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BURR'S TRIAL.

OPINION OF THE COURT

On the motion to arrest the evidence, delivered August 31.—Continued.

In both the cases here stated, the persons actually set out together and were near enough to assist in the commission of the fact. That in the case of Puddy the felony was as stated by Hale, a different felony from that originally intended, is unimportant in regard to the particular principle now under consideration, so far as a suspected distance, as respected capacity to assist in case of resistance, it is the same as if the robbery had been that originally intended. The case in the original report shows that the felony committed was in fact in pursuance of that originally designed. Follen 350, plainly supposes the same particular design, not a general design composed of many particular distinct facts. He supposes them to be co-operating with respect to that particular design.— This may be illustrated by a case which is perhaps common. Suppose a band of robbers con federated for the general purpose of robbing.— They set out together or in parties, to rob a particular individual and each performs the part assigned him. Some close up to the individual demands his purse, others watch out of sight to intercept those who might be coming to assist the man on whom the robbery is to be committed. If murder or robbery actually take place, all are principals, and all in con spiration of law are principals. But if those they set out at the same time or at different times, by different roads, to attack and rob different individuals or different companies; to commit different acts of robbery; to commit different acts of robbery or failed robbery, were committed pri vately at the different times, were committed with them in the commission of robbery, who were to share the plunder, but who did not assist in the particular fact.— They do indeed belong to the general party, but they are not of the particular party which committed this fact. To be considered as principals by observing that "in order to render a person an accomplice & a principal in a felony, he must be aiding and abetting at the fact, or ready to do so at the moment if necessary." That is, at the particular fact which is charged, he must be ready to render assistance to those who are committing that particular fact; he must, as is stated by Hawkins, be ready to give immediate and direct assistance.

All the cases to be found in the books go to the same point. Let them be applied to their proper consideration. The whole treason laid in this indictment is the levying of war in Essex-shire, & it is not the whole question to which the inquiry of the court is now directed is, whether the prisoner was legally present at that fact. I say this is the whole question, because the prisoner can only be convicted on the overt act laid in the indictment. With respect to this production, it is as if no other overt act existed. If other overt acts can be inquired into, it is for the sole purpose of proving the parti cular fact charged: it is as evidence of the crime consisting of this particular fact, not as establishing the general crime by a distinct fact.

The counsel for the prosecution have charged those engaged in the defence with consider ing the overt act as the treason, whereas it ought to be considered solely as the evidence of the treason; but the counsel for the prosecution seem themselves not to have sufficiently adverted to this clear principle, that though the overt act may not be itself the treason, it is the evi dence of that treason which can produce conviction. It is the sole point in issue between the parties. And the only division of that point, is the expression be allowed, which the court is now examining, is the constructive presence of the prisoner at the fact charged.

To return then to the application of the cases. Had the prisoner set out with the party from Beaver for Blannerhaffett's island or per haps had he set out for that place though not from Beaver, and had arrived in the island, he would have been present at the fact; had he not arrived in the island, but had taken a position near enough to co-operate with those on the island, to assist them in any act of hostility or to aid them if attacked, the question whether he was constructively present would be a question compounded of law and fact, which would be decided by the jury, with the aid of the court, so far as respected the law. In this case the accused would have been of the particular party assembled on the island, and would have been associated with them in the particular act of levying war, said to have been committed on the island.

But if he was not with the party at any time before they reached the island—if he did not join them there, or intend to join them there; if his personal co-operation in the general plan was to be afforded elsewhere at a great distance, in a different fact; if the overt acts of treason to be performed by him were to be distinct overt acts, then he was not of the parti cular party assembled at Blannerhaffett's island and was not constructively present, aiding and assisting in the particular act which was there committed.

The testimony on this point so far as it has been delivered, is not equivocal. There is not only no evidence that the accused was of the particular party which assembled on Blannerhaffett's island, but the whole evidence shows that he was not of that party. In felony, then, admitting the crime to have been completed on the island, and to have been aided, procured or commanded by the accused, he would have been incontestably an accessory and not a principal. But in treason it is said the law is other wise, because the theatre of action is more extensive. The reasoning applies in England as strongly as in the United States of America. While in 1715 and '45 the family of Stuart fought to regain the crown they had forfeited, the frigate was ever considered as legally present at one place, when actually at another; or as aiding in one transaction, while actually employed in another. With the perfect knowledge that the whole na tion may be the theatre of action, the English courts procure or aid treason, is guilty accus.

forty, and solely in virtue of the common law principle, that what will make a man an accessary in felony, makes him a principal in trea son. So far from considering a man as con structively present at every overt act of the general treason in which he may have been con cerned, the whole doctrine of the books limits the proof against him to the particular overt acts of levying war with which he is charged. What would be the effect of a different doc trine? Clearly that which has been stated. If a person levying war in Kentucky, may be said to be constructively present and assembled with a party carrying on war in Virginia at a great distance from him; then he is present at every overt act performed any where; he may be tried in any state on the continent, where any overt act has been committed; he may be pro ved to be guilty of an overt act laid in the in dictment in which he had no personal partici pation, by proving that he advised it, or that he committed other acts.

This is perhaps, too extravagant to be in terms maintained. Certainly it cannot be supported by the doctrines of the English law. The opinion of Judge Patterson in Mitchell's case has been cited on this point. 2 Dal. 318. The indictment is not, as stated; but from the case as reported it must have been either general for levying war in the county of Alleghany, and the overt act laid must have been the assembling of men and levying of war in that county; or it must have given a particular detail of the treasonable transactions in that county. The first proposition is the most prob able; but let the indictment be in the one form or the other, and the result is the same. The facts of the case are, that a large body of men of whom Mitchell was one, assembled at Brad dock's field, in the county of Alleghany, for the purpose of committing acts of violence at Pittsburgh. That there was also an assem blage at different times at Conches fort, at which a prisoner also attended. The general and avowed object of that meeting was to concert measures for resisting the execution of a public law. At Conches fort the resolution was taken to attack the house of the inspector, and the body there assembled marched to that house, and attacked it. It was proved by a competent number of witnesses that he was at Conches fort, and that he ordered to recruit the militia to be at tacked; that he marched with the insurgents towards the house, that he was with them after the action attending the body of one of his comrades who was killed in it; one witness swore positively that he was present at the burning of the house, and a second witness said that it ran in his bed, that he had been there. That a doubt would exist in such a case as this is strong evidence of the necessity that the overt act should be unequivocally proved by two witnesses.

But what was the opinion of the judge in this case? Conches fort and Neville's field being in the same county, the assembling having been at Conches fort, and the resolution to attack the house having been there taken, the body having for the avowed purpose moved in execution of that resolution towards the house to be attacked, he is not to think that the act of marching was in itself levying war. If it was then the overt act laid in the indictment was committed by the assembly at Conches and the marching from thence, and Mitchell was proved to be guilty by more than two positive witnesses. But without deciding that to be the law, he proceeded to consider the meeting at Conches the immediate marching to Neville's field, and the attack and burning of the house, as one transaction. Mitchell was proved by more than two positive witnesses to have been in that transaction, to have taken an active part in it, and the judge declared it to be unnecessary that all should have seen him at the same time and place.

(To be Continued.)

FROM THE LONDON MORNING CHRONICLE OF JULY 28.

The circumstances respecting the engage ment between the Leopard and the American frigate Constellation, [Chesa peake] are stated to be as follows:—"It appears that some British Deserters had taken refuge on board the American frigate. The Leopard sailing in with her demanded that they should be given up, and insisted upon searching for them. This was peremptorily refused by the American captain; after which the Leopard fired a shot, which was answered by a broadside, and an action immediately com menced, which, however, did not continue long, for the Constellation, [Chesa peake] upon having a few men killed and wounded, struck her colors. The deserters were taken out of her, and she was permitted to depart, and, we understand, she returned immediately to the Chesapeake. The Constellation, [Chesa peake] is a large 44 gun frigate, very little inferior in size to the Leopard.

Such is the account given of this affair in the Ministerial paper the Sun, of 1st in stant. Other reports mention, that it was not the Constellation, but the Chesa peake, and that she was carried to Halifax; but we take it for granted, that the above is the correct account. Out of this statement as it stands, various considerations arise; though, to enable us to judge of the true state of the case, much more information is necessary. If the American captain received on board his vessel deserters from British ships of war, knowing them to be such, perhaps he is culpable, notwithstanding the practice of one nation receiving the subjects of another into its service, with out any questions asked. On the men being demanded, he ought, for the sake of peace and good understanding, per haps, to have given them up, though we do not know that by any law of Nations, far less by any existing Treaty, he was bound to deliver them on the demand of any British ship. If he was called upon, however, to deliver them upon a menace of search, and if that accompanied the demand, he did no more than his duty in refusing to allow his ship to be searched; because, had he yielded to the menace, he surrendered an important right be longing to his country. It is to be observed, that this is a case different from any that has yet occurred, respecting the right of taking British sailors out of American ships. The Americans dispute our right of taking them out of private ships, and alledge great outrages in doing so. Here the

case stands upon totally different grounds. The Constellation [Chesa peake] was a ship bearing a flag and com mission of the United States. The ques tion then is, whether this country, or any ship bearing the King's authority and commission, had a right to insist on vi siting by force the ship of a neutral and friendly power, for the purpose of search ing for deserters? It is not whether there actually were or were not deserters on board the American frigate, or whether the American captain knew of it? That fact at present is of no manner of consequence. The question is, whether we had the right to pursue the redress of an alleged grievance, in the way resorted to by the commander of the Leopard. A man may have a very good action at law, when he must not take the law into his own hands.

We hardly imagine that any Civilian will contend, that a British ship could have this right of search by force, because this right is whol ly inconsistent with the Sovereignty of the U. States of America. To all intents and purposes the Sovereignty of the United States in all its branches, and in every respect whatever rela tive to military jurisdiction and authority over its public force, is as complete as that of this or any other nation over its own navy. But what can be a more direct invasion of this right of Sovereignty, than a more flagrant attack on the honour of an independent nation, than to insult as a matter of right, by going on board a ship of war, and searching for deserters? We do not know any case that would support such a demand, for there can be no necessity for it; but to permit a nation's title to very trading and far below what could justly be considered as demanding that another should consent to such a badge of ignominy. Let any military man, or any Captain, reflect for a moment what the thing demanded is. It is that the public troops and vessels are to be searched, when and where they please, and on board the public ships and ves sels of another friendly power, and by force pass in review the whole crew teach the whole ship, and in every thing the most inhumane with the dishonour of the ship wrecked, and the dignity of the nation submitting to this sup posed right?

Let us put this home to ourselves. Suppose the Constellation [Chesa peake] had been sailing at Port Antonio, Cape de Cayenne, or any other port, where the British flag was hoisted, and that some sailors were on board a British ship of war. A meeting that they were to have, would any English officer commanding such a ship, have called to the resident and insulting demands of Pruxton, to land or come on board his vessel, to make his crew pass in review, and to be taught the very nature of things, which without outrage and insult? Yet in such a right in this pretension, it is a high common to both nations, and Captain Pruxton would have been as much entitled to exercise it at Spit head, as the Downs, as the Commander of the Leopard in Hampton Roads. The claim is for the present, and we do not require an independent Government, that it can have no foundation in the law of nations; and it would necessarily lead in practice to such disorders as in the high spirited officers of two differ ent navies, as much as any reasonable man that being utterly repugnant to common sense, it annoys form part of the international code of civilized societies.

The demand to visit and search a ship bearing the flag and commission of an independ ent neutral power, on pretence of catching desert ers, is of a quite different nature. Surely if any power is to be privileged from a forcible entry on such ignominious pursuit, it is the royal, or the national navy, of an independ ent State—Surely if any coastwise are to be made, it must be to prohibit such indebate and disorderly intrusions. We do not plead the cause of the American Navy here—we plead that of the British Navy. We say that British ships of war are not, and cannot, be subject to such visits from the Americans, or any other nations; and therefore the Americans are not bound to submit to them from the British. The law is equal to both, and the exercise of a law at once so humiliating and so dan gerous, cannot be supported. We do not then that such a law exists. We do not think it proper to produce a single paragraph from any respect able writer on public law, or any admitted case, by which the proceedings of the com mander of the Leopard can be authorized or defended. His conduct, come what may of the dispute ought to be disavowed.

We are glad to find that Sir John Nichol, the King's advocate, was present at the Council, upon this affair. The learning and bold sense of Sir John Nichol, we trust would correct the intemperance of ministers, and satisfy them that the pretension insisted upon in this case is wholly unjust, and is utterly inconsis tent with the common rights and dignity of independent States. What may be the facts of this case, we do not pretend to be yet informed. It is said, however, that the deserters in question were really Americans and not British sailors; that, as we have said, does not alter the question of right. If they were British sailors, redress surely might have been obtained by applica tion to the American Government; and there was no high pressing emergency or urgent danger from the escape of these deserters, as to justify the adoption of a violent remedy, or the appeal to that sort of law which nothing but necessity can sanction.

Complaints of taking each other's men are common to us and the Americans, and proba bly in both cases to some extent well founded. But this is to be considered, that in the one our men follow their own inclination, in the other they are pressed. We do not believe, however, that there are 1000 British seamen altogether in the American service. This is not a case in the final degree af fected by that of the Swedish convoy. The principle is wholly different. In the case of the Swedish convoy there was no claim made to visit and search the ship of war. Our claim was to search the merchant ships under convoy; and the Swedes said "no; the presence of our ship of war is sufficient security that this convoy carries no contraband." We again denied this and insisted upon visiting the ships under convoy, provided we had a reasonable ground of doubt or suspicion.

PHILADELPHIA, Sept. 21. Extra from an officer of the United States, dated at Canton mts on the Missouri, on at St. Louis, August 25, 1857. "I have this day seen T. Bates, esq. the acting governor of this territory. He appears to be very apprehensive of some hostile intentions of the Indians on the Mississippi above this. He thinks the detachment of United States troops arrived here in very good time, to check or damp them. The British agents and traders on the Mississippi and the Missouri

rivers are I am certain doing every thing in their power to make the Indians unfriendly to the U. States."

Extra of a letter from a gentleman in the western country, to his friend in this city, dated August 31, 1857.

"Nothing material has transpired since I wrote you last, except much alarm has been excited in the back settlements, from disaf fected Indians of several nations, and it ap pears to increase with some foundation. Last night arrived here, an express from Urbana, fixing the apprehensions of the people in gen eral, and the movements and positions of the Indians in various quarters, which appear not very pacific; there are upwards of 11 or 1200 emu-diel and named, within the vicinity of Fort Wayne, and several other tribes in different parts of the country, which are chiefly composed of the Chippeway, Cowtowatamoy and Shawanese Indians; they have been en couraged and allured, of late, to come into the settlements to see a prophet, as he is termed, who boasts of supernatural power, and pre tends great fitness in advocating their cause, and tells them they have an equal right to all the country round—the chiefs here no credit to the stories propagated of his mir acles and powers."

WEDNESDAY, SEPTEMBER 23, 1857

FOR THE AMERICAN.

CLARA D'ALBE.

The French in the happy talent of telling a story with liveliness & ease, are univer sally allowed to excel every other nation. This is in part, perhaps, to be ascribed to a spry and nervous vivacity of charac ter—but certainly more to the innate beau ty and perfection of their language. Cultivated and refined in course of which it may properly be said to be the dialect, it has long since acquired an elegance and precision for which our language has been slowly exchanging its native rudi and inharmonious structure. It is happily calculated to support the unstudied elegancies of conversation, and abate all others, susceptible of embellish ment from a skilful and delicate hand. The French, therefore, have uniformly excelled in novel writing and in epistolary and familiar composition. Many of their novels are eminently distinguished for sprightly and animated narration; and we have, perhaps none, that in this re spect approach so the unrivalled and un equalled Gil Blas, of Le Sage. Mr. Fielding's novels, though exquisite in their kind, are liable to some objection; and every reader must remember how much the durable humor of that writer suffers from the coarseness and vulgarity of his expressions. I would not, how ever, be understood as applying this obser vation with very great latitude to the writers in our language. In the elevated and more dignified walks of composition, we have many who rise far above the French, and some who equal, if they do not surpass them, in the tender graces and lighter beauties of a style. I shall mention only two, whom it will be nearer my purpose, and more in harmony with the design of this essay, to notice. Mrs. Radcliffe as a romance writer, yields to none I am acquainted with in the French language. In the admirable performances of this lady, I recognize at one time the dark mysterious painting of Dante, at another the sportive and luxuriant imag ery of Ariosto. She has, indeed, stolen from the caverns of the Florentine muses their sacred fire—their dreams—their magic spells, and enchantments, with which they so imperiously sway the fancy and the heart. At one time I am transported amidst the gaiety of Venice to sport among its gondolas on a moon light summer's evening, upon the waters of the Adriatic; at another time I am carried into the cliffs, the steep and precipices of the Apennines, and conducted under the shades of night, to the myster ious transactions at Udolpho. The cha teau of St. Aubert, the little picture of domestic quiet exhibited there, the gay banks and variegated scenery of the Garonne would not more have embellished the mi nutable landscapes of Poussin or of Claude Lorrain, than the torrents, the rocks and the fine clad brows of the Apennines, together with the troops of banditti, and the terror-frowning battlements of Udolpho would have been worthy of the pencil of Salvator Rosa. Having mentioned Mrs. Radcliffe as a romance writer, I shall address Lady Montague as a no less illustrious exception in the department of epistolary composition. The accomplish ments, the attainments and learning of this lady were once well known to the polite and literary world. The graces and captivations of her person are now no more, but the radiant image of her mind remains and flourishes in immortal youth. She has the ease, the sprightliness, the playful manner and easy basinage of Madame Sevigne, without her talkativeness and silly anecdotes. And let me say the translator of Clara D'Albe is not among the least of those who have been success ful in copying the ease and graces of French composition. Of the original it would be superfluous for me at present to say much. It has supported some claims to excellence in its own language; no do I think in its present dress, it will be less acceptable to the reader of discernment and taste. As to its moral tendency, it paints in vivid colorate the agonies of deluded sensibility, and shows how strong a guard it is necessary to impose upon the ardent and impetuous feelings of youth. The seductive coloring by which a false imagi nation heightens the alligments of

guilty passion, vanishes before the light of experience and truth; and it is an exposure of the heart, its errors, and its aberra tions, that disarms the force of the passions, and strips the enchantment from vice, with which she surrounds her infatuated votaries. But to return: Of the translation I would say a few words: The first duty, undoubtedly, of a transla tor, is to give the meaning of the author pure and unsullied. This, however, is not all: Every work of merit is distin guished by a peculiar cast of thought and diction, which stamps and marks its character. This is the soul and animating spirit of writing; and in managing and preserving this, the skill of the transla tor is chiefly displayed. Here those ce lebrated lines in Horace, in a particular manner, become applicable:

Brevis esse laboro, Oniculus sic fectantem lenia nervi Delicant amoque. Profectus grandia turgo Scripsi hami tutus nimicum timidasque pro celas.

The translator must keep that path which steers between a timid and slavish adherence to the author's meaning on one hand, and a licentious par phraseastic manner on the other. These two ex tremes the translator of Clara D'Albe, has, I think, happily avoided. The promptitude and spirit with which she gives the meaning of the original, not only evinces a native sprightliness and energy of mind, but shows us she is in possession of that art which is the fruit of long and laborious practice. I mean the art which depends upon a knowledge of just and harmonious expression. I am proud to find in my native city a lady who, to a thorough conception of the force and delicacy of her own language, joins such brilliant powers of mind; and I have only to regret that such estimable talents should be employed in the servile task of translation. The little work, the version of which she has given to the public, has, upon the whole, considerable merit. The sentiments, without being overstrain ed, are glowing and animated, and calcu lated to interest the best feelings of the heart. The story is carried in a series of letters, which is a mode of composi tion that has peculiar advantages. The writer is enabled more fully to display the heart, and to paint those delicate shades of character which too often escape in narrative. In private familiar letters, the soul of the writer is as it were laid open, we penetrate into the most recesses, and see it naked, stripped of the studied artifices of behavior, and disengaged from those restraints which society and the world put upon it. It is to this circumstance we owe many of those inimitable touches which charm us in the Nouvelle Heloise of Rousseau. That celebrated work has never been translated into our language; I mean it has never been rendered with the spirit & eloquence of the original; and did I not fear the consequences of that alluring book; if its bewitching sentiments, its tender pa thos, were supported by an eloquence equally glowing and captivating with Rous seau, I know no one more adequate to the translation than the lady whose work I have presumed to criticize. But these observations will be unheard amidst the din of business, and perhaps but superfi cially attended to by those who have leisure for literary recreation. The period so anxiously waited for by the friends of true taste and learning approaches with tardy and hesitating steps. That period when the general voice will render un necessary such feeble testimony as this, and when a generous and enlightened public will discriminate and reject the spurious and tinsel productions that are thrown to us by surrounding nations and explore and cultivate that native mine of genius which has hitherto been suffer ed to moulder and decay.

PETRONIUS.

By captain Conklin, in 12 days from Hayti, we learn that the war between Petion and Christophe continued with varied success, but it was expected Christophe would finally prevail.

A private letter from London, dated August 5, affords that "the government of England are exceedingly embarrassed, and the peace is uncertain but they must very soon conclude a dishonorable peace."

VOLUNTEERS.

On the 18th inst. the First Regiment Marye land Militia (Charles county) commanded by Colonel Hawkins were addressed in an eloquent and patriotic manner by Brigadier General Caleb Hawkins, and by John Campbell, Esquire, member of congress, preparatory to the expected draft: who at seventy volunteered their services as part of the quota of this date. It is expected that Gen. H's brigade will furnish their number without a draft. Gazette.

The following extract is said to be from an intelligent merchant in London, who is on terms of confidence with the American min isters there. Phil. paper.

"I have the pleasure to state, that it is understood there is to be a friendly discussion under our government and your ministers respecting the unfortunate business of the Leopard and the American frigate, and measures taken accordingly. I trust that the powers and instructions, with which they are now invested, will cement the union between the two countries and provide for those casualties, that may occasionally arise to interrupt it." August 1, 1857.

There are very strong reasons for believing that the yellow fever rages at present in the city of Charleston. From the information we have received, we would conceive it highly proper in our board of health to keep a vigilant eye on vessels arriving from that port. Phil. paper.