

BURR'S TRIAL.
On the indictment for a Misdemeanor.

Thursday, September 10.
Mr. Botts continued his observations, and laid down a new proposition.

This 6th point was, that no evidence of conversations said to have taken place between any other persons can be given in evidence against col. Burr, unless he were present at the time the conversations passed.

Mr. Martin observed, that he should merely offer a few additional authorities on the question before the court. He commented on the terms "setting on foot," used in the act of congress. He contended that it was not to be found in the English laws or English dictionaries; and that it was an American word, and in American use; that the law itself had passed the senate of the United States by no more than the casting vote of the vice-president; and that when it passed the other house it had received several modifications; and that its ambiguity was such as to prevent its being carried into effect. He contended that the law was not intended to punish an accessory who advises another to begin and set on foot a military expedition; that upon the principles of the common law accessories were confined to treason, felonies and trespasses; and that this was not a case where there could be any accessory guilt under the common law; that col. Burr was not to be considered as a principal, because it was not pretended that he was on the island; and that he could not be considered as accessorially present, according to the principles of the common law. Mr. Martin entered into a short elucidation of the points stated by Mr. Botts.

Mr. Hay commenced his argument with some observations upon the light and ludicrous manner in which Mr. Botts had treated this subject. Why this solicitude of the accused to repress the evidence? Is it because its introduction would overwhelm him beyond the possibility of redemption? Why treat the subject with this extraordinary levity? Is it to impress the public mind, that it is not worthy of a serious consideration? With what is A. Burr charged? One of his counsel had asserted that the accomplishment of his scheme would have been honorable to him and to his country.—And what were those schemes? They were contrary to every principle of an honest man and virtuous citizen. They consisted in violating the laws of his country in a point the most materially interesting to her foreign relations. They were such as a man of ambition disposed to delude ignorant people might be disposed to conceive. They have alarmed and exasperated the whole country. And so difficult has it been to obtain a complete jury for the trial that 19 out of 20 men have been excluded; and yet in a case thus interesting to the public mind, have the opposite council had the hardihood to stand up here and declare that it was so farcical he could not treat it with serious consideration. If these gentlemen had but one moment reflected upon the consequences which must have resulted from the military expedition, they would have shrunk from this course. Perhaps the ambition of this party would have been gratified, and their hope of plunder would have been satisfied: perhaps the mines of Mexico would have been theirs, but little would it have been to them, that France and Spain should have exhausted their revenge in devastating the Eastern coasts of our country. Had the gentlemen considered it in this light, they would have viewed it as every other man would, as a scheme formed by an ambitious man to effect his own aggrandisement, and they could not have treated the subject with such unwarrantable levity.

The object of this motion is to exclude the evidence.
The ground taken by Mr. Botts is, that no person can be found guilty under the act of congress, who was not present, and concurring in the offence charged. But this point was already decided even in the treason case; it was there determined, that a man may be guilty of levying war, without being present at the scene where the war is levied, if he be properly indicted.
The true ground of objection to the evidence meant to be taken by Mr. Botts, is this, that Aaron Burr not having been present at the time of the offence charged, the evidence offered must be irrelevant. This indeed is the only ground on which the evidence can be excluded; for mere variance will not justify its exclusion. If A be indicted for killing B with a hammer, would the evidence be considered as irrelevant which goes to prove that the instrument of death was a broad axe? Must not the whole of the evidence necessarily go before the jury; and is it not for them to decide under the instructions of the court? It is only in a case where the evidence does not bear upon the subject at all, that the court may exclude it.

Assuming this then as the basis of his remarks, Mr. Hay stated that the inquiry would be whether the evidence now offered would be relevant to the indictment. The defendant is charged with beginning, setting on foot, providing and preparing the means for a military expedition on Blannerhassett's island against Mexico. These are the charges to which his plea relates and which we are bound to establish. The evidence offered goes to prove, that men were assembled and means were provided for an expedition against Mexico on the island; and that Burr was the projector of the plan and provider of the means. Is not this testimony relevant? and if it is how can the court exclude it?

In the treason case, the indictment charged the prisoner with being present at the acts done on the island.
There is a manifest difference between this and the indictment in the treason case. In the latter, the indictment charged the prisoner with being present. But in this indictment, there is nothing which either expressly or by implication proves him to be present. Burr might begin or set on foot, provide or prepare the means of a military expedition at Blannerhassett's island, without being present. Thus a merchant in Philadelphia might prepare the means of an expedition in New-York; he might enlist men by bounty and even equip a vessel for carrying them to the West-Indies; without once stirring from his counting house.

Presence, therefore, not being expressly stated, nor even alleged by inference, there is not even a variance between the case and the evidence. If there was, it would be no good ground for exclusion. If it be said that the indictment is defective in not stating expressly whether he was present or absent, it might be a good reason for a motion in arrest, but not for the exclusion of evidence. This objection as to the variance is entirely new. In the cases of indicting a man for keeping a gaming-house; of retailing spirituous liquors without a license; or for providing meat or drink for voters, it is not necessary to prove the presence of the accused; and such a defect is no ground of objection. But even if the defendant was charged expressly to have been present, in this case, still he might be convicted, though the evidence proved him to be absent; because in this case no proof of an overt act is required.

As to Mr. Botts's second proposition, that no evidence of facts done out of the district was admissible, this had even been settled in the treason case; for if after giving evidence of an overt act of treason on Blannerhassett's island, you can give explanatory and confirmatory evidence from another district, a fortiori can it be done in the present occasion.
As to Mr. Botts's 3d proposition, that no evidence of accessorial agency can be given, until the guilt of the principal be proved by a record; it may be answered, that the accused himself is charged as the offender; that the persons supposed to be the principals are merely means, the providing of which constitutes the guilt; that in treason every member of an assembly performing an overt act is a traitor; but that in this case, the persons called principals, are not supposed to have any legal guilt under this act, because they have not begun and set on foot, or provided the means of a military expedition; and that those only who have had agency in the scheme, have begun and set it on foot.

The Chief Justice here interrupted Mr. Hay, and said that he seemed to have misunderstood the argument of the opposite counsel. The principals to whom they alluded were not the men who were enlisted, but the agents who had enlisted those men, and purchased arms and provisions. Mr. Hay replied, that he should regret to see such a doctrine ever established in this country; a doctrine which was calculated to save able, intriguing and artful men, from the penalties of their ambition, and to expose their poor and humble agents to destruction. The persons who enlisted men and purchased arms, might be completely ignorant of the uses to which they were to be applied, and yet by this doctrine, they were to be treated as the principals.

Mr. Hay continued, and observed, that this 3d objection of Mr. Botts's had not been taken by the able and zealous counsel in the cases of Ogden and Smith, and that at all events this was a question of law and of fact proper for the consideration of the jury.
Mr. Hay contended that the 4th proposition, that the acts on the island do not come within the law, there being no military expedition, was a question of fact and law, and was therefore proper for the consideration of the jury; that whether under this act a man can be said to provide the means of a military expedition, unless he provides adequate means, as Mr. Botts had asserted, was not therefore essential to be discussed. Mr. Hay contended, however, that there were insuperable objections to this construction; that it was impossible to ascertain what were adequate means; that this point would depend upon the object to be attained, whether conquest, revenge and plunder; that this construction was also inconsistent with the law itself, for it would be absurd to require full means for punishment, and yet punish for beginning or setting on foot an expedition. Mr. Hay contended that the word "military" was only intended to mark the character of the enterprise; to show that it was an expedition of war and not a mere commercial or trading voyage; and that no military organization was necessary, as 1000 men enlisted, 1000 guns provided and boats, provisions, and ammunition prepared, would certainly come within the purview of the law.

Mr. H. contended, that Mr. Botts's 5th proposition was no reason for excluding the evidence, that this was a question of law and fact, fit for the consideration of the jury. He admitted, that the 6th proposition standing naked was true in itself, but he contended that if there was a connection between the parties, that the acts and confessions of one were evidence against the other; that this principle was settled in Hardy's, Thelwall's, and Tooke's cases; and that in the present case, the evidence of the connection and agency of Blanner-

hasset was already before the jury; and that he was prepared to adduce additional testimony. See Trial of Smith and Ogden, p. 102.

Some argument ensued upon this point; when Mr. H. observed, that he considered the terms "providing & providing means" as the direct and operative terms of the law; he would prove that means for a military expedition had been provided at the island; and the question was, who did provide them? He would undertake to deduce from circumstances, to the complete satisfaction of the jury, that Mr. Burr was the provider. These circumstances were satisfactory to his mind, and he thought they would be equally so to them.

Chief Justice. If you have any testimony about providing the means at the island, let it be produced.

Mr. Dudley Woodbridge was then called up, whose testimony we have already detailed in the Enquirer. He now gave and particular history of his contract with Mr. Burr, the building of the boats and the preparing of provisions. The prosecution interrogated him particularly about the corn which Mr. Blannerhassett had purchased on his island, and attempted to show that in this transaction, he acted under the powers of the firm. The opposite counsel asked him, whether this purchase of corn had ever been carried into the company's books. A. No. Whether were the partnership accounts settled? A. Yes.

Peter Taylor was then interrogated about the corn purchased by Blannerhassett on the island. He said that this corn was kiln-dried on the island; then carried to the mills on the Muskingum and on the Kanawha; that the meal was brought back to the island; but he was not certain whether any had been carried away by Blannerhassett's party.

Mr. Hay at length arose. He said, he perceived very distinctly that he could not proceed in his evidence without meeting the opinion of the court. That opinion had removed the great and most effective part of his testimony; that under such circumstances, he could not support the prosecution; he was willing therefore to enter a *nolle prosequi*, and he quoted Foster p. 327-8, to shew, that after a jury was impanelled, it was within the discretion of the court to admit that practice; that he was led to this mode of proceeding by the consideration that the law under which the indictment was laid, was vague in its terms and as yet undecided, and that this course might permit him to resume the prosecution at some future day, should any substantive testimony occur. The opposite counsel objected to this proceeding; that it was contrary to the uniform practice of the courts; that it was the right of the jury to give a verdict; that the consequences of this proceeding would be the delay of justice to the accused, to whom the constitution had awarded the benefits of a speedy trial. They attempted to show that the principle from Foster did not apply. Mr. Hay was perfectly willing to submit it to the court. The chief justice decided that the attorney could not enter a *nolle prosequi*.

LATEST PROCEEDINGS.
Since our last, the court have been principally occupied by the points submitted to their consideration. On Saturday Mr. Randolph resumed the argument. He was followed by Mr. Martin; and the argument was wound up by Mr. Wickham.
On Monday the chief justice delivered the opinion of the court: Mr. Griffin was absent. A desultory conversation then ensued upon the construction of certain points, when the court adjourned to give certain time for its consideration.

TUESDAY, September 15th.
Mr. Hay said that the counsel for the prosecution would attempt to go on as well as they could, and that they would attempt to introduce no evidence which interfered with the opinion of the court. He should state what he conceived to be a summary of that opinion. Mr. Hay stated one or two propositions, when the opposite council objected to this course.—Mr. Martin suggested whether it would not be better to introduce particular points of testimony, for the court then to determine upon their admissibility. After some conversation, Mr. Hay called up Mr. Neale. Q. Were you on the island, on the night of Blannerhassett's departure? A. I was not. I left it about the 20th of August.

James McDowell was then called; when Mr. Hay observed that this witness was introduced for the purpose of proving an interview between him and the accused at the mouth of Cumberland river, when the accused stated to him the object of his expedition. Mr. Burr observed that he understood this was offered as corroborative or auxiliary testimony. Auxiliary to what? They ought first to demonstrate that he did commit the acts at the island, that were laid in the indictment. Why do they thus attempt to prove acts done in Kentucky out of this district?

The jury then retired with the indictment, and after an absence of about twenty minutes, Mr. Orris Payne, their foreman, returned a verdict of "Not Guilty."
[We this evening finish the account of the trial of BURR, on the indictment for a misdemeanor—except the last opinion of the court. This opinion shall be given without unnecessary loss of time.

The course next to be pursued, as announced by Mr. Hay, was as given in the Gazette last Saturday.]

BY THIS DAY'S MAILS.

LONDON, August 7.

To the Editor of the Morning Post.

I have been much pleased with the fair and comprehensive view which you have taken of the recent rencontre with America. It is unfair to anticipate what may or may not be the future determination of the respective governments, when they shall be possessed of all the circumstances which led to that unpleasant event. But if we are to form an opinion from the partial relations which have reached us, that opinion must surely be favorable to the British commander. His conduct appears as eminent for decision and moderation as that of the other is marked by irresolution and impotent hostility.

But what surprises me most is, that from the tone of your opponents, they seem to insinuate that nothing of this kind ever before took place between these nations. From among others of a similar nature which I could mention, I shall select one, because I was an eye-witness of it myself. An American squadron of three frigates and a sloop, under the orders of commodore Dale, entered the Mediterranean in the summer of 1801, to cruise against the Tripolines, with whom at that time they were at war. Altho' it was notoriously known that a great proportion of the crews consisted of British seamen, yet no interruption was given them by the officers commanding on that station, but on the contrary every facility afforded that could ensue success against their enemies. One day, when the President, which bore the commodore's pendant, and the Philadelphia, another frigate, happened to be the only ships of war in the bay of Gibraltar, a boat, as was frequently the case, came on shore from the President. After landing, one of the men declared that he would not return on board of the frigate, that he was a British subject, and he would claim protection accordingly.—On his refusing to embark, a scuffle ensued, in which the sailor was severely wounded. He contrived, however, to reach the main guard, when the officer on duty there took him under his protection. He was pursued by a midshipman and a party of men, and at the request of the midshipman, who assured the officer that he was a deserter, he was delivered up, and conveyed on board of the frigate before the affair had been officially communicated to the governor.

The captain of the prison ship went on board the President, to inquire into the merits of the case. The commodore stated to him, that every man in the squadron had sworn himself to be a citizen of the United States before leaving America, and if they should take it in their heads to purjure themselves in every European port at which they might accidentally stop, and be encouraged in such conduct, that he would soon be left without a man; and that under these circumstances he felt it his duty to detain him as an American seaman. All this appeared extremely reasonable to the English captain.

QUEBEC, Sept. 3.

Extract of a letter from Port-au Prince, St. Domingo, dated 5th July, 1807—received in this city.
"I am now going to tell a most melancholy tale, of the fate of our gallant friend, the brave, unfortunate Hosier. He came out here with the command of a small armed schooner, in the employ of the concern Holt is agent for; and after performing all most miracles in escaping privateers, on his passage out, he was taken by two of them, of much superior force, going from this to Jeremie, after gallantly defending himself for seven hours and a half. Provoked at his determined resistance, after they had succeeded in boarding him, although he had received three very bad wounds in the action, the Ruffians had the savage inhumanity to seize him, cut off both his hands, cut and disfigure his face, and then throw him overboard, where in course he perished. To comment on so shocking a tale would be superfluous. His poor wife and poor children are left entirely destitute; and as to my poor Mrs. Grant, I hardly think she will recover it. The few remains of the crew were carried to Cuba, half of them wounded; where the greater part of them would in all probability have perished, but for the humanity of the American consul, who stepped forward to save them, paid all expenses, gave them surgical aid, and finally got them passages down here, uncertain whether he should ever be repaid."

Extract from a second letter.

"There has been a subscription raised here for capt. Hosier's widow. The few English and Americans have already subscribed upwards of one thousand dollars; and Holt has addressed the senate in her behalf. We have no doubt but they will do something handsome, and with the natives, will make up a sum of 5000."

It is remarkable that captain Hosier's father perished in the same cruel manner. After being boarded the barbarians stabbed him with his own sword.

NEW-YORK, September 19.

Arrived this day, ship Ann, from Bordeaux, brandy, wine and dry goods. Sailed in co. with brig Fame, Perry, of N. York. Left, ship Arcturus, Maine, of and for N. York in 10; Alknomac, Halstead, for N. York in 10; ship Thomas, Turner, for do. about the 10th August; ship Industry, do. immediately; ship Eliza, Smith, do. 15th;

brigs Edward and Charles, Pittingell of Bath, from New-Orleans; Minerva, Hale, from N. York; Aretia, O'Connor, from Charleston; Algon, Follensbee, from Newburyport; Alonzo, Almy, from N. York; brig Eliza, Cummings from ditto; Winnifred, Bonnell, from Louisiana; Amiable Antoinette, Williams, from Norfolk. At quarantine Adonis, Waterman, from New-York; brig Triton, of Boston, and ship Louisiana, of Philadelphia, arrived the day we sailed. Sept. 6, lat. 44, 26, spoke a ship from Liverpool, 29 days out, for Boston. 7th, lat. 42, 38, brig Hannah, from St. Petersburg, for Newburyport. 10th, lat. 41, 42, ship Union, of and from Baltimore, for Cork. 14th, lat. 39, a schr. from Trinidad, for Halifax.

Ship Marshall, from Antwerp, in ballast. August 29 lat. 40, 40, long. 57, 30, was upset in a violent gale of wind; remained on her beam ends for nearly 2 hours; was obliged to cut away main and mizenmasts for the preservation of the ship. When upset, not a single stitch of sail was set.

Sloop Maria Antoinette, from Alexandria, flour. The sloop Little Joe, and schr. — Sturges, were to sail next day for N. York.

Sloop Sally, from Montserrat, rum. Schr. Sally, from Newfoundland, fish and oil.

Cleared this day, ship Eagle, Duplex, Cork; brig Charles N. Newman, Europe; Gilbert, Aydelot, Guadalupe; Thomas, Attwater, Newhaven; schs. Esperance, Bousyou, River John, N. S.; Pandora, Ward, St. Johns; Rising Sun, Allen, Darien, Ge. ria.

Signals for a ship, a dismasted brig, and a schr.

PHILADELPHIA, Sept. 27.

Arrived, ship Alpha, P. Cuffy, Gottenburgh, iron and glass, 70 days; Fair Trader, —, Tonningen, Merchandize; brig Jannet Allison, P. Petre via Antigua, coffee and sugar, 21; Tartar, Champlin, Barroca, coffee and sugar; George, White, Rhode-Island, ballast; brig Ceres, Clark, Hull, merchandize; British brig Samartian's Hope, Christian, Belfast, 64; brig Molly, Norris, Bordeaux, wines brandy, &c. 70; Second Attempt, Williams, Jamaica, rum; brig Fox, Dugger, Boston, fish and plaster, 7; schr. Two Brothers, Hardie, St. Martins, rum and sugar; schr. Clarissa, Decker, Point Petre, coffee and sugar; William and Samuel, Anderson, Martinique, sugar and coffee; Huntress, Montgomery, New-York; schr. Mary, Bayley, Ferguson, Havana, via Halifax, brandy; schr. New Bethia, Hall, Bordeaux, sugars, &c. 48; Enterprize, Talton, Passamaquoddy, plaster; Danish schr. Oxholm, Conklin, Cape Francois, coffee; sloop Jersey, Cooper, Charleston, rice and cotton, 12; Harmony, Elwood, Alexandria, tobacco and flour, 8; Brother and Sister, Hickman, Norfolk, salt, 6.

Cleared, brig Clio, Boullier, Havana; Freel ve, Hughes, ditto; Polly and Betsy, Selby, ditto; Angel, Gamble, Jamaica; schs. Philip, Williams, Charleston; Molly, Conner, St. Thomas; Eliza, Treddick, Richmond; sloop Lucy, Taylor, Baltimore.

Ship Dispatch, Ryan, from St. Kitts; brig Mary Torrence, Devereaux, from St. Thomas; brig William & Martha, Kuhn, from Havana, and brig Victory, from St. Vincents, are below.

Schr. Five Brothers, Stevens, from Exuma, and a brig from Savannah, have arrived at the Lazaretto.

Saturday arrived, schr. Clarissa, Dexter, from Point Petre, Guadalupe, and informs that on the 17th of August they had a hurricane at that island, in which several vessels were driven ashore, but were got off again without much damage; among which were the brig —, Eaton, and schr. —, Stackpole, both of Portland. A brig belonging to N. York, and schr. Jefferson, captain Gamble, of Philadelphia, who arrived there the 15th, in the above gale lost an anchor and cable. Left there, in addition to the above, the schr. Robert Dawson, from this port, who met with the above gale off Desada, in which he lost his deck load, and received other damage, after which he fell in with an English cruiser, who behaved rascally, firing on him, tearing up his cargo to look for plunder, then leaving the same on deck. On the 27th August, lat. 25, long. 66, spoke the ship Independence, from Antigua, for N. York, who said they had a hurricane at that island on the 17th, but it did little or no damage.

Same day arrived, brig Jannet, Allison, from Point Petre, and last from Antigua, where she was carried by his Britannic majesty's brig Express, but after a detention of three days, was dismissed on paying expenses, without trial. The same day capt. A. was taken, the Express detained the ship —, capt. Andrew Wilson, of New-Bedford, from Point Petre—took part of his people out, and ordered her to follow the Jannet to Antigua, but missing her port, stood for Nevis, where captain Wilson, on the 18th of August, went on shore to enter protest, when a gale of wind came on and drove the ship to sea, with only one man and two boys on board, and she was not heard of as late as the 25th of August.

Captain A. informs that the brig Trimmer, from New-York for Point Petre, was arrived at Antigua, sent in by some of the cruisers; that the schooner Independence, Silvester, of Newbern, N. C. from Point-Petre, for New-York was tried, and the cargo condemned; that the brig —, Chadcock, from Beaufort, being taken possession of by one of the British cruisers, was run ashore on Sand Key, vessel and cargo entirely lost.

Same day arrived, schr. Margaret K. Bailey, captain Ferguson, from Halifax, where