

BURR'S TRIAL.  
On the indictment for a misdemeanor.  
[Continued from the Supplement which accompanies this evening's Gazette.]

The clerk then rose to read the indictment, to which Mr. Botts objected. He said that it was the province of the attorney himself to read his own indictment. Mr. Hay replied, that such was not the usual practice; and after a short conversation it was read by the clerk.

The clerk was then proceeding to charge the jury.

Mr. Botts contended that this was the province of the attorney for the prosecution. The Chief Justice observed, that there was no charge necessary. Mr. Hay. All that the clerk had to say, was that to this indictment the accused had entered *not guilty*, and that the jury were to try the validity of that plea. In saying this, however, I have delivered the charge.

Mr. Hay then stated to the court, that his express had arrived from Monticello, and had brought back the return of the president of the United States, which he was now prepared to read. Chief Justice did not know whether there was any necessity for it, if there was any difficulty on the part of the bar. Mr. Hay. None at all, I assure you. Mr. Botts. We wish, sir, to hear the return.

Mr. Hay then read the following certificate from the president, annexed to his extracted copy of Gen. Wilkinson's letter:

"On re-examination of a letter, Nov. 12th, 1806, from Gen. Wilkin to myself (which having been for a considerable time out of my possession, is now returned to me) I find in some passages entirely confidential, given for my information in the discharge of my executive functions, and which my duties and the public interest forbid me to make public. I have, therefore, given above a correct copy of all those parts which I ought to permit to be made public. Those not communicated are in no wise material for the purposes of justice on the charges of treason or misdemeanor, depending against Aaron Burr: they are on subjects irrelevant to any issues which can arise out of those charges, and could contribute nothing towards his acquittal or conviction. The papers mentioned in the 1st and 3d paragraphs, as inclosed in the letter, being separated therefrom, and not in my possession, I am unable from memory to say what they were. I presume they are in the hands of the attorney for the United States. Given under my hand this 7th day of Sept. 1807.

"TH. JEFFERSON."

Mr. Hay observed that in his own and in the president's extracted copy from general Wilkinson's letter, there was not a variation of more than 10 or 15 words—the omitted passages were indeed manifestly improper to be submitted to the court.

Mr. Hay then rose to open the charge of the misdemeanor:

"May it please your honor, and you gentlemen of the jury,

The defendant before you is charged with a violation of the law of congress of the U. States, passed in the year '94. As it originally stood the existence of this law was limited to a short period; but experience having proved its salutary tendency, it is now made permanent. The defendant stands charged with violating the 5th section of this act; and no other. This section is in the following terms:

"If any person shall within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every person, so offending, shall upon conviction, be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years."

You will observe, gentlemen of the jury, that an offence against this law may be committed by beginning or setting on foot within the territories of the United States, any military expedition or enterprise against the territory of any foreign prince or state with whom the United States are at peace. The law declares, that if a man begins or sets on foot, or provides or prepares means for any such offence, he shall be liable to punishment.

The indictment filed in this case contains 7 counts; between which there is some slight difference. These it is incumbent on me to state.

The 1st count in the indictment charges the defendant with beginning a military expedition at Blannerhassett's island, to be carried on from thence against the dominions of the king of Spain with whom the United States are in a state of peace.

The 2nd charges him with setting on foot a military expedition against the territory of the king of Spain.

The 3rd is the same as the last, except that the province of Mexico, is stated as the territory of the king of Spain, against which the expedition intended.

The 4th count charges the defendant with proving the means of a military expedition against the dominions of the king of Spain.

The 5th is the same as the 4th, except that Mexico is particularly mentioned as the province against which the expedition is intended.

The 6th is the same as the 4th, except that the foreign territory is said to be unknown.

The 7th charges him with setting on foot a military design against the dominions of a foreign state to the jurors unknown.

If the evidence produced proves him guilty on any count in this indictment, you must find him guilty. This is all that you are bound to say. The fine and imprisonment belong to the court. I shall trouble you with no remarks upon the enormity of this offence nor upon the consequences which were likely to have resulted from this expedition had it been carried into effect. The court will consider these circumstances in estimating the fine and imprisonment. It is only your province to determine whether he is guilty or not of the facts charged in the indictment.

It is not necessary for me to enter fully into the evidence which will be exhibited before you. The case is shortly this; It is believed and it will probably be proved to you, that the accused with several others, had formed a scheme to dismember the Western from the Atlantic states, & for this purpose preparations were actually made. But the design did not terminate with the separation. Their object was to make war upon the territories of the king of Spain. To effect this scheme N. Orleans was to be seized and Mexico was to be invaded both by land and sea. During that period and ever since that time, Spain and the United States have been in a state of peace. To accomplish this object, men, arms and provisions were prepared. About 35 or 40 men assembled at Blannerhassett's island under the direction of the accused. It will be proved to you, that they left that place and descended the Ohio, on his apprising them of the danger of interruption from the civil, perhaps the military authority. It will be proved to you, that after they had arrived at the mouth of Cumberland river, they were joined by the accused, he took the command of all the forces there assembled; that they descended the Mississippi to a considerable distance below Natchez, that at Bayou Pierre he received the first information that the first part of his project could not be accomplished; that he fell into the hands of the civil authority, from which he is said to have escaped and that he was arrested and brought here.

I have only one additional remark for your consideration. The act of congress is not intended to operate upon those who have accomplished their plans. Success is not necessary. It operates on those, who prepare and set on foot a military expedition. It is not necessary they advance far in the enterprise. If means are already accomplished and their destination is certain, it is sufficient. You, gentlemen of the jury, are to inquire, whether the accused did prepare these means with the view of making such an attack. If you conceive that such was his intention, you must pronounce him guilty.

Mr. Hay then called over the names of the witnesses on the part of the United States.

Mr. John Graham was summoned to the book and was about to be sworn, when Mr. Burr requested the attorney for the prosecution to state the substance of Mr. Graham's testimony; and whether it relates to the acts done on Blannerhassett's island.

Mr. Hay observed that he could give a very rough outline of Mr. Graham's evidence, as he had not frequently conversed with the witnesses on the subject: He believed, however, that Mr. G. would prove that the military expedition down the river was under the direction of the accused; that he had set on foot and provided means for the expedition; whose object was to invade the Spanish territories, after the preliminary object of taking possession of New Orleans had been accomplished.

Mr. Burr. It would save time if gentlemen would state the contents of Mr. G's testimony, with more precision. It is within their knowledge that Mr. Graham has never seen me but once; and then only for a few moments at the town of Washington—and that he was not at the island at the time when the military expedition is said to have been there nor any other which is expected to be proved. We shall ask the court to confine the counsel for the prosecution to proving the facts first.

Mr. Graham was sworn; when Mr. Hay observed, that he hoped he was at liberty to bring up the evidence according to his own discretion; but that not having the advantage enjoyed by others of understanding the evidence, it was impossible for him to state the substance of each witness testimony. He believed, that Mr. Graham would prove the setting on foot of a military expedition.—Mr. Burr. In the district of Virginia?—Mr. Hay. Yes:—begin in the district of Virginia.

Mr. Burr conceived that the opposite counsel should either restrict themselves to the bringing out the evidence in the order which they proposed on former occasions, or that they should be called upon to prove first the fact laid in the indictment.

Mr. Wirt. Part of the said fact laid in the indictment is the destination of this very enterprise.

Mr. Botts. When we wished them on a former occasion to begin with the proof of the overt act, they urged that their course was the lucid order of nature. Will the gentlemen then depart from it in the present instance? It is either right to pursue this course, which they themselves recommended, or to prove first the act laid in the indictment. Rather than disturb them in the course which we had supposed they had selected, we had made up our minds to submit to all its inconveniences. The gentlemen had surely better begin at the island it-

self; and after they have proved the existence of their military expedition, they may then search all the world over for stuff and nonsense enough to fill up the vacuum which they have imagined.

Mr. Hay then observed that he would not waste the time of the court in useless disputation; that he would take the gentlemen at their word; and begin at the island, and then he would look out for other nonsense, as the gentleman called it, to fill up the chasm of his story.

Mr. Hay then called up Peter Taylor (Blannerhassett's gardener) whose testimony we have already published in a more expanded form on the trial for treason. He stated that there were about 30 of the party who landed on the island; that Comfort Tyler, as he had understood, had had the direction of them before they came there; that Blannerhassett and Love were the only persons whom he recollected they had taken with them from the island; that he had seen a few arms, and also powder, bullets and provisions. He recited his interview with Dr. Bennett (who Mr. Hay stated had departed from Richmond in spite of all his admonitions;) he repeated in the most consistent manner Blannerhassett's communications to him; how they were going to take Mexico and make Burr its king; and his daughter to be his successor; as also his conversation with Aaron Burr at Lexington. He stated that he saw no appearance of any preparations to settle land; that Blannerhassett, it was true, had originally held out the gift of a certain number of acres to every lively and orderly young man who would accompany him without their families or women; but that he had afterwards, avowed the capture of Mexico as the object of these preparations.

After Peter Taylor had delivered his testimony, Morris B. Belknap was called in and sworn. The reader will recollect that Mr. Belknap was one of those witnesses who were examined on the trial for treason; but that his testimony on that occasion was confined to the overt act on the island, where he had not arrived before 8 or 9 o'clock in the night, on which the expedition had descended the river. His testimony was therefore necessarily short, and perfectly distinct from the evidence which he gave on the present occasion.

Mr. Burr, observed, that the gentlemen were about to depart from their usual method of introducing the evidence. They were now going from the island.

Somewhat desultory conversation ensued, when Mr. Hay observed that he wished to prove by Mr. Belknap that he had conveyed a letter from A. B. to the party on the island, which had produced their precipitate departure.—If he was not mistaken this was at least one great point in Mr. Belknap's testimony, and it would necessarily prove how much the party on the island were under the direction and agency of the accused.

Mr. Burr observed, that if they were to shew his acts done without the district of Virginia, he should object to it; that he was willing that the whole of the testimony exhibited on the former case should be gone through; and to save the time of the court, that the whole of it might be read from the judge's notes; but now it seemed, they were proceeding to an enumeration of the acts which were done out of the district. He should also protest against the right, which gentlemen were about to assume, of bringing the acts and sayings of other people at any time and place, as evidence against himself.

Mr. Hay wished to prove by Mr. Belknap an act that was done, it is true, without the district of Virginia; but which was consummated in that district. He wished to prove that Mr. Burr had apprised the party in the island of his own apprehensions, that he had conveyed his dispatches by Mr. Belknap, and that they had produced the precipitate departure of his men.

Mr. Burr. I will permit the gentlemen to go on with Mr. Belknap's testimony, although it is not right to produce it, because I am satisfied that Mr. B. is incapable of proving any such circumstance as they relate.

[To be continued.]

From the London Morning Chronicle, of July 28.

The circumstances respecting the Engagement between the Leopard and the American frigate Constellation, [Chesapeake] are stated to be as follows:—It appears that some British deserters had taken refuge on board the American frigate. The Leopard falling in with her demanded that they should be given up, and insisted upon searching for them. This was peremptorily refused by the American captain; after which the Leopard fired a shot, which was answered by a broadside, and an action immediately commenced, which, however, did not continue long, for the Constellation, [Chesapeake] upon having a few men killed and wounded, struck her colours. The deserters were then taken out of her, and she was permitted to depart, and we understand, she returned immediately to the Chesapeake: The Constellation, [Chesapeake] is a large 44 gun frigate, very little inferior in size to the Leopard.

Such is the account given of this affair in the Ministerial paper the Sun, of last night. Other reports mention, that it was not the Constellation, but the Chesapeake, and that she was carried to Halifax; but we take it for granted, that the above is the correct account.

Out of this statement, as it stands, various considerations arise; though, to enable us to judge of the true state of the case, much more information is necessary. If the American captain received on board his

vessel deserters from British ships of war, knowing them to be such, perhaps he was culpable, notwithstanding the practice of one nation receiving the subjects of another into its service, without any questions asked. On the men being demanded, he ought, for the sake of peace and good understanding, perhaps, to have given them up, tho' we do not know, that by any law of nations, far less by any existing treaty, he was bound to deliver them on the demand of any British ship. If he was called upon, however, to deliver them up on a menace of search, and if that accompanied the demand, he did no more than his duty in refusing to allow his ship to be searched; because, had he yielded to the menace, he surrendered on important right belonging to his country.

It is to be observed, that this is a case different from any that has yet occurred, respecting the right of taking British sailors out of American ships. The Americans dispute our right of taking them out of private ships, and alledge great outrages in doing so. Here the case stands upon totally different grounds. The Constellation [Chesapeake] was a ship bearing a flag and commission of the United States. The question then is, whether this country, or any ship bearing the king's authority and commission, had a right to insist on visiting by force the ship of a neutral and friendly power, for the purpose of searching for deserters? It is not whether there actually were or were not deserters on board the American frigate, or whether the American captain knew of it? The fact at present is of no manner of consequence. The question is, whether we had the right to pursue the redress of an alleged grievance in the way resorted to by the commander of the Leopard. A man may have a very good action at law, when he must not take the law into his own hands.

We hardly imagine that any Civilian will contend, that a British ship could have this right of search by force, because such a right is wholly inconsistent with the sovereignty of the United States of America. To all intents and purposes the sovereignty of the United States in all its branches, and surely therefore, in whatever relates to military jurisdiction and authority over its public, force is as complete as that of this or any other nation, over its army or navy. But what can be a more direct invasion of this right of sovereignty, what a more flagrant attack on the honor of an independent nation, than to insist as a matter of right, on going on board a ship of war, and searching for deserters? We do not know any case that would support such a demand, for there can be no necessity for it; but the pretence in this case is very trifling, and far below what could justify one nation in demanding that another should submit to such a badge of ignominy. Let any military man, or any seaman, reflect for a moment what the thing demanded is. It is that the public ships add vessels of one power shall, when and where they please, send on board the public ships and vessels of another friendly power, and by force pass in review the whole crew, search the whole ship, and do every thing the most inconsistent with the discipline of the ship visited, and the dignity of the nation submitting to this supposed right.

Let us put this home to ourselves. Suppose the Chesapeake had been lying at Portsmouth. Suppose captain Truxton or any hot-headed American had got information that some runaway American sailors were on board a British sloop of war. Admitting that they were runaways, would any English officer commanding such sloop of war, have acceded to the impudent and insulting demand of Truxton, to send or come on board his vessel, make his crew muster, each tell where he was born, search every cranny, and do that which, in the very nature of things, cannot be done without outrage and insult? Yet if there be right in this pretension, it is a right common to both nations; and captain Truxton would have been full as much entitled to exercise it at Spithead or in the Downs, as the commander of the Leopard in Hampton Roads. The claim is so inconsistent with the clearest rights of independent sovereignty, that it can have no foundation in the law of nations; and it would necessarily lead in practice to such disorders among the high-spirited officers of two different navies, as must satisfy every reasonable man that, being utterly repugnant to common sense, it cannot form part of the international code of civilized societies.

This is not a case in the smallest degree affected by that of the Swedish convoy. The principle is wholly different. In the case of the Swedish convoy there was no claim made to visit and search the ship of war.—Our claim was to search the merchant ships under convoy; and the Swedes said "No, the presence of our ship of war is a sufficient security that this convoy carries no contraband." We again denied this, and insisted upon visiting the ships under convoy, provided we had a reasonable ground of doubt or suspicion.

The demand to visit and search a ship bearing the flag and commission of an independent neutral power, on pretence of catching deserters, is of a quite different nature. Surely if any place ought to be privileged from a forcible entry on such ignoble pursuit, it is the royal or the national navy of an independent state. Surely if any countries are mutually due, it must be to prohibit such indelicate and disorderly intrusions. We do not plead the cause of the American navy here; we plead that of the

British navy. We say that British ships of war are not, and cannot be subject to such visits from the Americans, or any other nation; and therefore the Americans are not bound to submit to them from the British. The law is equal to both, and the existence of a law at once so humiliating and so dangerous, cannot be supposed. We deny, then, that such a law exists. We defy ministers to produce a single paragraph from any respectable writer on public law, or any admitted case, by which the proceedings of the commander of the Leopard can be authorized or defended. His conduct, come what may of the dispute, ought to be disavowed.

We are glad to find that sir John Nichol, the king's advocate, was present at the council upon this affair. The learning and sound sense of sir John Nichol, we trust, would correct the intemperance of ministers, and satisfy them that the pretension insisted upon in this case is wholly unprecedented, and is utterly inconsistent with the common rights and dignity of independent states.

What may be the facts of this case, we do not pretend to be yet informed. It is said, however, that the deserters in question were really Americans and not British sailors; that, as we have said, does not alter the question of right. If they were British sailors, redress surely might have been obtained by application to the American government; and there was no such pressing emergency or urgent danger, from the escape of these deserters as to justify the adoption of a violent remedy, or the appeal to that sort of law which nothing but necessity can sanction.

Complaints of taking each others men are common to us and the Americans, and probably in both cases to some extent well founded. But this is to be considered, that in the one our men follow their own inclination, in the other they are pressed. We do not believe, however, that there are 1000 British seamen altogether in the American service.

BY THIS DAY'S MAILS.

NEW-YORK, September 17.

Arrived, ship Factor, Whiteley, of Beverly, 37 days from St. Petersburg, and 47 from Elsinour, hemp, iron and manufactured goods. The brig Rose, Gardner, sailed for Philadelphia July 30. Sailed in company, ships Pactolus, Beckford, for Salem; Hesper, Cushing, for Newburyport; Perseverance, Glazier, for Boston. Sailed in co. from Elsinour, ship Pactolus. The brig Catharine, Harden, of Salem, just arrived. July 31, spoke brig Lion, Allen, from St. Petersburg for Boston; and brig Industry, Cook, from do. for New-York. Left, at St. Petersburg, ships Messenger, Buffington, of Salem, for Baltimore, in 10 days; America, Stickney; Mary, Holland; and Hannah, Roberts, all for Newburyport, in 2 days; Grace, Linze, for Boston, in 2; Brutus, Blunt, of Portsmouth, for New-York, in 4; Nancy, Shapley, do, next day; Farmer, Lunt, of Portsmouth, for Charleston; Byfield, Foster, for Boston, in 10; Laura, Cleveland, for do. in 5; Orion, M-Millan, for New-York, in 10; Indian Chief, Lilly, do, uncertain; Factor, Reynolds, for Boston, in 10; Magnet, Bowles, of Portsmouth, in 5; Cornelia, Philadelphia, 6; Mary, Kitchen, do, 10; brig Respect, Andrews, Newburyport, 5; schr. Joanna, Prince, Salem, 10. Lat. 37. 30, long. 18, 15, spoke ship Edward Preble, of Freeport, 28 days from Virginia, for Leith.

The ship Ceres, Green, 65 days from Bordeaux, wine, brandy and dry goods. The ship Charlotte, Sinclair, 64 days from Amsterdam, in ballast. Passengers 7. Sept. 1, lat. 40, long. 51, spoke brig Amity, 20 days from Bordeaux for Philadelphia. 4th, lat. 39, 34, long. 59, spoke ship Bordeaux, 5 days from New-York for Marseille. 11th, lat. 39, 54, long. 64, 10, spoke ship Cheeseman, 8 days from New-York.

The ship George, Sampson, of Boston, 55 days from London, dry goods, porter, &c. Spoke, July 30, lat. 49, 45, long. 7, 50, a yellow sided ship without a head, 45 days from Baltimore. August 21, lat. 44, long. 40, 16, ship Manchester, 28 days from Liverpool for Philadelphia; next day, ship Fair American, Davis, 19 days from London for Baltimore. Sept. 3, lat. 41, 40, long. 57, brig Rover of Kennebunk, from New-York for Greenock. 6th lat. 42, 10, long. 59, 46, brig Maria, 6 days from Philadelphia for Amsterdam. 10th, ship Golden Rule, 36 hours from Wiscasset for Liverpool. Spoke others that have been reported. Sailed in co. July 23, Cora, Mooney, for Baltimore; Planter, Moore; and Thomas, Bausch, for Norfolk.

The ship Perseverance, Connell, 48 days from Amsterdam, gin, dry goods. The ship Ophelia, Waterman; Charles, Longman; Logan, all sailed about the 21st July for New-York; ship Eliza, Sprout, 2 days before for do.—Left, ship Aurora, just arrived from New-York, and others. July 29, lat. 52, 38, spoke schr. Betsy, 24 hours from Amsterdam for Boston. Aug. 6, in the Channel, was boarded by a British brig of war, and treated politely—next day spoke ship Jane of Portland, 6 days from Rotterdam for America. 25th, lat. 45, 23, spoke ship Champion, 21 days from Liverpool for Philadelphia; same day, spoke a British ship 63 days from Liverpool for ditto.