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 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 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 on 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 shewn, and to insert none in support of which probable cause is not shewn, 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 controul 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, & 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 alledged 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?—Most certainly it 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 U. S. 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 U. S. 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 authorised Mr. Swartwout to speak in his name. He empowers Mr. Swartwout to make to gen. 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 a 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 U. States; at least so far as to admit of further enquiry into their meaning: and, if a territory of the U. States was to be revolutionised, though only as a mean 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 treasonable 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 those designs have been ripened into the crime itself by actually levying war against the U. 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 cannot remain invisible. Treason may be machinated in secret; but it can 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 to 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 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 shewing of probable cause that this fact has been committed depends the issue of the present enquiry.

The first piece of testimony relied on 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 ter-"ritories, with a view to carry on an "expedition against the Mexican pro-"vinces." The term "*levying*," has been said according to the explanation of the Lexicons to mean the embodying of troops, and therefore to prove what is required. Although I do not suppose that Mr. Swartwout had consulted 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 those 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 shewn, 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 must witness it. It is therefore capable of proof; and when time to collect this proof has been given, it ought to be adduced, or the suspicion becomes a 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 been alledged 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 voluntary, 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 brethern, 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. I cannot doubt the practicability of obtaining it, & its non-production at this late hour does not, in my opinion, leave me at liberty to give to these 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.

Judge Marshall then observed, that he should not commit Col. Burr on the charge of treason; but that he should hold him to bail, on the charge of setting on foot a military expedition against the dominions of Spain: That with respect to the amount of bail, he had made up no definitive opinion. He wished it to be neither too large, to amount to oppression, nor too small to defeat the objects of justice. It had occurred to him, that the sum of 10,000 dollars would perhaps avoid both these extremes.

Mr. Hay was in favor of a larger sum. He had no doubt, from the spirit which had been manifested, that Col. Burr could obtain bail to almost any amount he pleased. The day before, Col. B. had obtained bail for 5000 dollars, and he believed without any solicitation on his part.

Mr. Wickham had supposed that 5 or 6000 dollars would have been sufficient. It was only on the misdemeanor, that it was to be given. With respect to the possibility of obtaining bail to any amount, he was unable to express any opinion; it was a subject with which he was personally unacquainted. But as to the spirit which it was said had been manifested, he could say, that he had heard several gentlemen declare themselves unwilling to appear as bail for Col. Burr, lest it should be ascribed to a spirit of opposition to the administration.

Col. Burr rose and observed, that if the government was to pay him for the losses it had made him sustain, 40,000 dollars would not indemnify him. And yet this circumstance might operate against his obtaining bail to a large amount.

Mr. Hay replied.

The judge then observed that he should fix the bail to 10,000 dollars, and that he would meet Col. Burr at the Capitol at three o'clock, to receive it.

At three o'clock the judge met the parties: when Messrs. Thomas Taylor, John G. Gamble, John Hopkins, Henry Heath, and William Langburne, appeared as his securities. He is recognized to appear before the federal court, in this city, on the 22d of next May.

The affidavit of commodore Truxton did not get to the hands of the attorney of the United States before Tuesday night; of course it was not exhibited on the examination.—Mr. Rodney left this city yesterday morning, for Washington.

ROBERT CHERRY,

WILL RENT HIS HOUSE

Covering 25 feet by 36, with a handsome Kitchen Garden attached thereto, on Square 799 near the Navy Yard, reserving to himself the STORE and one half the Cellar.

April 6——3t

WASHINGTON CITY,

WEDNESDAY, APRIL 8.

The PRESIDENT of the UNITED STATES yesterday left this City on a short visit to Monticello.

The following extract of a letter received from Lt. Gaines, dated Fort Stoddert, Feb. 22, 1807, furnishes some interesting circumstances relative to the arrest of Col. Burr.

"Early in the morning of the 19th of the present month I was advised by major Perkins, that a man, whom he supposed to be col. Burr, had passed through the upper end of this settlement the preceding evening; whereupon I immediately set out with a serjeant and three privates of my detachment; and after reconnoitering with major Perkins about fourteen miles up the country, met with col. Burr, and escorted him to this place. My apprehensions relative to the Spaniards were strengthened by the arrival of a Spanish officer, who commands one of the armed vessels at Mobille (whose name I cannot recollect). He dined with me yesterday, and made a request through his interpreter, to be permitted to see col. Burr, who, he said, he understood was in the Fort. I promised to see the colonel, and then give him an answer. I went to the colonel's room, and informed him that the Spanish officer wished to see him. He immediately shewed me a paper he had just written, in which he requested me to introduce him to the Spanish officer, adding that he was anxious to send to his friend Moralles for a few necessaries. I observed that perhaps it was nothing more than idle curiosity that prompted the Spanish officer to wish to see him, and I could not, under present circumstances, admit an interview. I returned, and informed the Spanish officer, through his interpreter, that, as col. Burr was a citizen of the U. S. and in confinement for an offence against the laws thereof, I could not permit an officer of a neighboring government to see him, especially as I presumed they could have no sort of business with each other. The officer *immediately set out* in a small boat *for Mobille*. This circumstance, together with a communication, made by a Mr. Ashley, who accompanied col. Burr to this country, to one of our citizens, has induced me to adopt a measure, which had before strongly presented itself as indispensible, to send him direct to the seat of government. [See Note 1.]

"I regret extremely that I should have been compelled to take any measures in relation to the disposal of the prisoner, without instructions from my superiors; nor would I have hazarded this step, but from the fullest belief that I could not keep him secure at this place much longer; nor could I have sent him with safety to Natchez, from whence his associates are no doubt moving towards this place. But in addition to these causes, I have to combat an enemy, that might prove more formidable, and much more unpleasant than either. I have learnt from a soldier, whom I have usually found to be a man of truth, that the Colonel had made overtures to two centinels (who were at different times on duty at his door) for his liberation, and had made offers of cash. My informant, John Brown, a Taylor, had been doing some work for the Colonel, who finding he could speak French, and after some conversation with him in that language, and sounding him as he believed, on the subject of a bribe, enquired whether the two centinels aforesaid could be depended on—Such is my situation, that should any attempts be made either within or without the fort to rescue the prisoner before his departure, the measures which I feel bound to take will be of a much more serious nature than his removal to Washington

"I have committed the prisoner to the charge of major R. Perkins, to whose activity and patriotism the public are indebted for the seizure of this extraordinary man. The major has selected a party of active and respectable men, [*See Note 2.*] to assist him on the route, and he will also be accompanied by sergeant Harris and Cyrus Jones, who were with me when I took the prisoner, and who are amongst the most confidential men of my detachment."

Note 1. The communication, here referred to, we understand to be this. While Ashley was in the company of the sheriff, he said he was well acquainted with the objects Col. Burr had in view, and among other things stated that it was his intention to go into the Floridas. On subsequent enquiries made of him by others, he professed total ignorance of the views of Col. Burr, and said that he had accidentally fallen in with him. This Ashley is a character of some celebrity. He is reputed to be a man of talents, possesses considerable property, and was with Noland in the Spanish country when he fell.

There was another circumstance, which probably operated strongly on the mind of Lieut. Gaines, and which is stated on the authority of Major Perkins. Information was received in conversation with a Spanish officer, that Col. Burr was generally expected at the town of Mobile by the officers there, where also it was reported that Moralles then was. This, together with the *immediate* departure of the officer from Fort Stoddart, on finding an interview with Mr. Burr unattainable, probably led Lieut. Gaines to believe that a rescue might be attempted.

Note 2. The escort was composed of the most respectable men in the country, some of them possessed of very considerable property, and others much distinguished in their districts.

To these circumstances it is proper to add, that colonel Burr was treated during the journey with the greatest attention and tenderness. From the beginning to the end of it he was supplied with tea, coffee, wine and brandy, of some of which articles he had even a portion left on his arrival at Richmond—and although the party were for two or three days destitute of a sufficient supply of provisions, Mr. Burr had allotted to him the usual quantity. Until the attempt made by him to get out of the power of the escort, he was permitted to wear his pistols and a large knife. After this attempt he was deprived of the former.

Richmond, April 3.

MARRIED, on Monday evening last, by the Rev. *J. Buchanan* Mr. NICHOLAS B. VAN ZANDT, of the city of Washington, to the amiable and much admired Miss MARIA WOOD SOUTHALL, of this city.

A bill for abolishing the Slave Trade has passed the English House of Lords. Vessels employed in that iniquitous traffic (so contrary to justice, humanity, and sound policy) must clear out from British ports for Africa previous to the first of May next, and complete their lading in Africa and their voyage from thence to the West-Indies previous to the first of January, 1808, after which period the trade becomes contrary to law. An exception, however, is made in favor of cases where, by capture, loss of the vessel, or other unavoidable accident, (the proof to lie on the party) the completion of the voyage to the W. Indies within the time limited may have been prevented.

RUNAWAY,

On the 31st ult. a black fellow calling himself BILL, was committed to the jail in this city, as a runaway. He is 5 feet 7 or 8 inches high, black complexioned, slenderly made and at first said he belonged to Joseph Blake of Calvert county; but has since confessed that his right name is NED and that he belongs to Benjamin M'Call of said county. He is clothed in a maipun kersey. The owner of said slave is requested to release him, or he will be sold for his expences.

CARTWRIGHT TIPPETT,
Keeper of the jail in Washington city.

April 8—3t.

One Dollar Reward.

MY Negro man FIDELIO having left my service, and conducted himself improperly, I will give a reward of one dollar to any person who will lodge him in jail or bring him to me securely tied. All persons are warned not to harbor or give employment to said negro, as I shall hereafter prosecute every person so offending.

ALICE DERMOTT.

Washington city, April 8—3t

This is to give Notice

THAT the subscriber hath obtained from the Orphans court of Washington county, in the district of Columbia, letters of administration on the personal estate of REZIN BECK, late of said county deceased. All persons having claims against the said deceased are hereby warned to exhibit them with the vouchers thereof, on or before the 10th October next, otherwise they will by law be excluded from all benefits thereof and all those indebted to said estate are requested to make payment to the subscriber.

Given under my hand this 7th day of April, 1807.

RICH. BECK, adm'r.

Georgetown April 8—w3t

PUBLIC SALE.

The subscriber in pursuance of an order of the Orphans Court of Washington county, district of Columbia, will sell at public auction on Friday the 17th inst. all the valuable stock of Groceries together with the Household & Kitchen Furniture, and 3 Negroes, and one strong Horse and a Coachee and Harness all of which belonging to the estate of Rezin Beck, late of said county deceased. Terms of sale, 3 months credit, the purchaser giving notes with approved endorser, negotiable at the Bank of Columbia, or the Office of Discount and Deposit Washington.

RICH. BECK, adm'r.

Georgetown, April 8—3t

JUST PUBLISHED,

(PRICE 25 CENTS.)

And for Sale

AT WESCOT & CO. PRINTING OFFICE, 11th street, Duane's book store Pennsylvania avenue, by J. V. Thomas, at the Navy Yard, Washington, and J. March George town,

A LETTER ADDRESSED TO THE PEOPLE OF MARYLAND.

Giving a short account of the country on the the South side of Lake Erie, including a brief description of its situation, climate, soil, productions, trade, commerce, manufactures and exports.

BY JAMES TONGUE, M. D. &c. of Maryland.

April 8—3t

THE Directors of the North Carolina Gold Mine Company, will be chosen on the first Monday in May next, at Rhodes's Tavern, in this city.

WILLIAM THORNTON.

City of Washington, April 3—3t

NOTICE.

A small BATTEAUX was taken up adrift, supposed to have come down the Potomac, now lying on the wharf at Georgetown—no visible marks.

HUGH BROWN.

April 6—3t