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WEDNESDAY, FEBRUARY 4, 1807.

CONGRESS.

HOUSE OF REPRESENTATIVES.

THURSDAY, JAN. 22.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures on the memorials of sugar refiners—Mr. Baffet in the chair—it was read as follows:

The Committee of Commerce and Manufactures to whom was referred the petitions of Edward Pennington and others of Philadelphia, and Charles Garts and others of Baltimore, sugar refiners, submit their report—

The petitioners are manufacturers of sugar in the U. S. and request that the sugar refined by them shall be allowed a drawback on the exportation. The subject has been often before Congress, and a lengthy and detailed report was made by the committee at the second session of the 8th congress, to which the committee beg leave to refer, and request it may be considered as part of this report.

The opinion of the committee is opposed to granting any additional allowance or advantages to the sugar refiners, for the reasons stated in their former report—and they respectfully offer the following resolution:

Resolved, That it is inexpedient to grant the prayer of the petitioners.

The reading of the former report was then called for and the clerk having read the same,

Mr. Mac Cre ry spoke as follows:

Mr. Chairman—When the report which was last read was presented to the House at a former session, it was referred to a Committee of the Whole—but owing to a press of business apparently of greater importance, it was not acted on. Notwithstanding that two lengthy reports have been made on this subject by the Committee of Commerce and Manufactures, and that I have generally stood alone in opposition to them, I must now presume to hope that a majority of this committee, and among them the members of the committee of Commerce and Manufactures, will ultimately agree to the refined reasoning of this branch of trade, when they come to understand the subject more perfectly, and shall be convinced that they have entirely mistaken the object of the petitioners. They neither ask or desire any new duties or restrictions laid on the importation of refined sugars—they are willing, on the contrary, that the present duties on imported refined sugars and on sugar candy shall be made as low as congress may deem necessary—all they ask is, that they may be allowed a reasonable drawback on the exportation of domestic refined sugar, made from foreign materials.

The objections urged in this report are,

1st, That Louisiana sugar might be refined and exported.

2d, That imported sugar might be kept in store more than a year, and a drawback obtained afterwards.

3d. That the quantity of freight is diminished when the article is refined.

4th. That New England rum, cordage, canvas, made into sails, and manufactured iron are equally entitled to drawback, though not asked for.

As to the first and greatest objection, I answer that such an imposition is more easily guarded against than in any other species of goods, because, we can have, beside the oath of the employer, that of the refiner also, and he is in this a disinterested person—but the quality of this sugar being much preferred for retail, renders this precaution less necessary—and besides these reasons the public revenue can run no risk until a greater quantity of Louisiana sugar is furnished to us than is consumed in the U. States. For example—suppose our home consumption amounts to fifty millions pounds of sugar, which I believe it does, and the same quantity to be furnished us by Louisiana, which pays no duty—and suppose that an equal quantity of sugar of foreign growth be imported, and pays a duty of two and a half cents per lb. and that a drawback is allowed on exporting the same—this quantity of fifty millions will certainly be re-exported, because it cannot be consumed, and will obtain a drawback of the duties paid on entry: so that in fact the revenue gains nothing by the importation or exportation of any part of this one hundred millions, save 3¼ per ct. on the debentures granted on the part exported. I would therefore ask what difference it can make to us which part is consumed or which exported? Sir, it makes none, and I contend that the revenue can run no possible risk in this business until the quantity of sugar imported from Louisiana, exceeds our whole consumption. At present the quantity we receive from thence amounts to about four millions of pounds annually. When it shall exceed our consumption (an event which I shall be proud of) we shall have little difficulty in guarding against the imposition apprehended.

I have often seen sir, that when subjects of this nature are difcussed on this floor, the first question with many gentlemen is, how will this measure affect our revenue? I acknowledge that this consideration should never be lost sight of—but must at the same time avow, that it has always been with me a secondary one. The first, in my estimation, is how will it affect the people? If the people shall gain ten times as much as the revenue loses by a measure, he must be a poor financier who cannot supply the loss in another shape. But, I am ready to assert that not only the people, but the government also will benefit by the desired alteration.—— During the period in which a drawback was allowed on the exportation of domestic refined sugar, the erection of refineries increased to such a degree that at present being in a great measure confined to home consumption, most of them are idle half the year. The amount of that article exported last year, was short of 140,000 lbs. by which no doubt the nation benefitted about 7000 dollars, being 2½ cents per lb. on the quantity of crude sugar employed—but, sir, if the refiners be allowed a reasonable drawback, the quantity exported would in all probability soon amount to three million pounds or more annually—and, allowing only one cent per pound to be returned at the custom house, leaves a revenue of 30,000 dollars. In addition to this consideration, sir, let me add, that where a people is confined to the supplying of its own consumption of any article, the manufacture of that article must ever decline. I cannot better illustrate this proposition than by quoting the instance of the late policy of Great Britain towards Ireland. The latter nation was not only allowed the free exportation of linens but in some cases a bounty—yet in woollens were confined to their own consumption. Every body knows that the manufacture of the one, although obliged to import their seed, flourished to an extraordinary degree; whereas in the other, although good wool was always abundant, declined; and they purchased their woollen cloths chiefly from England—and for this simple reason, that the dread of making too much and the surplus perishing, they dare not make enough for their own use. Observe the price of coffee in the United States compared with any and every other country that imports and consumes it—we have it infinitely lower than any of them—because our merchants are not afraid of having more than can be consumed; knowing that they can readily obtain a drawback of duty on all they re-export. And it is owing to a defect of this regulation in the case of sugar, that the price of loaf sugar is at this time higher, compared with the price of crude sugar than it was during the existence of the excise law, when a drawback was allowed on the exportation.

We have in some years exported from 50 to 60 millions of pounds of crude sugar—could all this have been exported in a refined state, the revenue might have benefitted much, and the manufacturer still more. It would have brought much more in foreign countries, and enabled the exporters to import so much more of other goods, which would still have encreased our revenue.

There is yet another advantage of great importance to be derived—Belligerents have undertaken to say that our exportation of raw sugars was in many instances, for account of their enemies: therefore, had these sugars been exported in a refined state, such allegations could not have been made.

The circumstance of merchants holding imported sugars in their warehouses for more than a year must occur so seldom, that I am astonished how it could be thought of as an objection. It may happen that sugar of a bad quality cannot be readily disposed of; but there can be no danger of refiners meddling with it.

The next objection is still more unfortunate—for in place of diminishing freight, it actually augments it—for take a cask of raw sugar, and refine it, I defy you to put the loaves made from it into the same volume—therefore, as it takes up more room and pays freight by measurement, while the crude sugar pays by weight, the ship owner is benefitted.

The argument that because a drawback is not allowed on rum or cordage, canvas and iron, that it ought not, for, there ought not on sugar, is a serious one.

A drawback was allowed on rum when sugar was admitted to it, and why not distillers now apply for it again, I know not. I do object though I am certain of the fact, that a considerable part of what is commonly exported, goes to the coast of Africa; where it is not easily procurable the duties necessary to obtain the drawback. If a drawback on cordage could be allowed here after application for, as can be made appear that it is essential to commerce, I shall, for my part, have no objection to grant it.

The manufacturers of cordage will scarcely apply for a drawback, because it is short: the duty on imported hemp being only one per cent. per pound, and one pound of hemp making two pounds of tarred rope, renders the object too trifling.

To allow a drawback on imported canvas made into sail, would be attended with much difficulty, and must cause a deviation from some principles of the revenue laws known; and in practice at the custom house.

The quantity of nails and spikes exported in one year is so small that a drawback allowed on that article would amount to a very few thousand dollars, and will not, and the manufacture shall increase very much, be asked for.

However, sir, as the House is now very thin, and probably will not come to any decision on this measure until we have further information, I move you that the committee now rise, in order that the petitions and report on this subject be referred to the Secretary of the Treasury, that he may report thereon.

Mr. Early said the committee would not rise for the purpose proposed: he was against any further reference of this business, on which so much time had already been spent—as it had been before the house for a number of years, and he did not think that any new light could be thrown on the subject.

The committee rose and leave being asked to sit again, it was refused in the negative.

Mr. Early moved that the House concur with the resolution of the committee of commerce and Manufactures.

Mr. Varnum spoke in favor of this motion, and the question being put, that the House do agree to the said report, it was carried in the affirmative.

WASHINGTON CITY, February 2.

We have received N. Orleans papers to the 1st of January. They contain no articles of interest, except a long address to the public by Edward Livingston, vindicating himself against the charge of implication in Burr's conspiracy, made by General Wilkinson. The address closes with the following affidavit:

EDWARD LIVINGSTON, of the city of New-Orleans, counsellor at law, being duly sworn on the Holy Evangelist of Almighty God, doth depose, that he hath never had any communication, written or verbal, direct or indirect, with Aaron Burr, or any other person whom he knows or has reason to suspect, to be concerned with him in the plans now said to be carrying on, hostile to the union, laws, or constitution of the United States, relative to any such plans, and that he is utterly ignorant of the existence of any such schemes, on the part of the said Aaron Burr, or his adherents, except from the public papers, the communication of gen. Wilkinson, and the voice of public report.

(Signed) EDW. LIVINGSTON.

Sworn this 20th day of Dec. 1806, before me

DOM. A. HALL,
District Judge of the United States for the Orleans District.

Extract of a letter to a member of Congress dated Louisville, January 6.

"It has been reported yesterday by some gentleman coming from the Tennessee country that col. Burr was stationed in Cumberland island and busy in organising his recruits, and that he was very much disappointed in the number, which is very short of his expectation. A few thousand men, commanded by trusty officers, could soon clear the Western country of the Clan."

Circuit Court of the District of Columbia, in the case of Messrs. BOLLMAN and SWARTWOUT.

24th JANUARY, 1807.

The U. S. attorney appeared in court and informed the court that William Eaton and James L. Donaldson, esquires, were material witnesses to support the motion made yesterday for a warrant against Erick Bollman and Samuel Swartwout, and prayed the court to order a summons to be issued for the immediate appearance of the said witnesses, and the court directed the summons accordingly.

A short time after, Mr. Caldwell rose, and addressed the court as follows:

May it please the court,

I hold in my hand a petition, on which I shall ground a motion, relative to the business now before the court. The petition is in these words:

To the Judges of the Circuit court of the U. S. in and for the district of Columbia.

Your petitioners Erick Bollman and Samuel Swartwout, respectfully represent that they are confined within the body of Washington county, in the district of Columbia, at the Marine Barracks, under a military guard, without just and legal cause, and are deprived of the benefit of counsel, or being confronted with their accusers, and of being informed of the nature of their offence, or of the cause of their commitment. Your petitioners therefore request a writ of Habeas Corpus, in the usual form, directed to Lt. col. Franklin Wharton, or to such other person as may have the custody of your petitioners, that they may be proceeded against as the laws direct, and have an opportunity of being heard in their defence.

For and on behalf of Erick Bollman and Samuel Swartwout,
ELIAS B. CALDWELL,
Attorney.

My motion is for a writ of *Habeas Corpus* to bring the body of these petitioners before this court, that they may be released from their present illegal confinement, that they may have an opportunity of advising with counsel, and that they may be heard on the charges preferred against them. The petition is signed by me on their behalf because as they have not an opportunity of advising with counsel, this is the only mode in which their complaint could be laid before the court.

All the facts contained in that petition, except one, are already before the court, either by the official information of the district attorney, or in the documents which he has presented. The fact of their being deprived of the benefit of counsel, rests upon the authority of the petition. It could easily be substantiated by affidavit, but I do not consider it material to support the present motion; there being sufficient disclosed by the district attorney for the court to issue the writ prayed for. The court is informed, that the petitioners were arrested by general Wilkinson in New-Orleans, that they were sent from thence under the care of an officer of the army, and that they are now in this city, under a military guard at the marine barracks. It does appear to me that the whole of these proceedings from the first military arrest to the present moment of confinement, are illegal. Whatever may be thought however of the first arrest, every one, I believe, will agree with me in saying, that the present confinement is illegal. I do not mean by these observations to cast any reflection on the person who arrested, or on those who have had the custody of the petitioners. I am not sufficiently informed on that subject to form an opinion. If the safety of the country depended upon the arrest of a few individuals, I should feel very much disposed to acquit, nay to applaud the man, who should yield to the imperious law of self preservation, without waiting to enquire into the nice forms of law. The principal enquiry in my mind, would then be, did the necessity for such an extraordinary and novel procedure actually exist? Was the safety of the country really endangered by the persons apprehended? Was not the usual course of legal proceedings sufficient to apprehend and punish the guilty,—and had the assumed authority been exercised, with the delicacy, attention and humanity which the danger to be avoided and the public safety permitted? On this point however it is not necessary to dwell. Whatever circumstances may have given rise to the extraordinary commitment of the petitioners, no cause exists here which will justify their confinement under it. The President in his message has given us reason to hope, that the disturbances in the western country, are by this time quelled. The gathering storm has burst without our scarcely hearing of it. We have not only been removed from danger, but almost from the apprehension of it. We may now permit the laws to take their regular and quiet course. We may now permit the prisoner to enjoy those invaluable privileges which are secured by the laws and constitution of our country, to the meanest individual, to the most petty officer.

I am sensible that the proceedings of the district attorney are incipient, and that the parties on their trial will have the benefit of the privilages which it is the object of my motion to give them immediately. They are privileges secured to persons accused in my opinion in all stages of proceedings against them after their being apprehended—and it is of great consequence to the petitioners, that they should enjoy the full benefit of these advantages as early as possible. They have been accused in open court by the United States attorney of a very heinous offence. The public curiosity has been lately awakened on this subject by the President's message. It is therefore of great moment to them, that they should have an early opportunity of meeting the accusation, and of being heard in their defence, before the public mind becomes biassed by the public documents, which have been disseminated throughout the U. S. and the observations to which they have given rise. Let them come fairly before the world, and not have to contend against a torrent of public prejudice, exercised by exparte proceedings and by observations and statements which they have not an opportunity of examining or disproving. It is not my intention, nor will the granting the *Habeas Corpus* have the effect to embarrass the proceedings of the U. S. attorney, or stop the regular course of enquiry. The course of proceeding which I propose is in perfect accordance and harmony with this motion. He wishes to take them out of the hands of the military, to place them in the hands of the civil power, and to institute proceedings against them for their trial. This will be precisely the effect of the *Habeas Corpus*. They will be brought before this court,—you will examine into the cause of their commitment—the U. S. attorney will have a full opportunity of being heard on the subject, and if there be sufficient ground you will commit them for their trial. Here is a plain and simple course of proceeding pointed out, which the wisdom of the law, sanctioned by time and experience, approves, and which consults equally the interests of the U. S. and the security of the accused. The character and standing which these gentlemen have hitherto maintained in society, might at least secure to them, those advantages which are solemnly guaranteed to the meanest individual, and which it is the pride and boast of America to enjoy,—should at least preserve their characters from being the sport of idle rumours and vague conjectures, and prevent their being the victims of partial representations and exparte proceedings.

THURSDAY, Jan. 29.

Mr. Jones moved for the commitment of Messrs Bollman and Swartwout on the same charge for which they had been arrested.

A short conversation having taken place between Mr. Dorsey and Mr. Jones, with respect to the counsel entitled to the right of closing the argument, the attorney general (Mr. Rodney) suggested his opinion that the proceedings of the court on this preliminary question ought to be on exparte grounds. That it was neither consistent with the principles of the constitution, the practice of courts, or even with humanity, that an argument should be made by the counsel for the accused at this incipient stage of the business which would necessarily tend in a certain degree to excite prejudice which might operate ultimately to their disservice.

Mr. Lee went into an argument of considerable length to establish the right of the accused to be heard on the motion to commit. He contended that the right was strictly legal, and that on the ground of humanity towards the accused as they themselves claimed the right there could be no objection to their being indulged.

Mr. Rodney replied.

The court then gave it as their opinion that counsel should be heard.

Mr. Key then opened the argument on the part of the accused, against the motion to commit on the charge of treason.

He was followed by Mr. Jones on the other side, who terminated his remarks about 4 o'clock in the afternoon. The court rose for half an hour—when Mr. Lee spoke against the motion to commit until half past ten o'clock, at which hour the court adjourned until the next morning.

On Friday Mr. Lee adduced a number of additional authorities and made some further remarks.

Mr. Rodney then closed the argument in a speech of about an hour and an half in length.

The volume of matter adduced on this occasion was so great that scarcely a brief outline of it can be expected *at present*. We shall content ourselves with touching on the most prominent points.

The counsel of the accussed contended that the messages of the President, on this occasion, were not entitled to the least attention, however worthy of regard by the legislature to whom they were addressed or generally by the people, they could not in a case that required legal evidence, be of any avail. That if, however, the court should be of a different opinion, they notwithstanding would be found on examination to be destitute of any specific facts which justified the opinion that any act of treason had been committed by Aaron Burr, and much less by the accused. That they in fact established the commission of no crime whatever, and that at any rate the only offence which could be charged with any color, was the making preparations for an enterprize against the province of a foreign nation in amity with the U. S. The 6th article of the amendments to the constitution says—"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In this case there was no probable cause supported by oath or affirmation; & therefore the messages of the President were entitled to no weight in a court of justice.

With regard to the depositions of gen. Wilkinson it was alledged that they were totally inadmissible in a court of justice. They were taken before individuals who declared themselves to be justices of the peace, of which fact however there was no evidence which could be legally received. Such papers uniformly required a certificate of authentication, proving that the magistrate was duly appointed. This objection was therefore fatal to the reception of these papers as testimony. It was besides an established principle of criminal jurisprudence that none other than the magistrate who examined the accused was competent to arrest him.

But even if this insuperable objection was over-ruled and the depositions received as testimony, it was contended that they did not establish the commission of a single overt act of treason, by Aaron Burr, much less did they establish the implication of the accused in any such act.

The counsel on the part of the prosecution maintained that in a certain extent, in the incipient stages of a prosecution, the information contained in the messages of the President merited credit. Being, as to the discharge of certain duties, the highest organ of the government, specially entrusted with the preservation of the public peace, and with the command of the armed force, obliged under the sanction of an oath to discharge these duties and to give information to Congress of the state of the union, it must be presumed that he would not lightly make known to Congress the existence of acts of a treasonable nature, or call out the militia without the existence of a serious danger; and that consequently his communications, connected with other circumstances, conspired to establish the *probable cause* required under the constitution for arrest or commitment. That there was probable cause of the existence of treasonable acts was evinced by the extreme agitation of the public mind, by the march of the army from the Sabine, by the spirited operations conducted at N. Orleans for its defence, and by the energetic measures pursued by the several state and territorial governments in the western part of the union.

This probable cause, it was allowed, must be supported by oath or affirmation. This had been abundantly done in the depositions of gen. Wilkinson, gen. Eaton and other persons. The criminal intent of Aaron Burr was demonstrated by his conversations with general Eaton, and all that was besides necessary was the commission of some overt act, which would constitute levying of war against the United States. That such acts had been committed there was every reason to infer from the contents of the depositions. No doubt could be entertained that there had been a *bellum levatum*, if not a *bellum percussum*. All that was further necessary to show that there was probable cause that the accused were involved in the treason, was to show that they were the confederates of Aaron Burr. Of this the depositions of general Wilkinson furnished an abundant proof—they had presented letters from Burr to Wilkinson developing his views, with which they appeared to be well acquainted—they had gone further, and stated additional facts and urged additional arguments to seduce Wilkinson from his duty.

They contended that the different territories of the United States, were in law to be considered as one family, the officers of which were bound to respect and take notice of the acts of each other without any of those authentications required in one state to the official acts of another. They all derived their authority either mediately or immediately from the same source. To remove, however, all objection to the want of authentication to the depositions of general Wilkinson, they produced a certificate from the department of state, proving that the justices of the peace before whom the depositions had been taken were legally commissioned. With regard to the principle of law assumed, that none other than the magistrate who examined the accused was competent to his arrest, it was pronounced altogether untenable.

The court then gave their opinion.

Chief Judge Cranch said it was the opinion of a majority of the court that Erick Bollman and Samuel Swartwout should stand committed of the crime with which they were charged; and it was also the opinion of a majority of the court, that they ought not at present to be admitted to bail. He assigned at some length the reasons which induced him to dissent from the opinion of his brethren.

Justices Fitzhugh and Duckett also delivered their opinions at length in favor of the commitment of the prisoners for treason, and against admitting them to bail.

Mr. Lee moved for a special court to try the accused, and urged their desire to have a speedy trial.

Some conversation ensued between the court and the counsel, as well on the time of trial as on the competency of the circuit court of the district of Columbia to take cognizance of the crime charged to the accused. No decided opinions were expressed, though the prevailing sentiment was that this court had jurisdiction of the case.

The court observed that they were obliged in April to hold a court at Alexandria, and that as a special court had been ordered in the county of Washington on the 4th Monday of