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RALEIGH, (N. C.) THURSDAY, JULY 2, 1807.

[No. 578.

TRIAL OF Col. Aaron Burr.

CONTINUED.

5th day, June 20.

Immediately on the meeting of the court, Mr. Hay produced a letter to him from the President of the United States, including authenticated copies of the orders issued from the departments of war and of the navy, relative to the suppression of Aaron Burr's conspiracy. He observed that the court would recollect the former letter from the President mentioned the circumstance of his having entrusted to Mr. Rodney general Wilkinson's letter, which Col. Burr now demands to be produced; that the President had written to Mr. Rodney to return it that it might be furnished to the court; but since that gentleman (as he understood) had lately left Wilmington in Delaware, on his way to the City of Washington, the President's letter by the mail might have passed him on the road. He doubted not, however, that as soon as possible, the letter in question would come to hand. The President's letter and the documents included were received, at his return, in pursuance of the writ of *subpoena duces tecum*, and are as follows:

Washington, June 27, 1807.

Sir,
In answering your letter of the 9th, which desired a communication of one to me from Gen. Wilkinson, specified by its date, I informed you in mine of the 12th, that I had delivered it, with all other papers respecting the charges against Aaron Burr, to the attorney general, when he went to Richmond, that I had supposed he had left them in our possession, but would immediately write to him, if he had not, to forward that particular letter without delay. I wrote to him accordingly on the same day, but having no answer, I know not whether he has forwarded the letter. I stated in the same letter that I had desired the Secretary at War to examine his office in order to comply with or further request to furnish copies of the orders which had been given respecting Aaron Burr and his property; and in a subsequent letter of the same day, I forwarded to you copies of two letters from the Secretary at War, which appeared to be within the description expressed in your letter. The order from the Secretary of the Navy you said you were in possession of.

The receipt of these papers had, I presume so far anticipated, and others this day forwarded will have substantially fulfilled, the object of a subpoena from the district court of Richmond, requiring that those officers and myself should attend the court in Richmond, with the letter of Gen. Wilkinson, the answer to that letter, and the orders of the departments of war and the navy therein generally described. No answer to Gen. Wilkinson's letter, other than a mere acknowledgement of its receipt in a letter written for a different purpose, was ever written by myself or any other. To these communications of papers, I will add, that if the defendant supposes there are any facts within the knowledge of the heads of departments, or of myself, which can be useful for his defence, from a desire of doing anything our situation will permit in furtherance of justice, we shall be ready to give him the benefit of it, by way of deposition, through any persons whom the court shall authorize to take our testimony at this place. I know indeed, Mr. Hay, that this cannot be done but by consent of parties, and I therefore authorize you to give consent on the part of the United States. Mr. Burr's consent will be given of course, if he supposes the testimony useful.

As to our personal attendance at

Richmond, I am persuaded the court is sensible that paramount duties to the nation at large controul the obligation of compliance with their summons in this case, as they would, should we receive a similar one to attend the trials of Bannerhasset and others in the Mississippi territory, those instituted at St. Louis, and other places on the western waters or at any place other than the seat of government. To comply with such calls would leave the nation without an executive branch, whose agency nevertheless is understood to be constantly necessary, that it is the sole branch which the constitution requires to be always in function. It could not then mean that it should be withdrawn from its station by any co-ordinate authority. With respect to papers, there is certainly a public and a private side to our offices. To the former belong grants of land, patents for inventions, certain commissions, proclamations, and other papers patent in their nature. To the other belong mere executive proceedings. All nations have found it necessary that, for the advantageous conduct of their affairs, some of these proceedings at least, should remain known to their executive functionary only.—He of course, from the nature of the case must be the sole judge of which of them the public interest will permit publication. Hence under our constitution, in requests of papers from the legislative to the executive branch, an exception is carefully expressed as to those which he may deem the public welfare may require not to be disclosed, as you will see in the inclosed resolution of the house of representatives which produced the message of Jan. 22; respecting this case. The respect mutually due between the constituted authorities in their official intercourse, as well as sincere dispositions to do for every one what is just, will always ensure from the executive, in exercising the duty of discrimination confided to him, the same candor and integrity to which the nation has in like manner trusted in the disposal of its judiciary authorities. Considering you as the organ for communicating these sentiments to the court, I address them to you for that purpose, and salute you with esteem and respect.

TH: JEFFERSON.

I certify, that the annexed is a true copy from the records, in the office of the department of the navy of the United States, of the letter from the Secretary of the Navy to Capt. John Shaw, dated 20th December, 1806.

In faith whereof, I Robert Smith, Secretary of the Navy of the U. States of America, have signed these presents, and caused the seal of my office to be affixed hereto, at the City of Washington, this 17th day of June, Anno Domini 1807, and in the 31st year of the independence of the said states.

RT: SMITH

Registered, Secretary of the Navy.
CH: W. GOLDSBOROUGH,
Chief Clerk, N. D.

(COPY.)

Navy Department, 20th Dec. 1806.

SIR,
A Military expedition formed on the western waters by Col. Burr, will soon proceed down the Mississippi, and by the time you receive this letter will probably be near New-Orleans. You will by all the means in your power, aid the army and militia in suppressing this enterprise. You will with your boats take the best position to intercept and to take and if necessary to destroy the boats descending under the command of Col. Burr or of any person holding

an appointment under him.—There is great reliance on your vigilance and exertions. I have the honor to be,

Sir, your most ob't servt.
RT: SMITH.

Capt. JOHN SHAW,
Or the commanding naval officer at New-Orleans.

War, Department, Dec. 20, 1806.

"SIR,
"There is reason for believing that an association of unprincipled, ambitious and deluded men, has been formed for purposes hostile to the laws and peace of the United States, and that they are now descending the river Ohio and Mississippi, in considerable bodies, with large quantities of provisions and military stores, and that New Orleans will be the place of general rendezvous, or perhaps attack in the first instance. You will, therefore, in concert with the governor, make every possible exertion in your power for defeating their views, and for securing both men and stores; especially their leaders.

The gun boats will receive orders by this conveyance to take post up the river.

The artillery lately purchased from the French government will probably be aimed at, as well as other military apparatus: indeed, the capture of New-Orleans and all public property at that place, is presumed, by many, to be the first object."

I am very respectfully,
Sir, your ob't servant,
H. DEARBORN.
Lt. Col. CONSTANT FREEMAN.

I certify that the within is a true copy from the records of the department of war.

Given under my hand and the seal of the war office of the United States, this seventeenth day of June one thousand eight hundred and seven.

H. DEARBORN,
Secretary of War.

Mr. E. Randolph... We now proceed on our motion. May it please your honors, I am now about to submit to your attention, the motion which was noticed yesterday... The general purport of this motion, sir, is to award a rule against Gen. Wilkinson, to shew cause why an attachment should not issue against him for improper conduct, relative to certain witnesses brought forward in this case. Whether, sir, we shall be again charged with an intention to injure the character and conduct of General Wilkinson, I know not; but of one thing I am confident, that this is very remote from our design... Sir, we are possessed of nothing but plain facts to support the purport of this motion. We rely, sir, only on plain facts to support the purport of this motion, and to remove those prejudices, which may be afloat against us. We only hope, sir, that the public will be satisfied of the propriety of guarding the independence and free will of witnesses in all judicial proceedings. If General Wilkinson shall be incidentally affected by the legal consequences and doctrines from the consequences which may arise from the present investigation he cannot complain. He has no reason, sir, to complain of whatever consequences which may result from his own conduct.—It is due, sir, to the United States, it is due to the witnesses in question; it is due to the persons accused, that any obstruction which may have been made by the hand of military authority, to prevent the course of evidence in this case, should be exhibited. Sir, we shall charge General Wilkinson with specific acts, committed with the express design of thwarting the defence of the accused

...He is to reply by legal evidence, and not by protestations of innocence to these facts, which we shall exhibit against him. I prefer this course, sir, because after so many criminations from the Counsel against us, for improper and unnecessary waste of time, we may not again be accused of the same crime... and I hope, sir, no more time will likewise be wasted by these gentlemen in extraordinary eulogies, on the extraordinary merits of General Wilkinson. There may perhaps, sir, at a future period, be occasion for them to bring forward these panegyrics on the character of Gen. Wilkinson. There may perhaps sir be a time which will require all the force of their rhetoric, and all the lustre of his talents, to defend his conduct... It may be as well, sir, that the beams of his glory may not now be unnecessarily dissipated.

The ground, sir, of our charge is this, that General Wilkinson who is now before the Court in a case between him and the accused, has deliberately used improper means with the witnesses, who had been summoned on the part of the prosecution, and in consequence of the abuse of military authority, witnesses were brought forward to this place. This is our ground sir—I have mentioned Gen. Wilkinson alone, because we wish merely to have the principle determined. The affidavits, sir, upon which we found our motion, are those of Lieutenant Knox and Chancellor Lindsay."

Here Mr. Randolph began to read the affidavit of Lieutenant Knox, when he was interrupted by Mr. Hay, who opposed its reading. An argument of some length then took place between the Counsel on both sides, whether the affidavits should be read, or the witnesses examined in open Court. The Court decided for the later measure. James Knox was called. Mr. M'Rae proposed, that the examination should be deferred for a short time, until General Wilkinson himself was present; he was then, Mr. M'Rae observed, engaged before the Grand Jury.

Mr. Martin opposed the delay in this stage of the business, as General Wilkinson and his Counsel, could take no part in the business at present, being only a rule to shew cause why an attachment should not issue.

Mr. M'Rae supported the Counsel on the prosecution, ought to be present & ought to act in this stage of the motion—& said with the leave of the Court they intended to put some questions themselves to the witnesses. He believed he could satisfy the Court, that there was no just foundation for the present motion.

Mr. Martin said, he thought he had assigned a very satisfactory reason, why there should not be any delay. He confessed they were in Court. He saw them in Court, and never denied this; but in legal contemplation, they certainly were not in Court.

Mr. Wirt advocated the propriety, and the expediency, not the right that General Wilkinson should be present.

Mr. Martin said they had no more business to interfere in the present motion, than the counsel for Colonel Burr, had to interfere with the witnesses before the Grand Jury. He therefore hoped the court would not agree to a delay.

Col. Burr said he wished by no means even to exclude General Wilkinson at the present stage of the motion, or even for producing testimony on the present motion although it was irregular.

Mr. Hay asked if that declaration decided the question.—The concession of Col. Burr to wait for Gen. Wilkinson and for privilege of putting questions to the witnesses. He therefore moved that this business stand over until the General be discharged from the Grand Jury.

Mr. Wickham said he had no objections