STAR

OR,

EASTERN SHORE GENERAL ADVERTISER

EASTON: TUESDAY MORNING
JUNE 2, 1807.

The very important trial of col. Aaron Burr, so far as received will follow; and as regular a chain of proceedings as our limits will admit, shall be continued—in order to give the readers of the Star as correct an idea of the *whole* as may be both usefull and interesting to them.

The trial of capt. *Whitby*, for the murder of Mr. *Pierce* was ended on the 17th of April last, as might have been expected, in his *acquittal!*

From the Virginia Argus.
Richmond, May 28.

TRIAL OF COL. AARON BURR.

Yesterday the circuit court of the United States for the fifth circuit and district of Virginia, commenced its session in this city. The expected trial of Col. Burr drew together an immense concourse of citizens from various parts of the union; indeed far exceeding any that we recollect ever to have seen upon any former occasion.

At half past 12 o'clock the court was opened, present

John Marshall, Chief Justice of the U. States.

Cyrus Griffin, Judge of the District of Virginia.

Before the grand jury was impannelled and sworn, a lengthy and desultory argument took place between Col. Burr with his counsel on the one side, and the attorney for the U. States in the district of Virginia, on the other, in relation to exceptions taken by the former to the manner in which some of the jurors were summoned, and finally on objections to some individual members of the jury. The late hour at which the court adjourned obliges us to compress into as narrow a compass as possible, the proceedings in this preliminiary stage of the business. Indeed, if it were in our power to prepare the arguments at full length, we doubt extremely the propriety of publishing them during the pendency of the trial, before even the petit jury shall be sworn; especially as some of those arguments contained a degree of asperity which might possibly influence the minds of those who may finally pass between the United States and the accused.

After it was ascertained that eighteen of the grand jury had answered to their names, Col. Burr stated an objection to the manner in which part of them had been summoned by the marshal. He disclaimed every idea of casting any imputation on that officer, unfavorable either to him or his deputies; but considered the irregularity of his proceedings as the mere effect of an error in construing the law, which error it was proper to correct. He adverted to the law of Virginia, by which 24 persons properly qualified are directed to be summoned as a grand jury; and contended that, when the officer had summoned that number, his authority ceased, and he had no power to summon the twenty-fifth. In the present case, he said, he was authorised to state, that after the marshal had summoned the number required by law, he had accepted of excuses from part of them, and had afterwards completed the pannel by summoning additional members.

He was followed by Mr. *Botts*, who went more particularly into an examination of the question, and referred to the judicial act of Congress and the laws of Virginia, prescribing the duty of officers in summoning a grand jury.—He also cited the case of Marbury *v.* Madison, (1 Cranch) to shew that when a ministerial act was once performed by an officer, it was irrevocable. It was proposed on the part of Col. Burr that the marshal should be interrogated as to those members of the grand jury, who had been summoned after the original pannel of 24 had been completed.

Mr. Hay, district attorney, observed that he confessed himself not very well prepared to answer the objection, a similar one to which he had never heard before, but that he conceived it to be of no importance, and was willing that Col. Burr should be accommodated with a grand jury, to which no exception could be made. It appeared to him indeed not proper to examine witnesses as to the conduct of the marshal in this stage of the prosecution; and he knew not why the objection was now made; for it could make no difference to the prisoner or to the U. States—since if any of the grand jurors were set aside, there would either be enough remaining of those who had been summoned, or the deficiency would be supplied by the marshal from among the by-standers. He submitted the whole matter to the court to determine whether testimony should be examined concerning the persons summoned or not.

Mr. Wickham said he meant no imputation on the marshal, whose intentions he doubted not were upright; but as this was an extraordinary case, and great attempts had been made to prejudice the public mind against Colonel Burr, he was justifiable in taking every advantage that the law gave him. He cited 2 Hawk. Pleas of the Crown, p. 307, 16 sect. and 3 Bac. Abr. 725, to shew that a person bound in a recognizance to answer a criminal charge, has a right to appear and make objections to the grand jury before they are sworn. Whether a plea in abatement might afterwards be filed for the error committed, was a question not necessary now to be determined: neither was it the wish of Col. Burr to resort to that alternative; for he anxiously desired that the prosecution should terminate here and with a grand jury free from all exceptions.

Mr. Hay then read the law of Virginia, (Rev. Code, p. 100, sec. 2.) and contended that the construction attempted to be put upon it was more rigid than could be warranted by sound sense and good policy. The intention of the law was that 24 good men and not liable to any of the exceptions therein stated should be summoned.—What reason therefore could be given to prevent the marshal (if he discovered that a man whom he had once summoned, could not attend) from summoning another, and thereby securing the attendance of the full number required? The marshal summons a man without knowing the situation of his private affairs. The man afterwards informs him that he is subject to uncontrolable domestic difficulties; for example, that he is going a journey on indispensable business.—Why should he not excuse him, and summon another; Where is the authority to prove that the functions of the officer who collects a grand jury cease before the day on which it is impannelled?

When the return is made, if a sufficient number do not attend, a discretion, is vested in the marshal to appoint others in the room of the absentees: and is not the principle the same, when he knows that the twenty-four whom he has first summoned, cannot attend.?

He observed too that the gentlemen were influenced by a mistaken idea; for he had understood that the marshal, in the instances to which they alluded, had only enquired of the persons said to have been summoned, whether they could attend or not; expressing his intention to summon them, if they could attend; and, upon their assuring him of their inability, had applied to others.

Mr. Wickham said that the counsel for the U. States had not fairly met the question. As the authorities he had cited before were short, he read them: observing that his only object in doing so was to shew that the objection ought to be made before the grand jury were impannelled, and therefore must now be made.

On the merits of the objection he said that Mr. Hay's argument concerning policy had no weight; that the words of the law of Virginia being plain on the subject in question, ought alone to be regarded; that it was sufficient to answer *ita lex scripta est;* that policy however was on his side of the question; since great danger would result from permitting a marshal who was appointed by the President of the United States and dependent upon him for his continuance in office, (however respectable the present marshal is acknowledged to be) to change the members of the grand jury at his pleasure.

The law is, that if the 24 grand jurors who have been summoned do not attend, 16 are sufficient to constitute a grand jury. Mr. Hay is therefore mistaken as to the law in supposing that 24 are necessary. Let it be supposed that a day or an hour before the sitting of the court, the marshal is informed that one of the grand jury cannot attend.—According to the doctrine contended for by Mr. Hay, he may excuse him & summon another; but when they attend in court, if 16 present, he has no such power. If the excuse is made to the court and they deem it insufficient, a fine is to be imposed. Is the marshal to be substituted for the court? And can he release from the fine?

Upon the whole he insisted that the enquiry should be made; but declared that he had no intention to wound the marshal's feelings, whose error was certainly unintentional.

Mr. Hay. I said before, that no good reason existed for not authorising the marshal, where he discovered it to be certain that a grand juror could not attend, to supply the deficiency by summoning another before the commencement of the term. According to that doctrine, if 12 of those who are summoned should fail to attend, there might be no grand jury at all.

The chief justice enquired whether this question had ever come before the state courts?

Mr. Randolph answered that it never had within his knowledge, although he had thirty years ago been attorney for the commonwealth; but there never had been a case like the present; and therefore no necessity to make a similar objection had ever been felt.—This case was indeed a peculiar one, for in no other had such a torrent of prejudice been ever raised & by means too which *we shall shortly unfold.* In this case therefore it becomes necessary to contend for the rules of which we now avail ourselves; and in consequence of the power vested in the marshal and his liability to be influenced by the government, great danger would arise from relaxing them.

The Chief Justice. If this is a question which has never been decided in the courts of this state, we must have recourse to the words of the act of assembly only. No doubt an exception to the grand jury may be taken now.

The law of Virginia authorises the officer to summon 24 men, but says nothing of any more. He therefore cannot summon 25. If he desires the 25th man to attend, it ought not to be considered as a summons; but the act is void. Most certainly the officer is not authorised to discharge any person.—Where 16 grand jurors do not appear, by-standers may be called and not impannelled; but if 16 of those summoned appear, they are to constitute the grand jury. There is no necessity therefore to vest the marshal with the power of excusing those who say that they are not able to attend. It is indeed the custom of the officers in this state to exercise a discretion in such cases;—and no doubt the marshal acted with the best intentions under an idea that his conduct was proper; but after he has summoned any individual he cannot let him off. A plain argument in support of this position is that the person summoned might nevertheless appear though not called by the marshal, and offer his services to be sworn on the grand jury; in which case he could not be rejected. The question depends however on the point whether there was an *actual summons,* for a conversation merely preparatory to a summons is a different thing. It is therefore proper to examine the marshal as to what has been done.

Major Joseph Scott, the marshal of the district was thereupon examined. He said he had shewed the judges themselves a letter from Mr. John Taylor, of Caroline, who had been summoned, and that they had said that his excuse expressed in that letter was sufficient. He had therefore summoned col. James Barbour, of Orange, in his room; but did not say that the judges had *directed* him to do so, although he conceived it to be his duty in consequence of what had passed between him and them. He acknowledged also that Mr. John M'Rea, who had been summoned, having since that time left the state, he had under similar impressions summoned Doctor William Foushee.

The court decided that Mr. Barbour and Dr. Foushee, had not been legally added to the pannel of the grand jury; they were therefore withdrawn.

The pannel having been reduced to 16 by the removal of those gentlemen improperly summoned, col. *Burr* expressed some regret at exercising the privilege of challenging two others for favor. If the right was conceded, it might be necessary to appoint triers and go into the examination of witnesses.—He wished it to be distinctly understood that he claimed the same right of challenge in this stage of the business, as if the cause were now before the petit jury.

Mr. Botts presumed that there could be no question as to the right. Even in civil cases this was a cause, though not a principal cause of challenge. The law which had been read was explicit in its application to this case. Our cause of challenge must be made out by testimony.

Mr. Hay believed the law to be as stated on the other side. No objection would be made by him to the course which the gentlemen wished to pursue. Col. *Burr* then proceeded to name the persons and causes of challenge. He first mentioned *William B. Giles.*—With respect to him there were two causes, the first of which was of public notoriety. Mr. Giles while a member of the senate had voted for the suspension of the writ of *habeas corpus.* The constitution had declared that a suspension of this writ could only be warranted in extreme cases; and that by pronouncing on the expediency of that measure, Mr. Giles had inevitably formed an opinion as to the designs imputed to him. Further he would endeavor to establish by testimony, that since that time Mr. Giles had said that the documents furnished evidence of his (Burr's) guilt, and guilt of the highest grade.

Mr. Botts added a few observations explanatory of the law, and expressed a firm conviction, that from the intelligence, the virtue and patriotism of Mr. Giles, he would not suppose that the objections were made with a view to wound his feelings.

Mr. Hay observed that if the gentlemen objected to were willing to be withdrawn, he had no objection. [Here Mr. Giles made a very handsome and impressive address to the court, which neither our limits nor present plan will permit us, at this time to insert. We will, however, briefly remark, that he said, it had been an uniform rule with him neither to solicit nor refuse an appointment to any office which his country thought him qualified to fill.—It was a very unpleasant thing for him to be summoned as a grand juror at the present term, but having been summoned, he had resolved to wave all objections of a personal nature. He regretted that there had not been energy enough in the House of Representatives in Congress, to suspend the writ of *habeas corpus*—a measure—which he then thought and still thinks the state of the country required. Upon this case he was about to pronounce his real impressions. He meant ultimately to withdraw, but wished to remove certain impressions which had been made.]

The chief justice observed, that two circumstances must concur, in order to disqualify him as a juror, the one was, that he must have made up an opinion on the case, the other was that he had declared that opinion.

Mr. Giles wished to explain the state of his own mind. He had made up no opinion. He wished, indeed, that the public mind should be satisfied, and that the true character of col. Burr's transactions should be ascertained.

Col. Wilson Carey Nicholas was also objected to by col. Burr, on the ground of a personal enmity, sufficient he presumed to blind the judgment of the wisest men.

Col. Nicholas, observed, that upon being summoned by the marshal, he had pressed him in the most forcible manner to release him. He doubted the propriety of his serving in this particular case, as the various relations in which he had stood as a public character to Col. Burr, might create some bias on his mind. That he was in Congress with Col. Burr, when the nomination of President and Vice-President was made, which terminated in the election that presented Mr. Jefferson and Col. Burr with an equal number of suffrages for the decision of Congress. When Col. Burr went to the western country his suspicions were excited. He gave, perhaps, too ready a credit to the evidence which had transpired; but which was not sufficient to form a conclusive opinion. The marshal refusing to excuse him, he was obliged to attend. He did not choose that wrong impression should be made, with respect to his motives, had he been absent. Attempts, he said, had been made to intimidate him. He had been told that if he attended as a juror, such representation would be made of his public conduct as would be highly injurious to his feelings—Under all these circumstances he felt some difficulty. He had consulted lawyers of the first talents, who informed him that the court would not, for such causes, excuse him. He felt embarrassment from two considerations; the one was that his retiring might have sanctioned those objections, the other was that he did not wish to shrink from the performance of a public duty. But he consented to retire.

Col. Burr remarked, that the circumstance mentioned by the gentleman, that attempts had been made to intimidate him, were calculated to throw a suspicion on his cause. Such a course was not sanctioned by him. It must have been the work of some of his enemies. He disclaimed such conduct.

Col. Nicholas being withdrawn, Major Eggleston wished to be excused, because he had felt and expressed a considerable degree of warmth, on reading the deposition of Gen. Eaton: but the court considering that his case did not fall within the rule, and not being objected to by Col. Burr, he was not permitted to withdraw.

Dr. Willam Foushee, on being called, expressed a difficulty in serving.—On a consideration of his objections, the court suffered him to withdraw, Mr. John Randolph and Col. James Barbour, were then severally called.—These gentlemen wished to be excused, on account of the impressions which the subject had made on their minds, but their excuses were not deemed sufficient by the court.

The following gentlemen were then sworn on the grand jury.

John Randolph, foreman.

Joseph Eggleston, Littleton Waller Tazewell, Robert Taylor, William Daniel, jun. John Mercer, Edward Pegram, Mumford Beverley, John Ambler, Thomas Harrison, Joseph C. Cabell, James Pleasants, jun. John Brockenbrough, Alexander Shepherd, James Barbour, James M. Garnett.

The chief justice delivered a charge to the grand jury, in which he enumerated the several offences cognizable by them under the laws of the U. States, and particularly defined the crime of treason.

After the grand jury had retired, a debate of some length ensued on a proposition to instruct the jury specially with respect to the admissibility of certain evidence which it was supposed would be adduced on the part of the U. States. A further discussion of this question, it is expected, will take place to-day.

The names of the several witnesses summoned in behalf of the United States were called over, many of whom and among others Gen. Wilkinson were absent. Such as appeared were recognized to appear on this day at 11 o'clock, to which hour the court adjourned.

Married, on Tuesday evening last, Mr. *W. B. Posey,* merchant, of Queen's Town, to Miss *Susannah Coats,* daughter of Dr. John Coats, of this town.

Public Vendue.

On Wednesday *the fifteenth day of July next, if fair, if not, the next fair day, at two o'clock in the afternoon, will positively be sold at Public Vendue (without reserve) on the premises,*

A VERY Valuable FARM, now in the tenure of NATHAN KERR, situated in Caroline county, Maryland, one mile below Whiteleysburg, and adjoining the main road leading from Dover to Denton, Cambridge, &c. This tract contains near 500 and sixty acres of land, about two thirds of which are cleared and arable, the remainder well timbered with Red and White Oak, Chesnut, Hickory, Ash, &c.—The improvements consists of a brick dwelling house, with three rooms and a kitchen on the first floor, and four lodging rooms on the second, a very convenient barn fifty by thirty-five feet, a stable, twenty by twenty-two feet, two stories high; a smoke house, still house, milk house, &c. &c, all in good repair—There are one apple and two peach orchards on the Farm, with a variety of other fruit trees, &c. The cleared land is laid off in three fields, and might at a small expence be divided into two elegant farms.

The soil is equal to any in the county for Wheat, Indian Corn, &c. and is capable of much improvement by manure, for the raising of which there is every convenience. The property is clear of all incumbrances, and the title indisputable.

The terms will be one third cash on executing the deed, the remainder to be secured on the premises, and payable in 2, 3, 4, 5, 6 and 7 years, with interest. Any person disposed to purchase can view the premises by applying to Mr. *Henry Driver,* on the next Farm. Further particulars will be made known by application to the subscriber, No. 31, N. Water-street, Philadelphia, and on the day of sale.

JOHN WHITE, Jun.
June 2, 1807. 7

Notice.

THE subscriber returns his sincere thanks to his friends and the public in general for past favors; and as he intends removing from Easton in a short time, those indebted to him will please to come forward and settle their accounts, as delay cannot be given; and all those having claims against him will bring them in for settlement.

JOHN JEFFERIS.

N. B. The HATTING BUSINESS will be continued in the same house, opposite the Bank, with the utmost fidelity and dispatch, by Messrs. *George Frick* and *Matthew Jefferis,* under the Firm of Frick and Jefferis, whom I recommend to my friends and the public as good workmen; the former is allowed to be one of the best in the United States.

J. JEFFERIS.
Easton, June 2, 1807. 3

This is to give notice,

THAT the subscriber of Dorchester county, hath obtained from the orphans' court, in Maryland, letters of administration on the personal estate of *Wm. D. Glover,* late of Dorchester county, deceased. All persons having claims against the said deceased, are hereby warned to exhibit the same, with the vouchers thereof to the subscriber, at or before the first day of January next; they may otherwise by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1807. 3

SAMUEL BROWN, Adm'r.
of Wm. D. Glover, deceased.

Notice.

ALL persons indebted to Doctor *John Eccleston,* deceased, are requested to make immediate payment; and all those having claims against him, will please to produce them, duly proved, according to law, as I wish to know the amount of his debts to make arrangements for payment.

SAMUEL BROWN, Ex'or.
June 2, 1807. 4

Fifty dollars reward.

STOLEN out of my stable on the 28th of April, a likely bright bay mare, upwards of fifteen hands high, five years old, a small star, a black mane and tail, a few scattering white hairs over her body, but more on her flanks than any other part will be discovered upon close inspection; trots and canters, rather low in her withers and rises in her neck, and has a feather in each side of her neck. A certain JOHN WORLON, otherwise RIGGIN, for he calls himself by either name as best suits, is the person believed to have stole her, he having been seen with such a mare near Laurell, in the state of Delaware, shortly after she was stolen. Worlon looks young, is about twenty-five years old, rather small size, well made and very active, a little round shouldered and pock-marked: he is a blacksmith by trade, and appears to be conversible. It is believed he parted with the mare on the Eastern Shore of Maryland, as he has been since seen in Alexandria on his way to North Carolina. Any person giving information to me so that I get the mare, shall receive Twenty Dollars, or for mare and thief the above reward, from

JOHANNES JOHNSON.
Northampton C. H. Virg.
June 2, 1807. 3

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