

Trial of Col. Burr

TAKEN FROM THE FEDERAL GAZETTE

THURSDAY, June 18.

After the court was opened, the following opinion was delivered by the chief justice...

OPINION.

In point of law the question now before the court, relates to the witness himself, the attorney for the United States offers a paper in cypher, which he supposes to have proceeded from a person against whom he has preferred an indictment for high treason...

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.

When this opinion was first suggested, the court conceived the principle laid down at the bar to be broad, and therefore required that authorities in support of it might be adduced.

Mr. Wiley being interrogated, replied, he did not understand the part of the letter in cypher.

Mr. Hay then put the following question: "Mr. Wiley, do you know whether or not this paper was written by colonel Burr or by his directions?"

Answer.—The part in cypher, was written by colonel Burr.

Mr. Hay then moved, that the paper go to the grand jury as they had sent for it.

Mr. Holt objected to the motion, and contended that the materiality of the paper to the present case, ought first to be shown to the court, before the paper could be sent.

The court were of opinion, that the paper ought to be deciphered in court to prove its relevancy, before it could be sent to the grand jury.

The grand jury came into court about two.

Mr. John Randolph, the foreman of the grand jury, thus addressed the court:— "May it please the court, one of the witnesses under examination, has answered certain questions touching a letter in cypher.

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conceal the treason of another, 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...

But if the letter should relate to the misdemeanor and not the treason, the court is not apprized, that a knowledge and concealment of the misdemeanor, would expose the witness to any prosecution whatever.

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

The gentlemen of the bar, will understand the rule to be 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 an 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.

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sanction the exhibition of these voluntary affidavits, on the part of these reluctant witnesses on the part of the United States.

Mr. Edmund Randolph, I was about, please your honors, to go forward with the motion of which I had given notice the other day, when I was interrupted by the gentleman for the prosecution.

I might have been inclined to have deferred the motion for this day, yet from the observations which have fallen from him, I have determined now to proceed.—I make a motion to you, sir, for examining certain documents and testimony to prove that gen. Wilkinson has used improper means with several of the witnesses for the prosecution.

The counsel on the other side, sir, have said a vast deal about the policy which we had in view, in making this motion. That our policy, sir, was to degrade and debase the character of gen. Wilkinson.—I tell you, sir, that our policy is to show, that the most arbitrary means have been resorted to, in dragging hither several of the witnesses.

That gen. Wilkinson by virtue of military authority, has endeavored to interrupt the free course of testimony. Why, sir, inform us that this gentleman, this military hero, is to come forth, after this trial is over like the purest gold from a fiery furnace? Why are we told, sir, that gen. Wilkinson is the savior of America? Why has the attorney insinuated, that those men who wish to bring forward, are actuated with the most deadly hatred towards general Wilkinson?

Why else is he telling you that the law will be prostrated by the production of the testimony, we are desirous sir of producing? Sir, when we come to exhibit to the court the several testimonies we have in regard to the points which I have stated, I have no doubt but the court will see the propriety of the motion and of the measures we have adopted.

Mr. Hay says, that from a single glance his eye had at a paper in my hand he was satisfied my intention was to strike at the character of general Wilkinson. This, sir, is the great stroke; general W. is or is not subject to legal consequences. How deplorable how lamentable must be the lot of the accused! These affidavits contain a vast deal of miscellaneous matter of the highest importance in the present question.

If there be any impropriety in exhibiting these affidavits, it lies with the court to determine. The court are to say what the law is in this case. It is said the witnesses are here—I rejoice, sir, that the witnesses are here; I also rejoice, sir, that there are several respectable persons here to bear witness of the integrity of their characters.—I glory, sir, that this is the case and that we have an opportunity of repelling the insinuations that have been thrown out against them by the attorney for the prosecution. If their credibility be doubted, we can speedily remove this doubt to the satisfaction of the court.

I trust, therefore, that an argument will be gone into with respect to the propriety of the motion.

Mr. Holt spoke about ten minutes in support of Mr. Randolph.

He was replied to by Mr. M' Rae, in a speech of a quarter of an hour against the propriety of the motion, and in vindication of the character of gen. Wilkinson.

Mr. Wickham rose and answered Mr. M' Rae's proposition of submitting the affidavits in question to the secret inspection of the court, which he said was a mode of proceeding he should always oppose.

He would certainly protest against the creation of a secret tribunal of this sort, and adverted to the aspersion which was attempted to be thrown on the character of the witnesses.

Mr. Hay interposed him by observing, that he was surprised at Mr. Wickham's extraordinary remark on the epithets which he had used with respect to the witnesses.

Had he and the counsel associated with him, not accused gen. Wilkinson of the blackest deeds? Had they not accused gen. Wilkinson of perjury?

Mr. Martin rose and remarked, if by perjury, Mr. Hay alluded to the charge made against gen. Wilkinson for the violation of the constitution, this was a fact known to the whole world. Were not Swartwout and Bollman in court? Were there not living testimonies of gen. Wilkinson's having broken his oath, so far as regards the preservation of the constitution of the United States?

The court expressed a desire to hear the inspection of the affidavits, and that the arguments on the motion might proceed to-morrow.

Col. Burr rose and stated, that notwithstanding the inconvenience to which he was subjected by the delay, yet he was willing to conform to the wishes of the court, and that the arguments on the propriety of the motion should be commenced to-morrow.

Mr. Martin hoped the gentlemen for the prosecution would also postpone their motion.

Mr. Hay had several objections to a delay, particularly as there were several of the witnesses respecting whom he intended to put interrogatories, to be sent up to the grand jury.

Col. Burr had no objection, provided he also had the privilege of giving interrogatories to any witnesses he pleased, and had the privilege likewise of inspecting the interrogatories which might be put by the attorney.

Mr. Martin said he had been attorney general for the state of Maryland for many years, and never had known it practised that interrogations were sent by the attorney to the grand jury.

The chief justice said that the principle was no doubt a novel one, and he should for his own part be opposed to the introduction of the practice of the public attorney sending up the written interrogations to the grand jury.

But if the principle were admitted on one side it ought likewise to have a place on the other, and if the prosecuting attorney had the privilege of sending up written interrogations, that the accused likewise should have the same indulgence.

Mr. Hay therefore, waved his proposition of sending interrogations for witnesses to the Grand Jury, and stated that he would content himself by relying on the integrity and candor of the Grand Jury.

Col. Burr rose and informed the court that in Kentucky, Mr. Davess, the public attorney for that district, had made the same proposition to the court, that of sending interrogatories to the Grand Jury—that he at first had attempted to go to the grand jury himself, but the court very properly prevented the extraordinary measure.—That he then proposed interrogatories; but as they were only three in number, and the very questions which he, colonel Burr himself, was desirous should be put by the Grand Jury to the witnesses.—He therefore requested that the court would assent to their being sent, and in this manner the court had agreed to the sending of the interrogatories drawn up by Mr. Davess.

The chief justice observed, he did not know that the attempt had ever before been made by a public attorney.

A proposal was afterwards made by Mr. Hay, that general Wilkinson should be specially informed of the charges which were to be made against him.

A discussion of some length took place on this, when Mr. Randolph stated that he would tell them explicitly that the purpose of the motion would be to attack the conduct of general Wilkinson in the present case. Adjourned.

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BY THIS DAY'S MAILS.

BOSTON, June 18. A number of vessels have arrived at Nantucket and New-Bedford, within a few days past, full of oil.

Labrador Fishery. The last Newburyport paper enumerates the number of vessels from that place to the Labrador, during the present season. The whole number is 43, besides two others, now fitting out, the tonnage of which is 4407. It is calculated that they carry one man to every nine tons which makes about 480 men, who are employed in that fishery, from one single port only.

The Danish government has cautioned their captains and supercargoes against agreeing with their captives to abandon their claim for damages for detention, which is a too common case on the release of neutral vessels; and have stated a case where sir William Scott condemned the captor of a Danish vessel to the payment of all damages, expenses, &c.

Masonic. We understand that the engagements of knights of Malta, and of the holy order of St. John, of Jerusalem, knights templars, and knights of the red cross, will make the first appearance ever witnessed in this state, at the celebration of the festival of St. John, at Dorchester, on Wednesday next. The exercises are public, and will commence at 10 o'clock, A. M. in the new meeting house.

Arrived, ship Hannah, Cottle, of Newburyport, 35 days from Dublin.

Schr. Ocean, Watts, from Barbice, 25 days; British schr. Dart, Newburgh, 23 days from Honduras; brig Strangler, from Havana, via Portland; schr. Esabella and Amy Rooke, 30 days from Newfoundland.

Brig Sally, Pratt, 25 days from New-Orleans. Ship Thomas, Allen, went over the Bar May 20, but put back lealy and was entering the river May 23; ship Harriet, Gray, for Liverpool, first wind, May 23, in the river inside of the Bar; ship Draper, Page, do. do. in the river, just within the Bar. Spike on the passage, schr. Adherbal, M'Neal, 22 days from Baltimore, 3 leagues from the Palize. Lat. 32, 48, long. 78, 30, schr. Favorite, Potter, 5 days from Baltimore for Charleston. Lat. 34, 40, long. 75, schr. Mercury, Grove, in 16 days from Portland, for Charleston. Freight at New-Orleans very high; cotton 4 1/2 a 5 cents, and other articles in proportion, and there were not half vessels enough to take off the produce on hand.

Schr. Betsy, Freeman, Trinidad, in 27 days.

Brig Retrieve, Wait, Havana, 26 days; and schr. Nancy, Gardner, Trinidad.

Schr. Triton, Rich, St. Martins, 13 days. On the 3d June, in lat. 8, 19, long. 66, 26, fell in with the English Jamaica fleet, of 107 sail, homeward bound, with two prizes.

NEW-BEDFORD, June 6. Arrived, ship Russell, Allen, from the Pacific Ocean. Left on the coast, Dec. 30, ships Monticello, Coffin's Perseverance, Coffin, Jan. 4; Maria, Coffin, do.; John Jay, Clark, do. Feb. 28, parted company with the ship Lion, Paddock, bound home, May 21, in lat. 31, 65, N. long. 60, 20. W. ship William Wilson, of and from Baltimore, capt. Gibson, for Amsterdam, 72 hours from Cape-Henry. May 29, lat. 38, 20, N. long. 66, 50, schr. Four Sisters, Bowling, from Beverly for Havana. Passenger in the ship Russell, capt. Timothy Esmare, of the ship Juno, of Hudson, which ship was condemned as not being seaworthy, in the port of Payta, on the coast of Peru.

The ship Barclay, Rand; and Culloden, Swain, both from whaling voyages.

Dart, Hodgkins, Savannah; Hero, Baker, Norfolk.

NEW-YORK, June 20. Latest from Europe.

By the arrival of the brig Robert Barclay, captain Brady, at 2 o'clock this day, in 31 days from the Downs, the Editor of the Commercial Advertiser has received London papers to the 11th of May, inclusive, and Lloyd's Lists and prices current to the 8th. We have made 23 copious selections from these as our time would permit. The official account of the capture of Alexandria, the terms of the armistice agreed upon between General Morier and the Swedish commander, we are compelled to omit until Monday.

Price of Stocks, May 11.—3 per cent. red, 69 1/2 5/8; 3 per cent. cons. 63 1/4 3/8; minimum 1-1/4 1-2 p.

LONDON, May 6.

Admiral Duckworth.—Extracts of admiral Duckworth's letter, and enclosures transmitted to the admiralty, were published, as expected, in the Gazette of last night. They contain a full detail of the passage and re-passage of the Dardanelles by our fleet, and of the causes which unfortunately conspired to defeat the object of the expedition.

A fine wind from the southward on the morning of the 19th of Feb. permitted the British admiral to carry into effect the resolution which he had formed of passing the Dardanelles. At a quarter before 9 o'clock the whole of the squadron had passed the outer Castles, without having returned a shot of the enemy's fire, which occasioned but little injury. This forbearance arose from a wish to preserve every appearance of amity, that his majesty's minister might negotiate with the strongest proof of the pacific disposition of our sovereign towards the Porte.

A second battery on the European side fired also with little effect. The greatest resistance our fleet experienced was in sailing through the narrow passage of Sestos and Abydos. The Turks opened their fire upon our ships as they passed in succession, but the spirited return it met with, considerably diminished its force. Having thus triumphed over all opposition, with the steady gallantry of British seamen, and with little loss, the squadron at half past 5, P. M. was enabled to make sail, and on the evening of the next day, the 20th, came to an anchor at 10 o'clock near the Prince's Islands, about 8 miles from Constantinople, the wind not admitting of a nearer approach. Such was the unfortunate state of the weather that from the moment our squadron anchored till it weighed on the 1st of March, that admiral Duckworth writes, "That it was not at any time in his power to have occupied a situation which would have enabled him to commence offensive operations against Constantinople. The English admiral having stated these particulars, comes to the most interesting point of all—a development of the motives which impelled him to re-pass the Dardanelles. Having enumerated the force and preparations of the enemy, he says, "We should have been in no state to have defended ourselves against that force, and then re-pass the Dardanelles." Admiral Duckworth makes no complaint of the want of land forces; and it is evident that they could not have contributed in the least to the attainment of the object of the expedition.

May 8. A gentleman is arrived in town, who left Hamburg so late as Saturday last. He brings intelligence that a part of the French troops had returned thither, and that the king of Sweden had refused to ratify the armistice. This may be the case, and the French most likely had a suspicion it would be so, which induced them to draw up the armistice in such a manner, that the conditions would be carried into execution before the king's opinion could be obtained.

The funds have experienced a fall this morning, which, it is said, is owing to the subsidy intended for Russia amounting to the enormous sum of six millions!

May 9. The following letter was received this morning from our Plymouth correspondent:— Plymouth, May 7.

"Arrived, his majesty's brig Delight, of 16 guns, captain Hanfield, from Alexandria, with dispatches, which were immediately forwarded to the admiralty. She brings the important intelligence of the capture of Alexandria, by a detachment of British troops, under the command of Gen. Fraser, consisting of 5000 men, on the 19th of March last. They met with a slight resistance on their landing, which took place on the 18th of March, and the next day the garrison surrendered to the British forces; our loss is said only to consist of 30 killed and wounded. The detachments accompanied by one line of battle ship, some frigates and gun-boats; but the day after the surrender, a British squadron of 7 sail of the line, arrived at Alexandria. The Delight left Alexandria on the 29th of March, and Messina on the 8th of April, and passed through Lord Collingwood's fleet 7 days since, cruising off Cadiz, all well."

May 11. The Gazette of Saturday contains the official details of the capture of Alexandria. It will be seen that this conquest was effected without any extraordinary exertions; but the spirit, valor, and perseverance of our gallant countrymen, were prepared and ready to meet and surmount the most arduous resistance. Our loss, we are happy to find was very inconsiderable.

As the arrival of the transports which had separated, enabled general Fraser to follow up the capture of Alexandria by further operations, detachments were sent to take possession of Rosetta, and Bathmanee, the Mamelukes and Arabs are confidently stated to be friendly to our cause. We have received several letters from Alexandria, which we are obliged to postpone for the present. Admiral Duckworth has returned to Sicily; admiral Lewis remains at Alexandria. The troops employed in that service, were the first battalion of the 31st, first and second battalions of the 35th, second battalion of the 78th regiment. De Rolle's regiment, four troops of the 26th dragoons, three companies of artillery, and two of artificers.

Some more foreign papers and letters have arrived since our last. The accounts from Dantzic are of so late a date as the 20th ult.—No general battle had taken place a part of the besieging force had joined the French grand army; and an immense Russian reinforcement was on its march to Poland. Letters from Copenhagen, of the 28th, state that the Danish preparations for war had become very formidable, and that the crown prince had placed himself at the head of 25000 men in Holstein. Report says that Austria is immediately expected to declare against France; while on the contrary, it is asserted, the negotiations under the mediation of the court of Vienna, are already in a state of great forwardness. It is added, but we doubt the statement, that Great-Britain is included in these negotiations. Letters from Varel, of the 5th inst. confirm our former accounts, relative to the arrangement