

Trial of Col. Burr

TAKEN FOR THE FEDERAL GAZETTE

Wednesday, June 24.

Mr. Randolph made several beautiful illustrations of the danger in a free country of compelling witnesses to give affidavits; which our limits prevent us from narrating. He concluded nearly as follows:

It is impossible, sir, not to feel a degree of indignation at the conduct which has been practised towards Mr. Knox. It forms a part of the basis of our independence, that military force should not sport with civil rights. If these things have been by the wisest of our countrymen executed; if they are executed by that people from whom we have borrowed our laws and our constitution, by that nation which has taught us freedom and all the blessings of liberty, I hope they will be executed by this court. I trust, sir, they will incur your severest censure; for I say if these things are tolerated in the green tree, what will not be tolerated in the old? Remember, sir—you will remember it, I know, for you have foresight and judgment, if such proceedings as have been displayed in this case do not receive the most pointed censure, our children will repeat it, and you, sir, will be regarded as the author.

Mr. M' Rae replied to Mr. Randolph, in a speech of considerable length, ingenuity and merit.

Mr. Botts answered the arguments of Mr. M' Rae.

We regret, on account of the multiplicity of matter about to press upon us, that we have not room for the speeches of these gentlemen.

When Mr. Botts was in the middle of his reply to Mr. M' Rae, the grand jury entered, about 3 o'clock. After their names were called over, Mr. John Randolph, the foreman, delivered the four indictments to the clerk of the court, who read them as follows:

Indictment against Aaron Burr for High Treason—true bill: Indictment against Aaron Burr for Misdemeanor—true bill: Indictment against Blennerhassett for High Treason—true bill: Indictment against Blennerhassett for Misdemeanor—true bill. Mr. John Randolph then stated to the court, that although they had returned true bills on the four indictments which had been laid before them, yet they had other business to deliberate upon which might occupy them for several days.

After Mr. Botts had concluded his argument, Mr. Hay moved for the commitment of Colonel Burr for high treason.

Colonel Burr rose and observed he should state to the court their privilege of allowing bail as he could prove by a witness present, that the indictment was obtained by perjury.

A discussion of the power of the court with respect to bail in case where the punishment was death, then took place and continued for several hours.

The court were of opinion that they were vested with the power of giving bail, according to circumstances and usages of Law.

Whether the case of Colonel Burr could admit of bail was a question postponed for consideration until next day.

Col. Burr was then committed into the charge of the Marshal, who attended him to Col. Burr's lodgings where having dined, he was given into the charge of two deputy Marshals, who conducted him in a carriage to the public Jail. He arrived at the Jail about nine o'clock at night and was put by Mr. Rose the keeper of the Jail into the debtor's apartment. Centinels were afterwards placed round the Jail.

THURSDAY, June 25.

The court was opened at a quarter past eleven.

Mr. Botts rose and stated to the court that the business of the day would be very important. He observed, that as they could not proceed without the presence of Colonel Burr, he should move for a writ of habeas corpus to bring up his body.

Mr. Hay observed, that an attachment had been moved by Mr. Randolph against Gen. Wilkinson. He said that in his opinion the offence which General Wilkinson had committed, to constitute a contempt, had never been specified by the gentlemen on the other side. That they had been repeatedly urged to state the offence of which General Wilkinson had been guilty; but in place of specifying or stating particular facts, they had contented themselves merely by declamation. He believed, however, that on a fair and candid examination of the case, that the motion had no foundation either in law or justice. Mr. Hay then said before he would enter into the examination of this extraordinary measure, he would ask by whom the motion had been made. Was this motion made at the instance of the officers of the United States? No, sir, not a word had been said, or a complaint made by them upon the subject. The motion was made at the instance of Col. Burr alone. Colonel Burr had not said, or could not say, that he had suffered by the introduction of this witness. From what motive, then, was this motion made? The motion was obviously made to make an impression on the public mind that General Wilkinson, whose testimony was so material in the present case, was a man who had committed every species of violence.

Mr. Hay said, that if any contempt had been made, it had been made by Col. Burr and his counsel, in making this motion; and that there would be more propriety in him, if it was not to interrupt the business of the court, to move against Colonel Burr for contempt.

The Court here observed, that they would listen to any motion which he might make, and that the present business might be waived.

The counsel of Col. Burr also observed that they would have no objections to any motion Mr. Hay might make.

Mr. Hay then remarked, that although he might with propriety move against Colonel Burr, yet it was not his disposition to do so. He proceeded with his argument. He said, even although the facts with which Gen. Wilkinson was charged, were admitted, he asked, whether or not they could constitute a contempt of this court. There was one species of treatment to a witness, which might be called a contempt of court, viz. any means which would be used to prevent a witness coming to court. If a person, for example, when coming up the capitol hill to this court, was interrupted and prevented from attending: That this act

would be truly a contempt of court, and should merit punishment. He therefore contended, that according to the testimony of the only witness brought forward on the part of the prosecution, the court could not pronounce Gen. Wilkinson guilty of a contempt. The case, about which so much was said, and so much odium thrown upon Gen. Wilkinson, was, in reality, one in which General Wilkinson had no agency or concern. That Judge Hall and Lieut. Gaines were the sole actors. That it was very improbable Gen. Wilkinson, if he had intended to interfere in the affair, would have applied to Mr. Hall, a person who was no ways friendly to his views. Judge Hall committed Knox, not to military authority, but to the marshal of the state, and the marshal of the state committed him to the charge of Lieut. Gaines, whom he deputed to act on this occasion as deputy marshal.

Here some discussion took place, between the Counsel on both sides, as to the question whether Lieutenant Gaines was deputed by the Marshal, or by Judge Hall.

Lieutenant Gaines was therefore called for, but was out of court.

Mr. M' Rae in the mean time took the opportunity of making an eulogium on the character of Judge Hall, and wished to prove to the Court, that he was a man of integrity and talents.

The Chief Justice thought it would be extremely improper to enter into an investigation of the character of Judge Hall. That it was extremely foreign to the present question.

Mr. Martin. If the gentleman please, we shall allow Judge Hall to be an angel.

Mr. Botts said that if any Judge in Virginia, was to conduct himself as Judge Hall, he ought to have his licence revoked. Whether he was a tool of Wilkinson, or not, was an affair to be judged of by the Court.

Mr. Hay observed, he would certainly indicate at all times the conduct and character of Judge Hall.

Chief Justice. This is a matter which the Court has nothing to do with.

Mr. Hay proceeded. He said it appeared that General Wilkinson, who had been the subject of so many complaints, and much loud invective, had advised Lieutenant Gaines to apply to Counsel for advice. He thought this a circumstance highly in favor of General Wilkinson who, at that time, could never have supposed that his conduct would afterwards become a subject of legal investigation; and particularly by Mr. Burr who in place of an accused person, was to become a public prosecutor. Mr. Hay said, whether Gen. Wilkinson's conduct at New Orleans was in all things justifiable, he presumed, was a question not to be decided by this court. He observed, he would take up the subject entirely upon the testimony of the witnesses introduced by the prosecution. If Knox had not obeyed the process, he would have been liable to an attachment; and yet by the argument of the gentlemen, General Wilkinson was liable to an attachment for making him come. This was in reality making the law blow cold and hot at the same time. It was somewhat singular when the gentlemen on the other side had been addressing the court on a motion of a description entirely novel; they never entered into a specification of what a contempt of court was, or what act constituted a contempt of court. Nothing of the kind was shown by them. Mr. Hay then stated what appeared to him to be a contempt of court; and read several authorities to shew what was the legal description of a contempt of court.

Col. Burr now entered into Court, attended by two deputy Marshals.

Mr. Hay proceeded, and read several authorities, to shew what a contempt of court was. He likewise cited Blackstone's opinion on this subject. Mr. Hay narrated an instance of a case which occurred in Fredericksburg. Some young men were brought before the court on a charge of Murder. The Grand Jury found a true Bill. They were ordered into the custody of the Jailor. When they went out, they went where they pleased. The Jailor was ordered before the court for contempt of court. The defence of the Jailor was, that he regarded himself as responsible, and as the young men had attended at the hour required, that he had performed his duty. The Jailor was acquitted.

Mr. Hay concluded by making several severe remarks on the speech of Mr. Randolph.

The grand jury entered at one o'clock. After the names were called over—

Mr. John Randolph the foreman addressed the court—"May it please the court, the grand jury have been informed by a witness that there is in possession of Aaron Burr, who is now present in court, a letter from General Wilkinson, dated the 13th May, written in cypher, which letter the grand jury think will afford to them information on matters now under consideration. The grand jury wish to know whether the court sees any impropriety, or if it be legal that Aaron Burr should deliver up this letter if it contain matter criminalizing himself."

Chief Justice. "Certainly no man can be called upon to produce evidence which may criminate himself; but if Colonel Burr thinks proper voluntarily to produce any letter which the grand jury may require, the court sees no impropriety in his doing so."

Colonel Burr. "With respect to any information, letters, or papers which may have been given to me in confidence, I do not regard myself authorised to communicate them, whether any legal process may enforce me is not now the question; but so long as I retain those principles of honor, to which I have been always accustomed, I can never regard myself responsible for any consideration to disclose matters that have been so confided. I certainly can never tolerate such an idea or harbor such a sentiment."

Mr. John Randolph. Shall the grand jury withdraw and wait the opinion of the court.

Chief Justice. "No man can be compelled to deliver testimony which may criminate himself; but it does not appear to the court, that a person although indicted, can refuse to give testimony against others, which may not criminate himself. Although Colonel Burr stands indicted, yet at present

I do not know any authority by which his testimony could be 'debarred.'"

Mr. John Randolph. "The grand jury will therefore retire, and submit their request to the deliberation of the court."

Mr. Hay then proceeded in his objections for an attachment to issue against general Wilkinson.

Mr. M' Rae rose and stated to the court that after the grand jury went out, he had a conversation with general Wilkinson, and that he was authorised by general Wilkinson to request that all the correspondence between Colonel Burr and himself should be made public, and that Colonel Burr, should be absolved from every promise of secrecy he might have given to general Wilkinson.

Colonel Burr. "May it please the court, some reply no doubt is expected from me to the information which the gentleman has given with respect to general Wilkinson. The production of that letter is not now in my power. The letter is not in my possession, and general Wilkinson knows this to be the case."

Mr. M' Rae then requested that the court would inform the grand jury of the circumstance that general Wilkinson had communicated, and of his willingness that all correspondence between himself and Colonel Burr should be made public.

Mr. Martin hoped the court would also at the same time inform the grand jury of the circumstance that Colonel Burr had stated.

The Court expressed their unwillingness to be the vehicle of any information to the grand jury, but that which immediately related to the question proposed to them by the grand jury.

Mr. M' Rae observed he wished this information to be given to the grand jury, merely to wipe away any aspersion which might be attached to the character of general Wilkinson from what had fallen from Colonel Burr.

Col. Burr rose and said it was known to Gen. Wilkinson the letter was not in his possession, that he purposely gave it away in the presence of a third person to relieve him from the compulsion of giving it to the grand jury.

Mr. Wickham rose to reply to Mr. Hay's argument. He prefaced his remark by complimenting Mr. Hay upon the happy fertility this injunction possessed of always supposing himself whether right or wrong to be in the right. He adverted first to the judge's warrant, which he endeavored to shew was an illegal act. He then stated that every individual who was an accessory to an illegal act was a trespasser *ab initio*. He next shewed in what manner general Wilkinson was an accessory, and an aider in the accomplishment of this act. Col. Burr had a right to make this motion, because he was the person against whom the witness was brought forward. He asked if it was no consequence to a party that a witness should be thus dragged before the court? Could fear, could alarm, not have a powerful effect upon the minds of men? But this was not all. Was not hope as well as fear brought into action to operate upon him? The man who will use means of this sort, and for a particular purpose, will not be very scrupulous about the means. If this practice were tolerated, the public treasury might be emptied in bringing witnesses from one end of the continent to the other. The consequence of admitting a practice of this sort to the disadvantage of the accused, ought not to be sanctioned by the court. Col. B. was under no obligation to account for his motives to the court; but there was a motive that had a very powerful effect. It was not known how long this prosecution would be continued or what future attempts of the same nature might be made. He therefore wished that the court would inflict a punishment as an example to others in future. It was impossible that general Wilkinson could be so ignorant as not to know that his conduct was highly illegal. There was not a person, not even a boy out of his horn book but knew that the conduct of general Wilkinson was improper. He hoped therefore he should hear no more of general Wilkinson pleading ignorance as an apology.

The grand jury entered—After the names were called over, Mr. John Randolph addressed the court—"May it please the court, the grand jury have made several presentations." Mr. Randolph then handed them to the clerk who read as follows:

Presentment against Jonathan Dayton, of New-Jersey, for treason.

Presentment against John Smith, of the state of Ohio, for treason.

Presentment against Comfort Tyler, for treason.

Presentment against Israel Smith, of N. York, for treason.

Presentment against Davis Floyd, for treason.

Mr. Hay requested the grand jury might not be discharged for a day or two, until he should prepare indictments conformable to these presentations.

After the grand jury retired, Mr. Wickham concluded his argument on the motion for an attachment.

Mr. Martin rose in support of the motion; and with a vast deal of humor pictured the tyrannical conduct of general Wilkinson at New Orleans.

[To be continued.]

BY THIS DAY'S MAIL.

BOSTON, June 24.

Arrived, brig Betsy, Lathrop, 40 days from Amsterdam. Vessels left there, brig Savannah, Bissell, of N. York, for Charleston, in 8 days; ship George Barclay, Daniels, do. for St. Ubes, in 10; ship Virgin, Auld, of Baltimore, just arrived; Rising Sun, West, from Baltimore, arrived April 28. Arrived at the Texel, April 28, S. Shafford, from Baltimore; D. Bragten, from Charleston. April 30, arrived, William Penn, and M. Page, from Charleston. Vessels at Rotterdam, 13th May, ship Lovely Nan, Coffin, Baltimore; ship Alexander, Weston, Alexandria. The ship Sally, Richards, from Baltimore, was stranded off Goree, 16th April, vessel and cargo lost, except a few lbs. tobacco and bales of cotton, which have since come on shore at Schoven

Island—crew saved. The brig John Adams, of Portsmouth, Gokin, sailed last of April for Lisbon. Ship Cotton Planter, Chase sailed for Savannah same time. May 19, in the straits of Dover, was boarded from an English gun-brig, treated politely. Spoke June 2, lat. 45, 16, long. 37; ship Perseverance, Fennell, 14 day from New York for Amsterdam. June 18, lat. 42, 36, long. 61, brig Vigilant, Higgins, for Liverpool. Same day, brig Leopard, captain Jordan, 32 days from Liverpool. Same day, (via quarantine) brig Susanah, Minot, 35 days from St. Croix.

PHILADELPHIA, June 29.

Arrived, ship Volunteer, Martin, Porto-Cavello, 17 days; Agnes, Bunce, Charleston, 10; brig Only Son, Davis, Lisbon, 33; Violet, Minot, Boston, 9; schrs. Amity, Boutilier, Havana; Danish schr. Director, Tatem, St. Croix; Emily, Beulah, George Town, S. C. 12; sloop Fear, Eldridge, Boston, 14.

Cleared, ship Anthony Mangin, Thomas, Mocha; Two Brothers, Hall, St. Kitts; brig Lucy, Puckham, Martinique; Mary-Ann, Allen, St. Croix; snow Susan, Willis, Jamaica; schrs. Triumph, Fallin, Havana; Hsley, Sturdivant, Portland; Eliza, Benjamin, New-York.

Ships Dispatch, Baush, St. Kitts; Brothers, Bray, Jamaica; schrs. Sea Horse, Tukey, Matanzas; Ann, Pennock, Guadeloupe &c below.

Vessels left at Lisbon, by capt. Davis, of the Only Son.

Ships, James Skiline, from Philadelphia, discharging; Orozimbo, Brewster, of Portsmouth, N. H. Crawford, Russel, repairing.

Brigs Ann and Mary, Mallory, for Baltimore, discharging; Joseph, Pierce, ditto. Delight, Pierce, of N. York, for Philadelphia, discharging; Venus, Tunisian, of and for Salem, discharging; Jemima and Fanny, Sherburne, of Charleston for Nantz; Hope, Williams, of New York, destination unknown; Two Maries, Bates, for Barcelona; Dido, Stiness, do.; Five Sisters, Gedders, destination unknown; Perseverance, Starr, for Bordeaux; Telemachus, Goodwing, destination unknown; Eunice, Hunter, for N. York; Theres-Ann, Bailly, destination unknown; Reuben & Eliza, Tripp, ditto.

Schooners Eunice, Maxwell, of Portland, for France; Mount Hope, Macy, of and for Nantucket; Virginia, Coulson, for the Mediterranean; and sloop Columbus, of and for Boston, in 28 days.

Report of a Battle.

Captain Davis, arrived yesterday from Lisbon, spoke on the nineteenth instant, the ship Hazard, twenty-eight days from Amsterdam; the captain of which informed him, there had been a dreadful engagement between the Russians and French, on the second of May, in which the latter were defeated—Bonaparte had lost an army, and was otherwise badly wounded.

We will barely remark, that the latest advices of the French grand army were on the 29th of April, from Amsterdam the 8th of May, and from London the 16th. The Hazard must have sailed about the 20th of May; and consequently bring intelligence from the continent of Europe twelve days later than has been heretofore received.

[Pousson.]

FEDERAL GAZETTE.

TUESDAY, JUNE 30.

FROM OUR CORRESPONDENT.

"New-York, June 23.

"Arrived, brig Triton, Arnold, 66 days from Cette. Spoke, May 3, lat. 36, 14, long. 13, 11, a schooner 27 days from Baltimore for the Straits. June 17, lat. 39 44, long. 63, 24, brig Friendship, from Baltimore. June 22, was boarded by the British armed brig Columbine, Bradshaw, who pressed John Wadsen, with a Swedish protection.

Brig Mount Vernon, Martin, 10 days from Savannah.

Brig Ceres, Tucker, 10 days from Bermuda.

Schr. Fox, Crany, 14 days from Havana, dismasted.

Schr. Harmony, Aydelott, 15 days, do.

Schr. Sincerity, Kim, St. Croix, 17 days."

The editor of the Federal Gazette is not unacquainted with the feelings of his fellow-citizens, nor unmindful of the extreme anxiety of his readers, to be informed as speedily as possible, of the proceedings at Norfolk. Having received the Herald of the 27th, and been informed by a gentleman who arrived this morning in Deagle's packet, that the people continued their preparations for defence—we hasten to lay the accounts before our patrons.

NORFOLK, June 27.

Arrived, sloop Sally, Bradford, 9 days from Charleston.

Sloop Patty and Lydia, Gunter, 8 days from Charleston.

Entered, British ship Medway, Potts, last from Madeira.

Cleared, brig Mehitable, Hannah, Antigua; schr. Volunteer, Turner, Jamaica.

Extract of a letter from Hampton, dated June 26.

"We have late news from the British men of war by the pilots that were discharged yesterday. They declare that if their water and provisions do not come to them as usual, they will lay three ships of war

along side Hampton, send their barges ashore, and take them by force!—The Hamptonians are casting balls and making cartridges, to bid them welcome."

A meeting of the citizens of this Borough & Portsmouth, are earnestly requested at the Episcopal church this morning, at 10 o'clock, as business of the utmost importance is to be discussed.

The following letters have passed between the committee and the British consul, which are published for the information of the public. THEO. ARMISTEAD, Secy.

Of the committee, British Consul's Office, Norfolk, (Vir.) June 25, 1807.

To brigadier-general Mathews, chairman of the committee to carry into effect the resolutions, &c.

"As I do not perfectly understand how far the construction of the resolutions adopted at the meeting held yesterday, as they respect the communication between myself and his majesty's ships in the Chesapeake, may be supposed to extend, I beg leave to inquire of you, sir, as the chairman of the committee appointed to carry those resolutions into effect, whether any or what restraint is thereby intended to be laid on any communication with the king's ships—whether the schooners which have hitherto been used as advice boats, will be permitted to pass as heretofore, uninterruptedly, and whether there will be any objection to myself, or any of my family, going backwards or forwards to the ships of war below, in such boats as may be allowed to carry my correspondence, or to our going by land to the Bay-side, and embarking from thence and returning to the shore in the ships' boats."

I have the honor to remain,

With perfect respect, sir,

Your most obedt. humble servant,

JOHN HAMILTON.

To Col. John Hamilton, Consul for the State of Virginia.

"In answer to your letter of this date, I am directed by the committee to say, that the schooners hitherto employed as advice-boats in the service of M. B. majesty's ships, cannot be permitted to pass and re-pass as heretofore. The committee view the object of the resolutions as intended to prevent supplies of every kind being afforded to these ships until the pleasure of our government be known. The committee can see no obstacle to you or your family communicating with the officers of H. M.'s ships in effect of the modes you mention, provided that no attempt will be made to contravene the resolution restricting supplies. The boats you may engage in this service will be permitted to pass without examination."

I have the honor to be,

With perfect respect,

Your most obedt. servant,

TH. MATHEWS,

Chairman of the Committee.

Norfolk, June 26, 1807.

The following letter to the committee of correspondence, has been received from George Hope, Esquire, of Hampton, dated 28th instant.

"Sirs,

"I just now received yours, with the enclosed resolutions of the citizens of Norfolk, and immediately communicated them to col. Wray, and posted, to make them as public as possible. The inhabitants of this place unanimously feel indignant at the outrage committed on the Chesapeake, and are concerting measures to prevent the landing of any boats from the ships, which it is probable they may attempt."

I am, with respect,

GEO. HOPE."

At a meeting of the Committee at the Eagle Tavern, on Friday, June 26, 1807.

Present—Thomas Mathews, Daniel Bedinger, J. W. Murdaugh, Luke Wheeler, William Newsum, Thomas Newton, Thomas Blanchard, Theo. Armistead.

Resolved unanimously, as the opinion of this Committee, that the British Officer who this day brought dispatches to Col. Hamilton, not having hoisted a flag before his approach to our harbour, was not afterwards entitled to be considered as coming under the protection of a flag of truce; and as such, he should not have been discharged, but should have been held in custody until the pleasure of the government was known.

Resolved unanimously, that it is the opinion of this Committee, that any British Officer coming to this place, shall be considered as a prisoner, until the decision of the government be known.

Resolved unanimously, that the proceedings of this meeting be regularly published.

The Committee of Correspondence laid before the Committee, a letter from Mr. Hope, of Hampton, which was ordered to be published.

Resolved, that Theodorice Armistead and Thomas Newton, jun. be a Committee to ascertain the best means of establishing a Telegraphic Communication between the sea shore and this place.

Mr. James W. Murdaugh having informed the Committee that a number of young gentlemen had intreated him to offer their services for the erection of batteries for the defence of the Towns of Norfolk and Portsmouth,

Resolved, that Mr. Murdaugh be requested to return them the thanks of this Committee for their patriotic offer, and trusts that the time is not distant when an opportunity will be offered for the display of their zeal.

THOS. MATHEWS, Chairman.

THEO. ARMISTEAD, Sec'y.

PROCEEDINGS

At a meeting of the Committee convened at the Town Hall, on Saturday, the 27th of June, 1807.

Present—Thomas Mathews, Thomas Newton, jun. Thomas Blanchard, Seth Foster, Luke Wheeler, William Newsum, Mosé Myers, Daniel Bedinger, Theo. Armistead.

The chairman laid before the committee a communication from the superintendent of the marine hospital, notifying the death of ROBERT M'DON. LD. one of the mariners, wounded on board the United States frigate Chesapeake.

Resolved, That the funeral take place 19.