## American.

## Commercial Daily Advertiser.

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BURR's TRIAL.

OPINION OF THE COURT On the motion to arrest the evidence, delivered August 31. - Continued.

The crimes then are not the same, and may not indifferently be tried under the same indictment. - But why is it that an acquittal as principal may be pleaded in bar to an indictment as accessary? If it be answered that the accessorial crime may be given in evidence on an indictment as principal, but that the principal crime may not be given in evidence en an indicim nt as accessory, the question recurs, on what legal ground does this distinction fland? I can imagine only this. An accessary being encodam modo a principal, in indictments where the law does not require the manner to be stated, which need not be special, of accessorial guilt, if the punishment be the - same, may possibly be received; but every indistinent as an accessary must be special. The very allegation that he is an accessary must be a special attegation, and mutt show how he became an accessary. The charges of this special indictment therefore must be proved as laid, and no evidence which proves the crime in a form substantially different can be received. It this be the legal real in for the dillination it supports the exposition of thefe dicta which has been given. If it be not the legal reaton, I can conceive no other.

But suppose the law to be as contended by the countet for the United States. Suppose an indictment charging an individual with personally assembling among others and thus levying war, may be satisfied with the proof that he crufed the assemblage. What effect will this law have upon this cale?

The guilt of the acculed, if there be any guilt. dues not contill in the affe nblage, for he was not a member of it. The simple fact of usiemblage no more asseds one absent man than another. His guilt then confills in procuring the assemblage, and upon this fact depends it's criminality. The proof relative to the character of an assemblage must be the same whether a man be present or absent. In the general, to charge any individual with the guilt of an assemblage, the fact of his preferce mult be proved. It constitutes an essential part of the evert act. If then the procurement be sublituted in the place of presence, does it not allo constitute an essential part of the overt act Multit not be proved? Multit not be proved in the fame manner that prefence mult be prov.d? If in one cale the prefence of the individual makes the gult of the assemblage his gu!, and in the other cale the procurem n by the individual makes the guilt of the assemblage his guil, then prefence and procdeement are qually component parts of the evert uci, and equally requir to witness.

Collateral points may, fay the books, be proved according to the course of the comm in law, but is the sa collate al print! Is the fact without which he accused does not participate in the guilt of the assemblage, if it was guilty, a collateral point? This cannot be. The pr sence of the party, where presence is secessary, being a part of the overtiact, mult be politively proved by two witnesses. No presumptive evidence; no facts from which presence may be conjectured or interred, will latisfy the confliction and the law. If precare mentialis the place of presence, and become part of the overt art, then no pretump ive evidence, no facte from which the procurement may be conjured or inferred, c n satisfy the conflitution and the law. The mind is not to be led to the conclusion that the individual was present by a train of conjectures or inferen es, or of reasoning; the fact must be prived by the winelses. No the where productment supplies the want of presence, is the mir d to be committed to the conclusion that the accused procured the assembly, by a train of conjectures or inference, or of reasoning; the fact itled must be proved by two witness. 5, and man have been committed within the di, -

If it be faid that the advising or procurement of treation is a fecret transaction which can fearcely ever be proved in the manner required by this opinion; the answer which will readily fuggest ittelf is, that the difficulty of proving a fact will not justify conviction without proof. Certainly it will not justify conviction without a direct and positive withes in a cale where the corditution requires two. The more correct inserrence from this circumilance would Seem to be, that the advising of the fact is not within he constitutional definition of the crime. To advise or produce a treason is in the nature of conspiring or plotting treason, which is not treason in itself.

If then the dearmes of Keeling, Hale, and East are to be underslood in the sense in which they are pressed by the counsel for the profecution, and are applicable in the United S ates; the fact that the accused procured the alsemblage on Blannerhassett's itland must be prov.d. not circumitantially, but positively by two witnelses, to charge him with that alcemblage. But there are still other most important considerations which must be well weighed before this doctrine can be applied to the United

States. The 8th amendment to the constitution has been prefsed with great force, and it is impoultible not to seel its application to this point. The accused cannot be truly faid to be " informed of the nature and cause of the acculation," unless the indicament shall give him that notice which may realonably luggest to him the point on which the acculatio. urns, so that he may know the course to be pursued in his de-

It is also well worthy of consideration, that this doctrine so far as it respects treason, it entirely supported by the operation of the common law which is faid to convert the accelsary before the fire into the principal, and to make the act of the principal his act. The accessary before the fact is not said to have levied war-He is not said to be guilty under the statute.-But the common law attaches to him the guilt of that fact which he has advised or procured, and as contended, makes it his act.—This is the operation of the common law, not the operation of the flature. It is an operation then which can only be performed where the common law exills to perform it. It is the creature of the common law, and the creature presupposes its creator. To decide then that this doctrine is applicable to the United States, would seem to imply the decision that the United States, as a nation, have a comman law which etestes and defines the punishment of crimes

accessorial in their nature. It would imply the further decision that thefe accessorial crime. are nor, in the case of treason, excluded by the definition of treason given in the constitution I will not pretend that I have not individually an opinion on these points, but it is one which I thould give only in a cale abiclutely requiring it, unless I could confer respecting it, with the judges of the supreme court.

I have faid that this doctrine" cannot apply to the United States, without implying those decisions respecting the commontaw which I have stated, because, should it be true as is contentied, that the constitutional definition of treason comprehends him who advites or procures an assemblage that levies war, it would not follow that such adviter or procurer might be charged as having been present at the alienblage. If the adviler or procurer is within the definition of levying war, and, independent of the agency of the common law, does actually levy war, then the advisement or procurement is an overt act of levying war. If it be the overt act on which he is to be convicted, then it mult be charged in the indictment, for he can only be convicted on proof of the overt acts which are charged.

To render this distinction more intelligible, let it be recollected that although it should be conceded that fince the statute of William and Mary, he who advises or procures a treat n m ty in England be charged as having committed that treason by virtue of the common law operation which is laid, so far as respects the indicament, to unite the accessorial to the principal offence and permit them to be charged as one, yet it an never ne conceited that he who commits one overt act under the flatute of Edward, can be charged and convicted on proof on another overt act. If then procurement be an overt act of treason under the constitution, no man can be convicted for the producement under an indistment charging him with actually affembling; whatever may be the doctrine of the common law in the case of an accessorial

It may not be improper in this place again to advert to the opinion of the supreme court and to show that it contains nothing contrary to the doctrine now laid down. That opinion is that an individual may be guilty of tr aton " who has not appeared in arms against his country; that if war be actually levied, that is, if a body of men be allually affembled for the purpose of effecting by force a treasonable objest, all thole who perform any part however minute or however remote from the scene of action, and who are actually leagued in the general confintacy, are to be considered as

This opinion does not touch the case of a perfon who advises or procures an affemblage, and does nothing further. The advising certainly, and perhaps the produring, is more in the nature of a conspiracy to levy war, than of the actual levying of war. According to the opinion, it is not enough to be leagued in the conspiracy, and that war be levied, but it ! is also necclisary to perform a part; that part; from you very much, and as this port is is the aft of levying war. That part, it is true, may be minure, it may not be the adual appearance in arms; and it may be remote from the scene of action, that is from the place where the army is affembled, but it mult ! be a part, and that part must be performed by a person who is leagued in the conspiracy. This part however minu e or remote constitutes the overtast of which alone the perion who perfor a gan be convicted.

The opinion does not declare that the person who has performed this remote and minute part may be indest d for a part which was in trath performed by others, and convicted on their overt acts. It amounts to this and nothing more, that when war is advally levied, not on's those who bear arms, but those also who are leagued in the conspiracy, and who p rform the various distinft parts which are necessary for the prosecution of war, do in sense of the conflitution levy war. It may possibly be the opinion of the supreme court that those who procure a treatin and do nothing further are guilty under the conflitution; I only say that opinion has not yet been given: Itul less has it been indicated that he who advises, shall be indicted as having performed the

It is then the opinion of the court that the indictment can be supported only by tellimony, which proves the accused to have been a flually or constructively present when the affemblage took place on Blannerhaffett's island or by the admission of the doftrine that he who procures as ast may be indicted as having performed that act.

It is further the opinion of the court that there is no testimony whatever which tends to prove that the accused was actually or constructively present when that assemblage did take place. Indeed the contrary is most apparent. With respect to admitting proof of procurement to establish a charge of actual prelence, the c urt is of opinion that if this be admissible in England on an indictment for levying war, which is far from being conceded, it is admissible only by virtue of the operation of the common law upon the statute, and therefore is not admissible in this country unless by virtue of a similar operation; a point far from being established, but on which, for the present no opinion is given. If, however, this point be established, still the procurement must be proved in the same manner and by the same kind of testimony which would be required to

prove actual prefence. · (To be continued.)

NEW-YORK, September 22.

We publish the annexed letter at the request of the relations of the unfortunate captive:-

" Carthagena Prison, 19th March, 1807.

" DEAR BROTHER, "I wrote you a short account of my missortunes some time ago, but searful that it has not reached you, 'I shall give you a full description in this.

"You have heard, no doubt, of my falling into the hands of the Spaniards by the capture of the schooner that I had the missortune to be put on board at the island of Jacinel, (St. Domingo)-Yes, we was most shamefully deserted by that infamous scoundrel Miranda, and fell a sacrifice to Spanish humanity. We was captured, taken into Porto Cavello, hove into prison, and put into double irons. The sufferings that we experienced at that place is beyond description. We was brought to the lowest cbb of existence through the heat of our prison, the weight of our irons, and the want of the common necessaries of life. In this dreadful situation we remained upwards of three months, during which time we was tried for piracy, murder and rebellion, and the result was, that ten of those i the Havy of the 12th inft. a Court of Enquiry

that was thought most guilty was sentenced to suffer death by the hands of the common hangman-15 including myself, was sentenced to 10 years slavery to the island of Porto Rico—the remainder of our fellow sufferers for the same term at the Castl. Omoa. In short, we may co .sider ourselves as slaves for life, for we are to remain in the country till the king of Spain permits us to return to our own country after the expiration of our 10 years. Aiter being compelled to behold the horrid spectacle of seeing ten of our fellow prisoners suffer by the hands of the hangman, and their heads severed from their bodies, we set sail for Carthagena, at which place 19 of our fellow sufferers are condomned to 8 years slavery. After a passage of 14 days we had the misfortune to arrive in safety. Here we ar to remain till peace takes p'ace, for they are determined not to run any risk in conveying us to our places of dest nation for fear of a capture. Those that are sentenced to this place daily pass our prison, in chains 15 teet in length, to their daily labor, which is of the hardest kind. We saill remain in incus, and our treatment is somewhat better here than it was at Porto Cavello : but our sufferings still are great, through 1.1.p. 150nm nt, sick ness, and the want of provisions. This place is very unhealthy; numbers of us have ded, and I am extremely sorry to inform you that John Stott died about six weeks ago. He had previous to his de th lost his hearing, and his extreme sufferings put an end to his life. The sickly season is about commencing, and I am f arful it will carry off numbers of my fellow suffere's. We have almost given up all hope of ever getting our liberty. We know not what to think—we have heard that our country is endeavor ng to de something for us, but we can put no belief in what we hear, for it seems that people delight in deceiving us, and amusing us rith idle stories. This I am well convinced of that we shall never g tour liberty, but thro' the means of our country; an i without they increst themselves in our misjertunes I expect to pass the remainder of my life in prison. I never shall forgive that old raseal John rink, for using the diception he has with me -teil him if I die in this country, my ghost shall forever haunt him. I wis i to her

welfare of your affectionate bother, JOHN EDSELL.

PHILADELPHIA, September 23.

now open to American vessels. I shail

expect a letter from you, as you value the

We learn from N w-Orleans, that the fine ship Comet, formerly a regula pack t between that port and Baltimore had been put into the Philadelphia trade, and would sail to: this post early in Sept more. In this ship would come pa sen er die Hom. David Clark, Delegate to Congress trom New-Orleans.

We understand that the Board of He Ith. in consequence of information of the unhealthy condition of Charliston and S.vainab, have dire ted that all ressels arriving from those politic shall come to a the Lazare to, and be enject to all the necessary quaractine regulations. A.though the salability of our air, and the advanced period of the season afford his strong assurance of salety, this measure of precaution was highly necessary and Judicious.

Extract of a letter from John M. Furbes, Lisquire, Consul for Humburg, to a merchant in this city, dated Timaige, 14th

"I have, howev r, great pleasure in stating-I have received an official communication from his B. M's. Consul General, Mr. Cockburn, by which permission is given to neutral vessels, coming from neutral places an illad in with neutral cargoes, and bound to the ports of Guckstadt or Altona, to enter the Elbe and proceed to those ports, and to depart again with neutral cargoes for neutral places. The terms of the communication are general, and imply no prehibition of any merchandise except contraba d of w r, yet doubts have arisen, wheth r provisions, liquors and tobacco, excluded by previous orders, would not still find diffi-

"On the special application by the master of a neutral vessel here, laden with French wines, the commanding officer at the mouth of the Elbe, Lord Folkland, permitted the vessel to go round. I have, however, dispatched a boat with a letter, demanding explinations on this point, and also to know if vessels cleared are all our ships, for this place or Hamburg, if not blockaded, will be excluded, or whether they will be merely warned no to go to Hamburg, and suffered, under the general rule of blockade, to proceed to the next free port .- I expect an answer today or to-morrow, and have little doubt that it will be favorable.

"In any event, I have always an agent here, Mr. G. H. Loring, who will take charge of all consignments made to me and forward them, with the sm liest possible expence, to Hamburg. I beg leave to renew to you and your friends an offer of my best services, observing that I have it in my power to make the customary advances on consignments and to give every facility which other houses give."

WASHINGTON CITY, Sept. 23. By virtue of a precept of the Secretary of will be held at Norsolk on the 5th o. Oct. the case of Commodore Barron. The court will be composed of the following officers,

Captain Alexander Murray, President. Capt. Isanc Hull, and

Capt. Isaac Chauncey.

These gentlemen are the same with those, previously appointed, with the exception of Commodore Preble, whole long illnets and consequeut death prevented the court from sitting at an earlier period.

## American,

Commercial Daily Advertiser. FRIDAY, SETE MBER 25, 1807.

THE D.G TO HIS LOATHING. The Washington Federalist says, and the Political Register copie; it, that Mr. Jefferson is determined on war, and that it will be a war undertaken to "cover French property, and harbor British de-

That paragraph could never have been written by an American, we suppose it to be the production of the British ambassador, or some dependent agent. Look to the British papers which have come over since the affair of the Chesapeake, and let the Washington Federalis: tell the public the opinions of the Britis niercounts, whose property is most covere! French or British, hose papers acknowledge that nine parts in tea of the covered trade is ac ually British for herty or the proceed of Beirly's mont factures, and that eve the whole profit of that trad , cenwes at last in Creat Beitain-yet the V astancton Fede are res not blush to declar that our present dispute is only to cover French property, and harbor British describers-there is no length of i npudence to which the malice of tergism will not drive and commit itself.

For what were the petitions of all the merchants avo sessions past?

For what a 1 the addresses and resolutions of the whole American people, since the minders on the Chesapiake?

For what all the unanimity of almost every description of the population of our mercantile towns?

The Washington Federalist, tells you Americans—that your only aim is to cover French fir herry and to harbour " British desert .s"-by such an assertion it throws the gauntlet of insult to all our citizens. And for what could such a paragraph have been published-we know of but one reason—the British ambassaders are in the habit of sending out this Washington Federalist and similar prints, to the ministers and their printers in G. Britain, to corroborate their own deceptiour reports - and such extracts are then reminied there, by the government papers as the sentiments of the American nat in-vicen the greatest proportion of such like sentiments in all our torup the, are written for that very purpose by Bil-

tish ambassadors, consus, or agents. The caute in despue, his be n brought to magnitude it now is, b. the writings of he friends of Greut Britain and melancholy it is for that devoted nation, that ber friends, have only ferved to plunge her, the their deception, decper in the mire, and in the read to destruction-exactly as the frientin p of that nation has ben death and distribution to every govern ner's ho f'imed a rear al iar ce with her.

the fentireents of the Washington Fede alist ea tribe recorded in the besom of every American-and it certainty will be franchien the todian is timed up to a compo massact : and tealping in our frontiers, by the Brillia government-when the this of that nation are e nimitting turther muidere of our seamen, and blocks ing our fee ports, when they em barge our vessels. and commit actual open vai-wil te Wushing ron re. deist then dare den the entaged American atton, that all the wrongs of oritain are occasioned by our with ng to cover French projecty, and harb r Britist deterters-are those the 1e niments also of major jackson, who gave circula ion to that pititu! assertion?

It there is one circumftance which, more than another, is worth going to war for, it is this, that all communication with that deceitful nation might at once be Ropped-and that in open wartare, we might be able to discima nate the real American citizen from the ficie: assassin, the British agent and tory adherent of George III.

British Consul General's Office, New-York, 19th Sept. Meffrs. Lang & Turner,

Gen lemen-You will do me a favor by pub I thing the enclosed Ast of Astembly of the Island of J.maica, for the information of the American merchants training thither, who will perceive by comparing the A&, with his majetty's Order in Council of the ist of July lait, that the Lieut. Governor of that illand may by proclamation permit the importation of Fish into that island from the U. States of America in American ili ps.

1 am, Gentiemen, your obedient servant, THOS. BARCLAY.

JAMAICA, ss.

An Act for granting certain Bounties on Salted and Pickied Fift imported into this Island from Newfoundland, or any of the British Colonies, Provinces, or Settlements in North America, in British vessels.

Whereas it is necessary to take the most effectual means for procuring a regular and abundant supply of pickled and falled fith for the use of the inhabitants of this island and their slaves; and for that purpose it is expedient to grant a bounty on the importation of fuch rift trom Newfoundland, and the other British co onies, provinces, or fettlem ats i North America, we your Majesty's moil duifful and loyal Is bj. as the Aff mb.y of Jamaica, most humbiy beleech your Majelly, that it may be enackett : Best therefore enacted by the lieuren. ant g wernor, council and affembly of the faid island, and it is hereby enacted and ordained by the authority of the lame, that from and after the pathing of this act, and for and during tweive months trom thence n xi to enfue, up in the importation of such fish into this island in Britisii vessels there shall be paid and allowed to the importer, proprietor or confignes thereof for every quintal of one hundred and evelve jumels weight of dry or letted cod, ling, or

greater or less quantity; for every harrel containing thirty two gallons of flud, altwives and manhadden one thilling and fix pence like money, for every barrel of the fame fize it herrings two shillings and fix pence like money for every barrel of the same size of mackarel 3 th lling li e money, for every barrel of the fame fize of in mon four fhillings like money, and for in proportion for every number of barrels upor the following conditions, that is to fay, whom the mafter of fuch fhip or veiled making outh at the port of importation bet re the receiver general or his lawiu, deputy, who are hareby empowdered to administer the firme, that all the said with imported in the said thip or veliel were taken, cured and pickled by his Majetty's finbjedis carrying on the fithery in the island of heavier chand, or in force of the Bri ish col. nies, provinces or fettlements in N. America; and upon fuch fill, being duly entered and regular'y landed in the presence of the proper officer or officers appointed for that purpole: Be it su ther enach d by the au hority if retaids that the faid is united first be exchanged into current money of this is less that the rate of fory per cent, added to the fain fteding furns, and if all be page to and pad by the receiver gene. ral in money current in to is island, at the utual rate for which the coins pals to the proprie or, importer configuee of fuch fish, out of any mondes i his hands un ppropriated, on the promitte on of a certificate from the collector of the cuit ms that the fish for which fuch bounty i darmed his been landed, under the lame refirictions and regulations as have been obterved before 123mg the like bouncies by the directions of the Lords Commillioners of his Majetty's treatury, communicated by or by order of the commissioners of his Majany's cuitoms to the laid collector: Be it turther enacted, by the authority afcrefaid, that from a dafter the iffiday of a av next, in addition to the cutil of the malter, there thad be produced a regular certifica e from the princ pal officers of the cuff ims at the port in the coming, province or le the mon where fi on fich mail nav- voen ladent and cleated our for this tillend, and a regular manif it the I be exhibited, specifying he num. her, we ght a dimarks of the packag so it fact fifth; and the nobout by thall be part or allowed upon any glester quarrity or weight than is or snall be contained and expressed in the fail certificate and m viitett. De it fir her enacled by the authority aforef.id, that in cale a sy perion shall in any minner whatever fraudulen ly obtain any bounty upon the importa ion of fuch fish, or shall enter well fish for the pap fe of obtaining any boun'y therean contary to the true intent and meaning of this act, then and in every fich cafe the perfon offending shall for e ch and every fuch offence foriest the fun of five hundred pounds, and allot, ip e the amout of the bounty which shall have been fo fraudulently obt uned, one half to his majefty his heire and successors, fir and towards the support of the g vernment of this island; the other half to the person or persons who shall tue for the fame. And be it further enacted by the auth rity afcrefaid, that on discovery of any fraud or frau lulent attemp to obtain bounties itshall be the duty of the receiver general a d he is hereby enjoined and required to direct the folicitor for the crown forthwith to commence and carry on protecutions for the penalties in. curred under this act, and .fany penalty shall be recovered un such last mention d profecutions the while and every pire thereof shill be to the ule of his Majelty, his hei s and successors, for and towards the contingent charges of the gogovernment of the island. Be it allo enacted by the authority a orelaid that no faited dried or pickled fish imported into this island, and on which about y has been paid under and by vitti of thi act, shall be gain export dout of the island, under the penalty of one hundred pound : provided nevertheles, that i shall be lawful o carry fuch fish coast wife from one port of the Island to another on entering and cle ring out the fame at the cultom houle of the port wnere fuc i fish snall be relaten. Be it torther enacted by the unority a orelaid, that ever mafter of a ship or veffet importing lists on which a bour y is claimed, shall take and fublic on the following on h, or if a quaker affi mation before the receiv r general or his law ul deputy, who are hereby empowesed to administer the same-" jamaica" 62. i A. B. malter of the called the I tely arrived from si nated in his Ma-

Trale fift, a bounty of two fhillings flerling mo-

ney of G Bri ain, and fo in proportion for any

jell 'Island, colony, or province as the cafe and now a anchor in the hardo swear that the fire oing manitest exh bits a just and true account to the best of my knewledge information and belief, of ail the dried and pickled fish imported this voyage in the faid veffel, and for which the island bounty granted under an act of the 47th of George the third is fought; and I do swear that the f-me is in good and mirchantable condi i n, and to the self of Imy knowledge and be ief wer taken, cured and packed by his majesty's subjects carrying on the fisheries in the island of Newfoundland, or in some of the British colonies, provinces or settlements in north America. so help me God. And be it enacted, that the bounty bill on the said fish, after the whole of the same shall have been discharged, shall by the receiver general, or any of his lawful deputies be made out underneath or annexed to the said manifest and affiliavit, and receipted when paid on the back thereof. Be it further enacted by the authority aforefaid, that if any person or persons shall falsely swe ror assum in any of the particulars before mentioned, such person being thereof convicted shall incur the like pains and penalties as are inflicted on persons convided of wilful and corrupt perjury in that part of the United Kingdom called Eng

Passed the Council 14th November, 1806. W. CATHGART, Clerk of the Council. Passed the Assembly 14 h November, 1805. PHILIP REDWOOD, Speaker. I consent, 14th November, 1806.

EYRE COOTE. ; Vera Copia Extur, W. CATHCART, Sec'ry.

Humanity -The Marblehead Marine Society, with a regard to the lives of their fellow men which does them honor, have erected a house on Tinker's Island, furnislad with fuel and other conveniencies for the relief of distressed seamen. Such immers establishments have saved the life of many a shipwrecked mariner. We are sorry to learn that any person should have wan only cut down and marred some of the trees set out on this island and half way rock by order of the society. A little seffection on the purpose for which they are cultivated must surely restrain any person of comm n feeling from such inhuman depredations, for which the society have very properly determined to prosecute at law. Tinker's Island bears N. N. E. from Boston Light House, about 14 miles distant.