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TUESDAY, AUGUST 25, 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.

VIRGINIA DISTRICT:

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA, IN AND FOR THE FIFTH CIRCUIT AND VIRGINIA DISTRICT.

The Grand Inquest of the United States of America, for the Virginia District, upon their oath do present that AARON BURR, late of the city of New-York and state of New-York, attorney at law, being an inhabitant of and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the Devil, wickedly devising and intending the peace and tranquility of the said United States to disturb and to stir, move and excite insurrection, rebellion, and war against the said United States, on the tenth day of December, in the year of Christ, one thousand eight hundred and six at a certain place called and known by the name of Blannerhassett's island, in the county aforesaid of Wood, within the Virgin District and the jurisdiction of this court, with force and arms, unlawfully, falsely, maliciously and traitorously, did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him the said Aaron Burr, he the said Aaron Burr afterwards, to wit; on the said tenth day of December, in the year one thousand eight hundred and six, aforesaid, at the said island called Blannerhassett's island as aforesaid, in the county of Wood aforesaid, in the District of Virginia aforesaid and within the jurisdiction of this court, with a great multitude of persons whose names at present are unknown to the Grand Inquest aforesaid, to a great number, to wit; to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously and in a warlike and hostile manner array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year aforesaid, at the island aforesaid, commonly called Blannerhassett's island, in the county aforesaid of Wood, within the Virgin District and the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he the said Aaron Burr with the said persons so as aforesaid, traitorously assembled and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said United States, contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said U. States, and against the form of the act of the Congress of the said United States in such case made and provided

And the grand inquest of the United States of America, for the Virginia district, upon their oaths aforesaid, do further present, that the said Aaron Burr, late of the city of Newyork, and state of Newyork, attorney at law, being an inhabitant of, and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the Devil, wickedly devising and intending the peace and tranquility of the said United States to disturb and to stir, move and excite insurrection, rebellion and war against the said United States, on the eleventh day of December, in the year of our Lord one thousand eight hundred and six, at a certain place called and known by the name of Blannerhassett's island, in the county of Wood and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms unlawfully, falsely, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him the said A. Burr, he the said A. Burr afterwards, to wit: on the said last mentioned day of December in the year one thousand eight hundred and six aforesaid, at a certain place commonly called and known by the name of Blannerhassett's island in the said county of Wood in the district of Virginia aforesaid, and within the jurisdiction of this court, with one other great multitude of persons whose names at present are unknown to the grand inquest aforesaid, to a great number, to wit; to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons, as well offensive as defensive; being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States; and then and there with force and arms did falsely and traitorously and in a warlike and hostile manner array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year last mentioned, at the island aforesaid in the county of Wood aforesaid in the Virginia district, and within the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, traitorously assembled and armed and arranged in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said U. States, and further to fulfil and carry into effect the said traitorous compassings, imaginations and intentions of him the said Aaron Burr, against the said United States, and to carry on the war thus levied as aforesaid against the said U. S. the said Aaron Burr, with the multitude last mentioned, at the island aforesaid, in the said county of Wood within the Virginia District aforesaid, and within the jurisdiction of this court, did array themselves in a warlike manner, with guns and other weapons, offensive and defensive, and did proceed from the said island down the river Ohio in the county aforesaid, within the Virginia District, and within the jurisdiction of this court, on the said eleventh day of December, in the year one thousand eight hundred and six aforesaid, with the wicked and traitorous intention to descend the said river and the river Mississippi, and by force and arms traitorously to take possession of a city commonly called New-Orleans, in the territory of Orleans, belonging to the U. States; contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity, of the said United States, and against the form of the act of the Congress of the U. States in such case made and provided.

HAY, *Attorney of the United States for the Virginia district*

Endorsed—"A TRUE BILL—JOHN RANDOLPH."

A Copy. Test,
WILLIAM MARSHALL, CLK.

Mr. Hay then rose to *open the case* on the part of the prosecution. His speech was uncommonly luminous and instructive. He spoke upwards of two hours. As we have no time *at present* to report it in detail, we must be satisfied with a *very short* sketch of its principal points. Mr H. expatiated at considerable length on the definition of the crime of treason. The question was, what constitutes the overt act of levying war against the U. States? He stated that there was an immense interval between the first movements of a treasonable conspiracy and actual hostilities: that individuals might meet together and make arrangements for bringing forces into the field; this conspiracy was not treason: that they might go on to levy forces without treason; and that it had even been adjudged by the supreme Court of the U. States, that the travelling of these persons to a place of rendezvous was no treason: but that the crime of treason was constitutionally complete, when there was an assemblage of force at any place of rendezvous, which force was intended to be used for treasonable purposes before it was dispersed: He stated his reasons at great length for excluding from this definition, 1st the possession of arms; and 2dly, the actual employment of the force; and showed that his definition of treason was complete without these ingredients, as well on the principles of common sense, as on the decision of the supreme court of the United States in the cases of Bollman and Swartwout, and also on British authorities.

He stated, that it was consequently incumbent upon him to show 1st. that there had been a treasonable design, and 2dly. a meeting to effect that design: that it would be proved to the jury that it was the design of the prisoner, not only to wage war upon the Spanish Territories, but to take possession of New Orleans, with a view of affecting that object, and with a further view of dismembering the union: that to facilitate his own designs, he had spoken disrespectfully of the government of his country, wherever he went: to the persons in the Atlantic States: he had denounced the want of energy in the administration, and asserted the facility with which the present government and liberties of the people might be overthrown: to the people in the west, he had denounced the existence of that holy union which bound them to their brethren in the east; that wherever he went he attempted to scatter disaffection; that he had not only spoken in this spirit to the people of the west, but that writings had been published by one of his associates to dissatisfy that gallant people and prepare them for his plans: that to accomplish these plans, in the summer and fall of 1806, men were actually enlisted; boats built; provisions to an enormous amount purchased and ammunition laid in, that about 40 men had assembled at Bannerhassett's island; that Burr was not there, because he had been warned not to go, although such had been his intention; that he had joined them when they had descended to the mouth of Cum'd river, that this joint force of about 100 men had then descended the river under the command of Burr and Blannerhasret to a point, perhaps Bayou Pierre, where he first understood that all his preparations had miscarried through the means of the commander in chief; his letter put into the hands of the President, and it was then that he had expressed his surprise and indignation to a certain person at having been thus betrayed. That chimerical as these projects may appear, there was only one thing wanting to their accomplishment; the co-operation of the commander in chief and of the American army, and that it was to his exertions, that the country is indebted for the dissipation of this impending storm.

A short time after Mr. Hay had concluded, he was about to proceed to the examination of the witnesses: Gen. Eaton was sworn; when Mr. Burr rose and objected to this order of examining the witnesses. He said, that Mr. Hay had not stated the nature of Mr. Eaton's testimony; but he presumed that it related to certain conversations at Washington.—Mr. Hay. Our object is to prove by him what is contained in his deposition. Mr. Burr. Then we call upon them first to prove what the court has already established to be the course of proceeding, an overt act. Why waste 5 or 6 weeks to no purpose; at great expence and great trouble; and after all to know nothing which is relevant to the point at issue?

An argument then ensued upon this question which detained the court till 7 o'clock at night. Messrs. Botts, Wickham, Lee, and Martin advocated the necessity of proving the overt act first. Mr. Wirt opposed the motion.

He first laid a great stress upon the decision formerly given by the court, relative to this same point, on the motion for holding col. B to higher bail; they stated that the order of evidence was a part of the law of the evidence; that the court was to judge of the competency of evidence, and that it had a right to stop any evidence, which they deemed immaterial; that it was of avail to prove intentions, before an overt act had been established; that as in a writ of ejectment it would be ridiculous to begin with the boundaries before the title was proved, so it was improper to begin with the declarations of Col. B. or with any conversations, until the overt act was shown; that these declarations could only be admitted as confirmatory evidence; that it would be peculiarly hard on any individual for his whole life to be exposed in a court, every conversation which he had held, or every innocent declaration which he had ever made, before it was known whether any actual crime could be proved against him; that if the prosecutor was thus proceeding to develope the evidence as to intention only, the court had a right to stop him, and require him to give evidence of the act itself; that if it was not so he might be going on to charge a man accused of murder with a malignant intention, when the man said to be murdered was actually alive; or of Arson when the house was standing. They cited a variety of opinions and cases: Judge Iredell's opinion in the case of Fries p. 164. Vaugin's case 5 St. Tr. p. 17 22. Messenger's, 2 St. T. p. 585. 8 St. p 219.

Mr. *Wirt* contended, that from the first foundation of courts to this day, it was the practice for the prosecutor who was supposed to know the evidence best to display it in his own way; and that it would be a disrespect to the attorney for the U. States, to wave this practice on the present occasion that the chronological order which the attorney was about to pursue, was the lucid order of nature herself: that the proper course for enlightning 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? That the rule was to bring in nothing which did not touch the issue; but that the intention was an important feature in that issue. And how are the jury to be ifspoled of? The court knows, they have no right to keep from them any evidence touching the issue. If the prosecutor states that he is about to proceed to the intention, can the court say, that it proves not the overt act, and then send the jury out? Iredell's opinion in Fries's case, p. 745. And who is to be the judge of the evidence to prove the overt act? The court. Is the court to stop the prosecutor? Is then the court to usurp the right of deciding upon the evidence. As to the former decision of this court, that were two circumstances to explain it: 1st. The court wished to avoid poisoning the public mind by a needless display of evidence and called upon the prosecutor to prove the overt act first. 2dly. The court was then both judge and jury. It might say when it was satisfied with the evidence, and when it might stop it: but the jury is now to sit upon the trial and the court is stript of half its character.

Adjourned till to morrow 10 o'clock.

Half after 10 o'clock.

The Court has just decided that the attorny for the prosecution is at liberty to pursue his own judgment and the court will arrest any evidence which does not appear at its introduction to be relevat to the point at issue

JUDGE MARSHALL's OPINION, On the routin of evidence delivered on Tuesday the 18th.

Although this is precisely the same question relative to the order of evidence which was decided by this court, on the motion to commit, yet it is now presented under somewhat different circumstances, and may therefore, not be considered as determined by the former decision. At that time, no indictment was found, no pleadings existed, and there was no standard, by which the court could determine the relevancy of the testimony offered, until the fact to which it was to apply, should be disclosed—There is now an indictment specifying the charge which is to be proved, on the part of the prosecution, there is an issue made up, which presents a point to which all the testmony must apply, and consequently it is in the power of the court to determine, with some accuracy, on the relevancy of the testimony which may be offered.

It is contended in support of the motion which has been made, that according to the regular order of evidence and the usage of courts, the existence of the fact on which the charge depends, ought to be shown, before any testimony explanatory, or confirmatory of that fact can be received. Against the motion it is contended that the crime alleged in the indictment consists of two parts: the fact and the intention, and that it is in the discretion of the attorney for the United States, first to adduce the one or the other; that no instance has ever occurred of the interference of a court with that arangement which he has thought proper to make.

As is not unfrequent, the argument on both sides appears to be, in many respects correct. It is the most usual and appears to be the natural order of testimony to show, first, the existence of the fact respecting which the enquiry is to be made. It is unquestionably attended with this advantage; there is a fixed and certain object to which the mind applies with precision, all the testimony which may be received, and the court can decide with less difficulty on the relevancy of all the testimony which may be offered. But this arrangement is not clearly shewn, to be established by any fixed rule of evidence, and no case has been adduced in which it has been forced by the court, on the counsel for the prosecution.

On one side it has been contended that by requiring the exhibition of the fact in the first instance, a great deal of time may be saved, since there may be a total failure of proof with respect to the fact; and this argument has been answered, by observing, that should there even be such failure, they could not interpose and arrest the progress of the cause; but must permit the counsel for the prosecution to proceed with that testimony which is now offered.

Levying of war is a fact which must be decided by the jury. The court may give general instructions on this, as on every other question brought before them; but the jury must decide upon it as compounded of fact and law. Two assemblages of men not unlike in appearance, possibly may be, the one treasonable and the other innocent. If, therefore, the fact exhibited to the court and jury should, in the opinion of the court, not amount to the act of levying war, the court could not stop the prosecution, but must permit the counsel for the United States to proceed to show the intention of the act, in order to enable the jury to decide upon the fact, coupled with the intention.

The consumption of time would probably be nearly the same, whether the counsel for the prosecution commenced with the fact or the intention, provided those discussions, which respect the admissibility of evidence would be as much avoided in the one mode as in the other. The principal importance which, viewing the question in this light, would seem to attach to its decision, is the different impressions which the fact itself might make, if exhibited at the commencement or close of the prosecution.

Although human laws punish actions, the human mind spontaneously attaches guilt to the intentions. The same fact, therefore, may be viewed very differently, where the mind is prepared by a course of testimony, calculated to impress it with a conviction of the criminal designs of the accused, and where the fact is stated without such preparation. The overt act may be such as to influence the opinion, on the testimony afterwards given, respecting the intention; and the testimony respecting the intention, may be such as to influence the opinion on the testimony, which may be afterwards given respecting the overt act.

On the question of consuming time, the argument was placed in one point of view by the counsel for the defence, which excited some doubt. The case was supposed of only one witness to the overt act, and a declaration that it could be proved by no other. The court was asked whether the counsel would be permitted then to proceed to examine the intentions of the accused, and to do worse than waste the time of the court and jury, by exposing without a possible object, the private views and intentions of any person whatever.

Perhaps in such a case the cause might be arrested, but this does not appear to warrant the inference that it might be arrested, because the fact proved by the two witnesses did not appear to the court to amount to the act of levying war. In the case supposed, the declaration of the law is positive, and a point proper to be referred to the court occurs, which suspends the right of the jury to consider the subject, and compels them to bring in a verdict of not guilty. In such a case, no testimony could be relevant, and all testimony ought to be excluded. Suppose the counsel for the prosecution should say that he had no testimony to prove the treasonable intention: That he believed confidently the object of the assemblage of men on Blannerhassett's Island to be innocent: That it did not amount to the crime of levying war: Surely it would be a wanton and useless waste of time to proceed with the examination of the overt act. When such a case occurs, it cannot be doubted that a nolle prosequi will be entered, or the jury be directed with the consent of the attorney to find a verdict of not guilty.

It has been truly stated that the crime alledged in the indictment consists of the fact and of the intention with which that fact was committed. The testimony disclosing both the fact and the intention must be relevant. The court finds no express rule stating the order in which the attorney is to adduce relevant testimony, nor any case in which a court has interfered with the arrangement he has made. No alteration of that arrangement therefore will now be directed.

But it is proper to add that the intention which is considered as relevant in this stage of the enquiry is the intention which composes a part of the crime, the intention with which the overt act itself was committed; not a general evil disposition, or an intention to commit a distinct fact. This species of testimony, if admissible at all, is received as corroborative or confirmatory testimony. It does not itself prove the intention with which the act was performed, but it renders other testimony probable which goes to that intention. It is explanatory of or assistant to that other testimony. Now it is essentially repugnant to the usages of courts, to the declarations of the books by whose authority such testimony is received, that corroborative or confirmatory testimony should precede that which it is to corroborate or confirm. Until the introductory testimony be given, that which is merely corroborative is not relevant, and of consequence, if objected to, cannot be admitted without violating the best settled rules of evidence.

This position may be illustrated by a direct application to the testimony of gen. Eaton. So far as his testimony relates to the fact charged in the indictment, so far as relates to levying war on Blannerhasset's island, so far as it relates to a design to seize on New-Orleans, or to separate by force, the western from the atlantic states, it is deemed relevant and is now admissible. So far as it respects other plans to be executed in the city of Washington or elsewhere, if it indicates a treasonable design, it is a design to commit a distinct act of treason, and is therefore not relevant to the present indictment. It can only by showing a general evil intention render it more probable that the intention in the particular case was evil; it is merely additional or corroborative testimony, and therefore if admissible at any time, is only admissible according to rules and principles which the court must respect, after hearing that which it is to confirm.

The counsel will perceive how many questions respecting the relevancy of testimony, the arrangement proposed on the part of the prosecution, will most probably produce. He is however at liberty to proceed according to his own judgment, and the court feels itself bound to exclude such testimony only as at the time of its being offered, does not appear to be relevant.

BOSTON, August 19.

Letters from Holland, though they mention the absence of the King and Queen of that kingdom, make no mention of the abdication of the crown. The government is executed by the Ministers.—The health of the King has never been good; and he has gone into Piedmont, to take the waters for his recovery. The Queen has been with her mother, the Empress Josephine, in Paris, but has lately set out for the waters of Bagnares, near the foot of the Pyrenees.

The accounts, via Europe, of a revolt of the Spaniards at Buenos Ayres, in March last, and of their having declared themselves an independent nation, we are enabled to state on the authority of advices from the River Plate of dates two months later, are wholly unfounded.

The Emperor Napoleon has broken and disgraced Admiral Leissegues, for his conduct in the action off St. Domingo, February 20, 1806, when his squadron was destroyed by Admiral Duckworth.

Not one word has been recently mentioned of the restoration of Poland to the map of Europe.—Kosciusko had not joined the Grand Army, but remained in Paris.

Prince Jerome Bonaparte is to be created Grand Duke of Hanover.

Admiral Holloway is appointed Commander in Chief and Governor of the British colony of Newfoundland.—He is to come out in the Isis, of 50 guns, Capt. Langhorne. Sir Erasmus Gower is now on the station.

The King of Great Britain has presented a superb service of sacramental plate, and candelabra, of the most curious workmanship, for the altar of the great church in Quebec; which the Bishop of Lower Canada is to bring over with him. The King's arms are richly embossed on each article, and the whole service is curiously arranged in a mahogany case, with a green silk curtain to draw before it.

Gen. Dumourier is said to hold the pen of one of the readiest writers in Europe—He has recently published several military works, one of which is an "Analysis of the character and military conduct of Bonaparte; addressed to the French armies, and the people of Europe" In this work he endeavors to show that Bonaparte is not a *great* General: it would be well for the world if he could prove that he was not a *fortunate* one.

French Nobility. The "Legion of Honor" in France, like the "Knights of the Bath," in England, is an order of merit or nobility, which we believe is not hereditary. But this was only a stepping stone to the introduction of Orders of Nobility, which Bonaparte, in a late decree, says, are "to give fresh support to our throne, and surround our crown with a new lustre" By a recent decree a number of Dukedoms are to be created, as a reward for such of Bonaparte's favorites and "cousins" as he shall think fit to honor. Of those Most Nobles, the Marshal Lefebvre, whom the Emperor recognizes as having done him great service "on the first day of our reign," is the Premier Duke.

Commodore Preble, we learn, has returned to Portsmouth, from his late aquatic excursion; and we lament to hear, that he derived but little benefit from it; and that very little hopes are entertained of the life of that able and gallant officer.

Travellers from Canada say, that the people in that province were in expectation of being attacked by troops from the U. States, and were taking measures of defence. The garrison at Montreal had been reinforced.

NEW-YORK, August 22.

Extract of a letter from the captain of an American vessel at Laguira, dated July 25th, to the Editor of the Mercantile Advertiser.

"Previous to my departure I promised you if I saw any thing worthy the notice of your excellent paper to communicate it to you. I therefore sit down in this dreadful place, to give you the details of injustice and piracies committed on our commerce, as well as a list of Americans now in this port.

"I conceive it a duty I owe to my fellow citizens, to give such information as may prevent them from falling into error. A number of small open boats are fitted out here, whether by order of government or for individual enterprize I know not; but that they commit depredations, in the open view of this port, on our unprotected commerce, is certain; several Americans have already experienced the mortification of being brought in here, as well as into *Cabello* (which seems to be the favourite port, being at a greater distance from the seat of government) under the special pretence of having British goods on board; and, after experiencing every species of insult, they are allowed to take their vessels again, and their cargo if not British goods, *but all of them condemned*, and no redress in either case, whether you have them on board or not.

"I have an instance now before my eyes of an American ship in the offing, taken by a Spanish privateer (formerly the Fis Gig of New York) and is about conducting her to Porto Cabello. What ship she is, I cannot tell; but this is her description—a pretty long, low ship, yellow sides, ports apparent, whether painted or real I am not able to judge; no figure head, three top-gallant-yards and royals. Some of the vessels have absolutely been taken in the act of letting go their anchors, and carried away. I shall be obliged, from the distressed state of the market, to return with nearly all my cargo, or make a sacrifice of one third at least. Few of the Americans have done better; some have been wise enough to depart. A brig from Salem sailed for Maricaibo the 23d, after being offered eight dollars for his flour. It is morally impossible for our merchants to form an idea of the situation of this market. Cocoa and Coffee 23 dolls. Cotton from 18 to 19 dolls. Indigo 1 doll. 94 cents per lb.

A list of American vessels in this port the 25th July.

"Sch'r Brutus, King, for Philadelphia in 4 days; Farmer, Schuyen, do. 1 day; Juliet, Risbrough, do. 8 days; Richmond, Haswell, do. uncertain; Amazon, Sturges, New Haven; 8 days; Runger, Morfett, Philadelphia, 8 days; Juliet Seymour, Weston, arrived on the 21st July; brig Polly and Betsy, Selby, Philadelphia, uncertain; Rising States of George town, 2 days; brig Aspasia, Marrenner, of N. York, in a few days, with her outward cargo; the three masted sch'r Jason, from Norfolk, just arrived and in quarantine, captain Davis sick."