

TRIAL OF AARON BURR.
(Continued by adjournment, and held at the capitol, in the hall in the house of delegates) for High Treason against the United States.

OPINION
Of the court on a motion to arrest the evidence—delivered on 8th August.

[Continued.]
Lord Hale says (149. 6) "what shall be said a levying of war is partly a question of fact, for it is not every unlawful or riotous assembly of many persons to do an unlawful act, though *de facto* they commit the act they intend, that makes a levying of war; for then every riot would be treason, &c." but it must be such an assembly as carries with it *speciem belli*, the appearance of war, as if they ride or march *vestitis explicitis*, with colours flying, or if they be formed into companies or furnished with military officers, or if they are armed with military weapons as swords, guns, bills, halberds, pikes, and are so circumstanced that it may be reasonably concluded they are in a posture of war, which circumstances are so various that it is hard to describe them all particularly."

"On the general expressions in all the indictments of this nature that I have seen are *more guerrino arraiati*," arrayed in warlike manner."

He afterwards adds, "If there be a war levied as is above declared, viz. an assembly arrayed in warlike manner, and so in the posture of war for any treasonable attempt, it is *bellum levatum* but not *persecutum*."

It is obvious that Lord Hale supposed an assemblage of men in force, in a military posture, to be necessary to constitute the fact of levying war. The idea he appears to suggest, that the apparatus of war is necessary, has been very justly combated by an able judge who has written a valuable treatise on the subject of treason; but it is not recollected that his position, that the assembly should be in posture of war for any treasonable attempt, has ever been denied. Hawk. ch. 17, sec. 23, says, "That not only those who rebel against the king and take up arms to dethrone him, but also in many other cases, those who in a violent and forcible manner withstand his lawful authority are said to levy war against him, and therefore those that hold a fort or castle against the king's forces, or keep together armed numbers of men against the king's express command, have been adjudged to levy war against him."

The cases put by Hawkins are all cases of actual force and violence. "Those who rebel against the king and take up arms to dethrone him," in many other cases those "who in a violent and forcible manner withstand his lawful authority," "Those that hold a fort or castle against his forces, or keep together armed numbers of men against his express command."

These cases are obviously cases of force and violence.

Hawkins next proceeds to describe cases in which war is understood to be levied under the statute, although it was not directly made against the government. This Lord Hale terms an interpretative or constructive levying of war; and it will be perceived that he puts no case in which actual force is dispensed with.

"Those also he says who make an insurrection in order to redress a public grievance whether it be a real or pretended one, and of their own authority attempt with force to redress it are said to levy war against the king, although they have no direct design against his person, inasmuch as they insolently invade his prerogative by attempting to do that by private authority, which he by public justice ought to do, which manifestly tends to a downright rebellion. As where great numbers by force attempt to remove certain persons from the king, &c." The cases here put by Hawkins of a constructive levying of war, do in terms require force as a constituent part of the description of the offence.

Judge Foster in his valuable treatise on treason states the opinion which has been quoted from Lord Hale, and differs from that writer so far as the latter might seem to require swords, drums, colors &c. what he terms the pomp and pageantry of war, as essential circumstances to constitute the fact of levying war. In the cases of Demaree, and Purchase, he says, that want of these circumstances weighed nothing with the court although the prisoners counsel insisted much on that matter. But he adds, "the number of the insurgents supplied the want of military weapons; and they were provided with axes, crowns, and other tools of the like nature proper for the mischief they intended to effect. *horum arma ministrat*."

It is apparent that Judge Foster here alludes to an assemblage in force, or as Lord Hale terms it, "in a warlike position"—that is in a condition to attempt or proceed upon the treason which has been contemplated. The same author afterwards states at large the cases of Demaree and Purchase from 8th state trials, and they are cases where the insurgents not only assembled in force, in the posture of war, or in a condition to execute the treasonable designs, but they did actually carry it into execution and did resist the guards who were sent to disperse them.

Judge Foster states, sec. 4. all insurrections to effect certain innovations of a public and general concern by an armed force, to be in construction of law, high treason within the clause of levying war.

The case put by Foster of constructive levying of war, all contain as a material ingredient the actual employment of force. After going through this branch of his sub-

ject, he proceeds to state the law in a case of actual levying war, that is where the war is intended directly against the government.

He says, sec. 9. "An assembly armed and arrayed in a warlike manner for a treasonable purpose, is *bellum levatum*, though not *bellum persecutum*. Listing and marching are sufficient overt acts, without coming to a battle or action. So cruising on the king's subjects, under a French commission, France being then at war with us, was held to be adhering to the king's enemies though no other act of hostility be proved."

"An assembly armed and arrayed in a warlike manner for any treasonable purpose," is certainly in a state of force; in a condition to execute the treason for which they assembled. The words "enlisting & marching," which are overt acts of levying war, do in the arrangement of the sentence, also imply a state of force, though that state is not expressed in terms for the succeeding words, which state a particular act as not having happened, prove that event to have been the next circumstance to those which had happened: they are, "without coming to a battle or action." "If men be enlisted & march," (that is, if they march prepared for battle or in a condition for action, for marching is a technical term applied to the movement of a military corps) it is an overt act of levying war though they do not come to a battle or action. This exposition is rendered the stronger by what seems to be put in the same sentence as a parallel case with respect to adhering to an enemy. It is cruising under a commission from an enemy, without committing any other act of hostility. Cruising is the act of sailing in warlike form and in a condition to assail those of whom the cruiser is in quest.

This exposition, which seems to be that intended by Judge Foster, is rendered the more certain by a reference to the case in the state trials from which the extracts are taken. The words used by the chief justice are, "when men form themselves into a body and march rank and file with weapons offensive and defensive, this is levying of war with open force, if the design be public." Mr. Phipps, the counsel for the prisoner, afterwards observed, "Intending to levy war is not treason unless a war be actually levied." To this the chief justice answered, "Is it not actually levying war if they actually provide arms and levy men, and in a warlike manner set out and cruise, and come with a design to destroy our ships?" Mr. Phipps still insisted "it would not be an actual levying war unless they committed some act of hostility." "Yes, indeed," said the chief justice the going on board and being in a posture to attack the king's ships." Mr. Baron Powis added, "But for you to say that because they did not actually fight it is not a levying of war, is it not plain what they did intend? That they came with that intention, that they came in that posture, that they came armed, and had guns and blunderbusses and surrounded the ship twice: they came with an armed force, that is a strong evidence of the design."

The point insisted on by counsel in the case of Vaughan, as in this case, was, that war could not be levied without actual fighting. In this the counsel was very properly overruled; but it is apparent that the judges proceeded entirely on the idea that a warlike posture was indispensable to the fact of levying war.

Judge Foster proceeds to give other instances of levying war. "Attacking the king's forces in opposition to his authority upon a march or in quarters is levying war." "Holding a castle or fort against the king or his forces, if actual force be used in order to keep possession, is levying war. But a bare detainer, as supposed by shutting the gates against the king and his forces, without any other force from within, Lord Hale conceiveth will not amount to treason."

The whole doctrine of Judge Foster on this subject seems to demonstrate a clear opinion that a state of force and violence, a posture of war must exist to constitute technically as well as really the fact of levying war.

Judge Blackstone seems to concur with his predecessors. Speaking of levying war, he says, "This may be done by taking arms not only to dethrone the king, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, whether real or pretended. For the law does not, neither can it permit any private man or set of men to interfere forcibly in matters of such high importance."

He proceeds to give examples of levying war, which show that he contemplated actual force as a necessary ingredient in the composition of this crime.

It would seem then from the English authorities, that the words "levying war," have not received a technical different from their natural meaning, so far as respects the character of the assemblage of men which may constitute the fact. It must be a warlike assemblage, carrying the appearance of force, & in a situation to practise hostility.

Several judges of the United States have given opinions at their circuits on this subject, all of which deserve and will receive the particular attention of this court.

In his charge to the grand jury when John Fries was indicted, in consequence of a forcible opposition the direct tax, Judge Iredell is understood to have said, "I think I am

warranted in saying, that if in the case of the insurgents who may come under your consideration, the intention was to prevent by force the execution of any act of the congress of the United States altogether, any forcible opposition calculated to carry that intention into effect, was a levying of war against the United States, and of course an act of treason." To levy war then, according to this opinion of Judge Iredell, required the actual exertion of force.

[To be continued.]

BY THIS DAY'S MAIL.

EIGHTY-FIFTH BULLETIN.

Tilsit, June 24.

The grand marshal of the palace, Durac, went yesterday to compliment the emperor Alexander.

Marshal count Kalkreuth was presented this day to the emperor. He remained an hour in his majesty's cabinet.

The corps of marshal Lannes was reviewed this morning by the emperor. He made several promotions, and gave rewards to those who had distinguished themselves by their bravery.

To-morrow the two emperors will have a conference.

EIGHTY-SIXTH BULLETIN.

Tilsit, June 25.

Agreeably to arrangements, the two emperors met on the raft in the centre of the Niemen, and saluted each other in the most cordial manner.

The vast number of persons belonging to each army, who flocked to both banks of the river to view this scene, rendered it the more interesting, as the spectators were brave men, who came from the extremities of the world.

CONSTANTINOPLE, June 14.

The new emperor Mustapha follows the political system observed before the revolution which placed him on the throne, and by the advice of the Mufli, he has determined to continue the war against Russia.

The populace have declared entirely in favour of the new government. On the 19th of May, the Turkish fleet gained advantage over the Russian squadron. After an obstinate battle, the captain Pacha landed in the island of Tenedos, and made himself master of it. The army of the grand Vizier consists of 120,000 men, divided into three corps of 40,000 each. The right wing of this army has already entered Bucharest. All Transylvania is full of fugitives, who have fled from the unfortunate country of Wallachia.

The day before yesterday a Tartar (Courier) reached town from Egypt, with the following intelligence:

"The English, in order to avenge the defeat sustained near Rosetta, marched again from five to six thousand men from Alexandria to attack that town, but were surrounded on their march and either put to the sword or taken. The English garrison of Alexandria reduced to 1000 men, demanded thereupon to withdraw on board Admiral Louis's fleet, which was granted." Contrary to custom the porte has for the first time announced that victory to the public by an official bulletin.

ANTWERP, July 7.

A few days back, 2 sail of the line, Duguesclin and Caesar, were launched. The Antwerp is to proceed to Flushing, where the Charlemagne and Commerce de Lyon are already arrived. Another ship of the line, La Ville de Dantzic, will be launched on the 15th August, the birth-day of the emperor Napoleon.

[Hamburg Correspondent, July 22.]

PARIS, July 9.

A journal announces, that at the dinner given at Tilsit, at which the two emperors were present, the following toast was given—"The freedom of the Seas."

CONTINENTAL PEACE.

HAMBURG, July 15.

A courier from Berlin has just arrived, with the following important intelligence, so consolatory to humanity:—

"Imperial Headquarters, at Tilsit, July 9.

"NOTICE TO THE ARMY,

"Yesterday, the 8th of July, peace was signed between the emperors of France and Russia, by the prince of Benevento, the French minister for foreign affairs, on the one side; and by the princes Kurakin and Labanoff Von Rostrow, on the other. These plenipotentiaries were furnished with full powers by their respective sovereigns. The ratifications were exchanged this day, the 9th of July, as both sovereigns are still at Tilsit.

(Signed) "The marshal prince of Neuchâtel, BERTHIER."

LUNENBERG, July 16.

5000 men of the German Legion have arrived in the isle of Rugen from England.

LONDON, July 18—30.

Of the conditions of peace, no account has yet been received. It is rumored, but we trust without foundation, that in order to obtain better terms for his Prussian majesty, the emperor Alexander consented to some stipulations unfavorable to this country.—Rumor adds, that the peace is to be followed by several marriages: Jerome Bonaparte with the princess Louisa of Austria; the archduke Charles with the princess of Saxony.

There is a piece of intelligence brought by the mail which surprised us. The Copenhagen Gazette, in communicating the

information of the christening of the Swedish princess, states that the sponsors were the king of Prussia and Louis the 18th, king of France. What will Bonaparte say to this? We cannot discover the slightest symptom of a hostile disposition towards this country on the part of Denmark.

We have received Paris papers to the 19th. They state that the legislative body is to be assembled on the 16th of next month. Durac is arrived at Paris, with several other persons belonging to Bonaparte's household. He is expected himself about the beginning of August. It is still said that the emperor of Russia and the grand duke Constantine, are expected at Paris.

By the treaty of peace and amity with Prussia, his Prussian majesty relinquished all right and title to Hanover, and both parties engaged to invite the emperor of Russia to guarantee the renunciation of his Prussian majesty's pretensions to Hanover. [The treaty was signed in Jan. 1807.]

It was reported last night that Stralsund had surrendered to the French.—The rumor is not deserving of credit.

Letters from Malta of the first of June, mention, that the Spartan frigate had arrived there a few days before from a cruise, and had been chased by two different French squadrons out of Tonon. Her crew had been roughly handled in an unsuccessful attempt to cut out a large vessel in the port of Nice. Out of seventy men employed, there were fifty eight either killed or wounded; both the first and second lieutenants lost their lives.

LIVERPOOL, August 1.

The moderate and reasonable language of Mr. Perceval in the house of commons, on this interesting subject [attack on the Chesapeake] has given general satisfaction to the whole country. It acknowledges the mutual obligation of both nations to respect the rights of independent sovereignty in each, and lays no stress on the rights derived merely from superior power. The Americans have never consented that we should exercise at the pleasure of our naval commanders, the privilege of searching for deserters or English seamen even on board private ships. Can it then be expected that the commanders of vessels which bear the flag of the United States, will submit to have their crews mustered and examined by any British cruiser they may fall in with? The principle may be fair or otherwise; but it cannot be denied that if the right of search is to be admitted and applied to deserters, it should be common to both nations.

In the case of the Leopard, the circumstances are very strong, and it is probable that captain Humphreys may make out a case which will completely justify his conduct. But it is to be observed, that the Americans state a very different case, and materially alter the circumstances of the whole transaction. It therefore becomes in a great degree, a question of fact, and we must have more certain information, and more exact details, before a decisive opinion can be formed.

NEW-YORK, Sept. 9.

Arrived, the ship Manchester Packet, Coffin, 46 days from Liverpool, dry goods and coal. Left ship Ann Williams, Macey, of New-York, and ship Manchester, of Philadelphia, to sail first wind.

The brig Thomas, Attwater, 16 days from St. Croix, rum and sugar. Left, schr. Camellion, Young, of Baltimore; brig Louisa, Lovell Boston; brig Zoan, Celly, Portland; schooners Jane Barnes, Wilson, of New-York, arrived 14th August; St. Peter, Picket, Beverly; Washington, Eldridge, of New-York, from Norfolk, arrived the 14th; brig Ariadne, Cullen, arrived the 17th from Philadelphia.

The schr. Sally, Meekins, from N. Carolina, naval stores.

The sloop Chancellor, Storer, 8 days from Richmond, flour and tobacco. The schooner Hunter, Snowden, sailed 2 days before for New-York; the sloop Astrea, Herbert, sailed in 40. Left schr. Prudence-Mary, Shaw, for do. in 4 days. Met in the river, near Old Point Comfort, on Friday, the schr. Richmond, Seaman, from New-York.

Below last night, a brig and 2 schooners. Wind N. E.

Cleared, ship Indian Hunter, Newman, Liverpool; brig Atlantic, Hicks, Cayenne; schr. Venus, Oliver, Wilmington; Friends, Thompson, Tenerife and Langarrete.

The British ships of war Jason and Columbine, are still below. A boat from the Columbine, manned with an officer and five men, yesterday boarded the pilot boat Brothers, to send dispatches to New-York; and while the officer was in the cabin, the sailors pushed off in the boat, and landed at the Hook.

PHILADELPHIA, September 10.

Arrived, brig Welcome Return, Havana, sugars; sloop Rhoda & Sally, Pedrick, Richmond, 9 days, coal.

Cleared, schr. Union, Sawyer, Portland; Mark, Tabbutt, Passamaquoddy; brig Betsey, Richmond, from St. Croix.

LAZARETTO, Sept. 8.

"Yesterday afternoon arrived the brig Hetty, Bellows, 20 days from Point-Petre, (Gaud.) with coffee and sugar; also, brig Betsey, Rickham, from St. Croix. Sailed from thence on the nineteenth ult. Parted one of her cables in a hurricane, left part of her cargo on shore, and was obliged to pre-

ceed with only two casks of water and no provisions on board.

"Also, brig Alexander, Garwood, 30 days from Maracaibo, with coffee. Left the brig Venus, of Baltimore, taken by a Spanish privateer on her passage to Curacao.

For Sale,

123 hhds } Of very superior quality
14 tierces } white Clayed SUGAR,
16 hhds }
50 hhds } Of brown do.
3 tierces } do. do.
A few hhds. and barrels of first quality Muscovado do.
60 half boxes Spanish Segars.
14 bbls. prime Green Coffee. Apply to
EATON R. PARTRIDGE,
No. 1, Commerce-street,
Sept 10. d4t

Marr and Gibson,

No. 7, Calvert street,
Have imported in the Canawa, and Othello, from Liverpool, and Grand Seigneur, from Hull, a principal part of their
WOOLENS.

Also, in the Fame, a handsome assortment of Cutlery.

By the next arrivals, they expect their assortment of Dry Goods, Hardware and Saddlery, will be made complete.

Wanted,

A commodious two or three story Brick HOUSE, situate between Jones' Falls, and Howard-street. For particulars, inquire at this office. Sept 10. d

For Sale,

A new covered CHAIR, with Harness, &c. Inquire at Crowl's Livery Stable, Sept 10. d4t

A Handsome Saddle Horse, For sale at David Baily's Stable, well calculated for the Troop, will be sold cheap, as the owner has no use for him, Sept 10. d4t

For Sale,

A healthy Negro GIRL, about 14 years of age, just from the country, to be sold for a term of years. Apply at this office. Sept 8. d4t

To Rent,

THE LOWER STORY, of No. 6, South-street. Possession may be had on the first of October next. Inquire on the premises. August 31. 2aw

House and Store.

On Baltimore-street, to let. Inquire at this office. Sept 9. e4t

George Hoffman

Has imported in the Othello and Cannawa, from Liverpool, 102 P. CRAGES

Seasonable Goods;

Many of which are expressly adapted to the export trade. Sept 2. d3t e3t

Patton and Jones,

No. 93, Market street, Baltimore, and No. 44, Market-street, Philadelphia, Have received by the late arrivals from London and Liverpool, a complete assortment of Eight Day and Table

CLOCKS,

Horizontal, Patent Lever, Chronometers, and common Gold and Silver

WATCHES,

And Clock and Watch-maker's Tools and Materials.

Which they offer very low for cash, or acceptances in town. 9th mo. 8. e4t

To Let,

That new and commodious two story brick DWELLING, situate in North Charles-st. a few doors above Church-street, and adjoining the residence of Mr. George Crodale. In point of neatness and convenience, this House is calculated to please, and will be found to be surpassed by few. Terms will be made known by application to

CHARLES L. BOEHME,

September 10. d4t
Miss Martha Ann Honeywell Returns her sincere thanks to the Ladies and Gentlemen of Baltimore, for their polite attention to her, and informs them that, to complete her stay in this city, she intends on the 17th of the present month to move from No. 3 North Charles-street to Fall's Point, sept 10. d4t

City Commissioners' Office, Baltimore, 10th Sept 1807.

NOTICE IS HEREBY GIVEN To the proprietors of Lots situate on Queen-street, betw. en Granby-street and Jones' Falls, that they have the foot-ways paved front of their respective Lots, on or before the 25th instant, otherwise the city commissioners will have the same paved and charged to their account, with the addition of one-eighth of a dollar per foot in length, as a fine for neglect, agreeably to an ordinance passed the 26th of June, 1797.

By order of the board, SAMUEL VINCENT, Clk. d4t

For Sale

That very valuable Property on which the hay-scales now stand. The lot fronts Holliday-street seventy-five feet, and runs one hundred and fifty three feet to North street: divisions will be made to suit purchasers. The central situation, contiguity to the best water in the city, and having the advantage of two streets, one 80 and the other 40 feet wide, renders this property most eligible for building. For terms apply to DANIEL C. HOLLIDAY. e4t

Sept. 9. Coffee-House Hotel,

No. 38, SOUTH-STREET, Adjoining the Merchants' Coffee-House. THE Subscriber respectfully informs his friends and the public that he has opened AN HOTEL, at the above stand, where he is determined no exertions shall be wanting to merit public patronage; he is well prepared for the reception of travellers both by land and water, who will find this central situation convenient both for business and information. N. B. Boarders taken by the Week, Month or Year. A Public Ordinary served up every day at 2 o'clock. Sept 9. e4t