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.

WEDNESDAY, AUGUST 26, 1807.

RICHMOND, August 21.

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.*

SUBSTANCE of Mr. Hay's opening SPEECH. TUESDAY, August 18.

May it please the court and you gentlemen of the jury:

In the preliminary stage of the prosecution, in which we are now engaged many observations were made extremely derogatory to the government under which we live and injurious to the feelings of the counsel employed in the prosecution. It was said, amongst other things, that we had indulged an intemperate zeal which transgressed the limits of reason and humanity that we were solicitous to convict the prisoner, whether innocent or guilty; and to deprive him of all the proper means which were necessary to his defence. I know not, gentlemen of the jury, whether this charge has reached your ears; or if it has, whether it has made any serious impressions upon your minds; but if it had, it is my duty to efface them. But by what means? By professions of candour and of liberality which are easily made and as easily forgotten? No. I shall prove the injustice of this charge by the course and conduct of the prosecution.—We have arrived at a most serious crisis in this enquiry, on whose result the life of a man, and of a fellow-citizen, who once stood high in the estimation of this country, must certainly depend. It is alledged to be forfeited to the violated laws and justice of his country. It is my duty to support that allegation; but I shall support it only by facts which I believe to be true, and by arguments which have produced my own conviction.

The prisoner at the bar is charged with treason; in levying war against the United States. To this charge he has plead not guilty. It is your solemn duty to decide upon the validity of this plea: and you have sworn to decide it by facts alone. If you attend to the obligations of your oath, any admonitions from me will be unnecessary. You will divest your minds of every bias, of all extraneous rumours or political prepossessions. You will enter upon the case with candour, and with a firm determination to do justice between the U. S. and Aaron Burr. If after that patient investigation of the evidence which the importance of the case requires, you should doubt whether he is guilty, you must decide that he is not. Such is the language of the law and such the dictate of common sense. If you doubt, you must declare him to be innocent. But there is one distinction, which I have heard from the lips of jurymen; which seems to me to be a distinction without a difference; and to be founded in folly and in wickedness. I have heard them declare that though as individuals they might be satisfied of the guilt of a prisoner, as men they were not. This is a fallacy. I can conceive, that a juryman may entertain a belief founded on what he has heard out of doors, which is not warranted by the legal evidence before him; but if he once believes, from the evidence, that the prisoner has committed the crime alledged, he is then guilty of treachery to himself, to his country, and to his God, if he does not pronounce that belief.

The indictment before you consists of two counts. The first charges the prisoner with levying war on Blannerhassett's island: The second repeats the same charge in substance, with this addition, that in order to levy it more effectually, the Prisoner had descended the Ohio and the Mississippi with an armed force for the purpose of taking possession of New-Orleans. If either of those charges be supported by adequate evidence, you must find the prisoner guilty.

In Great Britain, there are no less than *ten* different species of treason; at least it was so when Blackstone wrote. Perhaps the catalogue has been since increased. But in this country, there are only *two* descriptions, which are defined by the Constitution itself; so that it is beyond the power of the Legislature to increase the list, however important they might consider such an augmentation. By the 3d sect. of the 3d act of the constitution of the United States, "Treason against the U. States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Of the last description of treason, it is unnecessary to say any thing, as the offence charged in the indictment is "levying war against" the U. States. This offence being thus constitutionally defined, the only question at this stage of the enquiry is, what shall constitute an Overt Act of levying war against the U. States.

It is obvious, that the interval between the first movements of a treasonable conspiracy and actual hostilities is immense. There may be a conspiracy to levy war, but this is not treason. Individuals may meet together for making arrangements to bring forces into the field; nor is this conspiracy Treason. They may advance a step further. They may not only project a plan for levying war, but they may proceed to levy troops; but this is not an Overt Act of treason. It has been adjudged by the Supreme Court of the United States that the concerned persons may proceed one other step further; the separate individuals may proceed to a place of rendezvous, and yet remain on the safe side of the line of treason. But, gentlemen, common sense, and principles founded on considerations of national safety, obviously require, that the crime of treason should be declared to be complete, before the commission of actual hostilities against the government. If any hostilities must be committed, what is the consequence? Why, that a man may take his steps until he is sufficiently strong to laugh at all your definitions of treason. He will not strike a blow; he will not commence actual hostilities, until he is prepared to give efficacy to that blow and to bid defiance to your government. Where then is the point at which a treasonable conspiracy shall be said to have arrived at its maturity? I answer; when there is an assemblage of men convened for the purpose of effecting by force, a treasonable design; which force is intended to be employed before their dispersion. The answer which I now give is not literally, but is substantially the same with that furnished by the Supreme Court of the United States, and is given in conformity to what I understand to be the spirit of that decision. In the opinion of that court delivered by the Chief Justice on the cases of Hollman and Swartwout, there occur the following expressions: "It is not the intention of the court to say, that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, *if a body of men be actually assembled for the purpose of effecting by force, a treasonable purpose*, 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." If war then be actually levied, in this manner, every person concerned is to be considered as a traitor. The same idea is expressed in ten or fifteen other parts of this decision. "To complete the crime of levying war against the U. States, there must be an *actual assemblage of men for the purpose of executing a treasonable design*." And again: "In the case now before the court, a design to overturn the government of the U. States at New-Orleans by force, would have been unquestionably a design, which, if carried into execution, would have been treason, and *the assemblage of a body of men* for the purpose of carrying it into execution, would amount to levying war against the U. States: but no conspiracy for this object, no enlisting of men to effect it, would be an actual levying of war." If then according to this definition, the accused and his associates had assembled together to attack N. Orleans and separate it from the union, though no actual force had been used, though no battle had been fought, they would have been guilty of treason. The same idea also occurs in these passages. "It cannot be necessary that the whole army should assemble and that the various parts which are to compose it should have combined. But it is necessary that there should be an actual assemblage."—"The meeting of particular bodies of men marching from places of partial to places of general rendezvous would be such an assemblage." It seems to me then, that I am warranted in the answer which I have given by the solemn decision of this supreme tribunal.—Perhaps, gentlemen, in opening this case, I may occupy more of your time than you may consider to be necessary. But you must excuse me. Justice to the accused requires, that I should freely communicate the grounds on which this accusation is to be maintained; that the counsel on the other side may prepare for his defence.

It is necessary for me to state my reasons, for having omitted two circumstances in this definition of levying war, which the counsel for the prisoner may perhaps consider as essential parts of treason. I have taken no notice of *military weapons*; nor have I introduced the employment of an actual *force*, of any violence or hostility to effect the treasonable design. I have stated neither of these circumstances, because I think neither of them essential, according to the constitution and laws of this country.

On the first point I shall offer but a few observations. Before satisfying you of the legal propriety of this omission, permit me to state the question on principles of common sense. It is true that it does not always happen in legal discussions, that this principle is consulted from the beginning to the end; but in many cases this disrespect is most unhappily practised. Instead then of considering this question as it would be presented to us by lawyers and by judges, let us view it on the sound principles of common sense and national policy. It is not necessary that the men should have arms in their hands to make them traitors. The act of treason might be completed, and yet not a single gun or even a pen knife be employed in the transaction. Suppose a case. There was a time, when 10,000 stands of arms were deposited under the roof of this Capitol. Suppose that 5 or 10,000 unarmed men had assembled within a few miles of this city, with a preconcerted design of marching to the Capitol, seizing upon the arms, dispersing our Legislature, and usurping the powers of the government. Let us suppose, what is no very difficult supposition, that the Cavalry and the Infantry of this city were to gird on their armour and resolve to disperse these men, before they could execute their treasonable intentions. They arm: they march: and the conspirators, conscious of their abominable guilt, fly in all directions at the approach of our volunteers. Will any one say, that these men are not traitors to their country?—Or suppose that any number of individuals were to assemble at Blannerhassett's island. We will suppose, that they had no arms, although I do not believe that such was the fact. They intend to descend the Ohio and Missisippi to seize upon N. Orleans, calculating upon meeting their leader at the mouth of Cumberland river and receiving arms from the Spanish minister at Baton Rouge. Would the simple circumstance of their being unarmed produce any difference in their guilt? And would it not be an absurdity to say, that the moment after arms have been put into their hands they are traitors, but that they were not the moment before? The supreme court have given a correct opinion on this subject, when in one passage they are silent as to the possession of arms, and in another, if I am not mistaken, they have expressly disclaimed it. If this point were not to be determined in this way, what would be the consequence? That conspirators would take care never to touch their arms, until they were ready to strike their blow. They would have military weapons placed within their reach; but they would not once venture to touch them before their organization should be completed. On the principles of Common Sense then, it is not necessary that they should have arms to consummate the overt act of treason. And what says the law? In the case decided by the supreme court, you will not find a single allusion as to the necessity of arms being in the hands of the conspirators. And in the case of Fries, p. 167, this subject has been particularly mentioned and my opinion embraced by one of the judges of the U. States, (Judge Chase)—It is remarkable too, in this case, that the same principle is conceded by the counsel for the defendant (Mr. Dallas) whose opinion is certainly no authority with you on this occasion; but it carries along with it the strong presumption that the law was against him, p. 108.

In Great Britain there is a statute, which was passed many years ago, in the 25th year of the reign of Edward the 3d, which describes treason in the very identical words of our constitution. This statute makes "levying war" against the king to be treason. Now; when the framers of our own constitution, many of them great lawyers too, have chosen to define treason in the very same words which had been so often in use, so often the subject of discussion and adjudication; it is certainly a fair presumption that they were to be used in the same sense which is annexed to them in England. An observation of a very able judge of the court of the United States amply confirms this remark, Fries's trial, p. 167. I beg the jury to believe, that my only purpose for referring to the English law, is to show that the decision of the supreme court on this subject is not an innovation, not a new doctrine, but is an exact counterpart of the English authorities. To prove this position, I will refer to Foster, p. 208, where he declares that there may be treason, that is, "levying war" against the country, without the presence of arms; and that the only question is, the *quo animo*, with which the thing is done; if it be to effect some treasonable plot. This opinion of Judge Foster is quoted in East's Reports, v. 1, p. 67, who approves its spirit, and thinks that arms and military array are not essential to treason. I have entered into this tedious investigation of this point, though it did not seem to me to be necessary, because our own courts have, in words too plain to deceive mortal man, pronounced that a bare assemblage of men was sufficient; and because the persons assembled at Blannerhassett's island, were actually armed for offensive as well as defensive purposes. It is to you gentlemen of the jury, I must submit, how far I have succeeded in justifying the propriety of my having omitted "arms" in the definition of treason.

I have also omitted, that the persons assembled for a treasonable purpose have committed hostilities or employed any actual force. I contend that it is not necessary to have waged battle or to have committed any act of violence. Perhaps the other side may, however, contend (though I am scarcely persuaded that they will) that there must be arms and actual force. But if they do contend for this observe the embarrassment in which they will be involved by their doctrine. If 10,000 armed men were to march to Washington in order to take possession of the capitol of the U. States; send the President to Monticello and turn Congress out of doors; these persons thus assembled are no traitors, because they have not yet struck a blow. They meet with no opposition; the government disperses through fear; but there is no treason. The doctrine that would make force, the presence and actual exertion of arms, necessary to the consummation of treason would be eminently fatal. It is the very doctrine that traitors met together to make laws for their own security, would be most seditious to recognize: for if they were not traitors, ere they had struck a blow, they would take care never to strike, one hard they could do it with effect.—I contend that my doctrine is unequivocally confirmed by the decision of the supreme court. There is no allegiance word in it which makes force or actual hostilities necessary to treason.

(To be continued.)

BOSTON, August 20.

By an arrival at Marblehead yesterday from Halifax, we received papers to the 4th inst.

HALIFAX, July 24.

The Leopard [illegible] two English merchant vessels in sight from the land. [illegible] that on its being expected [illegible] were going to attack Norfolk. [illegible] men," on [illegible] for their [illegible] they would not fight against their [illegible] refused they requested permission to leave the place in merchant vessels.

* *We presume [illegible] are meant.* EDITOR.

A letter from Halifax to a gentleman in this place states that the writer was informed by a British lieut. who was at the mutiny of the Chesapeake's crew, that eighteen men came forward and declared themselves Englishmen; but the officer refused to receive them, saying his orders were only to take the deserters.

(Repeat.)

NORFOLK, August 20.

MR. O'CONNER,

The Captain of the French frigate *La Cybele*, requests you to be good enough to add the Toast of Mr. *Poree*, the French Consul, to those published in the last Herald as given at the Fete on Sunday last—it was omitted through haste—Please also correct the one to the Emperor, to read as follows:

The EMPEROR—NAPOLEON the GREAT, the *Idol* of all Frenchmen—the *Honor* of mankind—May he live as long as his glory, to be forever the object of his People's Love, the *terror* of his enemies, and the *admiration* of the universe.

By Mr. Poree.

To the perfect harmony and union that exists between the two governments, and the two nations, *France* and *America*.

The health to *Napoleon* was followed by a salute of 21 guns—that to Mr *Jefferson* by one of 17 guns—21 guns were fired the evening that preced d the Fete accompanied by a flight of Rockets—Two other salutes were made at sun rise and at noon. Every Officer and Man of the Cybele vied with each other in doing homage to the great object of the Day—and the gaiety, harmony, discipline, and order that reigned on board, are above all praise.

The Captain of a northern sloop bound for Charleston, and put in here in distress, is to undergo an examination this morning at 10 o'clock, at the Town-Hall, in consequence of information lodged against him, for supplying the British ship of war Leopard with provisions.

American, AND Commercial Daily Advertiser.

WEDNESDAY, AUGUST 26, 1807.

The following article appeared in a Hamburg paper of the 6th June: It is stated to have been published originally on the 24th of May, in the Berlin Telegraphe the French official paper in Prussia. And coming from that quarter we may reasonably conclude that it has been composed under the eye and published by the connivance of Bonaparte. With a singular boldness the editor of the *London Times* gave it a place in that paper on the 17th of June, feebly depreciating its importance by presuming it to have been "written by some jacobin pen."

"HAMBURG, June 6, 1807.

"The popularity enjoyed by the Earl of Moira in Great Britain, is worthy of the most particular notice. It is the natural consequence of the high regard which the earl has obtained by the wisdom of his speeches in parliament, by his generosity and the splendor which surrounds him out of parliament, by his talents and military acquirements, and lastly, by his illustrious descent. Lord Moira also possesses the merit of being an Irishman, a merit which the inhabitants of that island do not treat with indifference. The earl is descended by his mother, a Baroness Hongerford, from Henry De La Pole, Lord Montague, who was beheaded in 1538, because he carried on a correspondence with his brother Cardinal De La Pole. Her mother was Countess of Salisbury, daughter of George Duke of Clarence, (brother of Edward IV.) condemned to death for having revolted against his brother; he was a son of Richard Duke of York, who fell near Wakefield in 1460, in the wars of the white and red rose. His mother, Ann, heiress of Lionel, Duke of Clarence, was married to Richard Duke of York, found guilty of a conspiracy and beheaded in 1415, who was a son of Edmund Duke of York, fourth son of Edward III.

"The houses of the Earl of Moira contain a collection of portraits of his illustrious and royal ancestors. That which has been attempted by some, to recover a throne due to them, is no proof that the Earl of Moira will also one day endeavor to enforce his right to the throne of England;—although this right would appear well founded if, as Mr. Horace Walpole has endeavored to prove, the birth of Elizabeth (daughter of Edward IV, who transferred the claims of the House of York to the collateral line of Tudor, by her marriage with Harry VII.) was really illegitimate; and if it be true, that Elizabeth Woodville was not the lawful Queen of Edward IV. because this Prince was already married with Eleanor Talbot, widow of Lord Butler, before he cohabited with Elizabeth Woodville.

"All this, however, affords reason to think, that in case the discontent of the Roman Catholics, Dissenters, and a large majority of the people, burdened with taxes, and incessantly agitated by opposite opinions, the natural result of frequent changes of ministers, should one day force the English nation to expel the house of Hanover, (authors of all the Continental wars, carried on at the expence of the people of England) it would be easy to find in the country a descendant of William the Conqueror, worthy of the sceptre of the celebrated Edward.

"Far be it from us to contend, that such a thought ever entered the mind of the Earl of Moira; but should the house of Hanover, in consequence of its Protestant fanaticism, be compelled to renounce the English throne, and Great Britain, tired of foreign princes, then wish to place on her throne, a descendant of Egbert, and of the great Alfred, would it be in the power of the Earl of Moira to counteract or oppose the execution of that project?"—[*Hamburgh Correspondenten, June 6.*]

Five years ago had any writer undertaken to predict the present exalted fortunes of Bonaparte, he would have been reputed a madman. The strange revolutions of the present day baffle all the calculations of the wisest politicians; and the most astonishing events occur with such unparalleled rapidity, that conjecture is nearly foiled in her attempts to anticipate the occurrences of the times. But in the preceding article a view is disclosed, of so broad a character, that much time must elapse before the consummation of the object, allowing it to be seriously contemplated by the French emperor, and speculation is in some measure invited, unrestricted by any fear of being forestalled by the event.

The views of Bonaparte, like those of all other spirited and ambitious men, expand with the increase of his fortune and power. We have seen him rise gradually from the rank of general to that of emperor, with an influence more consolidated and extensive than any prince that ever preceded him on the continent of Europe, nearly the whole of which is now in one shape or another subject to his control. Arrived at such a vast height of power, would it be astonishing that Bonaparte should attempt the expulsion of the house of Hanover from the throne of Great Britain? Whether Russia resolves to continue the war or makes a peace, the result will be pretty nearly the same for her; she will have to yield to the terms of her conqueror. England will then be left alone in the contest. It is well known that the people of that country are discontented with the corruptions of the monarchy and the detestable policy of the king. That discontent will not be diminished by a total exclusion of British manufactures from all parts of Europe, and from the dominions of Turkey in Asia. A revulsion of commerce so fatal to England will necessarily create all that kind of misery and dissatisfaction which leads to insurrection: As the present king has been the cause of immense evils to his subjects and of ruin to his empire, and the prince of Wales being notorious for his extravagant profligacy, the people may very readily turn their attention to some person out of the house of Hanover; and the publication above quoted, may be intended to sound the popular mind in England on the subject. No doubt but Bonaparte would support in opposition to the reigning family any one whom the people of Britain would accept. The earl of Moira has heretofore enjoyed considerable celebrity in England, and has made some figure in the public affairs of that country. This circumstance has doubtless induced the French emperor to have his pedigree traced and to select him as the object to be presented to the people of England for contemplation as a suitable successor to that family which has woefully degenerated and so shamefully disgraced the throne to which it was called in an evil moment by the councils of those islanders. If the British people can once be brought to think on the subject, important results might ensue. France would not be niggardly in her aid, and she is very competent to afford it. A war between America and England would promote such a revolution: And it behoves the British monarch and his ministry to weigh well the peril of entering into a contest with the United States at this crisis, when our weight in the scale against them would so exactly correspond with and facilitate the designs of her enemy.

These reflections had already passed in our mind, when a gentleman of this city put into our hands a letter from a distant correspondent, containing sentiments precisely similar to those we have uttered concerning this extraordinary article. We believe the mind of every unbiassed person will, on due reflection, be led to like conclusions.

DR. CRAWFORD'S THEORY.—A theory, of which we understand Dr. JOHN CRAWFORD is the author, has been broached in the "*Observer*," (a weekly publication in this city) that is calculated to awaken considerable curiosity, and to excite some interest, from the singular opinions advanced in it. The Doctor commences with the general proposition, that there is a continual tendency in all animals to an excessive increase; and, portraying the melancholy condition to which the world would be reduced if population were not repressed by the ravages of death, considers epidemics, as well as all other diseases which are destructive of life, merely agents existing in nature to prevent that excessive increase; justifying by the principle of necessity, the wise providence of God, displayed in such an œconomical organization of the universe. On the same grounds the Doctor deems war beneficial to the world, and suggests that the bloody contests of the French revolution were produced by an excess of population, which, not having been thinned by death, rendered the great mass of people miserable, from the increased difficulty of procuring the means of subsistence. After supporting this principle by a train of ingenious conjectures and pertinent reasoning, the Doctor proceeds to state his second proposition, that the principles of life and death are the same in different animals; and, enlivening his subject with an entertaining sketch of the natural history of the Puceron, known in English by the name of Vine-Fretter or Plant Louse, details at considerable length many phenomena relative to other insects and worms, explaining how they furnish the means of existence for, and are destined in the order of nature to become a prey to, each other. The Doctor then applies his reasoning to the human species, and submits it as a problem whether epidemics may not be occasioned by similar operations, from a deposit of the eggs of insects on the human body, to which the cuticle or other part may be insensible, and that their larvæ in due time proceed to assail the vitals of the human frame.

The Doctor has given his theory the title of "REMARKS on QUARANTINES," to which species of restrictions he is decidedly opposed, from the consideration that quarantines are entirely inefficacious, alleging that yellow fever and all other epidemics, proceed from a regular operation of the laws of nature, and no human precautions can hinder their introduction.

After this statement it can hardly be necessary to mention that the Doctor's opinions are hostile to the doctrine of contagion, which he contends cannot act through the medium of the air nor by contact. The general conclusion which Doctor Crawford draws from his premises is, that epidemics are an evil which it is in vain to attempt to prevent, and that we ought merely to strive to mitigate the affliction.

Without pretending to decide on the merits of this theory, we would invite persons who are disposed to investigate the subject to consult the numbers of the "*Observer*," from No. 16 of volume I, to No. 4 of volume II. Those who are disposed to test the Doctor's reasoning by applying it to the existing epidemical *influenza*, may find room for curious speculation.

FROM RICHMOND.

Commodore Truxton proved, exclusive of the treasonable intentions of Burr, that Mexico was to be invaded, revolutionized, and converted into an independent empire.

We mentioned yesterday that Mr. Wickham spoke for 4 hours on Thursday; some accounts say 5 hours.

On Friday Mr. Wickham spoke two hours longer. Israel Miller and Purley Howe were then examined on the part of the U. S. Mr. Randolph made an argument in support of the proposition, which continued till 3 o'clock; when at the request of Mr. Hay, the court allowed the counsel for the U. S. until Monday to prepare a reply to the arguments of Messrs. Wickham and Randolph.

A writer in the New York Commercial Advertiser, remarks that an unusual number of deaths occasioned by consumption of the lungs, succeeded the *influenza* of 1790-1; and states that the influenza, like catarrh, measles, and whooping-cough, by the inflammation it induces in the lungs, will in many instances, lay the foundation of consumption. Accordingly, he recommends those who are attacked with *influenza*, particularly such as have an hereditary predisposition to consumption, or from a weak chest and general delicacy of constitution, are liable to affections of the lungs, to be early in their application for medical aid, even where the attack is apparently slight.

It is certain that the hurry in which the proof-sheets of our daily papers are read, and the slovenly manner in which they are sometimes corrected by the workmen, are the occasion of very ludicrous errors. In the Gazette of the United States of the 22d, inst. speaking of an old man