

BOSTON, October 26.

From Plymouth.

Arrived, barque Hannah, Holmes, from Halifax, where she had been carried in, and cleared. Left at Halifax, October 14, ship *Vendia*, of St. Thomas, from Havana, for Baltimore, ship and cargo condemned; sch'r *Felicity*, Snowden, of Baltimore, from Carthage for Baltimore, cleared, paying costs, to in 3 or 4 days; ship *Aemon*, Nye, of N. Bedford, from Bordeaux for Baltimore, vessel cleared, cargo retained for further proof, to sail first wind; sch'r *Fly*, Frazier, of Baltimore, from Vera Cruz, for Baltimore, cleared; ship *Hero*, Spencer, of and from New-York, for St. Thomas, libelled; ship *U. States*, Moore, of Baltimore, from Isle of France and Bourbon, for Baltimore, libelled. Sailed from Halifax 16th Oct. in company with the English Packet, for N. York.

Fifty or fifty casks were fell in with 20th August, in lat. 22, long. 63, one picked up marked B on one head, and 1 G on the other, contained oil; supposed to belong to some shipwrecked whaleman.

SALEM, October 23.

Captain Emery, of the brig *Republican*, who arrived here the 15th instant, from the Havana, was boarded in his passage out, on the 17th August, from a New-Providence privateer, and treated politely. The officer informed him, that the day previous their boat was at Key Sternway, where they saw the wreck of a vessel and boat, and many fine clothes, together with some mangled limbs, among the rocks, but could not learn the name of the vessel, or where she was from; they saw the name of Thomas Arnold on a piece of a chart, which was all they could find relative to any thing.

NEW-YORK, Oct. 20.

Arrived, the ship *Falcon*, Todd, 9 days from Portsmouth. N. H. salt.

The brig *Charles Williams*, Ingersoll, 21 days from Antigua, rum. Left, brigs *Jane*, Lynch, for New-York, in 6 days; *Melancho*, Fowler, for the leeward, in 4 days; and sch'r *Virginia*, arrived Oct. 2, from Fredericksburg; sch'r *Mechanic*, C. Gesshall, for New-York in 6 days; sch'r *Ticonic*, Smith, of Bath; and sloop *Smith*, for New-York. Oct. 10, lat. 25, long. 66, spoke a brig from St. Kitts for Wiscasset.

The British sch'r *Loyalty*, Bowers, 13 days from Halifax.

The sch'r *Bald Eagle*, Hull, 3 days from Salem, wine, ginger-root, oil &c.

The well known pilot-boat *Tickler*, Russell, 94 hours from New-Bedford. By this boat we learn, that the brig *Reuben & Eliza*, which sailed for New-York some time since, lost her anchors off Gull Island; and the ship *Golconda*, Crocker, for N. York, sailed some days since; probably the one above *Hell Gate*.

At *Hell Gate*, the new ship *Golconda*, Crocker, in 8 days from New-Bedford.

Below last night, a ship and brig.

Cleared, ship *Phocion*, Stanton, Liverpool; *Logan*, Myrick, Amsterdam; *Rachel*, Joseph, Gibraltar; brig *Commerce*, Little, St. Croix; *Hope*, Perkins, Halifax; schooner *Harriet*, Hubbell, Turk's Island; *Nancy*, Roscoe, Plymouth; *Mava*, Dough, Dough, Windsor; *Collector*, Hathaway, Edenton; *Virginia*, Ann, Hill, Fredericksburg; *Polly Mackie*, Toler, Carrutuck.

PHILADELPHIA, Oct. 30.

Arrived, ship *Neptune*, Jeffries, St. Petersburg, Russia go ds, 66 days; sch'r *Collector*, Mayo, Vera Cruz, Woods, &c. 27; *Emily*, Holbrook, Porto-Rico, coffee &c. 18; *Olive Branch*, McCormick do. coffee &c. 48; sch'r *Happy Return*, Holt, St. Thomas.

Below, ship *Horace*, Turner, Marseille; brig *Ariel*, Donovan, Bristol.

Cleared, ship *Sultana*, Crosby, Rotterdam; brig *Second-Attempt*, Gardner, St. Thomas; sch'r *Philadelphia*, Jones, N. Carolina; *Elizabeth* and *Margaret*, Malloy, Norfolk; sloop *Independence*, Scull, Richmond.

The brig *Fortune*, Ellsworth, 104 days from Antwerp and 83 from Flushing, bound to Charleston put into Savannah in distress.

Captain Jeffries, was boarded from several British ships of war which he fell in with, all the officers of which treated him with the utmost politeness.

Captain Jeffries left Cronstadt August 22, in company with the *Mary* and *North America* of and for Portland, the latter of which vessels he left at Elsinore the 5th of September.

Captain J. left at Constad, ship *James*, Skinner, for Philadelphia; *Aurora*, of Newburyport; Governor Strong, of Boston; *Martha*, of Rhode-Island; *Harmony*, Marblehead; *Marquis*, Disimilis, Salem; *William* and *Mary*, Rhode-Island; and *Regeneration* of Portsmouth, N. H. with many others not recollected.

Yesterday arrived, sch'r *Happy Return*, Holt, 18 days from St. Thomas, and informs us, that the sch'r *Remittance*, of Milford, for Turks-Island and N. York, sailed 2d of October; and sch'r *Polly*, Scriven, for Turks-Island and Philadelphia, on the 7th September. Left there, sch'r *Emily*, Johnson, for Philadelphia in 4 days; sch'r *Maria*, for Baltimore, uncertain. The British send in all Danish vessels, and they expect a visit from them hourly.

Same day arrived, sch'r *Collector*, Mayo, 27 days from Vera Cruz. Sailed in company with sch'r *Matchless*, for Baltimore; saw her 5 days since, all well. The sch'r *Hawk* and *Maria*, for Baltimore, sailed two days before. Left, ships *Liberty*, Riely, and *Sally*, —; and sch'r *Hamilton* and *Dean*.

Yesterday arrived the ship *Neptune*, capt. Jeffries, 60 days from Petersburg. On the 4th of Sep. he stopped at Elsinore, and sailed from thence the 5th; this place he

still found in the hands of the Danes, who did duty at the Castle, though they supposed should Copenhagen fall, they should be obliged to submit also. — Here he learned that Copenhagen still held out, and was determined so to do, to the last extremity. — That the British had opened their batteries for 8 or 10 days previous to his being there; that they cannonaded but little; there was but little firing in the day; but through the night they kept up a continual bombardment: that they had several times set the town of Copenhagen on fire, which was as often extinguished: that the night before he sailed (being that of the 4th) the British had again set the town on fire, which seemed to burn furiously as long as captain J. was in sight. In the sound he saw above 400 sail of vessels, viz. men of war, transports, and vessels detained by the British. He did not understand that the British had made any attempts on Copenhagen by sea, but depended altogether on their land troops. One British frigate approaching too near the Crown Batteries, was obliged to surrender to the Danes.

Captain Jeffries left Petersburg the latter end of August; while there, he neither heard nor saw any thing like war about to commence with England, as has been reported; but the British vessels, of which there were a great number at Cronstadt, and the British merchants seemed to be carrying on their business in every respect as peaceably as formerly. The Russians blame the English for leading them into the war, and say they lost above 100,000 men in it for no purpose.

The following circumstance will clearly evince (says the London Globe) if further proof were necessary, what petty means the enemy resorts to, to annoy the trade of this country. The *Moniteur* of the 5th of August, contains the following paragraph: — "Large quantities of oak bark having for some time past been purchased in the territories of Westphalia, Brunswick and Oldenburg, for the use of the tanners in England, in consequence of which the price has risen beyond what the tanners in those districts can afford to pay for that article, the latter have lodged serious complaints on this particular with the French imperial government; the result of which is, the strictest prohibition to export oak bark (at least of what little remains) from the above and other territories under its influence, if even applied for by neutrals."

By proclamation of sir Eyre Coote, lieutenant-governor of Jamaica, &c. dated 1st September, 1807, permission is given, (agreeably to an order of council of 1st July last) for twelve months from 1st July last, to the ships or vessels belonging to the subjects belonging to any state in amity with Great-Britain, to import into the British islands and colonies in the West Indies, (and to any lands or territories on the continent of South-America to his Britannic majesty belonging) staves and lumber, every kind of provisions, beef, pork, fish and butter excepted, which are of the growth or produce of the country to which the ships or vessels importing the same shall belong; and also the exportation of rum and molasses, and of any other articles, goods and commodities whatsoever, except sugar, indigo, cotton, wool, coffee and cocoa; provided always, that such ships or vessels shall duly enter into, report and deliver their respective cargoes, and re-load at such ports only where regular custom-houses shall have been established. The exception (respecting the importation) of fish, however, not to be in force in any of the British islands, colonies, lands or territories, in which there shall have been provided a bounty on fish taken in part of his majesty's dominions in North-America, or on the coasts thereof by British subjects, to any amount equal to two shillings per quintal on cod, and imported in British vessels, in any of his majesty's provinces, settlements or possessions in North-America.

A custom-house is to be erected at Fort-Maria (J.) and in the mean time persons are appointed there to carry on the duties of the customs.

Recent advices from Spain state, that the crops of wheat have been very bad; in many parts of that country, there has not been more reaped than was sowed. Flour about the last of August at Algiers, 11 dollars and 50 cents per barrel, and rising.

From the registers of deaths in the Russian Empire, during the year 1806, it appears that there died in that period one between 145 and 150 years of age, one between 130 and 135, four between 125 and 130, six between 120 and 125, thirty-two between 115 and 120, twenty-six between 110 and 115, eighty-six between 105 and 110, an hundred and thirty-seven between 100 and 105, and eleven hundred & thirty-four between 95 and 100.

NORFOLK, October 26.

Yesterday about one o'clock the French frigate *Le Cybelle* got under weigh from Craney Island, with a strong wind at W. S. W. and proceeded to sea. — She was left by the pilot at 8 o'clock last night, about 6 leagues to the eastward of Cape Henry, going off under a press of sail, at the rate of 11 knots. About an hour after leaving the *Cybelle*, spoke a pilot who informed that the British ships were all at sunset about 6 leagues to the southward and eastward of the Cape. The wind shifted to north about midnight, and has been blowing very strong ever since, so that there is every reason to believe the frigate has escaped.

This furnishes us with an evidence of the impolicy of depending upon any other, than our own means for defence. Our government some time since calculated upon this frigate as a part of the defence of Norfolk, and reduced another part of the force then employed in consequence; behold she is gone without leave or notice, having taken what we used to call *French leave*. We wish Monsieur a good passage to France.

Orders, we understand, have been sent from the war department, to the different military posts of the United States, directing that all deserters from the service of

foreign nations should be forthwith discharged. At this post several have been discharged; they were mostly, if not all British. — This has been considered as indicative of a pacific disposition by some; unless we know more of the motives, we shall offer no opinion upon the subject. It is, however, to be inferred, that our government is persuaded that the employment of deserters from other services, is either impolitic on our part or illegal, as respecting the rights of other nations. If it is impolitic in the land service, it is more so in our naval service, because the means of becoming treacherous in the latter are more easy, and would be more ruinous to the service. The legality or justice would be alike in either case.

Ledger.]

October 28. The French ship *Patrot* has left the *Patuxent* on her way down.

ALEXANDRIA, October 30. Arrived, brig *Maria*, Russell, Lisbon, wine, fruit and salt; sch'r *Fair Play*, Grinnell, Martinique, sugar and molasses.

CONGRESS.

HOUSE OF REPRESENTATIVES.

TUESDAY, October 27.

Mr. Randolph inquired of the speaker if there was not a message received from the senate, which had not yet been read. [The speaker answered that there was.] He understood that it was accompanied by a petition from a number of American seamen, addressed to the senate, which that body had thought of importance enough to be communicated to this house. He presumed it was at least of consequence sufficient to be read.

The message alluded to was read; and on motion of Mr. Alston, the petition of the American seamen was referred to the secretary of state.

Four additional members attended on this day, were qualified and took their seats.

Thursday, October 29.

A communication was received from the secretary of the treasury, enclosing an account of the extra expenses incurred in the navy department, since the 22d day of June last, for the year 1807, which was ordered to be printed.

The secretary adds, that the general estimate will be ready in the course of the next week. The general heads of this report of extra expenditure are as follows:

For ordnance and military fortifications	dols. 310,554 60
For repairs of vessels,	151,809 73
Provisions,	31,468 15
Marine corps,	29,902 82
Pay of 1100 extra seamen, boys, petty officers, &c.	74,754 29
Timber for 73 gun boats,	87,500 00
	Dols. 686,076 59

FEDERAL GAZETTE.

SATURDAY, OCTOBER 31.

Mr. Erskine, minister of his Britannic majesty, has arrived at Washington City.

Another Counterfeiter! — A person calling his name Daniel Wilbur, of Westmoreland, N. H. but last from Canada, has been taken up at Windsor (Vermont) in the *fishion* of traffic of passing counterfeit bills and committed to the jail in Woodstock. Counterfeit bills to a large amount were found in his pocket book. [N. Y. paper.]

PACIFIC.

From the National Intelligencer.

At a period, so interesting as the present, the flourishing state of the finances will be a topic of high felicitation. The past year appears to have furnished a revenue of sixteen millions, which exceeds, we believe, the revenue of any antecedent year even when excises and a direct tax were in existence; and which yields a sum of three millions beyond our annual expenditures. But still higher will be the satisfaction at the official intimation that there are now in the treasury eight millions and a half unappropriated. With such resources, should the injustice of a foreign government drive us into hostilities, the means of defence actually possessed will be abundant; and should the subsisting differences be amicably settled, as we trust they will be, the means of carrying forward internal improvements on a scale that shall ensure a diffusion of incalculable benefits, will be still more ample, and thus remove every obstacle that can be apprehended to such a measure.

TRIAL OF AARON BURR.

MOTION FOR COMMITMENT. CONCLUSIVE OPINION of the Chief Justice MARSHALL, on the motion for commitment—Delivered on

Tuesday, October 20.

Much of the difficulty of the present case arises from its being attended by circumstances entirely opposite to those which are usually found in motions of a similar description.

An examining magistrate commits and ought to commit on probable cause. In defining his duty, after stating that he may arrest either upon his own suspicion or that of others, Blackstone adds, "but in both cases it is fitting to examine upon oath the party requiring a warrant, as well as to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted; as also to prove the cause and probability of suspecting the party against whom the warrant is prayed."

But although the existence of a fact as the foundation of the charge must be proved before a magistrate can legally imprison a citizen, it is not believed to be true that the same necessity exists for ascertaining with equal clearness the full legal character of that fact, or the degree of guilt which the

law attaches to it. On a charge of murder, for example, the homicide must be proved; but the inquiry whether it be justifiable or otherwise is seldom made by an examining magistrate. He could not refuse to commit, unless it was perfectly clear that the act was innocent. An opinion that a jury ought to acquit would not warrant a refusal on his part to take the steps which might bring the accused before a jury.

In cases where the legal effect of the act alleged to be criminal is in any degree doubtful, it would greatly derange the regular course of justice, and enable many offenders to escape, should a magistrate refuse to arrest until he had received full proof of guilt. If the fact be of such a character as perhaps to be construed into a high and dangerous crime with the aid of other testimony which the nature of the case admits, it would seem to be a duty to secure the person in order to abide the judgment of the law.

Among the many reasons which may be enumerated for committing in a doubtful case, are—

1st. That upon a considerable portion of a criminal charge it is the peculiar province of a jury to decide.

2d. That additional testimony is to be expected; and

3dly. That the person most commonly making the commitment is a justice of the peace, not authorised legally to try the offence, and who consequently, whatever may be the fact is not presumed to be so competent a judge of the law of the case as he is to whom the power of deciding it is confided.

Had these proceedings commenced with the present motion, founded on testimony such as is now adduced, I certainly should have felt no difficulty in deciding on it. But the proceedings are not now commencing. The persons against whom this motion is made have been seized, one in the Mississippi Territory, one in Kentucky, and one in the western parts of Pennsylvania or New-York, and brought to this place for trial. An immense number of witnesses have been assembled, and a very extensive investigation of the transactions alleged to be criminal has taken place. The result has been the acquittal of one of the accused upon the principle, that the offence, if committed anywhere, was committed out of the jurisdiction of this court; and a *nolle prosequi* has been entered with respect to the others. The witnesses, intended to establish the charge before a jury, have been examined, and the probability of obtaining testimony which can materially vary the case is admitted to be very remote. The great personal and pecuniary sufferings already sustained must be allowed to furnish some motives for requiring rather stronger testimony to transmit the accused to a distant state for trial, than would be required in the first instance. It may likewise be added, as a consideration of some weight, that the judge who hears the motion, tho' sitting as an examining magistrate, is one of those who is by law entrusted with the power of deciding finally on the case; and there seems to be on that account the less reason for referring the party to a distinct tribunal on a point on which a slight doubt may exist.

I do not believe that in England, whence our legal system is derived, a justice of *assize* and *magistrate* after hearing the whole testimony, would commit for trial in another county, a man who had been tried in an improper county; unless the probability was much stronger than would be required on ordinary occasions.

These conflicting considerations certainly render the questions to be decided more intricate than they would be in a different state of things. After weighing them I have conceived it to be my duty not to commit on slight ground; but at the same time I cannot permit myself to be governed by the same rules which would regulate my conduct on a trial in chief.

There are certain principles attached to the different characters of a judge sitting as an examining magistrate and on a trial in chief, which must essentially influence his conduct even under circumstances like those which attend the present case. It is a maxim universally in theory, tho' sometimes neglected in practice, that if in criminal prosecutions, there be doubts either as to fact or law, the decision ought to be in favor of the accused. This principle must be reversed on a question of commitment. In a case like the present, if the judge has formed a clear opinion on the law or fact, which there is not much reason to suppose additional testimony might be obtained to change, it would be injustice to the public, to the accused, and to that host of witnesses who must be drawn from their private avocations to the trial, should he take a step which in his judgment could produce only vexation and expence; but if he entertains serious doubts as to the law or fact, it is, I think, his duty even in a case like this, not to discharge, but to commit.

The charges against the accused are: 1st. that they have levied war against the United States at the mouth of Cumberland river in Kentucky; and

2dly. That they have begun and provided the means for a military expedition against a nation with which the United States were at peace.

With respect to one of the accused, a preliminary defence is made in the nature of a plea of *autrefois acquit*.

If the question raised by this defence was one on which my judgment was completely formed in favor of the person by whom it is made, it would certainly be improper for me to commit him; but if my judgment is not absolutely and decidedly formed upon it, there would be a manifest impropriety in undertaking now to determine it. This

does not arise from my fear to meet a great question whenever my situation shall require me to meet it, but from a belief that I ought as well to avoid the intrusion of my opinions on my brethren, in cases where duty does not enjoin it on me to give them, as the withholding of these opinions where my situation may demand them. The question whether *autrefois acquit* will be a good plea in this case, is of great magnitude and ought to be settled by the united wisdom of all the judges. Were it brought before me on a trial in chief I would, if in my power, carry it before the supreme court; when brought before me merely as an examining magistrate, I should deem myself inexcusable were I to decide, while a single doubt remained respecting the correctness of that decision.

To settle new and important questions in our criminal code, especially where those questions are constitutional, is a task upon which a single judge will at any time enter with reluctance; certainly he would not willingly engage in it while acting as an examining magistrate. There is a decent fitness which all must feel in bringing such questions, if practicable, before all the judges. In England, trials which are expected to involve questions of great magnitude are seldom assigned to one or two judges. At that interesting crisis when *Hardy*, *Took*, *Thelwall* and others were indicted for treason, chief justice *Eyre* was aided and supported by four associate judges of high talents and character. It would, I have no doubt, in that country be a matter of surprise if any person, whatever might be his station in the judiciary, should undertake to settle a great and novel point on a question of commitment. Although in the U. States, our system does not admit of a commission authorising a majority of the judges to constitute a court for the trial of special criminal cases, yet it does admit of carrying a doubtful and important point before the supreme court, and I should not feel myself justified were I now to give an opinion, anticipating such a measure.

I shall therefore consider this motion as if no verdict had been rendered for either of the parties.

Both charges are supported by the same transaction and the same testimony. The assemblage at the mouth of Cumberland is considered as an act of levying war against the United States, and as a military armament collected for the invasion of a neighboring power with whom the United States were at peace.

From the evidence which details that transaction, it appears, that from sixty to one hundred men who were collected from the upper parts of Ohio under the direction of *Tyler* and *Floyd*, had descended the river and reached the mouth of Cumberland about the 25th of December, 1806. The next day they went on shore and formed a line, represented by some as somewhat circular, to receive *col. Burr*, who was introduced to them, and who said that he had intended to impart something to them, or that he had intended to communicate to them his views, but that reasons of his own had induced him to postpone this communication; or, as others say, that there were then too many bystanders to admit of a communication of his objects.

The men assembled at the mouth of Cumberland appear to have considered *col. Burr* as their chief. Whatever might be the point towards which they were moving, they seem to have looked upon him as their conductor.

They demeaned themselves in a peaceable and orderly manner. No act of violence was committed, nor was any outrage on the laws practised. There was no act of disobedience to the civil authority, nor were there any military appearances. There were some arms and some boxes which might or might not contain arms. There were also some implements of husbandry, but they were purchased at the place. These men assembled under contracts to settle a tract of country on the Red River. No hostile objects were avowed; and, after continuing a day or two on an island in the mouth of the river, the party proceeded down the Ohio.

There are some circumstances in this transaction which are calculated to excite attention and to awaken suspicion. If the exclusive object of those who composed this meeting was to settle lands, it would naturally form the subject of public conversation, and there would most probably have been no impediment to a free communication respecting it. The course of the human mind would naturally lead to such communications. The silence observed by the leaders on this subject, connected with hints of ulterior views, seem calculated to impress on the minds of the people themselves, that some other project was contemplated, and was probably designed to make that impression.

That the men should have been armed with rifles was to be expected, had their single object have been to plant themselves in the Quachita; but the musket and bayonet are perhaps not the species of arms which are most usually found in our frontier settlements: Nor were the individuals who were assembled, of that description of persons who would most naturally be employed for such a purpose. The engagement for six months too is a stipulation for which it is difficult to account upon the principle, that a settlement of lands was the sole or principal object in contemplation.

There are circumstances which excite suspicion. How far they may be accounted for by saying, that ulterior eventual objects were entertained, and that the event on which those objects depended was believed to be certain or nearly certain, I need not determine; but I can scarcely suppose it possible that it would be contended by any person, that the transactions at the mouth of Cumberland do, in themselves, amount to an act of levying war. There was neither an act of hostility committed, nor any intention to commit such an act.

[To be Continued.]

Married on Thursday evening last, by the Rev. Mr. Roberts, Mr. Lewis E. Evans, to Miss William Hunt, both of Baltimore county.