## American,

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MONDAL, SEFTEMBER 28, 1807.

BURR'S TRIAL.

OPINION Of the court on a motion to arrest the evidence -delivered August 31. (Construted.)

The second point in this division of the subject is the necessity of adducing the record of the previous conviction of fame one perton who committed the fact alledged to be trea-

fonable. This point pre-lupholes the treaton of the accused, if any has oven committed, to be accentrial in its nature. It's being of this delcription according to the British authorities, depends on the prefence or autence of the zeculed at the time the last, was committed. The doctrine on this lubject is well understood, has been most a pirally explained, and need not be repeated. That there is no evidence of his aftual or legal presence is a point already difcoffed and decided. It is then apparent that. but for the exception to the general principle which is made in cites of treation, there who assembled at Blannerhasset's island if that assemblage was such as to conflitute the crime, would be principals, and those who might really have cauted that affemblage, although in trath the chief traiters, would in law se acceffaries.

It is a fettled principle in the law that the accellory cannot he gunty of a gicater offence than his principal. The maxim is, accellanus, sequiter, naturam sui principalis; the accellary foll ws the lature of the principal before the accellory can be tried. For the degree of guist which is incurred by countring or commanding the commission of a crime depends upon the e imm ffion of that crime. No min is an accetfory to murder unlets the fast has been commit-

The fact can only be established in a profecution against the perfou by whom the crine has been perpensted. The law luppetes a man more capable of defending his own conduct than any other perton, and will not tolerate that the guint of A thail be established in a projecution againft B. Consequently, if the guilt of B depends on the gult of A. A muli be convicted before B can be tried. It would exhibit a mon Arous actoritaty, indeed, in our lyftem, if B might be executed for being according to a marder committed by A, and A though afterwards, upon a full trial, or a quitted for the fact. For this obvicus reason, aitho' the pun shment of a principal and acc they was originally the fame, and although in many innances it is full the fame, the accent re could in no cafe be tried be f re the conviction of his prizeibal, nor can be yet be tried previous to facts conviction, unlets he requires it, or unlets a iprovide providen to thet elect be made by flature

If then, this was a felosy the philonor at the Breedling be tred um I, the crime was established by the conviction of the perion by whom it was actually perpetra ed.

Is the law otherwilenn this case, because in

treason all are principal. ? Let this qualtion be a twered by reason and

by authority. Why is it that the felonies however attrecrous, the trial of the accellary can never precide the conviction of the principal? No because the one is denominated the principal and the o her the accetiony, for that would be ground on which a great law pracciple could never stand. Not because there was in fact a diderence in the degree it moral guilt, for in cafe of marder corresponded by a hardy villain for a bribe, the person platting the marder and givmig the bribe, is, princips, of the two the lacker criminai; and, were i chierwife, this would

What then is the real in? It has ocea aiready given. The legal guilt of the accetsary depends on guitt of the principel; and to guile of the principal can only be chablified in a protecum n agamithimielf.

furnish no argument for precedence in trial.

Dies not this reason apply in full force to a cat of treaten?

The leg guilt of the person who planned the alsemblage on Blannerhalfett's illand de-Leads, not imply on the criminality of the precious confpiracy, but on the criminality of that aliemblige. It Those who perpetrated the saft be not tractors, he who advites the fact cannet be a traitor. His guilt then in con emplation of law, depends on theirs and theirs, guilt only be effablished in a profecution agan't thembly.s. Whether the adviller of this affemulage be punishable with death as a principal or as an accellory, his liability to punishment depends on the degre, of guilt at tached to anset which can been perpetrated by others, and which, it it be a criminal act, ren ders them gully allo. His guilt therefore depends on them, and their gull cannot be legally chablished in a prof. cution against him.

These authorities have been read and commented on at finh length that it cannot be necentary for the court to bring them again into view. It is the less necessary because it is not understood that the law is controverted by the counfel for the United States.

It is, however, contended, that the prisoner has waved his right to demand the conviction of tome one perton who was prelent at the

fact, by pleading to his indiament. Had this indictment even charged the prisoner according to the truth of the cafe, the court would teel tome difficulty in deciding that he had by implication waved his right to demand a liecies of testimony essen ial to his conviction. The court is not prepared to lay that the act which is to operate against his rights, did not require that it should be performed with a full knowledge of its operation. It would seem contonant to the utual courfe of proceeding in enher res, ects in criminal cases that the prisoner thould be informed that he had a right to refute to be tried until fime perton who comnitted the act fliould be convicted, and that he ought not to be confidered as waving the right to demand the record of conviction, unlets with the full knowledge of that right he consented to be tried. The coart, however, does not decide what the law would be in fuch a cate. It is unnecessary to decide it because pleading to an indiciment in which a man is charged as having committed an act, cannot be continued to wave a right which he would have cossessed, had he been charged with having advised the act. No person indified as a principal can be expected to fay I am not a principal, I am an accellary; I did not commit, I

only advised the act. The authority of the English cases on this subject depends in a great measure on the adop-

tion of the common jaw doctrine of accessorial treasons. Is that doctrine be excluded, this branch of it may not be directly applicable to treatons committed within the United States. If the crime of adviting or procuring a levying of war be within the continutional definit on of treason, then he who advises or procures it mult be indicted on the very fact, and the queltion whether the treat in blenets of the act may be decided in the first inflance in the trial of him who procured it, or mult be decided in the trial of one who committed it, will depend-upon the reaton, as it respects the law of evidence, which produced the British decisions with regard to the trial of principal and accessary, rather than on the positive authursty of those decisions

This question is not essential in the present case, because if the crime be within the con-Ritutional definition, it is an overtact of levying war, and to produce a conviction ought to have been char, ed in the indictment.

The law of the cate being thus far fettled, what ought to be the decision of the court on the present motion? Ought the court to let and hear testimony which cannot affect the priloner, or ought the court to arrest that tellimony? On this queftion much has been laid-much that may perhaps be afcribed to a misconception of the point really under consideration. The motion has been treated as a motion confessedly made to stop relevant testimony, and in the courfe of the argument, it has been repeatenly stated by thole who oppose the motion, that irrelevant testimony may and ought to be stopped. That this statement is pertectly correct, is one of those fundamental principles in judicial proceedings which is acknowledged by all, & is founded in the abfolute necessity of the thing. - No person will contend that in a civil or criminal cale, either party is at liberty to introduce what tellimony he pleases, legal or illegal, and to contame the whole term in details of facts une nnected with the particular case. Some tribunal then mult decide on the admissionity of testimony. The parties cannot conflicture this tround, for they do not agree. The july cannot constitute it, for the question is whether they shall hear the ted m no or not. Who then but the court can it. constitute it? It is of necessity the peculiar province of the court to judge of the admillibility of tettimony. It the court admit improper, or reject proper testimony, it is an error of the judgment, but it is an error committed in the direct exercite of their judicial functions.

The prefent indistment charges the prifiner with levying war against the L S. and alledges an overtact of leveling war. That overt act much be proved, according to the mandate of the conflituion and of the aft of Congress by two witnesses. It is not proved by a fing e withers. The prefence of the accided has been itateil to be an effential component part of the overeact in this indictment, untels the common law principle respecting accessaries thoma render it unnecessary; and there is not only no withels who has proved his actual or legal prefence, but the fact of his ablence is u t concroverted. The count I for the profecution oner to give in evid nee fablequent transactions, at a different place, and in a different fla e, in order to prove what? The overt act lais in the modelment? That the pritoner was one of those who affembled at Blannerhatfet's island? No; that is not all edged. It is we! Inown that fuch tenamery is not competent to eliablish tuch a fact. The constitution and law require that the fact thould be enab lithed by two withefles, not by the eliablishment of other facts from which the jury might reason to this fact. - The testimenty then is not relevant. It it can be intreduced, it is only in the character of correborative or confirmatory tellimon, after the overtact has been proved by two witnesses, in such manner that the quettion of fact engine to be lest with the jury. The concusion that in this fia cof things no teximony can be admissible, is to recvitable, that the counter for the U. States could not resilt it. I do not understand them to den, that if the overt act be not proved by two wit n iles to as to be tubmitted to the jury, that al. other tettimeny must be irrelevant, becaute no other tellimony can prove the act. Now an assemblage in Blamerhasser's i. a d is proved by the requirete number of witnesses, and the court might submit it to the jury, whether that affen blage amou ted to a levying of war, but the prefence of the accured at that aftembrage being no where aliedged except in the indictment, the overt act is not provid by a figle withers, and t confequence all other testimony mult be irrelevant.

The only difference between this motion as made, and the motion in the firm which the countel for the U. States would admit to be regular, is this. It is now general for the rejec ion of a l tellimony. It might be particular with respect to each wi nets as auduced. But can this be withid, or can it be decmed necelfary? It enough is proved to their that the indictnient cannot be supported, and that no teltimony unless it be of that description which the attorney for the U.S. deciares himfelt not to pedels, can be relevant, why mould a questi-

The opinion of this court on the order of tellimony has been trequently adverted to as deciding this question again t the motion.

on be taken on each withels!

If a contradiction between the two opinions does exill, the court cannot perceive it. It was faid that I vying war is an act compounded of law and fact, of which the jury aided by the court muit judge. To that declaration the court still adheres.

It was laid that if the overt act was not proved by two witnestes, no tettimony in its nature corroborative or confirmatory, was admissible or could be relevant.

From that declaration there is certainly no departure. It has been asked, in allusion to the present cale, if a general commanding an army thould detach troops for a utlant tervice, would the men composing that detachment be traitors, and would the commander in chief elcap: punithment?

Let the opinion which has been given, anfwer this quettion. Appearing at the head of an army would, according to this opinion, be an overt act of levying war; dataching a military corps from it for military purpotes might also be an overtact of levying war. It is not pretended that he would not be punishaule for thefe acts, it is only laid that he may be tried and convicted on his own acts, in the Mate where those acts were committed, not on the acts of others in the flate where those others

Much has been faid in the course of the argument on points, on which the court teels no inclination to comment particularly, but which may perhaps not improperly, receive tome no-

That this court dares not usurp powers is

That this court dares not thrink from its duty is not let's true.

No man is defirous of placing himfelf in fo ditagreeable tituation. No man is desirous of becoming the peculiar lubject of calumny. No man, might he let the pitter cup pass from him without feit-reproach, would drain it to the bottom. But it he has no choicelin the cale; a

If there is no alternative presented to him but a dereliction of duty or the pprobrium of those who are denominated the world, he merits the contempt as well as the indignation of his country who can helitate which to em-

That gentlemen, in a case the utmost interesting, in the zeal with which they advocate particular opinions and under the conviction in fome measure produced by that zeal, thould on each side preis their arguments too tar, would be impatient at any deliberation in the court, and should susped or tear the operation of motives to which alone they can alcribe that de iberation, is perhaps a trailiv incident to human nature; but it any conduct on the part of the court could warrant a tentiment that they would deviate to the one fide or the other from the line pr feribed by duty and by law, that conduct would be viewed by the judges themtelves with an eye of extreme feverity, and would long be recollected with deep and ferious regret.

The aiguments on both sides have been intendy and deliberately considered Thole which I great and diligent exertions which you could not be noticed, since to notice every argument and authority would fivell this opinion to a volume, have not been di regarded. The refult of the whole is a conviction as complete | the year be so particularly desirable. as the mind of the court is capable of receiv. ing on a complex lubject, that the motion must

No testimony relative to the conduct or decluations of the pritoner ellewhere and fattequent to the transaction on Blanne 'affet's itland can be admitted, because such testim ny, bing in its nature merely corroborative, and incompetent to prove the evertact in infelf, is in levant, until there be proof of the act by two

This opinion does not comprehend the proof by witheles that the meeting on Blannerhatset's i land was procured by the pritoner. On thit print the court for the present withholds its opinion for reasons which have been already angued; and as it is understood from the flatelments made on the part of the profecu ion that no fuch tellimony exals. If there be fuch let it be offered and the court will decide upon

The jury have now heard the opinion of the court on the law of the cale. They well apply that law to the facts, and will find a verdict of guilty or not guilty as their oun conscience may direct.

NEW-YORK, September 23.

## LATEST FOREIGN NEWS.

By the ships Gold Hunter, Vose, from London, and Eriza, Wa erman, from Li-1 verpool, the editor of the Mercantile Advertiser has received a regular file of Londen papers to the 15th August inclusive, (6 days later than any previous advices) and Lloyd's Lists to the 14th.

Captain Vose informs, that business was very dull; that the British government had not taken up the adair of the Chesapeake, as they had not received any official dispatches from the American government upon that subject; that the sch oner Ravenge had not arrived; hat there was no prospect of a peace between In land and Fran e; and that the merchants and han ufacturers in England were very much averse to a war with America. Captain Vose lest London the 1stu, and the Downs the 21st of August.

Insurance on American vessels from England to America Had fallen to three guancias

London, August 12.

A mail from Gottenburgh arrived yesterday. The private letters by this conveyance state, that the Empetor Alexander arrived at Petersburgh on the 17th ult, but that his arrival was not atmounteed by any discharge of cannon, or any ot er demonstration of joy. The mail contains an acc unt of the military opera. tions at Stralsund to the 22d ult. but we had previously received accounts so late as the 30th, at which time the fortiess had not surrendered. The German I. gion did duty for the first time on the 21st. On the same day Lord Catheart left Straisurd for Rugen.

The private letters by the Tonningen mail which arrived on Monday Evening, state that the recent proceedings inspire but little confidence in the adherence of Russia to the interests of Great Britain; and indeed, the circumstances inparted by Mr. Secretary Canning in the House of Commons on Monday evening, hav considerably damped the hopes of those among us, who on the first blush of the subject, expected from the Russian overtur a pacific result. The friendly in enti us manifested towards this country in one of the articles of the treaty between Russia and France, h.ve from cir umstances which remaine! to be explained, been suffered to remain a dead letter in respect to us, who were the declared object of it. We cannot help observing that Bonaparte far from having lost sight of his favorite object of hostility against Great Britain, appears by the last letters from the Continent, to be more intent than ever on the establishment of a new law of nations, securing the liberty of the se's and the independence of every flag. Whether Russia will ultimately be induced to enter into these interested views of Bonaparte against the naval supremacy of Great Britain, is a question upon which we are at present desirous of with holding our opinion. The Contineutral Politicians, however, are less backward in pronouncing their deci ion upon thus subject; and it is even asserted that so determin di Napoleon upon the universal recognition of his lavorite principle, that the French troops will remain in Germany until the full accomplishment o his object.

The passengers who came over in the last packet from Tonningen, state, that previously to the sailing of the packet, an express had arrived, with instructions for all the English ships lying at I onningen, to proceed down the river, below the battery. This is considered as a precautionary measure to secure the shipping, in

case the French should by force or stratagem, et possession of the battery which commands the navigation of the Eyder.

Dispatches were yesterday received at the admiralty from admiral Gambier, which were brought to Grimsby by the Swan cutter. At the date of these, the fleet had not reached its destination, but was continuing its progress towards the

August 14.

HIS MAJESTY'S SPETCH. Parliament was prorogued this afternoon with the following speech from his majesty's con missioners: " My Lords and Gentlemen,

" We have it in command from his majesty to express the satisfaction with which he finds himself enabled to give you that recess which, after the

have made in the dispatch of public business, must at this advanced season of " His majesty has been graciously pleased to direct us to return his thanks

for the steady loyalty and attachment to his Person and Covernment, and zealous devotion to the public service, which have charact rised all your deliberations, and most espicially to thank you for the seasonable exertions which you have enabled him to make for the augmentation of the military force of his kin dom.

"Gentlemen of the House o Commons, " His majesty has commanded us to return you his warmest thanks for the supply s which you have granted with so much cheerfulness for the emert year; and when he confiders the prove on which you have made for those contain just and unforescen services, which the events of the war may render necessity, his majesty has the g eatest satisfaction in in iccognizing the wisdom where a the in a time of extraordinary wifi which were anticipated the possible demands which those difficulties may occasion.

" My Lords and Gentlemen, "His majetty commands us to assure you that he deeply deplores the unfortunate issue of

the war upon the Continent. "The immente extention of the power and imiuence of France, and the undifficited desermount in of the country to employ the means and refources of those countries which he potfesses or controll for the purpose of effecting the rum of this kingdom, und advectly prefect a termidable view of the dangers and difficulty ties which this country has to chooser.

to that has majesty teads, that the hoyal and brave jeopher was whom he reigns are not to be

dans to a or dimeastened. " been the reconcer not those difficulties under which his prople is a state elstady strug gled, and of those dangers where have Lapply farmounted, his mijesty derives the consolation of beneving that the fame limit an a perference will have nithe, oregianedu broken will continue to be exerted with unabated vigour and incosts.

" And wante his majerty commands ue to

replanted abundances of his constant readingle ; to enteriain any propolais the mis lead to a fecure and a moribie peace, he e mmands us at the fance time to express his connence that his Paraamen, and his jedjie will neel with han the necessity of parterents in those vigor rous effects which althe can give the engacter of a mor to any negocia i a, or ta, protact of learning or paintaneary to any peace. " this Bulletty, theretore, truths that his prople will aimay a be ready to lupport him in

any meature water may be nece sare to deseat the orangus of me encomes against the indeprindefied of his majesty's dominion, and to magnitain acannit any undur pretensions, and against any limiting conclusion, their jam Frights which his majesty is always define is exer ise with temper and moderation, but which, as excential to the horoards his crown and the true interest of his pe ple, he is de termined never to lurren .er."

DIFFERENCES WITH AMERICA. The following Refolation and Circular Letter have been drawn up by the American Cham-

ber of Commerce of Liverpool. At a general and very nu nerous Meeting of | nanner. the Members of this Asioc.acion, held this day,

Refolved unanimoufly, That the following Circular Letter, preaxed to this R folution, be prin ed, ani to t the Vice-P. endent (in the absence of the Presiden ) be requested to fign the fa e, on behalf of the American Chamber of Commerce in Liverpool, and to transmit a Copy thereof to Philip Sansom, Esq. Chairman of the Committee of American Merchants in London.

(CIRCULAR.) Sir-A Meeting of the Members of the American Chantber of Commerce, at this port, has been convened this day, for the purpole of taking into consideration the present serious and critical state of affairs as relating to the intercourse between the British Empire and the

U.S. of America. When it is considered how effentially the vital interests of both the countries are concerned in a maintainance of the relations of amily and commerce, and particularly at the prefent juncture, it must be the wish of every sincere friend to his country, whether Briton or American, these relations should not be interrupted, unless fuch interruption be rendered inevitable by lome imperious and irresultible necessity, arising from that regard which it is incumbent on every country to pay to its hanour and its interest. ilt the manufactuier- and merchants of this kingdom flialibe convinced that the conduct of the British government towards the U.S. of America has been, and continues, such as becomes a government desirous of preferving the relations of Peace and Am ty; and if it should now be found that these relations cannot longer be preferred without compromising the honour and thereby facrificing the best interests of the British empire, it is hoped there are no facrifices or privations to which the manufacturers and metchants will not cheerfully lubmit, in order to prevent such consequences.

If on the contrary, the manufacturers and merchants of this kingdom shall be convinced that the intercourse, which has now subsilled for more than twenty years, between the British empire and the U. S. of America, with so many arid fuch progrettively increasing advantages to each is in danger of being interrupted by an affertion to ciaims, incompatible with a due regard to the equal right of both countries, or by unjust conduct on the part of either the British government, or of any persons acting under its authority, it then becomes a duty to excresse that invaluable privilege, the essential bulwark

of the British constitution -of respectfully making fuch representations . the government as the ci cumulances of the c e may require.

And as thele c.rcumfta nes may be tuch as to render it highly important that the perfors making tuch representations thould aft with promptuels, and in concert, I am requelled to inform you that, it fuch circumitances thould arile, the Members of the American Chamber of Commerce in Liverpool hold themfelves in readin is to correspond and co-operate with the manufacturers and mergha its of Great Britain and Ireland, for the attainment of the important objects herein mentioned I have the honour to be, Sir, your obedient Servant.

JOHN RICHARDSON, Vice-President. Liverpool, August 11, 1807.

August 15t A mail from Gottenburgh arrived this moining bringing news from Govenburgh fithe 7th. which flate that on the 3d adm rd Gan lier's Best parfed he found faluting Cromberg Caille as it pailed and receiving a falure in recurn. A great rum crof Lighth thips of war and transports are allo aid to have pailed Gittenburg in the 5th and 6th - They were probably the 2d and 3d Expeditions. Aletter from C penhagen in forms us that orders have been received by the inhabituats in the Sa cros to prepare for lodging a large body of cavalry. Another bulletta Livibe is received of the operations against Stralland, but it is of little im, of tince. The King of Swed in fent his proposed for an Armillice in writing—it was made verbally befor. But Brune replied that he could not accede to it except on the condition of Strallund being

farrendered to the French. A gentleman is arrived who left. To: ningen on the 9th, and Cop ahagen on the 6th-a this time there wire twie Butiff feels in the Balie. Admiral Gam'ier's & the lec and divilion which

failer from he Downs. In confequence of tome informari n faid to have been received, relative to the fecter Articie of he treat betwien Rollie and France. Sir Stiglie i Butte, . ur Conful it Petersbur, h. which is seen in this cultry upon leave, was despetched yetterdi upon a spical musionio the Ruka gover mant

Par spagers have arrived to the 7 h, and Duch to the first little Monne unfried with contains dome a pres egion, the news extracted from the the gather payers literated that Prooffic will never racing it rates by with us, and that the will not or is the our to its against us but d'clare war. As n t is map cree pro otes to accomplish no to in Prise a to weckers war we know not -The holling c n niw be of no injury to us. From the lan ag n db. the French papers, in the aking King of Sixden, it is eviden ha B ap . If of make place with nim, unlet, e content to abandon a lais Ge man Territo. ies.

A letter from Corenhagen, dated July 18, theys, " The Council of War has not yet decided upon the tate of the principals and accompai es in the la e troubles which rave taken prace in that capital. I is profecuting its inquities with at vity. The regiment of cavalry of Zealand, manned in the luburbs, continues to sen patroles into the city "

It is faid the the Marchals of the Empire, commanding the cutt rent corps of the Grand Array, are named Dakes, and receive their todes from ences in Plant, which they are ent ted to ten, and exclude tor others in and Savary will obtain the same thyour, M. Ch mpagny,

the Minister of the interior, will alto be creat-

ed a Duke. The peace has been promulz ted in all the cities of the empire with the proxed folemnity, and amoust unanimous and out repeated tries of Longlive Napo con the Great! Every e e the pullicj. Eg an ude have been manifested. by tpontaneous illumination, and devices and interpretations suited to the occation

A deputa ion from the finite, with the prefident Laceped at their head, attace to the Pictors, with the Marthal Duke of D n'zing and M. Cemende Rus, went sellerday to st. Chad, to congractiate the King of Wellphalia. A deprivation from the Liburate was also admitted to an audience of his majetty

BAYONNE, July 21. Every thing on our thores we is a warlike aspect. We are in daily expectation of feeing breign troops, who are to form an army of 10.000 ten, for the purpole of compeliing Portugal to thut her ports against the English. - ( Journal well Lampire, dug 5)

GOTTENBURGH, Jug. 7. By accounts from Elsineu, we learn, that the first division of the English Fleet pussed the Caille of Cronberg on Monday last, and faluted and received a fainte in the cultomary

A letter from Cofenhagen states, that all the inhabitants of the suburbs have received orders for preparing for a confiderable number of cavalry are to be quartered there.

> NORFOLK, September 24. COMMUNICATED.

Yesterday morning a meeting took place between Dr. Stark, and Lupt. Gorcon of the Chesapeake, in consequence of a dispute on the subject of Commodore Barron's conduct -several shots were exchanged without effect. The affair was terminated in the Doctor's receiving a wound through the arm from Lieut. Crane, the friend of Capt. Gordon!

## American,

Commercial Daily Advertiser.

MONDAY, SETEMBER 28, 1807.

COMMUNICATION.

The following sketch of an act for the punishment of certain offenders, and for taking from them the benefit of clergy, is submitted to the consideration of Congress at their ensuing session:

An Act to funish insurrections and conspiracies, and for better security of the government of the United States.

BE it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That if, after the passing of this act, any citizen or citizens, inhabitant or inhabitants of the United States shall, within or without the same, at any time consult, advise, conspire or attempt, to raise an insurrection against, or within the United States, or Territories thereof, for the purpose of subverting, chan ing, or overthrowing by any violence, or force whate er, the constitution, or government of the United States,