

of law are felt with strength. * * * * *You have, doubtless, seen a good deal of malicious insinuations in the papers against you.*"¹

In order to secure the personal liberty of Samuel Swartwout and Doctor Erick Bollman motions for writs of *habeas corpus* were made in the Supreme Court of the United States at Washington, D. C., on the thirteenth of February, by their respective attorneys.

On the twenty-first of February Chief-Justice Marshall² delivered the opinion of the court as follows :

" The prisoners having been brought before this court on a writ of *habeas corpus*, and the testimony on which they were committed having been fully examined and attentively considered, the court is now to declare the law upon the case.

" This being a mere inquiry, which, without deciding upon guilt, precedes the institution of a prosecution, the question to be determined is whether the accused shall be discharged or held to trial. * * * *

" The specific charge brought against the prisoners is treason in levying war against the United States. * * * *

" ' Treason against the United States [according to the Constitution] shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.' * * * *

" It was deemed necessary to look into the affidavit for the purpose of discovering whether, if admitted, it contains matter which would justify the commitment of the prisoners at the bar on the charge of treason.

" That the letter from Colonel Burr to General Wilkinson relates to a military enterprise meditated by the former has not been questioned. If this enterprise was against Mexico it would amount to a high misdemeanor ; if against any of the territories of the United States, or if in its progress the subversion of the government of the United States, in any of their territories, was a mean clearly and necessarily to be employed, if such mean formed a substantive part of the plan, the assemblage of a body of men to effect it would be levying war against the United States.

" The letter is in language which furnishes no distinct view of the design of the writer. The co-operation, however, which is stated to have been secured, points strongly to some expedition against the territories of Spain. After making these general statements the writer becomes rather more explicit and says, ' Burr's plan of operations is to move down rapidly from the falls on the 15th of November with the first 500 or 1,000 men in light boats now constructing for

¹ Memoirs of his own times. By General James Wilkinson, vol. ii., appendix, doc. xxx.

² The only judges present when these opinions were given were Chief-Justice Marshall, Justices Johnson and Livingston. Justices Cushing and Chase were prevented from attending by ill health.