



Quills are the plumed fair, delightful peace,
Unwarped by party rage, to live like Brothers.

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THURSDAY, JUNE 25, 1867.

No. 405.

TRIAL of Colonel Aaron Burr.

(CONTINUED.)

Monday, May 25.

On Mr. Hay's motion to commit
A. Burr for Treason.

At this moment the grand jury returned into court, and their names being called over, requested an adjournment. After some desultory conversation, between their Foreman and the Chief Justice, respecting certain points of form, they were accordingly adjourned till to-morrow 10 o'clock. They immediately retired from the court, when Mr. Hay rose to proceed with the argument. He spoke in substance as follows:

I stand here, sir, engaged in performance of a most serious duty. I appear here in a cause, which involves the character of our government. I come here to charge Aaron Burr with high treason against the U. S. with "levying war" upon his country. Sir, it was natural to suppose, that such a charge would have made a most serious impression upon A. Burr's mind; that he would have roused all the energies of his understanding in his service; in vindicating himself against such heinous charges, and not in casting imputations upon the government. Why then, sir, does he turn from himself against the administration. Why these complaints of persecution, which have fatigued our ears? I most solemnly deny the charge. I most confidently avow that there is not a tittle of evidence to support it. None can be produced, unless it be a prosecution, that the government brings him before a legal tribunal, where his guilt or innocence will be impartially established. A. Burr stands accused of the highest crimes and misdemeanors, he stands charged with a deliberate design of involving his country in all the horrors of a civil insurrection, or of engaging her in a war with foreign nations. This is the true question before the court, and instead of meeting this charge with the energy and firmness which became him; instead of confronting it with his evidence; he complains forsooth of persecution. And where, sir, is this tremendous persecution?

"Because he was sent here by a military authority." But could A. Burr be tried in the country where he was arrested? Was Blennerhassett's island in the Mississippi territory? Or ought he not to have been conveyed to that judicial district, which possessed a competent jurisdiction? But if A. Burr ought to have been sent here, by what number of men should he have been escorted? Was it by one man only; from whom he could have been so easily rescued, and whose vigilance he could most probably have eluded? Or ought he to have been conveyed as he really was, by the energy of men like Perkins, whose unshrinking firmness and whose humanity (in the presence of A. Burr himself, I avow it, let him deny it, if he can) had completely qualified him for the safe transportation of his prisoner?

But, sir, when this cry and spell of persecution are once excited, it is not easy to set bounds to its fury? Not contented with inveighing against the pretended persecution of the government—a government which never did persecute;—a government which cannot persecute, and which will forever stand firm in the affections of the people, from the integrity and intelligence which mark its measures;—not contented with lavishing their complaints against it, the opposite counsel have even turned against the humane instruments, who conduct the prosecution. They solemnly complain, that we have given them no previous notice of this motion—and these are the very men, who have so often offered motions to this court without the slightest intimation to ourselves. Sir, I must positively assert, that no notice in the present case ought to have been given. I shall not pretend to assert that A. Burr was disposed under the present state of things, to effect his escape; but I say, that supposing such to have been the fact, and supposing that, availing himself of the

information which we had imparted he should have taken to flight; I appeal to the candor of every impartial man; I appeal to the candor of the opposite counsel themselves, whether I should not have been guilty of a most gross violation of my duties.

But they say, he ought not to be committed, because the presence of the grand jury suspends the authority of this court. But where are the precedents to justify this position? I have not made many researches into this case; because I did not suppose there was a single sceptic at this bar, who would deny the universality of the proposition which we have laid down; that it was the right of the court to commit in every case where they deemed it proper. They say that in this case, the powers of the grand jury and the court are concurrent. Strange that they should forget the immense difference between their powers! There is a difference in the evidence necessary to convince them. We are not bound to submit the same testimony which we may produce before this court; much less before a petit jury. Affidavits may convince the court that it is proper to commit; but it is not yet perfectly certain whether it be proper to exhibit them before a grand jury. I am, however, unacquainted with the opinion, which the court entertain on this point; but I will boldly enquire, whether I should discharge my honest duty, were I to submit my indictments before the grand jury at this moment, when I have not all the material evidence which we may possess?—Sir, these gentlemen may cast their groundless censures upon me; but in vain; all their clamors will never move me from my purpose. The course which I am pursuing is sufficient to satisfy my own conscience; and it is indifferent to me whether ten or ten thousand men should join in my condemnation.

Mr. Botts asserts, that we have produced no authorities to support our position; and that we have none to produce. But is it right to be continually recurring to precedents? Is there no allowance to be made for the operations of common sense, in any case? Where cases of doubt and difficulty occur, a reference of this kind is certainly proper to enlighten and fortify our own judgments. But even admitting the propriety of introducing precedents in the whole extent for which gentlemen contend, it is their business and not our own to comply with the requisition for precedents, we stand upon the broad, general principle, that courts have the power to commit. If gentlemen contest this principle in the present case, why do they not introduce the countervailing authorities.

Mr. Hay expressed his regret that his friend Mr. Wickham had not more seriously meditated upon this subject, before he urged his objections; that if he had understood it with his usual correctness, he never would have troubled the court with the law of Virginia; for that this law had not the slightest bearing upon the specific proposition before them.

Mr. Wickham enquires why we do not at once send up our indictments before the grand jury; and suppose, sir, we should pursue the course which he recommends; suppose we should send up our indictments upon the evidence, which is now in our possession. Several days might elapse before they might be able to investigate this body of evidence. In the mean time, some of those numerous persons who are prying into every hole and corner of this city, might possibly catch some distant hint of the probable decision of the jury. They have certainly too much discretion not to keep their own council; but it is impossible to exclude completely the busy eye of curiosity. Some vague insinuations may probably escape; something which might justify a suspicion of their determination. Suppose then that Aaron Burr was to be actuated by these considerations; suppose that his fears (if fears he can feel) should prompt him to escape; what, sir, would become of our indictment? Mr. B. may quit the U. States; he may flee forever beyond the jurisdiction of this country; and

in that case the whole world would ridicule us for the course we had pursued. Or let us even suppose, that we had to withdraw this motion; where would be our security? Must we trust to the indulgence of Mr. Burr himself for remaining in this city and standing his trial?

We expect Gen. Wilkinson here in a few days. We have an affidavit which positively states, that an express to New-Orleans to command his presence on this trial, was met on the frontiers of the Mississippi Territory. We have also letters from the Attorney General of the U. S. explicitly stating, that Gen. Wilkinson has been officially authorized to leave the army of the U. S. and to select whatever mode of transportation he might think proper.—(Here he read the affidavit, showing that the express to Gen. Wilkinson had been seen in Athens, in the state of Georgia.) In the mean time, what is Col. Burr's situation? It is completely optional with him, whether to stay here and face his accusers; or to avail himself of his liberty and leave the United States. We call upon this court to exercise the authority with which they are invested; and by binding over Col. B. as well on the charge of high treason, as of a misdemeanor, to detain him for a satisfactory trial.

Mr. H. said, he scarcely expected to have been asked, why Gen. Wilkinson was not here? The gentleman himself has said, that he is a General. Can he then leave his army at any time without the permission of the government? Make, however a computation of the time. The Attorney General left this city on the fourth or fifth of April. He reached Washington on the 7th or 8th. Allow then a reasonable time for an express from Washington to New-Orleans; and for a man of Gen. W.'s age and bulk to travel to this city, and is it probable that he could have arrived here before this period? If he availed himself of the liberty and means to come by water; the gales have been lately very severe. And even two of the grand jury had assured him, that if Gen. Wilkinson was exposed to the late tempestuous weather, he would probably never see the U. S.

Mr. Wickham has expatiated upon the attempts made to prejudice the public opinion through the medium of the press. Sir, a great deal has been said; and a great deal will yet be said on this transaction. But are the presses shut against Colonel Burr? When even in this very city certain presses have been found to vindicate his motives and designs? But what of all this? The public mind is hostile to any encroachment upon the liberty of the press; and it ought to be so. Where then a crime of such gigantic evil arises in this country, like the one attributed to A. Burr, the printers will speak and they ought to speak; the purest motives will command them to speak. And if there have been publications against Col. Burr; innumerable communications have also appeared in his favor; and if these publications have contained the severest strictures from his own character and conduct; then he has no right to complain.

Mr. Hay demanded why Col. B. should then, wish, to close the only door to his own vindication by excluding the evidence. His counsel exclaimed, "send the evidence to the grand jury." Surely if Col. Burr wishes to have the evidence before the jury, he should be much more anxious to have it before the court. Why then does he shrink from the evidence? If an unjust prejudice assails him, the light of truth and evidence will dissipate it. Why does he shrink?

The gentlemen on the other side, continued Mr. Hay, do not do us justice. They charge us with persecution and oppression. Sir, I never contemplated or wished to hurt A. Burr. I scorn it. I look not to him. I look only to the duties which I am solemnly bound to perform.—One remark more, sir, and I have done; gentlemen on the other side insist upon the insufficiency of our evidence. Because we have withheld our indictments from the grand jury they have hastily inferred, that we feel our evidence to be too feeble to

satisfy the jury. They are mistaken, sir, I assure them they are mistaken. I conscientiously believe that we have evidence enough, even excluding the depositions themselves, to satisfy the grand jury of the guilt of A. Burr. But, sir, puerile indeed would it be for us under the present state of things to submit our case before the grand jury on the evidence before us, when we are every moment expecting better.

Mr. Edmund Randolph addressed the court to the following effect:

Sir, it would have been impossible for us, even had we received due notice of this motion to have availed ourselves of the time that was allowed to us. That would have been impossible, because the enormity of the proposition itself would have baffled all our consideration and all our researches. Mark the course, sir, which has been pursued towards my unfortunate client. First he was brought here under a military escort. Then that little folio of depositions and affidavits was laid before your honor: then the charge of treason; and then that little cock-bout which was destined to attend this great ship on a foreign expedition? You heard it all, sir, and what did you say? You bound Col. Burr to bail, simply on the charge of misdemeanor, to appear here at the opening of the court; but not contented with this security, you superadded, that he was not to leave the court until it discharged him. You opened the door too for an ulterior prosecution; you declared that if the Attorney for the United States should obtain any additional evidence, the judgment which you rendered, would not prevent his indicting Col. Burr, on a charge of treason.

Sir, thus stands the case, as it was understood by the whole universe. On Friday we came here to meet the world; Friday however passes away and nothing is done. On Saturday, we came here again; Saturday also passes away and nothing is done. But on Sunday, sir,—is broached this new fangled doctrine, which now excites our astonishment. They demand precedents, sir, for our conduct; and who are they that require it? Why, sir, they that take things out of the ordinary course of the law. For thirty years I never saw such a proceeding; I have never read of such a one in the English books; and yet these gentlemen call upon us for precedents.

If we were asked for our reasons, sir, we should have enough to offer. And first, a Judge in the Federal Court, sitting in the capacity which your honor now fills, would be the same relation to the accused as an examining Judge is in the State Courts. But, sir, who ever invited a single magistrate or a state court to augment the bail of any individual in the situation of Col. Burr? If a man be bound in a distant county to answer to a misdemeanor, and another crime was to be brought against him to be predicated on the very same evidence, have you, sir, ever known the trying to increase his bail?—There never was such an example.

Mr. Botts's remark, sir, is not to be answered. You are changing the constitutional organ of justice. You are completely blotting out the functions of a grand jury. The witnesses will be all produced before you; but no, improper as this proceeding will be, it is still less so than that which they actually pursue: None of the United States witnesses will be heard before you, but only those whom they may think it politic to introduce; and depend upon it, that such testimony will be garbled for the ears of this court, as may be expected to bias their judgment. Well, sir, and what will be the consequence? When the grand jury are about to retire to their own chamber, they will be told that you have demanded additional bail. Are you then, sir, to be a pioneer of blood for the grand jury? Is not this precedent outrageous, sir? The boasted principle, that a man is to be condemned, but upon the verdict of 24 of his peers, is gone.—Throughout this town it will be universally reported, that you have solemnly declared A. Burr to be guilty of high treason against the U. States, and some of those to whom the rumor may extend to y hereafter be

impanelled on the petit jury. And will they feel themselves altogether unbiassed by your judgment? Why, sir, let it be declared at once, that the grand jury is to be struck out as an intermediate organ of justice.

Do not, I pray you, sir, let us suffer for the delays and negligence of other people. I cannot blame the U. States Attorney; it is his business to obey the instructions of the government; and if the witnesses are not here, it is certainly no fault of his. But surely there is time enough to travel from N. Orleans to this city in 17 days: even with the gigantic "bulk" of General Wilkinson himself.

Mr. Hay says, our tone is changed. And how, sir? We demand a fair trial. But must we not therefore protest against a measure, which is calculated to defeat this object?—Certainly, sir. You are called upon to prejudice the minds of the grand jury. But, sir, in this interesting case, where liberty and life themselves are endangered, I trust that some hard mouthed precedents will be found in opposition to this procedure. We come here to answer to every charge which may be urged against us—we come here to answer on a precedent and constitutional decision; and that the court itself was to commit its opinion on certain points, which would be regularly brought before them for argument and for decision at some of the ulterior stages of the prosecution.

"Why, said Mr. Witt, do you shrink." Sir, trace the course of the prosecution, and see who it is that retires from the contest. On Friday the U. States Attorney was not ready; on Saturday he was not ready, and now indeed he will not probably be ready before Monday next. Sir, who is it that shrinks? And yet does the attorney positively aver that he has evidence enough.

We are charged, sir, with addressing the multitude. Mr. Witt says, that he could but would not imitate the example. But neither he nor Mr. Hay have spared the theme.—Sir, I will not deny the justness of his eulogiums upon the administration; but permit me only to remark that there has been a certain conduct observed towards Col. B. which excites my deepest astonishment.—When I look at the first man in the government, I behold an individual whom I have long known, and whose public services have commanded my admiration. When I look at the second, sir, he has my whole heart.—But, sir, the enquiry which is now before us, relates not so much to the intention as to the effect. An order has been given to treat Col. Burr as an outlaw, and to burn him and his property. And, sir, again, when the House of Representatives demanded certain information, as it was their right and their duty to do, the President granted it; and would to God! sir, that he had stopped here as an executive ought to have done. He proceeded to say, that Col. Burr was guilty of a crime; and consequently to express an opinion, which was calculated to operate judicially upon the judges and the juries.—Such was the substratum of all the censures which has been heaped upon Col. Burr.

Mr. R. proceeded to touch upon a subject, to which Mr. Hay had referred. Col. Burr was arrested in the Mississippi Territory.—Was there no court there? Was there no Judge of integrity to try him? Arrested too after he had been acquitted by a grand jury!! Well! he was transported thence (with humanity it has been said) dragged on by eight musqueteers who were ready to shoot him at a moment's warning; refused any appeal to the judicial authority; denied even the melancholy satisfaction of writing to his only child. Was all this humanity? Dragged before this court which derives its only jurisdiction from a little speck of land on the Ohio. Yes, sir, but for that little spot of an island, Virginia would never have enjoyed this honor! What is all this, sir, but oppressive and bitter inhumanity? I trust, sir, from what I have said, that no one will think with Mr. Witt, that I am shifting the question from Col. Burr to Mr. Jefferson. I should not have made the