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RICHMOND, August 27.

TRIAL OF AARON BURR. (Continued by adjournment, and held at the Capitol in the Hall of the House of Delegates) for High Treason against the United States.

MR. HAY'S SPEECH CONCLUDED.

I know not but gentlemen may be disposed to take shelter under an opinion, expressed by Judges Chase and Peters in the case of Fries, p. 197, and I most candidly admit, that there are certain expressions in that opinion, which seem to countenance their doctrine. But if the observation were correct in fact, still it should be recollected that it was but the opinion of subordinate judges, which cannot be opposed to the decision of the supreme court. It must also be recollected, that their opinions on this point are extrajudicial; by that term I mean, that it was not such a point as was necessary to be settled in the case before the court. The question before them was not, whether force does actually enter into the composition of treason; for in the case of Fries, there was force enough employed. It was a case of an actual opposition to the laws of the United States by force. Now, the opinion of any court is never considered as good authority, unless it be delivered on the very point actually before the court. It will be seen too upon an accurate inspection, that the opinion of Judge Chase is not even consistent with itself. In his definition of treason, (Fries's trial, page 196) he expressly says, that "any information or rising of any body of people within the U. States, to attain or effect by force or violence any object of a great public nature, or of public and national concern, is a levying of war against the U. S. within the contemplation and construction of the constitution." Thus excluding from his definition the two circumstances which I have excluded from mine, military weapons, and the actual employment of force. In the next page, he expressly states, that military weapons, &c. are not necessary in the consummation of treason. And yet in the course of the same charge he seems to think that some force must be employed before the crime is legally complete. The ideas of Judge Peters on this point (see page 204 and p. 207) seem to be in like manner at variance with each other. The truth is, that they did not express themselves on this subject, with the precision which they would have displayed, had the question before them been what it was before the supreme court and what it is here.

Judge Patterson in his exposition of the law, in his construction of the constitution, agrees with the supreme court in their decision. 2 Dall. 235, and even Mr. Lewis, an advocate in the case of Fries, distinguished no less by his zeal, than by his legal erudition; seems to concede that the crime may be consummated without the actual commission of hostilities, or employment of force.

The English adjudications are to the same effect. Treasons, in the populous country of Great Britain, where numbers are concerned, are generally accompanied by force; but that the actual employment of force, where the treasonous design is clearly proved, is not necessary, is in my judgment indisputably certain. See Feil. 211, 218. East. 1, 67. Hale 146.

But whether I am correct in this remark or not, is immaterial. In our own country, the judges of the supreme court have placed this point beyond the reach of a controversy.

You will probably be told, Sirs, that certainly in criminal law is important, and in that part of it which relates to treason, essential to public liberty. You may be reminded of an observation of the celebrated Montesquieu who says, that uncertainty on this single point, is of itself sufficient to change a free into an arbitrary government. It is not admitted that this observation is applicable to our government, dependent as it is on the people, or to our people, informed as they are of their rights. But I will refer it to be so. The answer is obvious. By the decision of the supreme court, the law is certain. Every man who can read, knows the limitation in which he stands, and at what point he must stop, if he wishes to avoid the imputation and the guilt of treason.

You will probably be told also, of the danger of a conspiracy to raise by force and arbitrary constructions, offences into the crime of treason, which never were supposed to be such. Of this some terrible examples exist in the earlier periods of the English history, when the people were ignorant, and the judges entirely dependent on the king. It is admitted that the doctrine, which is all that is now in question, is not defined by the constitution, by any arbitrary construction, inference or analogy, as in England formerly, ought not to be countenanced. But in fact in this country, there is no danger to be apprehended. It may serve as a topic of declamation, but the apprehensions of mischief from this source is absolutely visionary.

It would be absurd to call the treason defined by the supreme court, a constructive treason. The words "levying war," do not present to the mind a clear and distinct idea, like the words "levying a man's arms or sealing a horse." If the question is, has levying war been proved distinctly and separately to every man in this assembly, or to the most intelligent among them, there would be great hesitation, doubt, and cavil;—perhaps half as many objections as necessary, then, requires that the words should retain the construction of their own words. If it is their province, it is their duty to do so, and in giving the definition for which I contend, they have performed that duty. (The words "levying war" are taken from Fries's trial, and the same remarks of Judge Peters, page 206, applicable to this point.)

The law thus established by the supreme court, will be a constructive treason, and it is not to be either that the judges should have any construction of the constitution on this subject, which would be illegal and absurd, and would necessarily by leaving every thing to the discretion of juries, produce all the mischief and uncertainty, the most interesting of all to the public mind, or that the opinion of the supreme court should be overruled. The former, is proclaimed, and the latter, which the counsel for the prisoner has endeavored to support, is a mere phantom, which may be dispensed with, and if it were to be countenanced that an assembly of

men with a traitorous design is not sufficient, but that hostile force must be commenced, actual violence must be used, before treason is complete, the constitution is a dead letter. No man can be pronounced to be a traitor, until he has, by striking a blow, shown that he is or conceives himself to be out of the reach of the law. The case, then, presents a question of force alone, and it is a matter of no consequence, what the definition of treason shall be, until it is decided by arms what side shall pronounce it.

Perhaps it will be said, that the decision of the supreme court, is not correctly understood. I may, for aught I know, be incorrect in my exposition of it; but if I am, it is idle to look into reported cases, for evidence of the law. The language which the court have used, is remarkable for its precision, and its perspicuity. In every part, the ideas which they have expressed, are perfectly consistent, and you will not find from one end of it to the other a sentence, or even a word, which implies that any thing more is necessary for the completion of treason, than an assembly of men, convened for the purpose of executing a traitorous design.

Taking it for granted then that the decision of the supreme court is the law of the land; that the overt act of treason is complete, if there be an assembly of men for effecting treasonable designs, it is incumbent on the prosecutors to show 1st. that there was a treasonable design; and 2dly. that there was an assembly of men for the purpose of effecting it. It will be proved to you, that the design of the prisoner was not only to wage war against the Spanish Territories, but to separate the Western from the Eastern States; for which purpose N. Orleans was to be seized, and an independent government was there to be established. You will perceive from the evidence, that he intended to take possession of N. Orleans, to excite the people there to infurrection; and to take advantage of the hostile sentiment which prevailed, to the West of the Alleghany, against the Spaniards. If either of these is proved; if it be either established that his design was to dismember the union, or after seizing on N. Orleans, to invade the Spanish Provinces; if in fact it be established that he intended to occupy N. Orleans at all, he is completely guilty of treason.—It would be absurd to suppose that a man who had revolved such an immense project in his mind, would communicate it to many. But he did disclose it to a few, and fortunately for our country the evidences of his design have been disclosed to our government. I shall lay before you, gentlemen of the jury, evidence the most positive and direct, as well as numerous and conclusive circumstances, to establish the existence of this design.

For the purpose of establishing an empire in the West, of which New Orleans was to have been his capital, he made two long visits in the western country. He was in Kentucky and Tennessee, and travelled in various directions until he arrived in New Orleans. Wherever he went, with a view of facilitating the consummation of his own designs, he spoke disrespectfully of the government of his country. He represented it as a delirium of energy to protect our national rights, or spirit to maintain our national character. He asserted that all the men of property and influence were dissatisfied with its arrangements, because they were not in the proper situation to which they were entitled; that with 500 men he could effect a revolution, by which he could send the President to Monticello, intimidate Congress, and take the government into his own hands; and that the people were so little acquainted with, and so indifferent about their rights, so completely destitute of public spirit and of an efficient leader, that they would be mean enough to acquiesce in this revolution. Such were his expressions about the government and the people. To the people of the West, he spoke a different language. He represented to them, that they were in a state of colonial dependence on those of the Atlantic States; and that they annually paid millions for which they received no return. They were told that a separation was necessary and would unquestionably take place; not as referring to the operation of natural causes, but as determined by a particular chain of events; that the destiny of the republic was fixed, and that in the course of two years they would see it in ruins.

I thank God! that this prediction is not fulfilled, and our posterity will also thank their God, that the accomplishment has not reached their own times.—Such were the sentiments which he avowed; such were the doctrines which he endeavored to propagate, though all this while pretending that his objects were of a purely agricultural nature. Nor was this language confined to conversation alone; for writings were published by one of his adherents, calculated to scatter dissension among the people, and prepare them for his plans.

To accomplish these plans, in the summer and fall of 1806, men were actually enlisted, boats built on the waters of the Ohio, provisions purchased to an enormous amount, and arms and ammunition provided. Some of these men, about 40, assembled with arms on Blennerhassett's island, in order to defend the river. Burr was not there at that moment. He had left it a short time before; he had intended to return; but he had been warned not to return. His presence however was not material. A man may try war at the distance of 3,000 miles; we may probably have an experience of this truth in a few months. But this principle has been sufficiently established by the decision of the supreme court. "If war is actually levied—all those who perform any part however minute or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."—It is this assemblage of men which constitutes the overt act of treason, and is relied on in support of the indictment. These troops on the island feeling the country alarmed, and themselves threatened by the militia of Wood county, made a precipitate retreat by night, in company with Blennerhassett, and descended the Ohio to the mouth of Cumberland river, where Burr joined them with a small party and took the command. By this time their numbers increased to more than 100. The men under the command of Burr and Blennerhassett then descended the Mississippi to a point called Bayou Pierre, in the neighborhood of Natchez. It was here that Mr. Burr first understood that his preparations would be defeated through the exertions of the commander in chief (that his letter in cypher had been communicated to the President; and it was here that he expressed to another person the astonishment and indignation he felt at being (as he said) thus betrayed. Finding that all his schemes were baffled, he entered into a kind of capitulation with Covens Meade; was bound to appear before a tribunal at Natchez; came off, it is said, without the leave of the court, and was arrested by Perkins in his flight.

It will be proved to you, by express and direct evidence, that a settlement on the Onatchita was merely a cover for contemplating the design of himself and his associates. I have as yet in need no kind of proof, that he has acquired a real title to this land.—Burr's untold mystery and circumlocution prevailed on this subject. To

the world at large and to those whom he had not tampered with, the object was avowed to be the settlement on the Onatchita. To some, it is that the settlement was dropped of an approaching rupture with Spain, against whose provinces the expedition was intended; his language continually varying with the character whom he addressed. To a few, and a few only, his real design was developed. But to all were held up the idea of some great project. All were told that the design was just and honorable; known and approved by the government and in which the co-operation of the army was to be expected; that it was one which would lead to great fortunes; & that it would be developed as soon as the proper time for the disclosure arrived. The time, however, never did arrive. At Blennerhassett's island, it was not the time; and when at the mouth of Cumberland river, some enterprising men, but who were not disposed to violate the laws of their country, were solicitous to understand this project, they were told that the time had not yet come. Ignorant people were led away from their homes, under an expectation that they would be informed of the whole project—the information was promised, but never imparted. The consequence was, that when Mr. Burr was apprehended, they were left to find their way back to their own homes in any way that they could.

Chimerical as this project may appear, there was only one single thing wanted to accomplish it: the co-operation of the Commander in Chief and of the American army. If General Wilkinson had acted as some represented; if instead of performing the part of a patriot, he had played the character of a traitor; what would have been the consequence? The people of the U. States would have had a civil war raging in the West; while our Eastern coasts would have been ravaged and infested by an insidious foe, in consequence of our internal dissensions. From this calamity, at least from that which hovered in the West, we have been protected by the vigilance and integrity of the Commander in Chief. I care not for the constructions which may be placed upon my assertions; but I will venture to declare that since the adoption of the Federal Constitution, no man had so much in his power or has so effectually used it, to render services to his country; as Gen. W. has done by defeating this project; and yet for his illustrious service, he has been as much calumniated, insulted and denounced, as if he had joined in it.

It is not right to anticipate the defence; but the prisoner himself if asked while under examination, what the object of his expedition was peaceful and agricultural. If this ground shall be again taken, we shall find no difficulty in bringing together a variety of circumstances to prove its infutility. At present I am too much exhausted to detail them; but that task is necessary, shall hereafter be performed.

I have observed that you would enter upon this enquiry with calmness and impartiality; and I must hope too, with firmness. This question is to be contemplated and decided on the very same principles, as if the place of the prisoner were occupied by the most ignorant man in the community. It is true that he has been the Vice President of the U. S. the second in office and perhaps the second in the confidence of his fellow citizens; and that he has talents and energies which at the approaching crisis might have been employed more honorably to himself, and more usefully to his country. But these circumstances aggravate if any thing can aggravate, rather than extenuate the enormity of his crime. It is not often, at least in other countries, that the laws of society operate upon men of this stamp. Lord George Gordon, the miserable fanatic, was acquitted; while 19 of his poor deluded followers were hung up at once and paid the forfeit of their crimes. I call upon you, gentlemen of the jury, to remove all such distinctions in this land of equality; to do the strictest justice to all; and to find upon the evidence which will be produced before you.

TUESDAY, August 18. The Judge having delivered his opinion on the point argued yesterday, some arrangements were made for the accommodation of the jury; that they were to occupy two or more rooms in the capitol; that for the sake of exercise they might walk out in a body, or separately if accompanied by the marshal or his deputy; and that they might send or receive letters if the superscriptions were shown to the marshal. It was understood, that they were to lay all letters before the court, which should appear to touch on the trial, designedly sent to influence their verdict. The hours of the court are fixed from 9 till 4. WILLIAM EATON was then called in for his examination.

Mr. Eaton enquired whether he might be permitted to have recurrence to his notes. Chief Justice. Were they written by yourself? Mr. Eaton. They were. Mr. Wickham. At what time? Mr. E. At different times. Mr. Burr. What is the nature of them? A. They are nothing but memoranda taken from notes, which I made of the conversations between you and myself, at the times that they passed. The court decided that they were not admissible. Mr. E. May I ask one indulgence from the court? I have been long before the public. Much stricture and some severity have passed upon me. May I, in stating my evidence, be permitted to make some explanations about the motives of my own conduct? Chief Justice. Perhaps it would be more correct for the court to decide upon the propriety of the explanation, when the particular case occurs. Some cases may require: And if any objection is made to your explanations then the court will decide upon it.

Mr. Eaton. Concerning any overt act, which goes to prove Aaron Burr guilty of treason, I know nothing. Concerning certain transactions which are said to have happened at Blennerhassett's Island, or any agency which Aaron Burr may be supposed to have had in them, I know nothing. But concerning Colonel B's expressions of treasonable intentions, I know much and it is to these that my evidence relates. Mr. Martin. I know not how far the court's opinion extends. Chief Justice. It is this: that any proof of intention formed before the act itself, if relevant to that act, may be admitted. One witness may prove the intention at one time; and another may prove it at another, so as to prove the continuance of the intention through the whole transaction; and therefore the proof of very remote

intentions may be relevant to this particular act. Mr. Martin. I trust that when he speaks of a treasonable intention not applicable to this act, the court will stop him. (To be Continued.)

American, Commercial Daily Advertiser. THURSDAY, AUGUST 27, 1867. The Boston Repertory has attacked the proposition that we advanced a few days ago, when we said, "We can fight Great Britain in her manufactures, and there we can overcome her;" and declares that to be "the fatal error of the present administration and all its supporters." This is about as candid a way of treating government as the practice of federalists in sheltering themselves under the name of Washington is honorable. If a republican print utters a sentiment that displeases such gentlemen as edit the Repertory, it is instantaneously set down as the very opinion of the administration; and if you detect them in their sophistical calculations in favor of Great Britain and brand them with the appellation of Tory when they richly deserve it, you are met full in the face with an appeal to General Washington, and an exclamation, "If he was a Tory, so are we." But with a due share of deference for these wise men of the East, for these Bostonian candidates for a British salary, we must be so incorrigible as to believe that an individual may write his own thoughts without government's being answerable for them, although they may chance to coincide with the ideas of the executive and legislature; and that a Boston printer of Tory sentiments may take part with England and discountenance the rightful claims of his own country, without implicating in any degree whatsoever the principles of Washington, who is made a stalking-horse for every jackanapes that has impudence enough to prostitute his name. To invalidate our proposition, the Repertory very formally introduces an "interesting paper" from "a friend of extensive commercial knowledge," whose "data," says the editor, "we have traced to official documents." We might probably place more confidence in this "tracing to official documents," if the very paper itself did not warn us to keep on the skeptical side. "I do not recollect," says the gentleman of "extensive commercial knowledge," "the precise amount of our importations from Great Britain as reported by Mr. Gallatin;" but, (mark, reader, his authority!) "as far as my memory serves me, it is nearly six millions." Thus, in the discussion of an important national question, we are impudently required to rely upon acknowledged falsehood and the service of a fallacious memory. It is hardly to be supposed that any man will confide in statements exhibited in this vague way: And the writer renders himself too much suspected for belief by attempting in the first instance to palm on the public a gross deception; for, after boldly asserting that the United States "take only about 6-40ths instead of 13-40ths," of British manufactures, the calculator goes on to lessen that proportion, by saying—

It has been stated that Great Britain "consumes one half of all her manufactures, and exports the remainder—if this be true, she must manufacture eighty millions per annum. In the event of a rupture with this country, she would lose a direct sale for 6-80ths of the amount."

This, if true, would go essentially to weaken the influence which as purchasers of her manufactures we certainly have over Great Britain. But mark how adroitly the gentleman has caught himself! Great Britain manufactures, he says, "eighty millions per annum;" but of these, she is acknowledged to "consume one half." If, then, she consumes one half of eighty millions, according to the rules of common arithmetic she can have a surplus for sale of no more than forty millions! Of course, taking the gentleman's own statement for a basis, as a purchaser, the United States must evidently stand in the proportion of 6 to 40, for what G. Britain has to dispose of to foreign nations. Such wire-drawing and attempts at delusion as this, destroy a man's credibility. His calculations are all of a piece; quite overstrained in behalf of Great Britain.

A statement of Lord Grenville is foisted in by the gentleman of "extensive commercial knowledge," to prove that the consumption of British goods in the United States is quite insignificant. Would to God that this were the case, and that we were enabled to supply ourselves at home. But the noble lord's evidence proves nothing in point. He is said to have stated to parliament in 1801, that "the British exports to the United States, taking the three years previous to the war of '92, amounted only to 3,694,000."—And that in the succeeding three years they rose to 6,232,000." The position is then assumed, that the 2,538,000 increase for the last three years was occasioned by the British being engaged in war, and that the additional importations were made for the purpose of supplying the colonies of France and Spain. This supposition, however, as it applies to Spain, is entirely without foundation; because Spain, from '92 to '95 was neutral, and could readily supply herself with British manufactures in her own bottoms; or by means of British vessels; and from '93 to '95 was at war with France, so that there was then no need of the agency of the flag of the United States to supply her colonies, as she was then leagued with England. But even admitting that the additional increase for the three years succeeding the year '92 was occasioned by importations for the purpose of supplying the colonies of the enemies of England, is it not the same thing as if the whole amount was consumed within the United States? If we purchased of her 2,538,000. extraordinary, which she could not herself dispose of on account of her belligerent situation, she certainly ought to be obliged to us to that amount. But we are very far from attributing the increase in the three years succeeding '92 to the belligerent situation of G. Britain. It is a notorious fact, that from the year 1789 to the year 1795, the growth of the population of the United States, by emigration, was rapid beyond all computation. This, together with the natural increase by births, must have had a prodigious influence upon the consumption of British manufactures. Besides, the blessings of the constitution of the U. S. were just then beginning to be experienced, & our mercantile concerns began to assume an importance independent of that which they subsequently derived from the existence of war in Europe. Our commercial men would, even had a profound peace continued, have asserted their claims to a full and perhaps more than equal portion of the carrying trade. Their industry, their enterprise, entitled them to it. Circumstances of this complexion must have had a decided influence to increase the importations of the three years in question.

But, leaving the Boston Repertory's gentleman of "extensive commercial knowledge" to amuse himself with speculations in favor of the tyrannical policy of Great Britain, we shall lay before the readers of this paper the opinions of a man of acknowledged talents and information in commercial concerns; one whose authority will not be questioned by mercantile men, and whose sentiments are decisive on the subject. We allude to J. Jepson Oddy, the author of a well known and justly esteemed treatise on European commerce.—He says, page 205, vol. 2d,—

"Our customers are very different from each other in regard to the nature of the goods they take. The continent of Europe takes more colonial & India produce than British manufactures." "America takes from this country, (England) no East-India produce at all, and but little from the West-India islands; but nearly all our exports there consist of British manufactures." "The most rapid increase of our trade, as well as of our revenues and burthens, has been since the year 1793, (a fact which confutes the reasoning of the man of "extensive commercial knowledge") "when the war broke out with France, which being of a nature entirely new, has produced a very uncommon effect."

And Mr. Oddy avers, (page 216) what will not a little startle the advocates for the supremacy of Great Britain, "that the American war diminished British trade both in exports and imports, and at least made it go on in a retrograde direction, till it fell to what it had been at fifty years before." The last war (that of the French revolution) occasioned a most unexampled and great increase." A clear proof this, that with America for her friend, the commercial concerns of G. Britain will flourish in defiance of the most inveterate European war; whilst hostilities with America are calculated to overwhelm G. Britain in ruin.

We fear not to put the authority of Mr. Oddy in opposition to that of any man who can write on the subject of European commerce. All his arguments are supported by official vouchers. And as for the smuggling plan which the Repertory's "friend" has devised for Great Britain, we can only smile with pity on the scribbler who, in lieu of honorable traffic, can connect the ideas of power and greatness, which are ascribed to Great Britain, with that of smuggling, which, to say the best of it, is a knavish practice.

The information furnished by Capt. Rich, of the Feb'r Three Sisters, relative to the ship Othello, capt. Glover, which appeared under the marine head in yesterday's American, excited in the minds of our merchants and citizens generally, considerable anxiety with respect to the fate of the latter vessel. In consequence a vessel, provided with sweeps, and full of spirited mariners and detachments from some of our volunteer corps, went in pursuit of the Othello on Tuesday night; and others prepared to proceed yesterday morning. No other information than that furnished by Capt. Rich has reached us in a distinct shape; Captain Deagle, who arrived here yesterday did not see the Othello in the Bay, nor had he heard any thing of the affair until he reached this place. Various conjectures have been made respecting the pilot-boat which is said to have captured the Othello, but being nothing but conjecture, the public mind is as much in the dark as yesterday on the subject. The vessel which was seen in the Bay, and which is supposed to have been in pursuit of the supposed enemy does not, unless it were, still in a state of the vessel.