Mr. Burr. I thought, sir, I had sufficiently explained my intentions. I may either move for a rule to shew cause why an attachment should not issue against these persons; or what is sometimes though not so frequently practised, I may *directly* move for an attachment itself.

Mr. Mc'Rae. At whose motion?

Mr. Burr. At the public's.

Mr Mc'Rae. A pretty proceeding indeed! that the public prosecution should thus be taken out of the hands of the public prosecutor!

Mr. Burr. A strange remark indeed! As if it was not the business of the prejudiced person himself to institute the complaint!

At this moment Mr. Randolph entered the court, and observed, that if he had been present, he would have himself opened the motion; which was intended to operate immediately upon Gen. W. but ultimately upon some other persons. Mr. R. here read the motion which he would have submitted to the court.

Mr. Hay protested against this proceeding; which was calculated to interrupt the course of the prosecution, and was levelled at gen. W. alone. Why these hints? Why these mysterious looks of terror, with which gentlemen come into this court as if they had something too horrible to be told? Mr. H. claimed from the court a priority for the business of the U. States. Let the present prosecution be concluded; and gentlemen might then proceed with their investigation into the conduct of gen. W.

Mr. Randolph. The gentleman, sir, will understand the subject much better to-morrow; but as he asked for some intimation of our designs, I thought proper to accompany them with a few remarks. And sir, if this affair be really so stupendous as I conceive it be true (Mr. Hay exclaimed that it was not) is it not entitled to the most serious enquiry! If this subject bears upon the present case; if it may influence the result of this trial; ought it not to be suppressed? Your honor will direct me when to come out; and I assure your honor, that I shall come out with an affidavit of one of the witnesses themselves.

Mr. Martin declared that they would make their motion in the morning.

Mr. Hay expatiated at some length: he understood the object of this motion was to affect the materiality of gen. W's testimony: and in what way; He presumed that the court would not notice the pretended transactions which had been alluded to, in any other way than as amounting to a contempt. As to any offence against the laws of the U S. the true course would be to proceed in the way of the presentment. Now, what are the principles of the law of contempt in relation to this subject? Gen. W. is said to have taken the depositions of certain persons in New-Orleans and then to have brought them here by military force. This is the only ground of the contempt against this court? But how can a contempt be committed?

Either by directly insulting this court; or abusing its process; or interrupting its justice, will it be said that G. W's conduct comes under either of those descriptions?

'Gentlemen have been very often pleased to put words *into* our mouths; and on one occasion they have made us to say that Gen. W. is "the pivot of the prosecution." And is it this very pivot which they are now attempting to break down by this precipitate application? Are the communications between the court and the grand jury to be thus interrupted? Is their examination to be suspended until Gen W. has been put upon his trial? If these suspected transactions do amount to a contempt of this court, it was not his business officially to notice it. He should move to postpone the motion of gentlemen, until the prosecution was over; for several reasons—because it would necessarily interrupt the business before the court—because it was intended to impeach the credit of a witness—and because this enquiry could be as well conducted after as before the prosecution.

Mr. *M'Rae.* I will affirm, sir, in the presence of this court and the surrounding people, that the charge now adduced against Gen. W. is completely unfounded. I affirm, that no witness has been brought from New Orleans with an affidavit along with him, except one individual, who, refusing to obey the summons of the government, was regularly brought before a private magistrate for his disobedience, and dealt with according to the due course of law; and who is now in the custody of a person before this court—all the rest came as good citizens ought to have come; and the only fault which can possibly be attributed to them, if it be a fault, is, that they came in the U. States' vessel in which Gen. W. was authorised to come.

Mr. *Wickham.* May I request the liberty, sir, of making a few remarks upon Mr. Hay's motion? Col. Burr, sir, brought forward his motion in the plainest possible style. There was no imputation—there was no attempt to excite the public feelings. He merely stated his object in the most general terms. The gentlemen, however, misunderstood him. They required a specification of our designs; and then we promised to satisfy them tomorrow. They still insisted upon a more particular explanation of our points; and Mr. Randolph did rise to gratify them. Nothing, however, seems to please those gentlemen. They not only found fault with the motion, but the face of Mr. R. He will scarcely, however, change his face to please them. It is precisely such a one as God Almighty gave him.

Mr. Hay, sir, has got into parliamentary habits; and talks very fluently of the previous motion. On this subject I will make but one remark. The constitution has divided the powers of the government among three great departments, the legislative, executive and judiciary. These must be kept separate and distinct not only in their duties, but in their practice. The legislature act upon convenience, the judiciary acts upon right. The gentleman, however, seems to think himself suddenly transported to the legislative hall, and no doubt, would soon think it very convenient to hang Col. Burr.—He tramples all our judiciary forms under foot; if we make a motion before the court, he soon trips up ours with his previous motion. And where is his doctrine to end? We certainly have the same rights as the gentlemen themselves; and as they have moved the previous question, we will move, sir, that the court shall not hear their motion. It is better that we send these parliamentary distinctions to the other side of the house, where they ought for ever to remain.

Mr. Hay says, that this motion ought not to be made *pendente lite.* Sir, col. B. ought to have the same justice meted out to him, which is meted to every other person. He stands here on the same footing—and with the same privileges as any other citizen in his situation. I assert that any other man would have a right to this attachment; and that the motion may be made *pendente lite*, though it is sometimes made afterwards.—"Why does he make it at this time? Why does he not postpone it till after the prosecution? Why, sir, when col. Burr is discharged, and I hope he will shortly be so, he may not be disposed to trouble the court any further. How long this prosecution will last, no one knows; perhaps a week—perhaps longer—it is already gone so far beyond our expectations, it is impossible to conjecture. Now, sir, may not similar contempts occur? Is it not necessary to restrain certain people, by convincing them that such practices make them liable to punishment?

But what has gen. W. done? He has brought witnesses with him from New Orleans by military force. He has taken their depositions too, entirely *exparte*, for the purpose of keeping their testimony straight—I lay down this broad position; that the man who goes about collecting affidavits—we have already seen a volume of such at this bar—(Mr. Hay. Did they come from New Orleans?) I did not say New Orleans—I might have particularly mentioned Mr. Jackson—who comes here with the depositions of witnesses, thus bound hand and foot—sir, I saw them in this very court examining witnesses with affidavits in their hand and comparing the one with the other; depositions taken not by commission, but *ex-parte*; when an interested agent thus goes about collecting depositions and with ignorant men, shaping them just as he pleases; I avow that they are contrary to the spirit and genius of our government; that they are a contempt upon this court, by interfering with the purposes of justice. Such men are liable to an attachment; and from the very moment, when the government took possession of col. Burr's person—not from the moment of his arrest by Mr Perkins and lieutenant Gaines, but from the moment when Mr. Perkins received orders to conduct his prisoner to this city—Do not gentlemen recollect any instance of libels, upon the courts, when they were actually in session? Such have taken place on this side of the ocean as well as on the other; though not so frequently in Virginia, where printing presses are not so numerous, nor so extravagant in the license, which they assume. I repeat that whoever does any act which influences the administration of justice, is liable to an attachment. Mr. Wickham hoped that the court would hear this motion to-morrow.

The *Chief Justice* observed, that if the practice could be shown to affect the decision of the jury while they were in session; the court could not refuse to hear the motion.

Mr. *Hay*. Whenever it is brought on, I shall renew my motion to suspend this enquiry, until the prosecution shall be finished.

THURSDAY, June 18.

As soon as the court assembled, the chief justice delivered the following opinion in the case of Willie.

In point of law the question now before the court relates to the witness himself. The attorney for the U. S. offers a paper in cypher which he supposes to have proceeded from a person against whom he has preferred an indictment for high treason and another for a misdemeanor, both of which are now before the grand jury, and produces a person said to be the secretary or clerk of the accused, who is supposed either to have copied this paper by his directions, or to be able to prove in some other manner that it has proceeded from his authority. To a question demanding whether he understands this paper, the witness has declined giving an answer, saying that the answer might criminate himself; and it is referred to the court to decide whether the excuse he has offered be sufficient to prevent his answering the question which has been propounded to him.

It is a settled maxim of law that no man is bound to criminate himself.—This maxim forms one exception to the general rule which declares that every person is compellable to bear testimony in a court of justice. For the witness, who considers himself as being within this exception, it is alledged that he is, and from the nature of things must be, the sole judge of the effect of his answer: That he is consequently at liberty to refuse to answer any question, if he will say upon his oath that his answer to that question might criminate himself.

When this opinion was first suggested, the court conceived the principle laid down at the bar to be too broad, and therefore required that authorities in support of it might be adduced. Authorities have been adduced, and have been considered. In all of them the court could perceive that an answer to the question propounded might criminate the witness, and he was informed that he was at liberty to refuse an answer. These cases do not appear to the court to support the principle laid down by the counsel for the witness, in the full latitude in which they have stated it. There is no dictum which takes from the court the right to consider and decide whether any direct answer to the particular question propounded could be reasonably supposed to affect the witness. There may be questions, no direct answer to which could in any degree affect him, and there is no case which goes so far as to say that he is not bound to answer such question. The case of Goosly in this court is perhaps the strongest that has been adduced. But the general doctrine of the judge in that case must have referred to the circumstances which shewed that the answer might criminate him.

When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the U. S. to the testimony of every citizen, and the principles by which every witness is privileged not to accuse himself, can neither of them be entirely disregarded. They are believed both to be preserved to a reasonable extent and according to the true intention of the rule and of the exception to that rule, by observing that course which it is conceived courts have generally observed.

It is this:

When a question is propounded, it belongs to the court to consider and to decide whether any direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law. If a direct answer to it may criminate himself, then he must be the sole judge what his answer would be. The court cannot participate with him in this judgment, because they cannot decide on the effect of his answer without knowing what it would be, and a disclosure of that fact to the judges would strip him of the privilege which the law allows and which he claims. It follows necessarily then, from this state of things, that if the question be of such a description that an answer to it may or may not criminate the witness according to the purport of that answer it must rest with himself who alone can tell what it would be, to answer the question or not. If in such a case, he says upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact. If the declaration be untrue, it is in conscience and in law as much a perjury as if he had declared any other untruth upon his oath, as it is one of those cases in which the rule of law must be abandoned or the oath of the witness be received.

The counsel for the U. S. have also laid down this rule according to their understanding of it; but they appear to the court to have made it as much too narrow as the counsel for the witness have made it too broad. According to their statement a witness can never refuse to answer any question unless that answer unconnected with other testimony would be sufficient to convict him of a crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule, that no witness is compellable to furnish any one of them against himself.

It is certainly not only a possible, but a probable case, that a witness by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would do by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself, would most obviously be infringed by compelling a witness to disclose a fact of this description.

What testimony may be possessed, or is attainable against any individual, the court can never know. It would seem then, that the court ought never to compel a witness to give an answer, which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws.

To apply this reasoning to the particular case under consideration. To know and conceal the treason of another is misprision of treason, and is punishable by law. No witness, therefore, is compellable by law to disclose a fact which would form a necessary and essential part of this crime. If the letter in question contain evidence of treason, which is a fact not dependent on the testimony of the witness before the court, and therefore may be proved without the aid of his testimony, and if the witness was acquainted with that treason when the letter was written, he may probably be guilty of misprision of treason, and therefore the court ought not to compel him to answer any question, the answer to which might disclose his former knowledge of the contents of that letter.

But if the letter should relate to the misdemeanor and not to the treason, the court is not apprized that a knowledge and concealment of the misdemeanor would expose the witness to any prosecution whatever. On this account the court was at first disposed to enquire, whether the letter could be decyphered, in order to determine from its contents how far the witness could be examined respecting it. The court was inclined to this course from considering the question as one, which might require a disclosure of the knowledge which the witness might have had of the contents of this letter when it was put in cypher or when it was copied by himself, if indeed such was the fact. But on hearing the question more particularly and precisely stated, and finding that it refers only to the present knowledge of the cypher, it appears to the court, that the question may be answered without implicating the witness, because his present knowledge would not, it is believed, in a criminal prosecution, justify the inference that his knowledge was acquired previous to this trial, or afford the means of proving that fact.

The court is, therefore, of opinion, that the witness may answer the question now propounded.

The gentlemen of the bar will understand the rule laid down by the court to be this:

It is the province of the court to judge, whether any direct answer to the question, which may be proposed, will furnish evidence against the witness.

If such answer may disclose a fact, which forms a necessary and essential link in the chain of testimony, which would be sufficient to convict him of any crime, he is not bound to answer it so as to furnish matter for that conviction.

In such a case the witness must himself judge, what his answer will be, and if he says on oath that he cannot answer without accusing himself, he cannot be compelled to answer.

TUESDAY, JUNE 23.

The court was occupied yesterday by the motion for an attachment against gen. W.

The general appeared in court, and took his seat amongst the counsel for the U. S.

Mr. Burr said, that as gen. W. was present, he would now proceed with his enquiry. It was, however, to be understood, that if the charge could not be brought home to gen. W. himself, it would equally attach to any other subordinate officer, as Mr. Gaines.

Mr. Hay, objected to this extension of the motion, which was understood to be confined to gen. Wilkinson alone.

Mr. Randolph then opened the motion. The charge, against G. W. was, that in conjunction with others he had employed improper and unlawful means in bringing James Knox and Chandler Lindsley from New-Orleans to this city; and thus obstructed the administration of the justice of this court and interfered with the rights of witnesses. Mr. R. then gave a long narrative of the transactions, connected with James Knox and concluded with stating that the only difference between his case & Lindsley, was that the latter made a virtue of necessity, & submitted at once to the authority which had been exercised over him.

James Knox was then examined. The substance of his statement was that he had visited New-Orleans; had seen Gen W; and had given him some information about Burr's expedition, which the general had noted down; that he was asked by him whether he would not attend as a witness; but that he had urged his want of means as an objection; that the general had particularly enquired, about the redress which was due to him from Comfort Tyler, to the amount of about 150 dollars, and asked him, whether if he had that sum, he would be willing to go as a witness: that about the 12th of May he had been formally subpoenaed by Lieut. Gaines; about 4 days afterwards he was taken up and carried before Judge Hall, who wished to recognize him in a large sum for his appearance on this trial, which he had refused to give; that he was then committed to the jail, from which he was removed by serjeant Dunbaugh on board the U. S. vessel the Revenge, and conveyed to this city. On his *cross examination* it appeared that the witness was one of Burr's men, had been engaged by Comfort Tyler at Meadville; had descended the Ohio and the Mississippi as far as Natchez, & that he had conceived himself as moving under Burr's direction.

He was followed by Lieut: Gaines who commands at Fort Stoddart on the Mobile: he stated, that he had received several subpoenas from the attorney general for the U. S. to be served at New Orleans, one among the rest upon James Knox; he described his unwillingness to attend as a witness, and the steps which had been taken by the *civil authority* to send him to this city as a witness. He had himself reluctantly accepted a deputation from the marshal of New-Orleans to have him brought here, on the condition that he might be authorised to entrust him to any other whom he might select; & that he had selected Sert. Dunbaugh for the purpose. Mr. Gaines declared that the witness had been brought here by the *civil* authority alone; that there was no appearance of the military authority; or of gen. W's agency in the business.

Mr. Graham the Secretary for the Territory Orleans, examined at considerable length; and confirmed the statements of Mr. Gaines so far as he knew.

Mr. Hay offered to submit the evidence to the court without an argument. Mr. Burr's counsel refused the proposition: and the argument will be held to-morrow.

WASHINGTON CITY.

MONDAY, June 29.

At a meeting of a number of the citizens of Washington, at Stelle's Hotel on the 26th inst. it was determined to celebrate the ensuing Anniversary of National Independence by a Dinner at Stelle's Hotel.

The following gentlemen were appointed a committee to make the necessary arrangements.

Robert Brent,
Thomas Tingey,
John P. Van Ness,
Samuel H. Smith,
Gabriel Duval,
Isaac A. Coles,
Franklin Wharton,
John Cassin,
E. B. Caldwell,
Charles Minifie,
Joseph Forrest.

The members of the committee are requested to meet at Stelle's Hotel THIS EVENING at 7 o'clock.

The Grand Jury at Richmond have at length brought their researches to a close, after a steady and indefatigable investigation of eleven days, and have found true bills against the two most distinguished subjects of accusation. Ample as the field of criticism is which the proceedings of the Circuit Court have opened, novel and strange as the course of proceeding has been on the part of the accused, we have forborne, and shall still forbear comment. The season for this may hereafter arrive. In the mean time we content ourselves with two remarks. The first is, that the finding of true bills by a grand jury of acknowledged respectability and independence is a conclusive justification of the vigorous measures of the administration to crush a conspiracy of so formidable a nature, which by acts of treason was in progress towards consummation; for the bills found imply not only treasonable purpose but treasonable acts. We consider, therefore, the clamor against the administration, as having blown its blast. Whatever may be the final issue, the decision of the Grand Jury proves the existence of danger and the necessity of averting or crushing it; and, however, men may differ on the subordinate measures of the administration to effect this purpose, they must all admit the propriety of a strong and decided course of conduct.

Our second remark is that, in consequence of finding the bills, the nation will have a full and satisfactory disclosure of all the circumstances connected with the conspiracy. After this disclosure they will no longer grope in the dark. Suspicion and crimination and clamor, will no longer pass for proof. Men will be seen as they really are. The judgment of a court and a jury will *legally* decide the guilt of the accused. The public, independently of this decision, will have the means of deciding for themselves, on the conduct of the administration, of Col. Burr and Gen. Wilkinson. We shall, at last, have day light thrown upon scenes so thickly involved in obscurity.

If there ever was a nation impelled by a blind fatality to ruin, it is that nation that now lords it upon the ocean. Not contented with having nearly the whole European world to contend with, and the commercial ruin with which the closing the continental market to her productions menaces her, she would really seem as if she were striving by the most aggravated wrongs to add the U. States to the list of her open and active enemies. The wound inflicted upon the feelings of our citizens by the recent infamous outrage of Humphreys will not be easily healed; it will rankle; it will strike deep into the minds of our countrymen; it has done more than the deadliest enemies of Britain could have done, to unite every discordant feeling into the conviction that the British government, whatever they may promise, will give us nothing but hostility. It will operate as a solemn admonition to us to adopt a course of conduct, not the offspring of circumstance or of a spirit of impracticable accommodation; but such a course of conduct as shall enable us to maintain our own interests independently of the good or the bad offices of Britain. Not, in fine, to look to treaty stipulations for mere palliatives, but to take commanding ground, and teach an unjust government that for one vulnerable point she can reach in our system, we can touch to the quick ten in her's.

The barbarous exploit of Captain Humphreys has raised a monument to his name, whose infamy will give it eternal duration. He has *heroically* triumphed over a ship, whose inferiority not only screened him from danger,