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WILMINGTON, N. C. TUESDAY, JUNE 30, 1807.

[11TH YEAR.]

TRIAL OF Col. Aaron Burr. FEDERAL COURT.

TUESDAY, June 9.

Present the Chief Justice of the United States, and Cyrus Griffin, District Judge.

The Grand Jury had been adjourned till 2 o'clock. About 3, they all appeared, and their names being called over,

Mr. Hay observed, it might be proper to inform the court, that he had received no further intelligence of gen. Wilkinson, except what was contained in the little scrap of paper in his hand. It was an extract from a Norfolk paper, and he believed the latest which had been published, the gentlemen from that part of the country could say, whether it was so or not: (Mr. Hay here read an extract from the "Public Ledger" of the 5th instant.

This extract only proves, continued Mr. Hay, that gen. W. had not left N. Orleans in the early part of May. My information therefore was not altogether correct: The express whom Mr. Milikin met, had not travelled with the same expedition, nor arrived at New-Orleans as early as I had expected. Perhaps he did not reach that city before the 9th or 10th of May. We have evidence however to prove that a summons had been sent to him. This fact completely shows that he was at New-Orleans. My hopes are therefore stronger, that he has actually received the summons and I have not the smallest doubt that he will soon arrive here. The court will well recollect, that from the calculation which I had submitted to them, I concluded that he could not be here before the 14th or 15th. It is my most anxious wish, for the sake of economy, of expedition, and what is of still greater consequence, the justice due to the country and the accused, that this trial should be completed during the present term. Almost all the witnesses are here. I am sorry to be forced to make so many apologies to the grand jury, who have already manifested so much patience; but I beg them to recollect, the extreme importance of the present trial and that it will perhaps be the last time, that they are placed in this situation.

The Chief Justice presumed that the mail from Norfolk would not arrive here, until the day after to-morrow.

Mr. Hay said that it had arrived the day before.

Mr. Martin. I have an extract from another Norfolk paper one day later, than the one quoted by the attorney; (Mr. M. here read an extract from the "Norfolk Herald" of the 6th instant:

The ship news in the same paper states, that the Hannah had left N. Orleans 27 days before.

Mr. Hay. If these are different vessels—

Mr. Martin. The same vessel, sir.

Mr. Hay. These vessels may convey some intelligence to Washington respecting general Wilkinson, which may consequently reach ourselves.

Mr. Burr. I hope, sir, it will not be understood, from the observations of my friend (Mr. M.) that I mean to take any part in this business. I shall certainly not interfere with the Grand Jury in this stage of the affair. The position of the gentleman has my cordial concurrence.

The Chief Justice observed, that if the jury were adjourned till Thursday, some passenger might, perhaps, arrive in the next Norfolk mail, with some intelligence about gen. W.

Mr. Hay presumed, that the jury would not probably be wanting before Saturday.

Mr. Burr hoped that the jury would be adjourned for as short a time as possible: at all events not longer than Thursday.

Chief Justice. This is Tuesday.—The attorney for the United States cannot probably expect gen. W. before Thursday if he comes by water.

Mr. Hay knew not how he was to come. If by water he certainly could not be expected before that time; and if by land he would certainly require one day to recover from the fatigue of travelling.

The Chief Justice then observed to the Grand Jury that they were adjourned till Thursday 10 o'clock.

Mr. Burr then addressed the court.—There was a proposition which he wished

to submit to them. In the president's communication to Congress, he speaks of a letter and other papers he had received from Mr. Wilkinson, under date of 21st October. Circumstances had now rendered it material that the whole of this letter should be produced in court.

And further. It has already appeared to the court in the course of different examinations, that the government have attempted to infer certain intentions on my part from certain transactions. It becomes necessary therefore, that these transactions should be accurately stated. It was, therefore, material to show in what circumstances I was placed in the Mississippi Territory; and of course to obtain certain orders of the army and the navy which were issued respecting me. I have seen the order of the navy in print; and one of the officers of the navy had assured me that this transcript was correct. The instructions in this order were to destroy my person and my property, in defending the Mississippi. Now I wish if possible to authenticate this statement; and it was for this purpose, when I passed thro' Washington lately, that I addressed myself to Mr. Robert Smith. That gentleman seemed to admit the propriety of my application, but objected to my course. He informed me that if I would apply to him through one of my counsel, there could be no difficulty in granting the object of my application. I have since applied in this manner to Mr. S. but without success. Hence I feel it necessary to refer to the authority of this court, to call upon them to issue a Subpœna to the President of the United States, with a clause requiring him to produce certain papers; or in other words, to issue the Subpœna *duces tecum*.—The attorney for the United States will however save the time of this court if he will consent to produce the letter of the 21st October, with the accompanying papers, and also authentic orders of the navy and war departments.

Mr. Randolph observed, that he knew not, whether it was necessary for him to support Col. B's motion: that he had been informed by him of his application thro' a friend to Mr. Smith, and of Mr. S's refusing to grant the application, unless it were made through one of his counsel; that he had himself, therefore addressed a letter to Mr. S. informing him of Col. B's statement. To this he had received a letter, which seemed like a personal communication to himself, but as he had not requested him to withhold it from Col. Burr, and as it contained information material to him, he had shown it to Col. Burr.—Mr. R. regretted that he had not the letter then about him; but the substance of it was, that the order which had been alluded to was only for the officer to whom it had been addressed, and was to be seen only by him. He added, that he had written in reply to Mr. S. that he never would have applied to him for it but for two reasons, that it had already appeared in a Natchez Gazette, and that Mr. Van Nels (the friend of Col. B.) had intimated him of Mr. S's unconditional promise to furnish the order if he was properly applied to for it.

Mr. Burr observed, that to avoid all possible misconception, he thought it proper to state, that Mr. Van Nels had assured him of Mr. S's positive and unqualified promise to furnish the answer, if applied for through counsel.

Mr. Hay declared he knew not for what purpose such evidence could relate, and whether it was to be used on a motion for commitment or on the trial in chief.

Mr. Burr, Mr. Pickham, and Mr. Martin, observed that perhaps on both; according as circumstances might require.

Mr. Hay. I suppose this court will not proceed but upon facts. Now a letter of the 21st of October is spoken of; but has this letter been yet identified?—He hoped that the court would not issue the Subpœna *duces tecum*, until they were furnished that they had the authority to issue it; and that the information required, was material in the present case.

Mr. Wickham observed, that the present was simply intended as a notice of a motion to be brought before the court; which motion might be discussed either to-day or to-morrow.

Mr. Hay declared that all delay was unnecessary: but he pledged himself, if possible, to obtain the papers which were wanted, and yet not only those, but every paper, which might be necessary to the elucidation of the case.

Chief Justice observed that all delay was obviously improper, that if the papers were wanted, they ought to be obtained as soon as possible; and not perhaps delay the ulterior stages of the prosecution.

Mr. Hay stated, that he had already received a communication from Mr. Wickham on this subject and intended to have informed him, that he would write for all the papers which were wanted, (and he had no doubt he should obtain them) if the court judged them material.—The fact was that he had already in his possession Mr. Randolph's correspondence with Mr. Smith, and the order from the navy department; but in his own opinion, they no more related to the present prosecution, than the first paragraph of the first page of the *acts of Congress*.

Chief Justice enquired whether the Natchez Gazette was in court.

Mr. Burr. No, sir; but I have already seen the same order in other papers; and have no doubt that almost every person has. At Natchez it was a subject of surprise that such an order had ever found its way into a public print.

Mr. Hay repeated, that if the gentlemen would furnish him with a list of such papers as they wanted, he would attempt to obtain them, if the court thought them material. Of what use were they? Were they too to be laid before the Grand Jury, to distract their attention: & to prevent under another point of view another subject for their consideration? He had supposed that the mass of matter to be laid before them was large enough already.

Chief Justice observed, that it was impossible to determine their use, without hearing them. He would much rather that the opposite counsels should make an arrangement with each other suitable to them both—and that the court itself was not now disposed to make any arrangement. But if the parties could not come to any agreement, he should then wish to hear some argument on the subject to satisfy him, whether the court had the right to issue a subpœna *duces tecum*.

Mr. Burr observed, that he had been told it was the constant practice in this state to issue such subpœnas upon the application of a party.

Chief Justice had no doubt it was the custom to do it, where there was no great inconvenience to the party summoned; that it seldom occurred; but that he was inclined to think, where great inconvenience would result to the party summoned, that the materiality of his testimony should be fully shown. If papers are to be obtained from a Clerk's office, such a Subpœna may be issued, and though not upon affidavit, yet where there has been good cause shown.

Mr. Martin said, that there would be no inconvenience; as the President might just transmit the papers wanted by the mail.

Mr. Hay observed, that Mr. Martin's remark superseded any further proceeding; why apply to the court to issue Subpœna to the President, unless perhaps it was the necessary form for obtaining the papers?

Chief Justice. The reason is that in case of a refusal to send the papers, the officer himself may be present to show cause. This Subpœna is issued only where fears of this sort are entertained.

Mr. Hay said, that no application had yet been made to the Secretary of state for gen. W's letter; nor to the department of war for its order.

Mr. Martin. If one department refuses, we may presume that the others will.

Mr. Burr. If the gentleman grants our demand, he may propose any alteration in its form that he pleases.

Mr. Randolph. If any arrangement can be made to obtain these papers, we would rather that it should be a voluntary act on the part of the government.

Mr. Hay. I will attempt to obtain these papers—any, in fact that gentleman may want, if the court will but say, they are material.

Mr. Wickham. Col. B's counsel knows little of the importance of these papers but from himself; and from that they are fully persuaded of their great importance. The attorney for the United States says, that so far as his personal exertions will go, he will attempt to obtain them and firmly believes that his application will be successful. But, sir, at Washington they may entertain very different views from himself; under such circumstances, it is better to encounter the de-

lay of three or four days to obtain the authority of this court, than trust to an expedient which may be unavailing. But I see no necessity for any such delay; as the order may at once issue by consent of parties. As to the order from the navy department, a copy may be sufficient: the original is already gone out. As to Wilkinson's letter, we wish to see it here; and solely it may be trusted in the hands of the attorney for the U. States.

Mr. Hay. It seems then that copies of papers from the government of the United States will not be received. They are not to be trusted. After such an observation, sir, I retract every thing that I have promised. Let gentlemen, sir, take their own course. Here some warm, desultory conversation took place at the bar, when Mr. Wickham observed, that as the unfortunate expression fell from him; he thought it proper to explain. He had intended no insinuation against the fairness of the government; that the distinction he had drawn between an original and a copy simply resulted from his anxiety to obtain the highest possible degree of evidence; hence he preferred the original to the copy; that if Wilkinson was here it would be necessary to meet him with his own letter; perhaps in no other way.

Mr. Hay. That explanation removes the difficulty.

Mr. Wickham. We wish to confront him with his own letter. Mr. Hay. Perhaps they may not be able to remove the original as it is already filed in the department of state. Mr. Martin. We are ready to go on with the discussion. Mr. Wickham. The President's message mentioned, that this was a letter to himself. Mr. Hay. I hope the court will remember that remark. The letter these gentlemen then want is addressed to Thomas Jefferson. Have they a right to demand any but public letters?—Mr. Martin. The President's message said, it was addressed to him as President of the United States. Mr. Hay. If it be a public letter, it is of course deposited in the department of state. I have no objection, since this insinuation has been removed, to repeat my promise to apply for these papers, if the court think them material; and when the business arrives at the proper stage, they may then be produced. I hope that no more time will be wasted in these preliminary stages; and that such arrangement may be adopted as will prevent this useless consumption of time and of breath. Mr. Randolph had no reason to believe, that there had been more delay on his side, than on the other; that if time was to be consumed at all, more would be employed in removing greater difficulties than had already been done; that he however only hinted at this now. He declared with Mr. Wickham his perfect concurrence in this measure.

Mr. Botts. Unanimously so, I am sure Sir, I cannot sit down, and hear complaints so unnecessarily repeated about the waste of time. 'Tis time, Sir, to be done with them; 'tis time that we should enjoy something like the liberty of speech. Mr. Hay makes, I think, about a dozen times as many speeches as any other gentleman; and each speech longer than those of other persons; and yet we cannot open our mouths, without his sounding loud, his complaints to the ears of this Hall. On this case of unequalled magnitude, shall we not be suffered to declare our opinions; without this unnecessary complaint about the consumption of the court's time? We feel the magnitude of our duties, and we shall firmly discharge them, in spite of Mr. Hay. It is obvious to you, Sir, and to every body, that the delay is not with us. If, Sir, you call for an argument, we are ready to proceed. But if you are satisfied—

Chief Justice. If the attorney for the U. States is satisfied that this court has a right to issue the subpœna *duces tecum*. I—Mr. Hay I am not, sir.

Chief Justice. I am not prepared to give an opinion on this point; and therefore I must call for an argument.

Mr. Hay. When I said that there had been a great consumption of time, I certainly did not mean to insinuate, that they only consumed it. I have certainly had my full proportion. I thought however that my proposition would have saved some time; and I am still willing to repeat my promise.

Mr. Randolph. That the court may understand us, I will read to them the form of the subpœna which we wish to obtain. (Here Mr. R. read the sketch before him.) Mr. Botts. We will be under the direction of the court, whether we shall proceed in the argument to-day or to-morrow. Chief Justice. Unquestionably, there must be an argument, if the attorney for the United States disputes the authority of the court.

Mr. Hay. Whatever other gentlemen may think on this subject, I have not the least doubt that these papers will be produced; because Mr. Robert Smith has voluntarily furnished me with the order of the Navy Department. But although I may procure those papers, let it be distinctly under-