

THE WILMINGTON GAZETTE.

Published every Tuesday by ALLMAND HALL, at Three Dollars a Year, payable in advance, or Four Dollars if not paid within a Year.

[NUMBER 560.]

WILMINGTON, N. C. TUESDAY, SEPTEMBER 23, 1807.

[11TH YEAR.]

TRIAL OF Col. Aaron Burr.

Saturday, September 5.

Mr. Hay wished to extend the terms of the return which he made yesterday. There was one passage in Gen. Wilkinson's letter, which he was certain the President himself would keep back.

Mr. McRae. As the President is now at Monticello, is it not practicable to send an express to him with a subpoena duces tecum? It is advantageous on every consideration to have the trial completed at this term. Almost all the witnesses are present; and perhaps it would be impossible to collect them here again. An express might perhaps return in four days from Monticello; and is it not far better to postpone the trial for that period, than to the next term of the court?

Mr. Hay here read the following:

"Additional return:

"I hereby certify, that upon a more minute examination of the above mentioned, I have observed other passages, which are entirely of a public nature, and which, according to my best judgment, ought not to be disclosed, and which, I conceive, would not be disclosed by the President himself, if the return were to be made by him.

GEORGE HAY."

Mr. Hay then observed that he did not conceive himself at liberty to put this letter into the hands of the defendant; but that he would immediately send an express to Monticello for instructions; and that the return might probably be made by Tuesday evening.

Chief Justice. Is there any objection then to the court's adjourning till Tuesday?

Mr. Martin said he proposed to bring the case of Israel Smith before the court on Monday.

Mr. Burr observed, that some agreements might be made between his counsel and the prosecution respecting the letter, and that they might go to trial on Monday.

On the application of Mr. Wirt, Dr. Tazewell (Williamsburg) was excused from serving on the jury on account of the indisposition of his friends.

The Chief Justice then observed that the court would meet on Monday; as some arrangements might be in the mean time made, respecting the letter. Mr. Hay—I can consent to no arrangement but for me to furnish such parts of the letter only as I may deem material to the defence. Chief Justice. If there are any state secrets in that letter, the court would be extremely unwilling to call for its production.

Mr. Martin. Gentlemen need not be so scrupulous, sir, upon this subject; for we can compel the appearance of the President before this court with that letter. Mr. Hay. Shall I furnish such parts in the mean time as I am disposed to surrender? Mr. Burr—Yes; under the reservation, that such a step does not impair my right to demand the remainder.

The Chief Justice then observed, that the court would meet again at half after 2, when he understood that Col. Burr was to give bail on the trial for misdemeanor.

At 2, the court assembled, when Luther Martin and Thomas Langburne were accepted as his securities.

Monday, September 7.

Mr. Botts. The court will recollect, that when the order was moved for the continuance of the trial for misdemeanor, we deprecated the actions, inconveniences of delay. It is much to be regretted that we should now be driven into the trial without the letter, which we have required; but as that letter may probably be received in the course of the trial we are willing to enter into it.

Mr. Hay observed that he should not wish the trial to be gone into with such a declaration on the part of the accused; that he had sent an express to Monticello, agreeing to his promise; and that he expected him to return by to-morrow 12 o'clock. He therefore did not wish the jury to be fully sworn to-day.

The Chief Justice did not see any necessity for delay on that account. The paper would probably be here by the time when it is wanted as it will not be required until the defence is opened.

Mr. Hay wished every preparation for the trial to be made to-day, but hoped that the trial will not be gone into until to-morrow. He expected some communications from the President, which would have considerable influence on him, with respect to his conduct on the trial.

At this moment Herman Blannerhasset appeared in court, when Mr. Botts observed that Mr. Blannerhasset had attended for the purpose of understanding his true situation. He could obtain bail for the misdemeanor, and it was obvious, that under the opinion of the court, the indictment for treason could not be supported. Will you, Mr. Hay, enter a *nolle prosequi* to the prosecution for treason?

Mr. Hay acquiesced;

Mr. Martin. Will you not adopt the same course, as to the case of Mr. Israel Smith?

Mr. Hay acquiesced again.

Mr. Martin. I will mention the case of John Smith of Ohio; would it not be better to save the expence of bringing him here as a prisoner, by entering a *nolle prosequi* in his case?

Mr. Hay. His case is not before the court. Mr. Botts then requested the court to fix Blannerhasset's bail for misdemeanor. It was already ascertained that he is not rich. The Chief Justice determined that he should give the same as Aaron Burr; 5000 dollars. The same sum was also fixed for Israel Smith.

Tuesday, Sept. 8.

No measure of importance was adopted this day.

Mr. Hay informed the court, that his messenger had not returned from Monticello.

Mr. Israel Smith appeared in court, and was bailed on the indictment of a charge of a misdemeanor; himself in the sum of 5000 dollars, and his securities John B. Walton and John Alcock in 2500 dollars each.

Wednesday, Sept. 9.

The pannel of the jury was at length completed, after having excused several on account of their having formed and delivered opinions unfavorable to the accused. The following were sworn to try the issue.

Orris Paine, James Rootwright, Obadiah Gathright, John Murphy, Robert McKim, William Bentley, Yeamans Smith, Carter B. Berkeley, Jesse Bowles, James Penn, Robert Gordon, Thomas Lewis.

The clerk then read the indictment.

Mr. Hay produced the return of the President to the subpoena *duces tecum*, requiring the exhibition of the letter of Gen. Wilkinson to him of the 12th of November 1806, which has before been noticed. The return was annexed to a copy of the letter with the exception of those parts which he deemed of a confidential nature, and which he thought ought not to be disclosed. The parts excepted agree in substance, and almost verbatim, with those which Mr. Hay deemed it his duty to withhold.

The return is in the following words:

"On re-examination of a letter of Nov. 12th, 1806, from General Wilkinson to myself (which having been a considerable time out of my possession is now returned to me,) I find in it some passages entirely confidential, given for my information in the discharge of my executive functions, and which my duties and the public interest forbid me to make public. I have therefore given above a correct copy of all those parts which I ought to permit to make public. Those not communicated are in no wise material for the purposes of justice on the charges of treason or misdemeanor depending against Aaron Burr; they are on subjects irrelevant to any issues which can arise out of those charges and could contribute nothing towards his acquittal or conviction. The papers mentioned in the 1st and 3d paragraphs as enclosed in the letter being separated therefrom and not in my possession, I am unable from memory to say what they were. I presume they are in the hands of the Attorney for the U. States.

"Given under my hand this 7th day of September 1807.

TH: JEFFERSON"

Mr. Hay then in a concise and perspicuous address to the jury, opened the case on the part of the prosecution. He referred to the law of Congress on the subject.

The 1st count in the indictment charges the defendant with beginning a military expedition at Blannerhasset's island, to be carried on from thence against the dominions of the king of Spain with whom the United States are in a state of peace.

The 2nd charges him with setting on foot a military expedition against the territory of the king of Spain.

The 3rd is the same as the last, except that the province of Mexico, is stated as the territory of the king of Spain, against which the expedition is intended.

The 4th count charges the defendant with providing the means of a military expedition against the dominions of the king of Spain.

The 5th is the same as the 4th, except that Mexico is particularly mentioned as the province against which the expedition is intended.

The 6th is the same as the 4th, except that the foreign territory is said to be unknown.

The 7th charges him with setting on foot a military design against the dominions of a foreign state to the jurors unknown.

Richard Neale was sworn. He was proceeding with his evidence to state that Blannerhasset sent for him and asked him if he could keep a secret, when he was interrupted by Col. Burr, who objected to any relation of conversations with others not in his presence. He said he was willing to indulge the gentlemen with the examination of any testimony to prove a military expedition in this state;

but as it was admitted on all hands that he was not present, when the appearance of an expedition which has been attempted to be proved was set on foot: that is, the assemblage of the four boats at Blannerhasset's island, he should object to any evidence being given to connect him with that assemblage.

Mr. Hay said he wished to save as much time as possible. Is there any objection to our going on to prove the descent of the party from Blannerhasset's island till they joined Col. Burr, and his taking command of the expedition afterwards?

Mr. Botts immediately rose and commenced an argument in opposition to the introduction of any farther testimony in the cause.

He laid down the following propositions:

1st. That under the act of Congress there can be no accessorial offender, i. e. none are within the points of the statute but such as are acting at the fact.

2d. If the first point be not sustainable, no act of Col. Burr out of the district can be given in evidence against him.

3dly. Again, if the first point be not sustainable, no act of an accessorial agency can be given in evidence on this indictment charging the offence of acting at the island and not specially that the indicted did the accessorial act.

4thly. That if the foregoing points be not sustainable, still no evidence of an accessorial agency could be given till the record of the conviction of an actor in the expedition be produced.

5thly. That the act on Blannerhasset's island cannot amount to a providing or preparing the means, or a beginning or setting on foot a military expedition there. This point revolves itself into two others. 1st. There was no military expedition in maturity there. 2dly. If there was a military expedition in progress there, it was not begun or set on foot there, nor were the means provided or prepared thereon. In enquiring into what constitutes the offence under the act of Congress, he contended that the act was so uncertain and ambiguous that it never could be carried into execution. He instanced many cases which went to show that, according to the rules of constructing penal statutes, this act could not be enforced. He argued that providing the means spoken of in the act of Congress, required the entire means; that the means must be not of an expedition merely, but a military expedition; that to make it a military expedition it must have a military character, the most essential means of a military expedition is a military organization; that there must be a military posture; that the means must be adequate to the end; that no assembly of men was engaged in this expedition, nor was Col. Burr ever present at it; that no intention could aid facts in furnishing the means of a military expedition; that war might be without military form, but the means of a military expedition must have a military character; and that hostile means will not do, the means must be military.

A 6th point was, that no evidence of conversations said to have taken place between any other persons can be given in evidence against Col. Burr, unless he were present at the time the conversations passed.

On Thursday, Mr. Botts concluded his argument. He was followed by Mr. Hay; and the court adjourned at an early hour till the next day, on account of Mr. Wirt's indisposition.

On Friday, Mr. Martin offered a few additional authorities. He was followed by Mr. McRae; and afterwards by Mr. Wirt, who spoke 2 hours. Mr. Randolph continued the argument for one hour.

On Saturday, Mr. Randolph was to resume the argument, which is to be wound up by Mr. Martin; and on Monday, the judge was to have pronounced his opinion.

NEW-YORK, Sept. 7.

Fresh Outrages.—On Thursday last one of our gun-boats, coming into port, was fired at within the Hook, by the British armed brig Columbine, now within our waters, in violation of the Proclamation, and the midshipman compelled to go on board, where he was detained, interrogated, and treated with the usual insolence.

This outrage upon our national sovereignty is as gross, wanton, and flagrant, as that which was committed upon the Chesapeake. The gun-boat is a national ship, and when fired and brought to was within our jurisdiction. Instead, therefore, of going on board the Columbine by compulsion, the commander of the gun-boat should have struck her colours, or have suffered her to have been sunk. His having no powder on board, as he has alleged, is no adequate excuse, for with powder he could have made no effectual resistance.

For every wrong there is a remedy. This fresh attack could not have been contemplated or anticipated by the Proclamation, which goes no further than to prohibit intercourse. But the attack is upon rights so inherent that no law can abridge them, nor add to their force. Does not this new offence authorize an ample punishment, and cannot Commo-

dore Rogers, now, take vengeance upon the Columbine, as if he had been the person fired at? The lapse of a few days cannot vary the right of resistance. If he had it originally, he has it still.

In a former paper we stated that on Friday the Custom-House had, in the absence of the Revenue Cutter, sent down to the Hook a pilot boat, with the United States colours and officers; she was therefore to be taken by the British ships as the Revenue Cutter, for she had all her authority. The pilot boat came to anchor near the Columbine. This furnished a pretext for additional insults. The pilot boat was ordered by the commander of the Columbine to weigh anchor and remove farther off, or he would compel her. To this order no attention was paid; she continued where she was, and no violence was immediately offered. But on Saturday morning, under pretence of having missed a hand, the pilot boat was boarded from the Columbine by men armed with pistols, cutlasses, and blunderbusses, who swore that the man was concealed on board, and that they would search every nook and corner for him. Accordingly the Revenue Cutter was searched, but not finding the hand whom they pretended they had lost, the searchers insisted that he was concealed among the ballast, and threatened to tear up the planks which covered it! They were told that they could do so if they pleased, but that if the ballast was disturbed the Cutter would instantly upset: at length, having exhausted their vocabulary, of insolence the searchers desisted & returned to the Columbine. On Saturday afternoon the Cutter came up to this city, perhaps deeming it hazardous to remain any longer below, although in our own waters!

The Jason's barge which on Saturday brought Capt. Cochran to shore, returned to the stream, off the Battery, where she moored. Upon the signal of a gentleman, who had a letter from the British Consul which he held in his hand, elevated, the barge parted from her moorings and came towards the Battery, with eight hands, a lieutenant and midshipman. As she approached, the numerous and anxious spectators who had assembled on the Battery, crowded to the place for which she was making. The officers of the barge, alarmed, paused, but on being told by the messenger that they would not be harmed they continued their course. On coming near the wharf to receive the letter, the commander of the barge called out 'fend off—fend off!' 'aye, aye, sir,' said the men, when as if by preconcert and with the utmost quickness, they placed the barge along the wharf, when six of the men laid down their oars, leapt on shore, and called out 'hook it,' mingled with the crowd and made their escape. The two poor fellows left behind, looked anxiously at the six who had escaped.

A letter received at Newburyport from St. Vincent, dated July 29th, states, that accounts of the attack made by the Leopard on the Chesapeake frigate, had recently reached that place, and that it was expected by many that war would take place between the two countries. On the 29th July, the Governor of the Island sent for the American Masters in the port to meet at his house at 10 o'clock, A. M. That agreeable to his request, they repaired thither, where they were received in a very friendly manner by the Governor, who observed, that as he supposed the late disagreeable news from America, might induce them to hasten their departure from the Island, he thought proper to inform them that they need be under no apprehensions of difficulty, and might finish their business as usual, and when ready they might depart; assuring them, that whatever should happen between the two countries they should meet with no detention.

AMERICANS BE ON YOUR GUARD! The Danish government at the Island of St. Thomas having prohibited the exportations of provisions, shipping must expect a certain and heavy loss on adventures to that quarter.

The actual consumption of the Island is trifling, and if the present restriction continues in force, American produce will in a little time be sacrificed there, at less than half cost in the United States.

Philadelphia paper.

COMMUNICATION.

For Sale in Store

By the Subscriber;

50 punctons high 4th proof Rum
28 hhds. Sugar
50 bbls. St. Croix do.
20 hhds. Molasses
6 hhds. N. E. Rum
28 bags. Coffee
10 crates Crockery-Ware assorted
4 pipes Brandy.

HANSON KELLY.

Sept. 22.