American,
AND
Commercial Daily Advertiser.

PRINTED & PUBLISHED BY W. PECHIN,
31, South Gay-Street.
[Printer of the Laws of the Union.]

Daily Paper $7 and Country Paper $5 per ann.
☞ All advertisements appear in both Papers.

SATURDAY, AUGUST 22, 1807.

RICHMOND, August 18.

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.

THURSDAY, August 13.

Sketch of the arguments on the qualifications of an impartial jury (CONCLUDED.)

Mr. Wirt said, it were to be wished that in this case, a jury could be got of such pure materials as Mr. Martin desired; whose minds were as pure as the unsoiled snow on Dian's lap. But does experience justify such a hope? The case does not exist and the law does not require it. Mr. Martin's authorities are elementary; they are abstract; and not precisely applicable to points of practice. They are general phrases; they deal only in generals; but were these books even to be trusted; and did not their generality exclude them from familiar use; you will find that when they specify, they express a particular reference to the person of the accused. To show that these elementary principles are not compleatly pursued in the English courts, he would refer to Tooke's case, p. 9. Any enmity, any familiarity, is it Reeves a sufficient cause for rejection; but in Tooke's Trial, Mr. Thompson's intimacy with Mr. T. for 34 years was said by the judge to be no good ground of exception. *But* let us select another case in our own country. It is important that the rules of law should not be continually shifting on the waves of uncertainty, in order that a man may know how to steer his course. Well, now what says the case of Callender in a particular point? When Mr. John Bassett had objected to himself, because he had already made up his mind on the point of libel, he was overruled. But turn to the English laws of libel and what is the principal point there? Is it who is the author? Is it on that point that the brightest beams of eloquence are shed? No. But it is on the question whether it is a libel or not. Then in the language of Mr Botts, was not Callender cut off from more than half his defence? Let us draw an analogy between the two cases. These jurymen might have said, that the assemblage of men on Blannerhassett's Island was High Treason; but they knew not whether col. B. was there. Here this case and that of Callender would be strikingly parallel. In both these cases, the great facts would be fixed in the mind of the juror—and the only thing that would remain, would be to trace them up to the individual accused. But the present case falls far short of that. These jurymen say, that from newspaper publications they have taken up some impression, as to Burr's treasonable intentions; but not one of them says, that the meeting on Blannerhassett's Island was an act of treason. In another point Callender's case was a stronger one than this. It was ridiculous for J. T. Callender to have attempted to counteract the conviction, that lay against his crime. Mr. Bassett's opinion was formed upon the book itself; and there was no other evidence to produce. But in this case, a juryman has seen nothing but the evidence in the newspapers; and they say there is conflicting evidence as to the fact of treason. If then you would strip col. B. of half of his defence, because a juryman has made up half of his mind; how much more was Mr. Callender stript of his!—This kind of jury that Mr. Martin contends for, is impossible to be obtained from the very nature of things. Necessity has often given the law in other cases; and perhaps it must in this. This is not the only case where a purely impartial juryman must have dropt from Heaven or from some other planet. Look at the English Rebellions of 1715 and of '74; when the question of the Pretender and the House of Hanover was so warmly agitated. The magazines were filled with it; the utmost zeal and enthusiasm animated every man in the nation; men not only wrote but fought for it; and that in so small a kingdom, that the very clang and the din of the battle of Culloden rang to the other confines of the country. Is this a case in which an impartial jury could have been expected! and yet the rebels were tried; tried by British jurors; tried by jurors, who had been perhaps arrayed in battle against them. Perhaps those who fought for the monarch in the fields of Culloden, were the very men who decided on the trials for treason. Mr. Martin's rule is a good rule, when it flourishes in the mind of a good man; it is a good rule for Utopia and Arabia happy; and look to the trials of '94 in Ireland; when men who had fought at the battle of Wexford; when men at the very focus of public illumination, were to sit on the trial of Alexander Hamilton Rowan. Could such men have gone into the jury box as if they had never seen the books on which these charges had been predicated; as if they had been then dropt from another planet!—From the plains of Culloden and Wexford, from London and Dublin let us come back to our own threshholds. He who could peruse the public prints of North America, for the last 12 months with adamantine indifference; he who could read the depositions of Eaton and Wilkinson without some interest; cannot be a man. No man could do it that has a soul, that can grace the bosom of a man. I appeal to the bench, whether there is that base frigidity of character in the inhabitant of North America. Look at this very pannel; have they taken no impressions?—Mr. Wirt embraced a variety of other points, which our limits do not permit us to detail; and in a strain of eloquence, which it is impossible for us to transluse.

Mr. Wickham observed, that the remarks of the gentleman last up, reminded him of a Roman Epigram on a lady, who was so completely covered by the decorations which enveloped her, that she was the least part of herself. It was precisely so with the gentleman's argument. It was so perfectly enveloped in figures and graces, that the argument constituted the least part of itself; and it was only by lifting a flounce here and a furbelow there, that you could catch a glimpse of it. The gentleman has hurried us to England and to the bar of Culloden, with as much ease as if he had waved the wand of a magician. He has compared the judicial decisions in that country at the period of the rebellion with the case now agitated before this court; without having attended to the natural points of distinction between them. Every man in England could reason upon the cause of the Pretender. The basis of this decision was a chain of historical facts, recorded in books, which reason could appreciate and prejudice could not distort. Such a case would have been precisely similar to the one now before the court, had this too been founded on the annals of history or on matters of fact. Had it been established that gun-boats had defended the Ohio; that Col. B had had several engagements with Gen. Wilkinson; and had then been brought before this court for trial; the jury would have decided upon these facts, and not upon their own prepossessions. But where are the established facts in this case? The President has declared that of his guilt there can be no doubt. Yet the President is but a man and liable to deception. Gen Wilkinson too is a witness, but his credibility may be hereafter impeached: and the supreme court has already decided that his testimony is no relative to the charge of treason. This whole tale then resolves itself into Gen. Eaton's deposition; of which though we may not be disposed to say it is untrue, we may at least assert that it is marvellous. Is this accusation then founded on historical facts? Is there a single document to support it? No; not one. How then can the gentleman pretend to institute a parallel between this case and the cases of the Rebellions of England.

If it be no disqualification for one juryman to have entertained an opinion of Col B's treasonable intentions, it can be no disqualification for 12 of them. What then would be the situation of his counsel? The jury are impannelled; their minds made up as to the treasonable designs of Col. B. With what attitude could his counsel stand before such men to vindicate his innocence? Would they pretend to operate upon marble? They might as well at once abandon the cause of their client—These impressions too, respecting Col. B's intentions would directly contribute to influence their judgments as to the overt acts said to have been committed. These impressions do directly bear upon the overt act; because the intention is the first step towards the act itself, and render it more probable that that act will be committed. What is most probable is soonest believed to be most likely to happen; and the man whose judgement is therefore made up as to the intentions of Col. B cannot be said to be impartial on any one point in the cause.—Let the case be supposed of 6 jurymen whose mind is decided as to the intentions; and others as to the overt act. How could the counsel pretend to address them on either of these points? If they wished to argue on one of them they must abandon it, because 6 of the Jury are adamant: If they turned to the other, they would meet with equal prejudice and equal resistance. It was like the case of the Abbess and the Nun recorded in Trifram Shandy; where it would be a sin for either of them to pronounce a certain word entire; but by splitting it into two pieces, they completely removed all the sin of the transaction. One of them could then articulate the *Bou*; and the other the *ger*.

As to Callender's case, had Mr. Basset concluded that Callender was the author of the libel? Had he decided upon his intentions? Or upon the guilt of publishing it? No.—Did the council who appeared for him pretend to deny that it was a libel; or did they not rather voluntarily step forward for the sake of disputing the constitutionality of the law and the authority of the court, under which he was arraigned? Did Mr. Randolph himself, in the House of Representatives deny that it was a libel? And let it be recollected, that this very decision of Judge Chase was overruled in the Senate of the U. S. by a majority of 18 to 16; and yet Mr Hay has now quoted it as law.

Mr W then expatiated upon Mr. Hay's definition of an impartial Juryman. The sense of the majority of any country was to be considered as the criterion of Impartiality and truth. What a vast saving of trouble would result from this new principle. Instead of a student's poring over the black letter in his own closet, in search of principles and tests; he need only go about to this Barbacue and that Horse Race to take the common sense of mankind. A lawyer would perhaps consult his McNally; or his Reeves: But Mr. Hay would go about collecting the sense of the nation. Is there then to be an *appele nominal*, as there has been in France, when the French people were asked, "are you for Napoleon being king of the French?" But this argument proves too much. Were a man to declare Col. B. guilty not only of a treasonable intent, but of treasonable act, could he be considered as an impartial juryman, because he happened to coincide with the public opinion? It is in fact impossible to know what that opinion is. Opinions are continually fluctuating: What is law under the administration of John Adams, is not so under the administration of Mr. Jefferson.

Mr Wirt has found fault with elementary writings, and asserts that they are not always the tests of truth. It is true that they are not always so; but they are most generally so considered. Some elementary books, such as Lord Coke's, are of inestimable value. As to the variation which Mr. Wirt has pointed out between one of the elementary principles of Reeves and the court's decision in the case of Horne Tooke, a reference to the report of that trial would clearly show that this case had not been accurately represented to this court. Thompson the juryman, was not in court; he had exercised the discretion of absenting himself, and it was said by way of excuse, that he had been long and intimately acquainted with the defendant. It was to this point that the judge spoke, when he said that it was no excuse. No excuse for what? Not from serving on the jury; but for not attending the court.

Mr. Wirt here interrupted Mr W. and submitted it to every candid mind, which had most candidly stated the passage. Mr. Wirt then read it and commented at some length. A long and desultory conversation occurred on this point; after which Mr. Wickham observed that he had but one more remark to offer; that he had come here to try the defendant on the law and on the fact; and not on public rumour: but that this trial would be nothing but a mockery, if it were to be submitted to the decision of a prejudiced jury. Why did the framers of our constitution attempt to secure the privilege of an impartial jury? Was it not known to them, that the period would at length arrive, when some individual would be marked out as the victim of popular and political jealousy? And was it not from such a case, that the constitution had originally forbid the Legislature to change the law of treason; and that a subsequent amendment was introduced, still further to fortify and to secure the privileges of the accused?

Mr. E. Randolph (at the request of the court) read Judge Chase's answer to the article of the indictment, which arraigns his decision in the case of Mr Basset: Mr R. then observed that he had not intended to have interfered in this discussion; because he expected that the objections which would be offered would have been made to particular individuals only; but he had since seen, that a most serious blow was meditated at the whole system of jury trial. Whether heaven or accident had given us this illustrious Judge; it was certainly our most solemn duty to preserve it pure and perfect. Vain would be all this parade, if a judge would calmly sit upon the bench, and connive at its violation. If the courts do not defend this right could it be truly said that any man was safe in his own habitation?—Mr R. said, that some analogies had been stated between the present and other cases. Other gentlemen had introduced Burglary and Murder; and to this catalogue he should add the crime of uttering false money, knowing it to be false. If a juror should assert that he knew not whether the accused passed the money; but that he was certain he must have known it to be false; there could be no doubt of his being a biassed and incompetent juryman. Mr R expatiated at some length upon the case of Tooke, and upon the authorities quoted from Hawkins: and attempted to shew that Hawkins had contradicted and confuted himself; that instead of advocating the pure and more liberal doctrines of his own day on the subject of juries, he had appealed to the reign of the Tudors, when not a spark of liberty existed. He concluded by solemnly conjuring the court to preserve the privileges of the jury trial free from violation; he would appeal to the volume of human nature; he could almost appeal to Mr. Hay's great tribunal itself, whether any man could decide a case fairly and impartially on one half of which his mind was already made up.

NORFOLK August 17

Yesterday being the anniversary of His Imperial and Royal Majesty, the Emperour of France and King of Italy; at Sun rise a royal salute was fired by His Majesty's frigate Chesapeake, which was returned in a handsome manner by Fort Norfolk, under the command of Captain Neville. At noon and sun-set similar salutes were fired from the frigate, which was superbly decorated with flags through the day, and with lanthorns in the evening.

We received by last mail from Nassau, N. Providence papers to the 29th July; their contents are without interest. They are chiefly filled with accounts of the late ocurrence copied from American papers, from the account as originally published by the proceedings of the committees, Douglass's letter, the mayor's reply, president's proclamation and other matter on the same subject, but all *without* one single remark.

Our private correspondence says, that they do not wish to go to war with us, but that they fear from our temper it is unavoidable.

Salted provitions in American bottoms are prohibited; other articles as before.

American,
AND
Commercial Daily Advertiser.

SATURDAY, AUGUST 22, 1807

The emperor of Russia has met with a humiliating rebuff from his royal brother, (for kings are all brothers) the emperor of China. Alexander had sent thither a splendid embassy; but on its arrival at the Great Wall, an officer of the Chinese court met the ambassador, with a letter and presents, politely inviting him to return, lest, if he should proceed, after having travelled so far, he might be too much fatigued to get back again. The Chinese are a shrewd cunning people, and it has been the invariable rule of their policy to enter into no treaty-alliances, well knowing that treaties are something like cobwebs, which control the weak, but are too flimsy to hold the strong; and besides they seem somehow or other to have come to the knowledge that treaties give rise to altercations about their meaning, out of which altercations grow bloody, desolating wars. They keep all nations at a respectful distance, and manage their foreign intercourse by means of their internal regulations. Their policy, in truth, is the same as that which dictated the American non-importation act; a policy which says to other nations, "you may trade with us if you will; but if you do trade with us, it must be after the manner which we shall prescribe; and if you do not behave yourselves we will have nothing to do with you." The re-establishment of the Polish nation seems to be pretty certain: The French emperor has accredited from the existing government of Poland, M. Batowski, formerly nunico of Livonia in the constitutional diet of Warsaw, and delegate of the republic to the grand duke and the states of Courland: Bonaparte in return has appointed M. Vincent commissary to the provisional government of Poland. An article under date of Frankfort, (on the Oder) June 12th, gives an account of the French force in Germany, Poland, the kingdom of Naples and in Dalmatia, to wit; 30,000 men in the kingdom of Naples, under the command of generals St. Cyr and Regnier; 20,000 in Dalmatia, under general Marmont; 10,000 in Hesse, and in the countries of Fulda and Bayreuth; 80,000 in Prussia, forming the corps of observation, commanded by marshal Brune, and which comprises the troops in Mecklenburg, Hanover and the Hanse towns (this army is not compleated); 8000 forming the blockade of Colberg, under general Grandjean; 20 to 30,000 in Silesia, under prince Jerome; 40 or 50,000 forming marshal Massena's army; 220,000 occupying the place between Elbing, Ortelsburg and Thorn, besides the besieging corps of Dantzick, estimated at 60 or 70,000 men. Total 463,000 men. It is calculated that within the last three months, no less than 200,000 men have passed through Mecklenburg, on their way from the interior of France and Italy, to the grand army.

We are enabled to-day to proceed with the trial of Burr. On Monday, after a previous canvass for jurors on the second venire, the particulars of which will appear in the sequel, a petit jury was formed, consisting of the following persons: Edward Carrington, David Lambert, Richard E. Parker, Hugh Mercer, Christopher Anthony, James Sheppard, Reuben Blakey, Benjamin Graves, Miles Bott, Henry Coleman, John M. Sheppard, and Richard Curd, who were duly sworn. Proclamation then having been made in due form, the prisoner standing up, the clerk read the copy of the indictment, (which will be published in regular order) and afterwards addressed the jury in the usual form. Mr. Hay then opened the case on the part of the prosecution; and afterwards proceeded to the examination of the witnesses: General Eaton was sworn; when Mr. Burr rose and objected to this order of examining the witnesses. He wished the overt act to be first proved; Mr. Hay was desirous of proceeding in a chronological way.—A long argument ensued on this point, supported on behalf of the accused by Messrs. Botts, Wickham, Lee, and Martin, who were opposed by Mr. Wirt.—The latter gentleman with his usual ability, contended "that the chronological order which the attorney for the U. States was about to pursue, was the lucid order of nature herself; that the proper course for enlightening the minds of the jury was to take the conspiracy from its first birth to its consummation; would a man begin a tale at the end of it? Would an historian commence the American revolution at the siege of York?" Such arguments were conclusive; and the court finally decided that the attorney for the prosecution was at liberty to pursue his own judgment; and the court will arrest any evidence which does not appear at its introduction to be relevant to the point at issue. The court adjourned to Tuesday, the 18th inst.

The Editor of the United States Gazette, true to his party colored cause, rails loudly at Mr. Jefferson and the republican prints for having propagated the opinion that Burr is guilty, & then exclaims in behalf of the emperor-colonel, "*See now* in what a situation he is placed." His *situation*, we acknowledge, is lamentable enough. But who is to blame? Whilst Burr was travelling in the land of Nod, lurking here and there, coursing it from one place to another, building boats, enrolling men, providing provisions, borrowing large sums of money, and deluding the people of the western country with the idea that he was acting under the authority of the general government, until he had excited the suspicion of the administration and its friends, the federal prints justified him to the utmost: And when the arm of government was extended to arrest him in his career, when general Wilkinson, to save the republic, caused Burr's accomplices to be seized and sent to Washington, they raised the cry of persecution, and called on the administration and its friends to produce their proofs. Well; the proofs were produced: The public mind saw the danger which threatened the country, and acquiesced (saving and excepting the factious) in the preventative measures taken. From the proofs adduced, it was impossible but the public mind must have received some impressions: And now, because those impressions have been made from the documents called forth by the outcries of federal papers, the government is stigmatised as "flagitious," and the journals friendly to it branded with infamy by one of the original bawlers for proofs of Burr's guilt. Absurdity has no bounds. There has not been a more active partizan of Burr in the newspaper way, nor an editor on the continent that has published more in his favor than the conductor of the U. S. Gazette; and yet he is the first one to cry out that the public mind has been biassed. The fact is, that Bronson and all those of his tribe, have been defeated in their attempts to produce in the minds of the people an impression in Burr's favor; and so, having failed and being chagrined at the failure, they eject their venom on the government whenever they can, and even attempt to turn public indignation into commiseration for their favorite. Poor, persecuted Burr! Persecuted, indeed, thou art, and strangely cursed with the weakest, and most blundering and knavish friends, that ever attempted to vindicate a man in this world.

A person of the name of Jonathan S. Findlay has announced himself in the Washington Federalist as the future editor of that paper. From the tenor of his address it may be supposed that he is bent upon some nefarious enterprize, which he is determined to accomplish at all hazards; for he says, "I shall press forward in that path which a *horde* of *worthies* have travelled, with a determination not to be shaken by the threatening terrors of the *midnight dagger*." A man must really be about some criminal affair when he expects to be *daggered*; and his purposes must be *dark*, if he thinks to be caught and punished at "*midnight*." The people of the District of Columbia had better look well to the gentleman.

The following article is copied from a late London paper. The fact which it gives corroborates the opinion which we have invariably entertained touching the policy of Bonaparte ever since the battle of Jena, to wit: that on the continent of Europe he will reconquer the lost colonies of his allies as well as those of his own empire. There is a policy, however, in the British pushing their conquests in South America, besides the advantages of trade that may accrue; for the more they conquer from the Spaniards, the greater means they will have of securing to themselves good terms in a general pacification. The article follows:—

"A private letter from Altona, of the 16th inst. states, that the Spanish ambassador to the court of Vienna, has officially declared that with the consent of the emperor of the French, the Spanish troops now in Germany, would keep & occupy Hanover until the troops of England evacuated Monte Video, and all the other conquests in S America. Similar declarations are supposed to have been made by the ministers of the king of Spain, at Constantinople, Copenhagen and Lisbon."

The N. York printers of newspapers have adopted the mode of publishing for public information and as a means of aiding the cause of preventative justice, all the trials which take place at their Courts of General Sessions, together with the punishments inflicted on the guilty. We have no doubt but the practice is a salutary one, else it would hardly be continued. From a long list of cases in the N. Y Mercantile Advertiser, we select several for this day's American, as well to gratify the curiosity as to contribute to the instruction of our readers with regard to the laws and policy of a neighboring state:—

Archibald M'Lean, a boy about 15 years of age, was indicted for breaking into the warehouse of John Tonnelly on the 3d day of July last, and stealing thereout 50 skins of leather, which he threw out of a back window, and was seized by Mr. Tonnelly's foreman in the act of carrying them away. Mr. T. was in the country at the time of the trial, and no other proof of property was given than the testimony of his foreman—Messrs Morton & Sampson defended the prisoner with considerable ingenuity on the ground of his extreme youth and a defect of evidence: but it appearing that the prisoner had been for some time in the habit of stealing skins from the prosecutor, and of selling them to druggists for 12 1-2 cents each, & he having confessed his guilt before the magistrates at the police office when first apprehended, the jury brought in a verdict of *Guilty*; and he was sentenced to three years imprisonment in the state prison.

Stephen Rowe was indicted for a fraud in obtaining about 70 dollars from the wife of Mr. Fritz, junr. to whom he was a Journeyman, on the false pretence of paying a bill of Mr. Ichabod Potter's for leather alledged to have been sent to the said Henry Fritz Mr. Morton, for the prisoner, contended that the indictment could not be supported; for that according to analogous cases which had been decided in the English courts, the offence of the prisoner was no more than a *bare naked lie*. The jury found him guilty. The court ordered him to 3 months confinement in the city prison.

Samuel Van Brunt, a boy about 15, was put to the bar on a charge of stealing a gold watch, the property of Andrew Demarest, his brother in law. From the testimony of the prosecutor himself, the boy had always been admitted into his house on terms of the utmost familiarity; he had at all times been allowed access to anything in the house, and had often been permitted to use the watch in question. On the day mentioned in the indictment, he had put the watch into his pocket, evidently without any felonious intention, and had carried it out of the house. In his peregrinations through the city he called at the grocery store of one Michael Weims, who it appeared supplied him liberally with liquor, got him into a state of intoxication, and then easily prevailed on him to sell the watch for three dollars. In this situation his brother in law found him, unconscious of having committed a crime. The jury acquitted the prisoner. Weims, we understand, is in confinement on a charge of receiving this property, knowing it to have been stolen.

John Middleton was indicted for an assault on Mary Gibson. The prosecutrix is a married woman of reputation, a native of Ireland. On Sunday the 2d inst. the prisoner came into her apartment, where she and her husband were at breakfast, and enquired if she could not give him some *herring broth*. Conceiving this to be a gross national as well as personal insult the prosecutrix threw the contents of the slop bowl in his face, and he departed to all appearance perfectly satisfied. He was relating this treatment to a friend of his on the stoop of a house in Broadway as Mrs. Gibson was returning from church. His friend perceiving her pass by, pointed her out to him, when he followed her immediately, and brutally kicked her in the street, telling her at the same time he was giving her a little herring broth. The prisoner made no defence at the bar. The jury found him guilty, and the court very deservedly sentenced him to six months imprisonment in the city prison.

John Samler was charged with a violent assault upon Elizabeth Samler his wife. It appeared in the evidence that the prisoner is addicted to excessive drinking, that in these fits of intoxication he was very quarrelsome with his wife and his neighbours; that Mrs. S, is the mother of six children, depending principally on her industry for their support; that on the day mentioned in the indictment he had sold her bed and several articles of household furniture at auction, and was returning home drunk with a package of *dirty trumpery*, as the prosecutrix called it, which she would not permit him to bring into the house, and accordingly locked the door upon him; that he broke the door open, and brought in his rubbish, which she threw out pretty expeditiously into the street that he thereupon knocked her down; that she rising and running into the back yard he followed her and knocked her down a second time, after which she threw a stone at him which missed him, &c. He was found guilty, and sentenced to 3 months imprisonment in the city prison.

William Riley was indicted for stealing a horse of the value of 150 dollars, and a chair of the value of 120, the property of William Bur-