

TRIAL OF AARON BURR.

Circuit Court of the U. States for the fifth circuit

and District of Virginia.

Present JOHN MARSHALL, Chief Justice of the U. States, and CYRUS GRIFFIN, Judge of the District of Virginia.

TUESDAY, June 9. (Continued.)

Mr. Burr then addressed the court. There was a proposition which he wished to submit to them.

And further, it has already appeared to the court in the course of different examinations, that the government have attempted to intrude certain incriminating papers from certain transactions.

It was, therefore, material to show in what circumstances I was placed in the Mississippi Territory; and of course to obtain certain orders of the army and the navy which were issued respecting me.

Mr. Burr said, that there would be no inconvenience; as the President might just transmit the papers wanted by the mail.

Mr. Hay observed, that Mr. Martin's remark superseded any further proceeding; why apply to the court to issue a Subpoena to the President unless perhaps it was the necessary form for obtaining the papers.

Chief Justice. The reason is that in case of a refusal to send the papers, the officer himself may be present to show cause. This Subpoena is issued only where fears of this sort are entertained.

Mr. Hay said, that no application had yet been made to the Secretary of State for Gen. W.'s letter; nor to the department of war for its order.

Mr. Martin. If one department refuses, we may presume that the others will.

Mr. Burr. If the gentleman grants our demand, he may propose any alteration in its form that he pleases.

Mr. Randolph. If any arrangement can be made to obtain these papers, we would rather that it should be a voluntary act on the part of the government.

Mr. Hay. I will attempt to obtain these papers—any, in fact, that gentlemen may want, if the court will but say, they are material.

Mr. Wickham. Col. B's counsel knows little of the importance of these papers but from himself; and from that they are fully persuaded of their great importance.

Mr. Hay. It seems then that copies of papers from the government of the United States will not be received. They are not to be trusted.

After such an observation, sir, I retract every thing that I have promised. Let gentlemen, sir, take their own course.

Mr. Burr observed, that to avoid all possible misconception, he thought it proper to state that Mr. Van Neis had assured him of Mr. Smith's positive and unqualified promise to furnish the order if he was properly applied to for it.

Mr. Burr declared he knew not for what this information could be wanted; to what purpose such evidence could relate, and whether it was to be used on a motion for commitment or on the trial itself.

Mr. Burr, Mr. Wickham and Mr. Martin observed that perhaps on both; according as circumstances might require.

Mr. Hay. I suppose this court will not proceed but upon facts. Now a letter of the 21st of October is spoken of; but has this letter been yet identified?—He hoped that the court would not issue the subpoena duces tecum, until they were satisfied that they had the authority to issue it, and that the information required, was material in the present case.

Mr. Wickham observed, that the present was simply intended as a notice of a motion to be brought before the court; which motion might be discussed either to-day or to-morrow.

Mr. Hay declared that all delay was unnecessary; but he pledged himself, if possible, to obtain the papers which were wanted, and not only those, but every paper which might be necessary to the elucidation of the case.

Chief Justice observed that all delay was obviously improper, that if the papers were wanted they ought to be obtained as soon as possible; and not perhaps delay the ulterior stages of the prosecution.

Mr. Hay stated, that he had already received a communication from Mr. Wickham on this subject; and intended to have informed him, that he would write for all the papers which were wanted, (and he had no doubt he should obtain them) if the court judged them material.

The fact was that he had already in his possession Mr. Randolph's correspondence with Mr. Smith, and the order from the navy department; but in his own opinion, they no more related to the present prosecution, than the first paragraph of the first page of the acts of Congress.

Chief Justice enquired whether the Natchez Gazette was in court.

He would much rather that the opposite counsel should make an arrangement with each other suitable to them both—and that the court itself was not now disposed to make any arrangement. But if the parties could not come to any agreement, he should then wish to hear some argument on the subject to satisfy him, whether the court had the right to issue a subpoena duces tecum.

Mr. Burr observed, that he had been told it was the constant practice in this state to issue such Subpoenas upon the application of a party.

Chief Justice had no doubt it was the custom to do it, where there was no great inconvenience to the party summoned; that it seldom occurred; but that he was inclined to think, where great inconveniences would result to the party summoned, that the materiality of his testimony should be fully shown.

If papers are to be obtained from a Clerk's office, such a Subpoena may be issued, and though not upon affidavit, yet where there has been good cause shown.

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We shall proceed in the argument to-day or to-morrow.—Chief Justice. Unquestionably, there must be an argument, if the attorney for the United States disputes the authority of the court.

Mr. Hay. Whatever other gentlemen may think on this subject, I have not the least doubt, that these papers will be produced by Mr. Robert Smith has voluntarily furnished me with the order of the Navy Department. But although I may procure these papers, let it be distinctly understood, that I shall object to their being unnecessarily produced.

Mr. Bots. It will take 4 days at least to interchange letters between this city and Washington, and 2 or 3 days to copy the papers. So that 6 days will be totally lost to us: In the mean time, 30 or 40 witnesses; and 16 Grand Jurymen (they might perhaps require them) would be detained here; and after all, the attorney's application to the government might be unavailing.

Mr. Hay. Since then gentlemen, sir, will press this subject; I ask no more than that they will waive this discussion till to-morrow.

The court was then adjourned till to-morrow, 11 o'clock.

RICHMOND, June 13.

Latest Proceedings.

The court have been occupied during the three last days, on the motion to obtain a subpoena duces tecum, addressed to the President of the U. S.

We have detailed a part of the argument that was maintained on Wednesday on this subject. Mr. Martin was followed by Messrs. McCrae, Bots, Wirt and Wickham.

On Thursday the Grand Jury were adjourned over till Saturday; and the argument was resumed by Mr. Hay, who was succeeded by Mr. Randolph.

On Friday, the argument was continued by Mr. Martin and closed by Mr. Burr. The court have not given their decision on this interesting point. Mr. Burr observed that as Gen. Wilkinson might now be expected in a short time before the court, it was desirable to obtain a prompt decision.

On the conclusion of this argument, Mr. Burr addressed the court: he observed that this was perhaps the most proper time for renewing the motion which he had some time ago made to the court, and giving more specific instructions to the Grand Jury, on certain points of evidence. These points he had reduced to writing in the form of abstract propositions, which he would take the liberty of reading to the court.

The following is a list of those propositions, with the authorities cited to support them:

1. That the G. Jury cannot consistently with their oath find a bill except on such testimony as would justify a Petit Jury to find the prisoner guilty.

2. That no testimony or witnesses ought to go to the Grand Jury but what are legal and competent to support the charge about which the enquiry is made.

3. That the G. Jury can return a bill for Treason for lying in wait against the U. S. unless they have two witnesses who swear to the overt act of the Treason laid in the indictment; both which witnesses are believed by them.

4. That there must be two witnesses to the Grand Jury of each overt act, follows also as a consequence from the former position, that they must have such testimony as would be requisite for the Petit Jury.

5. That the Grand Jury cannot find a bill for treason in consequence of any confessions made though proved by two witnesses.

6. That as the Grand Jury only hear evidence on the part of the State, if upon that evidence they entertain a doubt of the truth of the charge, they ought not to find the bill, as the presumption is ever in favor of innocence.

7. No act of a third person can be given in evidence against the accused to prove him guilty of Treason, or of a misdemeanor under the law of 9th June 1794, unless that act is proved to have been committed by the advice, command, direction or instigation of the accused, if done in his absence or if done in his presence, unless it be proved that the accused was aiding or assisting.

8. That the declarations of others cannot be given in evidence on the present enquiry to support the charge of treason or of a misdemeanor unless it be proven that the accused was present and assented thereto.

9. That in case of conspiracy confessions good against him who makes them but not against others, Peake B. Confess. Peake 7. Hearsay—Kelyng 11th McNally 40-41. Confessions of one cannot be read against others.

10. That the declarations of others cannot be given in evidence on the present enquiry to support the charge of treason or of a misdemeanor unless it be proven that the accused was present and assented thereto.

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Burr's will not be wanting at all; or if there should be any necessity for them, that these questions might be discussed as they successively arose; that these discussions would necessarily consume much of his own time as well as the time of the court, which might probably be devoted to more useful purposes; and after all, the Grand Jury might refuse to hear any instructions, and in that case, how could they be compelled by the court? If the Grand Jury determined to pay no regard to it, of what avail would be the recommendation of the court (for it was in fact no more?) And if they were to find according to their own opinions, and in the old way, how could the court know of this variation? And how could they redress it?

Mr. Bots replied. He stated that the gentleman had demanded precedents; and yet it was but the other day when that very gentleman had enquired, why we did not constantly refer to precedents; and why we did not sometimes consult the principles of common sense; that the Grand Jury were not that lawless mob, which the gentleman had seemed to represent them; and that they would not certainly act against the law, when it was properly expounded to them by the head of the court; that although the Chief Justice's charge was extremely able, yet it was impossible that it could be so comprehensive as it might now be made, from the information which has since occurred; and that the very necessity of giving any charge at all, showed the propriety of persisting in it; that it was not colonel B's desire to consume much time, as it was his most earnest wish to end at once the bonds of recognition and the public prejudice, which surrounded him; and that they were even willing to limit their share of the discussion to a particular time.

The Chief Justice said, that it was usual and the best course for the court to charge the Jury generally, at the commencement of the term, and to give their opinion on incidental points as they arise, when the Grand Jury, themselves, should apply to them for information; that it was manifestly improper to commit the opinion of the court on points, which might come before them, to be decided on the trial in chief; that he had generally confined his charges to a few general points, without launching into many details; one reason was, that some of the detailed points might never arise during the session of the Grand Jury, and any intrusion on them, would of course, be unnecessary; and other way, that some of these points might be extremely difficult to be decided, and would require an argument of Counsel; because there was no judge or man, who would not often find the solitary meditations of his client very much assisted by the discussions of others; that he would have had no difficulty, however, in expanding his charge, if he had been particularly requested to do it, or if he could have anticipated any necessity for it, and that he would have no difficulty in giving his opinions at this time on certain points, on which he could obtain a discussion by the counsel, provided he did not thereby commit his opinion, on the trial in chief.

Mr. Burr, then requested him to inspect the list of propositions, which he had prepared; he might then determine which of those points would admit of the delivery of his own opinion; and which would not.

This list is now in the possession of the court; and here the business rests for the present.

Gen. Wilkinson and Suite.—We congratulate our country on the arrival of this important character in our city. We rejoice at this event much on his own account; but still more in relation to his country and to the cause of truth. We confidently trust, that the veil of mystery which has hitherto enshrouded so many of the transactions of the Western Country, is about to be rent in twain; and that every man concerned will be seen for what he is.

The eyes of this country are fixed upon this interesting Drama; and to our times may rue or bless the catastrophe which awaits it. But, whatever may be the consequences of the arduous trial, there is one great sentiment which every honest heart will re-echo. May misery expire; may the light beam upon us; and may justice be faithfully rendered to every man!

General Wilkinson arrived in Hampton Roads on Wednesday the 10th, in the U. States Schooner Ranger, from N. Orleans. On passing the Frigate Chesapeake, lying in Hampton Roads, the Ranger fired a salute, which was returned by the Frigate.

On his arrival at Hampton, Gen. Wilkinson had the precaution to dispatch immediately an express to the Attorney for the U. S. in this city. He left Hampton at 4 o'clock on Wednesday, and arrived about the same hour on Thursday. The object of this dispatch was to communicate the General's arrival to Mr. Hay, and through him to the court; and thus to prevent a premature discharge of the Grand Jury.

Gen. Wilkinson arrived this morning in the frigate from Hampton. He is accompanied by his son, Lieut. Murray, & servant, Lieut. Gaines, Lieut. Smith, & Mr. Graham and servant. Sergeant Dunbar, whose affidavit was lately put aside in court, & some other witnesses, accompanied the general as far as Hampton, & came up in a Pilot boat to this city.

G. W. left Governor Claiborne at New Orleans.

TURKEY. CONSTANTINOPLE, MARCH 11. Firmans have been sent to all the Barbary Regencies, charging them to send out their cruisers against the English merchantmen. Another measure which must press severely on trade, is the general decree adopted both in the Ottoman and Persian States, not only against English merchandise but against the English factories. Every thing that is English is ordered to be confiscated in both Empires.

The English Admiral has passed the Dardanelles. He left only a corvette and a brig laden with ammunition; and on the 7th of March the whole English fleet was again on its old station off Tenedos.

The Porte has formally acknowledged the new Kings of Holland and of the Two Sicilies.

ALEXANDRIA, JAN. 7. The Persians make a common cause with the Turks, and attack, at once the Russians and the English. All the English factories have been seized, and the correspondence from England with the East Indies by the way of Persia, must at this moment be stopped.

SWEDEN. MALMÖ, APRIL 7. Dispatches were yesterday received from the Governor of Pomerania, announcing the retreat of the French from thence. The Swedish troops followed them closely, and entered them much. The French abandoned their batteries and intrenchments before Stralsund. A combat took place at Lüssow, at Stralsund, and at Fagrebö. The Swedish troops possession of Lüssow and Fagrebö on the 2d of April—on the 3d of Lüssow and of Fagrebö. At the latter place 1995 French soldiers and 3000 cannons, belonging to the French military chest, were

taken.—In the other places a quantity of arms and stores were captured. 3000 French soldiers and 20 officers were taken; among the latter a French Col.

GERMANY.

BANKS OF THE ELBE, April 17. The news of a British army coming into the river has excited the most sanguine expectations among all classes of inhabitants, and an equal degree of dismay among the Dutch troops, among whom a spirit of discontent and mutiny has lately prevailed, particularly the day before yesterday, when several detachments were marched from Hamburg, on the way to Lubeck, for the defence of that city, whose Governor and garrison hourly feared to be attacked by a corps of victorious Swedes, of whom scouring parties of horse were seen near Berge-dorf a few nights ago. On this account most of the Dutch at Hamburg were ordered to march to that little town, situated half way between the former town and Lubeck. On this occasion many of the soldiers openly mutinied, swore they would throw away their arms, and go over to the Swedes or the Prussians.

The mutiny grew so serious, that some actually threw down their arms, and waving their hats high in the air, called aloud, "Long live the Kings of Sweden and Prussia! We won't fight without pay!" It was found necessary to employ martial law against some of the rioters, who were sent off tied on wag-gons, and several of them have since that been tried by a Council of War and shot.

In different parts of Pomerania, and Dutchy of Mecklenburg, the Dutch threw down their arms at the approach of the Swedes, and surrendered themselves prisoners. Besides Rostock, the Swedes had also taken Prentzlaw, at a small distance from Stettin, to which place 2000 Dutch troops had retreated from Mecklenburg. They were also masters of Ucker-münde, Wollin, Usedom, &c.

All the news of an armistice between the belligerent powers of the continent, as well as the intelligence of negotiations for peace having been opened between France on the one part and Russia and Prussia on the other, are idle tales.

The following is a copy of a letter from Hague, dated the 17th inst. alluding to this, among other interesting topics.

"Although it is pretty generally acknowledged that the Dutch troops have sustained considerable loss before Stralsund, no official report of that affair has as yet appeared. It is said that only 12 men of one battalion remain, and that the park of artillery fell into the enemy's hands. The remains of the besieging army are now in the duchy of Mecklenburgh. King Louis is much indisposed, it is said he is much affected at the reverses which our army has sustained."

FROM THE BERLIN TELEGRAPH. "Dardanelles, March 3. At three o'clock yesterday afternoon, were descried from the tower of the Mosque of Gallipoli, the enemy's fleet, to the number of 13 sail, off the island of Marmora. At 5, the squadron dropped anchor between Lampasqui and Nagara. At 3, this morning, I remarked the Admiral's ship, making signals, and beginning to lift anchor. The rest of the fleet followed the example; and in a quarter of an hour the first ship was under sail, but lay too far to the others. Exactly at 9 o'clock, a cannonade was opened from the battery of Nagara. The enemy was suffered to approach within short gun shot.—The Turks served the batteries with the greatest coolness, taking good aim, and loading quickly.—Not a shot was thrown away. The English must have received great damage, for I observed many shot balls on board, and among others, several large balls of marble struck their hulls. They were seen throwing a number of dead bodies overboard. Two English corvettes were shot between wind and water, and wrecked on the European side of the Straits. The wind blew a fresh breeze from the north, in consequence of which, the enemy's squadron, in passing from Nagara to Cape Barber, were only an hour and a quarter exposed to our fire. Unfortunately, none of the European batteries took part in this affair, so that the English had thus an opportunity of partly keeping out of the reach of the batteries on the Asiatic side. The cannonade from the castle of Couen-Cale, was very brisk, and still continues. A few days later the enemy would not have come off so well. As it is, he has lost several masts, about one hundred men, and two ships. "MECHAIN."

On the 4th, the English fleet was in the Mediterranean and out of sight. It has probably gone to Malta to repair its damages. The Turkish fleet has cast anchor before Gallipoli. The Dardanelles are fortifying in such a manner, that no fleet will hereafter be able to pass them with impunity.

DENMARK.

COPENHAGEN, April 14. Our mercantile papers give, this day, the following information, "Whereas, several persons in the mercantile line have suffered considerable losses, by suffering agreements to be made in their name, with captors of really neutral vessels and cargoes, for the payment of the expenses of the captors for carrying them in; it is supposed necessary to publish the following, in order to prove that if a due course of law is taken a decision may be obtained. The ship Africanus, of Altona, commanded by capt. Seeman, was last year on her voyage from Acoo to Fredericksbad, detained by the English privateer Hero, Capt. Aaron Goori Gilchrist. As all the ships papers as well as the declaration of the ship's crew, were fully established the neutrality of the ship, and the captor obliged to depart from the suit, the captain paying his costs.—The owner insisted on his part on the recovery of damages sustained by bringing in said vessel, and his further expenses; and notwithstanding his attorney (an Englishman) advised him to close with the proposal of the captor, he nevertheless, adhered to his determination; that the matter should be decided by the court. The result was, that the Judge of the court of Vice Admiralty, Sir William Scott, on the 5th of February, pronounced the capture to be the payment of all damages and expenses, occasioned by this unjust detention."

ENGLAND.

LONDON, April 15.—(As part of a stipulated subsidy (amounting to about 1 mil