to the estate whereon the subscriber resides.

ALSO,

Eleven thousand seven hundred acres of Land on Great Sandy River (Kentucky) of early location, consequently preferable to the lands in general in that country; which he will sell at a small price, or barter for goods if more agreeable to the purchaser, for which apply to Mr. WALTER KOLB, Broker, South-street, who is in possession of the title papers and will contract for the same; or terms on the upper Land, apply to Mr. John Taggart, North Howard-street, (No. 120) or the subscriber.

CHARLES CARNAN,

Garrison Forest, Baltimore county.

April 7.

2aw

German Evangelical Reformed Church LOTTERY.

500 tickets were drawn on the 13th days drawing, of which the following were prizes:

Prize of \$300 No. 1187, the fortunate holder thereof is a Mr. Conrad Swiney and Co. Manchester town.

Prize of \$500 No. 10783.

Prize of \$50 No. 8732.

Prizes of \$5 Nos. 332 9535 8596 5789 8659 10833 2834 11914 10191 10650 3583 5658 5703 6797 3925 5893 11182 11857, and 479 three dollar prizes.

Total gain of the wheel this day \$4002.

The following capital prizes remain in the wheel yet:

2 prizes of	1000
2 do.	500
1 do.	400
1 do.	300
6 do.	100
7 do.	100
17 do.	50

Public Sale.

Pursuant to the last will and testament of the late Captain Richard Conway, will be sold, on the premises, on the first day of May next,

All his Real Property,

Lying in and contiguous to the town of Alexandria.

CONSISTING OF

Several Lots on Water-street, Union-street, and Cameron-street.

Also,

His Farm, called Spring Park, adjoining to the town, containing about 60 acres, in a high state of improvement.

Also,

28 acres, at present under lease to John Gadsby for 10 years from the first of January last, at the yearly rent of eighty-six dollars and 28 cents. This property adjoins the town and is part of the ground.

Also,

About 15 and an half Acres, in the occupation of Beal Heward, under a lease for 10 years, at the yearly rent of one hundred dollars.

Also,

All the rest of his Land, lying between the east side of the George-Town road and the west side of Fairfax-street continued, and to the south of John Mandeville's Lot & the property of Nathaniel Pendleton, and to the north of the property of the late Charles Alexander. This last mentioned property will be laid off in squares agreeable to the plan of the town.

Also,

A piece of Ground adjoining to the south side of Spring-Park Farm, the precise quantity at present not known.

A particular plat and description of the whole will be set up at the Coffee-house one week previous to the day of sale.

The terms of sale will be—A credit of 6, 12, and 18 months, the purchaser giving bond with approved security, together with a deed of trust on the property. The sale will be continued from day to day until all the property is disposed of.

ATSO,

On the 4th day of May next, will be sold, at the Coffee-house, in Alexandria,

One hundred Shares in the Stock of the Marine Insurance Company of Alexandria, on the above credit, the purchasers giving negotiable notes with approved indorsers.

Also,

Two Shares in the Alexandria Theatre, on the same terms.

WILLIAM HERBERT,

N. FITZTHUGH,

EDMUND L. LEE,

April 7.

dt1M

Red Clover Seed.

A large supply of excellent RED CLOVER SEED, of the growth of the late season, just received from Lancaster and York Counties, and offered for sale by

GERARD & WM. HOPKINS.

No. 3, County wharf.

Second mo. 10.

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