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EDITORIAL ADDRESS.

In the early part of June the Editor intimated his purpose to retire from the establishment of the National Intelligencer, and invited the offers of individuals disposed to enter on its superintendance. His principal inducement, for taking this step, was a regard to the general state of his health, which had been, in no small degree, affected by the incessant occupation required by his situation. At the time this purpose was avowed, it was accompanied by a determination not to suffer the establishment, on any account whatever, to pass into hands, either unfriendly to the great political principles uniformly advocated by the National Intelligencer, or incompetent to its management. For although the period was, almost without precedent, peaceful and prosperous, it was obvious that, as all nations are exposed to vicissitudes, a profound calm might be succeeded in the political, as it frequently is in the physical world, by a storm that would call for the exercise of all the talents and virtues of the friends of principles, which seem to be exclusively confided to the safe-keeping of the United States. In advocating these principles, and defending those who have been the most distinguished in supporting them, the Editor lays no claim to merit on the score of talent. He does, however, lay claim to the virtue of fidelity; to a sincere belief both in the superiority and feasibility of republican government, and in a firm determination to contribute whatever is in his power towards its maintenance. However weakly, therefore, he may defend, it is impossible for him to betray this great cause.

But a short time elapsed, from the time of his making known his purpose, before a totally unlooked for aggression on the national rights occurred, which threatened to disturb the peace of the country, and seemed not unlikely to be the prelude of times in which the sincerity of principle would be exposed to an unusually severe ordeal, and which would claim from every citizen the best exertion of his faculties. This invigorated the resolution, originally formed, not to surrender the establishment into hands on whom the fullest reliance could not be placed.

A considerable time has since passed without any offer being made, which has been considered satisfactory on this ground. The Editor, has, therefore, determined to continue to superintend the National Intelligencer. In communicating this intention to the public, he has only to observe that the same principles, which have hitherto guided the discharge of his Editorial duties, remain unshaken, and from which it is his pride never to have swerved. Every conviction of his understanding has increased his attachment to them; and his purpose to defend those measures which are the best calculated to preserve them inviolate. He conscientiously believes the existing administration have uprightly and wisely discharged their duties. He is, therefore, the friend of that administration, and whatever new dangers may environ them, from the injustice of foreign powers, or from internal machinations, he shall view in the light of new motives to exertion.

Looking forward to the ensuing session of Congress as probably one of the most interesting since the era of the present government, he has exerted himself in making arrangements, which he trusts will render the National Intelligencer the full and faithful organ as well of the proceedings of the government as of the public sentiment, With this view, and to relieve himself from a burthen peculiarly oppressive when united with other duties, he has engaged the services of MR. JOSEPH GALES, JUN. an able Stenographer, who, with the additional aid contemplated to be furnished by one of the first Stenographers in America, will, it is expected, be fully competent to presenting a comprehensive and faithful statement of the Debates. This arrangement will leave the Editor more time, than would otherwise be at his disposition, for conducting the other departments of the paper, and particularly for the notice of such points as may during the session require elucidation or comment.

More regard will likewise be paid to the mechanical management of the paper. For some time past, the Editor has had to regret the necessary use of an inferior paper, and of a press somewhat out of repair, from his inability immediately to retrieve at the City of Washington the disappointment experienced in these respects. He has, however, entered into a new contract for the supply of a better paper, and there are already on the water on their way from Philadelphia, a New Press and fount of letter. He thus flatters himself with being able to make the National Intelligencer before the sitting of Congress, not only worthy of the patronage which it now enjoys, but likewise of an extended subscription.

The great additional expences which will be incurred render it indispensible that Subscribers should be punctual in their payments. It is, therefore, expected that every new Subscriber advance five dollars, the price for a year, at the period of subscription, and that the existing subscribers pay off their arrears and make the necessary advance before the opening of the session. Should this circumstance not be attended to, the transmission of the papers must be discontinued. Subscribers will recollect that subscriptions cannot be received for less than a year, and that the postage of letters must be paid.

TRIAL OF A. BURR.

A more particular account of the proceedings on

TUESDAY, SEPTEMBER 1.

The jury retired, and after an absence of 20 minutes, returned a verdict in these words:

"We, of the Jury, find that AARON
" BURR is not proved to be guilty
" under this indictment, by any
" evidence submitted to us. We,
" therefore, find him NOT GUIL-
" TY."

This form of a verdict was objected to by col. Burr and his counsel, who insisted that it should be in the usual form, simply, *Not Guilty*.

Mr. *Hay* contended, that the jury had a right to find their verdict in this form if they thought proper; and that it should be recorded in the very words of the verdict. It might be more satisfactory to them, and amounted in effect to the same thing as a general verdict of *Not Guilty*. He knew of no law, & he was certain there was no principle against it.

Mr. *Randolph* answered that form was against it; and in criminal cases, form was law. Why else are precedents always consulted to ascertain what the law is.

Col. *Burr* contended that the jury had no right to bring in a written verdict, or to say more than whether he was guilty or not guilty. The form of the charge given to the jury (which was read, at his request, by the clerk) would point out their duty. This was, that they were to say whether guilty or not guilty, and no more.

Mr. *Hay* observed, that if the verdict were not in writing the same objections might occur, if the jury should persist in the form adopted by them.— They might direct their foreman to deliver it *ore tenus*, in the very words which had been indorsed on the indictment.

Col. *Burr*. The charge given to the jury, so far from including such matters as they have inserted in their verdict expressly excludes it. If they had delivered it *ore tenus* it would have been considered as mere conversation addressed to the audience, and nothing more would have been thought of it.— But they had no right to deface a record of the court.

Mr. *Parker*, one of the jury, enquired whether the endorsement on the indictment could not stand, and the verdict be entered on the record in the common form of not guilty. If he were sent out again he should not agree to return a verdict in any other form; and if he were to answer *ore tenus*, he should use the very same words.

Chief Justice. If the jury think proper to alter their verdict it is very well; but if they insist upon retaining the form in which they have returned it, the court cannot reject it;—because it is a full answer to what was given them in charge. The endorsement remained as the jury had inserted it, and the clerk recorded the verdict in the common form not guilty.

WEDNESDAY, SEPTEMBER 2.

Mr. *Hay* wished to know whether he understood the opinion of the court correctly, as to what would constitute an overt act of reason. According to his construction of that opinion, the evidence of the transactions at Blannerhassett's island did not amount to an overt act.— If so, it would be improper to proceed with the prosecution of Blannerhassett and Smith, on the indictments now found against them. He certainly should not press upon the jury doctrines in opposition to the opinion of the court; but should consider it his duty, to enter a *nole prosequi*, and move to send them for trial to the place where an overt act was committed.

The *Ch. Justice* said that it was undoubtedly the opinion of the court, that the facts proven to have been committed at Blannerhassett's island did not amount to an overt act of treason. But the court did not contend that their opinion should apply to the facts of any particular case. They only meant to declare the law, leaving it to the jury to determine from the facts submitted to them, whether an overt act of treason had been committed or not.

Mr. *Hay* observed, that he should enter a *nole prosequi* as to Blannerhassett and Smith, and move the court to commit them together with the person who now stands before them indicted of a misdemeanor, in order that they may be sent to the place where the overt act was committed—if the court should be of opinion after hearing the evidence that it would be proper to do so. For this purpose he move that Blannerhassett and Smith be brought into court.

Col. *Burr* contended, that his case and that of Mr. Blannerhassett and Mr. Smith was quite separate and distinct, and that the motion could not be blended. To hear them together would tend to produce confusion. He should insist that the motion against him be taken up separately. He should also insist that there be a specification of the place where the offence is supposed to have been committed.

Mr. *Hay* said, he did not know that he was bound to specify the place—but he had no objection to doing it as far as was in his power. It is said that col. Burr was at the mouth of Cumberland; there he was joined by Blannerhassett and Smith; and from thence descended the river with the forces which he had been collecting; their number of men and military accoutrements increasing till the moment when they were finally dispersed. It will be in the power of the court to say after the evidence should be heard, whether they should be sent to another place for trial, and to what place. He confessed that he made the motion with a great deal of reluctance. He had pondered the subject very much; and it was the course which his conscience and a sense of duty prescribed. The form of the motion was objected to. It was said that we had no right to blend the examination of the three persons accused. The propriety of this course must be obvious. Blannerhassett and Smith would not be bound by evidence which was not delivered in their presence. If a motion should be made separately, the evidence must be three times repeated. It is supposed that much confusion will result from a joint examination. He did not expect to have heard such observations addressed to the court. However chaotic, however confused the case may be, the court will have no difficulty in separating the evidence and applying it to each person. But he believed the testimony would bear equally upon all; for they were all present. If, however, it should be the pleasure of the court to hear the motions separately, he should acquiesce.

Col. *Burr* remarked, that there would be no necessity to repeat the testimony, because the court could recollect it and apply it to the case of each individual. Besides some evidence might be deemed necessary by some, which would not be by another.

Mr. *Botts* said, that col. Burr, having gone through one trial for the whole treason, he stood upon different grounds from any one of the others. Different, not only as it related to many legal questions, but to the evidence which might be adduced. When the evidence should be gone through, he expected that Mr. Hay's overt act would be to himself a subject of ridicule. Besides there were separate counsel retained for the several gentlemen; and the examination ought, as nearly as possible to assume the shape of a final and regular trial.

Mr. *Wickham* observed, that col. B. had been tried for treason; & the jury had found a verdict of not guilty. He was consequently entitled to his discharge, though he had not as yet moved for it. He appears as any other innocent man, and unless something else should be exhibited, he could not with any degree of propriety be detained longer in custody. Again, the scene of action laid by the counsel for the prosecution, embraces a range of 1500 miles. Suppose a man arrested by a warrant on suspicion of treason or felony. Would not the prosecutor be compelled to designate some place where the crime was supposed to have been committed? Surely he would.

Ch. Jus. With respect to the verdict not guilty, that is a question of law and not of fact. On the question of a general charge of treason or felony, I understand the law to be that the accusation may be brought against any individual; and it is the duty of the judge to enquire whether a crime has been committed against the U. S. If the judge shall be of opinion that an offence has been committed, but not within the jurisdiction of the court, it is the duty of the district judge to remove the accused to the district where the offence was committed. That a grand jury may find a bill conjointly against several persons, he believed, there could be no doubt; but he was not certain whether they could be tried together before the petit jury without their own consent.— He was rather inclined to think that they could not.

Col. Burr said there could be no doubt but that there could not be a joint trial without consent of parties.

The *Chief Justice* mentioned a difficulty which he did not know how the court could get over. Colonel Burr was now in custody of the marshal, and bound to answer an indictment for a misdemeanor. He did not know how he could be taken out of that custody and sent to a foreign jurisdiction for trial of another offence.

Mr. Hay. I shall make the motion to the court, and leave it to the court to decide.

Chief Justice said he did not know how he could do it.

Mr. Hay. I know how to do it. When the court is called upon to decide, and the difficulty presents itself, I will remove it. I do not expect to untie the knot, but I can cut it.

Mr. Wickham contended, that the difficulty should be removed in the first instance. Colonel Burr was now in custody.

Mr. Hay observed, that it was obvious the question did not occur till the court was called upon to transmit the accused. Then the difficulty will present itself and not before.

Mr. Botts said, the subject presented two questions, one to *commit*, and the other to transmit to a foreign court, Which was the most regular in the order of proceedings? Surely the commitment? Suppose Col. Burr had been in custody, and bound to answer in another court:—Could this court act upon him till he was discharged from his prosecution there?

Mr. Wickham, after making some observations as to the course of proceedings in this case, said, that this might be sport to the government. He would not say it was death to Col. Burr —but it was death to every individual whom the government might think proper to persecute."

Chief Justice. This court *commits*, the district judge *transmits*. But why commit for custody? He is already in custody.

Mr. Hay. The application to you, sir, is to commit. If the district judge should find any difficulty, upon enquiring into the circumstances, it will be removed.

Chief Justice. The only doubt is whether this court is not bound to hear the whole case before a decision is made. Suppose the motion had been made before the district judge, might he not require a decision upon the present indictment before he committed?— (After examining the law) the Chief Justice said, that when a person was to be transmitted to a foreign court, if the offence was bailable, the court was to take a recognizance of bail. Now, can the court take a recognizance to appear in another court when the party is bound to appear in this?

This court is bound to specify the court to which the accused is to be sent; and the district judge is bound to send him.

Mr. Blannerhassett and Mr. Smith, were brought into court by the marshal.

Mr. Hay observed, that the three persons then before the court, all stood in the same situations and the same difficulty applied to all. He regretted that the court had not expressed an opinion before the prisoners had been sent for. He was not disposed to disturb the opinions of the court; but would go on with the trial for a misdemeanor against Col. Burr.

The clerk was about to read the indictment for a misdemeanor, when he was interrupted by Col. Burr, who said he was not to be arraigned, but might plead by attorney. He said that he was not in court upon that indictment. He was only in court because he had not moved to be discharged from the first indictment. He hoped that nothing which had passed would prevent a full consideration of this subject. In this case he wished to set up certain land marks by which others might be guided, who were to follow; and he feared there would be many.

Mr. Wirt enquired as to the effect of the proclamation which was made by the marshal after the jury had returned their verdict. The usual course was, (and the one which had been adopted in this case) for the officer to make proclamation if any person "knew of any treasons, felonies, or other misdemeanors committed or done by the prisoner at the bar, let them come forth and they shall be heard. The prisoner at the bar stands upon his deliverance," that is, his *discharge*.

Mr. Hay. It was at first objected that Col. Burr was in custody, & therefore he could not be transmitted to any other court. We are now told that he is not in custody.

Mr. Botts went into a lengthy argument to prove that although Col. Burr was *corporeally* present, he was not *legally* in court. He produced a number of precedents from the records of the general court of this state, as well as of the Federal court, to shew that after an indictment for a misdemeanor, the regular process was a *summons*, and not a *capias*, by which the body could be arrested. He relied particularly on the opinion of Judge Iredell, pronounced in Mundell's case, in which he considered the practice of the state courts as adopted throughout by the judicial act of Congress, and on the practice in Sinclair's case, which was a prevention under this very act. In the latter case, the process was a summons.

Col. Burr observed, that his counsel considered it a question of policy not to move for his discharge immediately.— In submitting to give bail as to the misdemeanor in the first instance, it was never his intention to admit the right to demand it.

The *Chief Justice* said, that he had determined, in the first instance, that bail was demandable, without considering the subject fully. He thought the law was clear. But he was open to conviction. He did not think himself precluded from a full examination of its propriety.

Mr. Hay said, he was not solicitous as to the result of the motion. The question now was, whether the prisoner should appear to the indictment for a misdemeanor without bail. Whenever a motion should be made to discharge him altogether, he should object to it, on the ground that treason had been committed elsewhere. He relied upon the act of Congress, which said, that for any *crime* or *offence* against the U. S. the prisoner upon an arrest, should be committed or give bail. He also relied upon the practice of this court in the case of Logwood. He had no doubt as to the application of the law of Congress to the practice of the state courts in civil cases. His only doubts were whether it applied to criminal cases.

Mr. Wickham considered that the act of Congress declaring that the usual mode of process of the several states in criminal cases should be adopted, was conclusive upon this question. The act of Congress fixes the punishment, but the proceedings are to be according to the laws of the several states. He had no objection to state the motives which governed the counsel of Col. Burr, in submitting to bail as to the misdemeanor. Such was the infatuation of the public mind, that if the grand jury had not found a true bill as to the treason, it was believed that Colonel Burr would have been taken with or without process, and sent to some other place. He therefore gave bail as to the misdemeanor, in order that he might be under the protection of the court.

The *Chief Justice* said, that when he gave his opinion on the question of entering into an examination of evidence, with a view to send the accused to Cumberland, or to some other place, it was predicated on the idea that he was actually confined by the process of this court. The precedents of this court which have been quoted, seem to settle the practice very differently from my ideas of the law of Congress, in relation to criminal prosecutions. The question deserves consideration; and if I should be of opinion that I am bound by those precedents, then the foundation on which I gave my opinion falls.

Mr. Hay enquired, where would be the propriety of issuing a process to bring a person into court, who was already before it.

The *Chief Justice* said, that if a *capias* should be determined to be the proper process, he should consider the state of the party as sufficient, and might direct the marshal to take him into custody; but if a summons should be considered the regular process, he could not make such an order; and a *venire* must be awarded. If a *venire* issues, it will involve a question, whether the party is not entitled to a continuance.

The court took time to consider, and adjourned till to-morrow, 10 o'clock.

THURSDAY, SEPTEMBER 3.

The Chief Justice delivered his opinion as to the proper process on an indictment for a misdemeanor of the kind charged against col. Burr; the result of which was, after examining the laws of Congress and reviewing all the precedents, that the regular process was a capias.

As soon as this opinion was delivered,

Mr. Hay observed that he would then proceed to the trial of the indictment for misdemeanor.

Chief Justice. The issue must be made up, I suppose.

Mr. Burr. A letter has been demanded from the President of the U. S. which has often been often promised, but never produced. I wish to know if that letter is in court, and whether it cannot be put into the hands of the clerk.

Mr. Hay. I believe that it is not in my possession, for I have not been able to find it among my papers after a minute search. Perhaps it may not be necessary to produce it, as there is a copy of it which is ready to be verified by the oath of more than one person.

Mr. Burr. I cannot admit a copy. It is certainly strange, that after the President's promise, this letter is not here.

Mr. Martin. It is within my knowledge, that Mr. Rodney has been to the city of Washington since the application was made for this paper.

Mr. Hay. I have made a minute search, among the large bundles of papers, which Mr. Rodney has transmitted to me, but I have not found it. Gen. Wilkinson has a copy of the letter verified on oath.

Chief Justice. Unless the loss of the original be proved, a copy cannot be admitted.

Mr. Burr then observed that he should now call the attention of the court to the subject of bail; as the opinion just delivered by the court demands bail; that since bail was demanded of him on a former occasion, circumstances had considerably varied, and some had occurred which ought to mitigate the amount of bail: that it was useless for him to mention those circumstances as they were well known, and it would consequently be understood that