NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

VOL. VII. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | No. 1041

FIVE DOLLARS PER ANNUM | WEDNESDAY, JUNE 17, 1807. | PAID IN ADVANCE.

TRIAL of Col. AARON BURR.

Wednesday, May 27.

(CONCLUDED.)

Mr. Wickham regretted that so much time had been consumed; but hoped that the court would acquit *them* of any intention to waste it; when any illegal motion was introduced by the opposite counsel, he felt it as a serious duty due to his client to resist it with firmness: for his own part he should not forget that he was before the circuit court of the U.S. nor should he so far lose his respect for their discernment as to bring forward motions which he believed to be illegal only to waste the time of the court; that he hoped none but legal evidence would be suffered to be introduced; none but competent witnesses to be heard; and that if this rule was not rigidly adhered to, what was to prevent the counsel on the other side from producing any and every kind of evidence that they pleased?

It cannot be supposed, said Mr. W. that we are afraid of this affidavit; what is in it, which has not been already known and scattered in every loose sheet of a newspaper throughout the U. States? It is not that we resist it in point of fact; but on the ground of principle. We wish two points to be settled; are affidavits to be read at all on such a motion? And at such a crisis of the prosecution as this? And if so, ought they to be read if the witnesses themselves were present? Would it be right, if they were in the next street or the next county? Would it in fact be right if there was time enough to produce the *viva voce* testimony itself? Mr. Burr had a right to be confronted with General Wilkinson. He had a right to cross question and examine him on all the statements which he has made. The government had power to bring him here. Why is he not here? Ought not some satisfactory excuse to be made for him? He is an officer of this government; and the government might have procured his attendance as well by a special order as by a civil process. Has any subpoena been taken out, enquired Mr. W. addressing himself to the clerk?

The clerk replied, that no subpoena filled-up with Gen. W's name had issued from his office; but that blank subpoenas had been taken out.

Mr. Wickham—No one knows, sir. There was time enough to have him here. The mail travels from Washington to New Orleans in 17 days. He might have come; but if he has not, why is not some satisfactory excuse brought forward? We want, sir, to see this gentleman cross examined.—We want to see him confronted with other witnesses. This is one ground, on which we object to the production of this affidavit.

Another ground is, that according to the decision of the supreme court of the U. S. this affidavit does not bear upon the present motion. Mr. Swartwout, who was said to be connected with Col. Burr, was discharged by them, because this affidavit did not apply to the charge of treason. Are counsel then to be suffered to produce testimony on any subject that they please?—A third objection is, that General Wilkinson does not relate a single act, committed in the district of Virginia;—in Virginia?—no—nor any where else. The attorney for the U. S. says, that he will prove the overt act hereafter. But, sir, I repeat it, that the rules of evidence apply not only to the admissibility of evidence, but to the order in which it is to be produced. Let them first prove an overt act, if they can—and then they are at full liberty to prove the color of it.

Again, sir, this deposition is not the best evidence which could be produced, and which the laws require. General Wilkinson speaks of a cyphered letter, and of its contents, as well as he can make them out. Now, sir, where is this letter; and where is the key to it? Why are they not here? Why are they not produced before you? For these reasons, Mr. Wickham hoped that the court would not suffer the affidavit to be read in evidence.

Mr. *Hay*. We shall not, sir, be carried from our course by speeches, however long or animated they may be.—But, sir, permit me to give those gentlemen a little information. Why talk of the affidavit before you? Do these gentlemen know, that we can positively prove the astonishment, the regret, and the denunciations which escaped from Mr. Burr, when he first heard of the publication of his cyphered letter?—Let them first know what we can prove, before they abandon themselves to their triumph. General Wilkinson's affidavit is the first in the series of our proofs, and it is for this reason that we wish to commence with it.

Mr. E. Randolph. Sir, we do not know what those gentlemen expect to prove. But we do object to the production of gen. Wilkinson's affidavit from what is already known; we know it to be perfectly inapplicable to the present question. Sir, this species of evidence is directly in the face of our bill of rights and of the constitution of the U. S. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him,*" &c. Col. Burr then, sir, has a *general* constitutional right to be confronted with the witnesses against him. Let gentlemen show any exceptions on it, if they can. And what have they done? Why; they have shown here an obsolete, an evaporated affidavit, for which there is no necessity and no law. The law positively declares, that the best evidence is always to be had; that when a witness is attainable, his affidavit is not to be admitted as testimony. We stand, therefore, sir, upon the bill of rights. Gentlemen may, indeed, attempt to evade its provisions, by saying that they can hereafter prove the material act; but I hope that this court will never countenance such illegal proceedings.

The Chief Justice stated, that the supreme court of the U. S. had already decided, that an affidavit might be admitted under certain circumstances—but they had also determined that gen. Wilkinson's affidavit did not contain any proof of an overt act; that he was certainly extremely willing to permit the attorney for the U. S. to pursue his own course in the order of drawing out his evidence, under a full confidence that he would not waste the time of the court by producing any extraneous matter; but where was the necessity of producing gen. W's affidavit first? If there was no other evidence to prove the overt act; Wilkinson's affidavit goes for nothing; for so the supreme court of the U. S. have already decided; and by that decision he should have conceived himself bound, even if he had dissented from it. Why then produce this affidavit?

Mr. Hay observed, that there was a great difference between the course prescribed by the court and the one which he would have himself pursued; and that he seriously believed, if he had been left to himself, he would at least have satisfied the court itself that his own course was the best; that as to gen. Wilkinson's affidavit, it might even now be confronted with witnesses; as Messrs. Bollman and Swartwout were present, and would say whether such & such conversations were ever held, as are detailed in this affidavit; that he was now before an examining court, and not before the petit jury: Why then the same strictness of evidence *now* as would be required on the trial in chief? That he really believed it was the intention of the opposite counsel, by dint of long speeches to attempt to drive him into *their* course: but that they ought to know he never consulted the counsel opposed to him; and that they would be the last persons in the world whose opinions he would consult on the present occasion:—that he seriously believed, that the evidence which he possessed, would, beyond the possibility of a doubt, convince the mind of the court, not only of the existence of a traiterous design, but of an overt act—& that all that he asked was the liberty of producing this evidence in the order, which he thought best. Is no part of this deposition, then, admissible? not a word?

The Chief Justice observed, he tho't no part of it admissible at this time; that gen. Wilkinson's affidavit either contained proof of the treasonable design, or proof of the overt act; or it related to conversations, which however strongly they might bear upon those who held them, did not bear upon col. Burr.*

Mr. *Hay* asked how the court was to be satisfied of the contents of any paper, before it was read to them. An affidavit might contain both the proof of the overt act and of a traiterous design. Was such a paper as this to be read under the decision of the court? Or how was the court to know, whether a paper might not contain some proof of the overt act satisfactory to them, unless they had an opportunity of inspecting that paper?

Mr. *Wickham*. These gentlemen talk of delay; and yet they would produce to this court whole masses of evidence that are perfectly irrelevant to the present question. They declare that they will not pursue our advice; and that we were the last persons whom they would take for counsellors. Sir, we do not ask them. All that we want is, that they would pursue the strict principles of law and evidence. One of the best rules of evidence is the order of evidence. If a man is charged with a crime, must not the deed itself exist, before any testimony is produced as to the intention with which it is done? I hope that no testimony will be suffered to be introduced, before the overt act itself shall be produced; and I call upon this court to enforce the strict order of evidence.

Mr. *Burr* observed, that in point of fact it was very immaterial to him whether this affidavit was read or not; that what he particularly wanted, was, that the great principles of evidence should be laid down, which would be equally applicable to this and to all other affidavits. He consented that the court might have this deposition read, if they thought proper.

Mr. *Hay*. This deposition will prove that it was one of Aaron Burr's objects to seize upon Mexico:—Then if we can prove by some other evidence that this object was connected with an attack upon the U. S. is not this deposition of material importance in that point of view? If both must be proved, does it make any difference which we begin with? If a conspiracy has been planned, of a misdemeanor and of treason so strongly combined, that they are made to go on together, and the accomplishment of the one facilitates the accomplishment of the other, is it not of material consequence to prove the misdemeanor? I have not myself seen Mr. Taylor or Mr. Allbright, but I am credibly informed that they will prove an armed assemblage of men on Blannerhasset's island.

The Chief Justice observed, that if there was no fact, or no overt act of treason before the court, the court could have nothing to say to the present motion: that if therefore no fact was proved, the court could not hear the prosecution: that he should be extremely sorry to waste the time of the court, and to launch into a variety of irrelevant subjects, when there was actually no testimony to prove the overt act itself, and thus to give the court a competent jurisdiction over the case.

Mr. *Hay*. I am bound, sir, to obey the decision of the court, however much I may lament that decision. I shall certainly acquiesce in their order. If I understand the court—

The Chief Justice said, that he was of opinion, that unless there be a fact to be proved, no testimony ought to be produced. The question before the court was not, whether there had been a treasonable intent, but an overt act. That fact itself must be proved, before there can be any treason or any commitment for treason.

General Wilkinson's affidavit was accordingly put aside.

*** Here follow the other proceedings which we have already journalized: the production of Taylor and Allbright's testimony, and of Duons's deposition, which last was finally rejected by the court.

* *The Chief Justice* observed in a subsequent stage of this business, that an idea had since struck his mind, which he thought it material to state, that he had not recollected that these conversations were said to be held by persons who were said to be authorised by Colonel Burr, and of course that their conversations would bear upon him.

Fifty Dollars Reward.

RAN away from the subſcriber, on Monday the 11th of this month,

Negro JOHN,

who calls himſelf John WHITE. but as he is an artful and intelligent fellow, may probable change his name, and attempt to paſs for a freeman. John is about 35 years old, his complexion black, has a pleasant countenance a high round fore-head and about 5 feet 9 or 10 inches high, ſquare and well ſet. He is a blackſmith by trade, and a tolerable good houſe carpenter, and will probable offer his ſervices in one or the other of the above trades,

Had on, when he abſconded, a black fur hat a good deal worn, a round jacket of ſtriped country made cotten, oznaburgs ſhirt, and a pair of olive colored negro cotten trowſers, but, as he has a variety of clothing, will no doubt change his dreſs. He is given to drink and apt to get intoxicated.

The above reward and all reaſonable charges will be paid for apprehending the ſaid Runaway and lodging him in any jail ſo that I get him again, if out of the ſtate, or fifty miles from home but if within the ſtate or the above diſtance from home 20 dollars & all reaſonable charges.

CLEMENT BROOKE.
Near Upper Marlborough.
Prince George's County.

May 25.—w6t.

R. C. WEIGHTMAN,

PRINTER, BOOKSELLER AND STATIONER,

PENNSYLVANIA AVENUE,

HAVING purchaſed the Extenſive and Valuable eſtabliſhment of WM. DUANE, conſiſting of Books, Stationery, Binding implements, and Printing materials, offers for ſale at the loweſt Philadelphia rates, Books and Stationery of all kinds;—Muſic and Muſical Inſtruments— Printing Ink of the firſt quality, and Patent Ball ſkins.

Printing in all its various branches, will be executed to order, with taſte and on the ſhorteſt notice.

Blank Mortgages, Deeds, Leaſes, Bills of Lading, Powers of Attorney, Apprentices' Indentures, Warrants, &c. kept conſtantly for ſale, by the quire or ſingle ſheet. Lawyers & others, by taking a quantity will be allowed a liberal diſcount.

R. C. W. ſolicits the attention of his friends, and hopes by unremitted aſſiduity to his buſineſs, to merit a ſhare of public patronage.

May 27—tf

Foreign Intelligence.

VIENNA, MARCH 28.

According to the laſt official accounts from Turkey of the 31 March, there was not only no treaty of peace made between the Porte and the courts of London and Peterſburg, but even the negociations with the Engliſh ambaſſador, Mr. Arbuthnot, were entirely broken off, and the preparations for defence, on the part of the Turks were moſt vigorouſly purſued. Whether the Engliſh fleet returned to the Dardanelles, and whether as ſome will affirm, it was forced only by a gale of wind to do ſo, is not well known yet.

The Turkiſh fleet which was taken or deſtroyed by the Engliſh, after they had ſilenced the batteries of the 2 firſt caſtles of the Dardanelles, by a moſt dreadful bombardment, conſiſted of 1 ſhip of the line of 84 guns, 2 frigates, and 2 ſloops of war.

Sir Sidney Smith was in the year 1799, in Conſtantinople, by which opportunity he undoubtedly examined the ſituation of the Dardanelles. The Porte was at this time in alliance with England.

As ſoon as the Engliſh fleet had arrived before Conſtantinople, vice admiral Duckworth diſpatched two faſt ſailing cutters into the Black Sea—probably to inform the Ruſſian fleet, which lay at the mouth of the Danube near Kilia of his arrival. As all the ſtrong caſtles on the coaſt of Europe, as well as on that of the coaſt of Aſia, all along the channel, are in the poſſeſſion of the Turks, and cannot be taken but by regular ſieges, for which the Engliſh have not a ſufficiency of troops; the Engliſh fleet is in a very critical ſituation; for the Turkiſh garriſons of theſe caſtles, amongſt whom there are certainly a great number of Frenchmen, might take it into their heads to fire red hot balls upon the Engliſh ſhips as they paſs.

HAMBURG, APRIL 19.

Letters from Memel of the 2d April, mentions the arrival there of the emperor of Ruſſia; he arrived on the morning of that day. Their majeſties, the emperor of Ruſſia and the king of Pruſſia, will in a few days repair to the army. At Memel a corps of Pruſſians is embarking for Dantzic.

The miſcarried expedition againſt Conſtantinople is very detrimental to the allied powers.

PARIS, APRIL 10.

By an imperial decree of the 20th March, the eſtabliſhment of 5 legions of reſerve for the interior and for the protection of the frontier & the ſea coaſt is ordered. Each legion is to conſiſt of 5 battalions, each battalion of 8 companies and each company of 160 men. Each legion is to be commanded by a ſenator and receives but one ſtandard or eagle; their uniform is to be the ſame as that of the troops of the line.

The firſt legion meets at Liſle, the ſecond at Metz, the third at Rennes, the fourth at Verſailles, and the fifth at Grenoble.

By an imperial decree of the 26th March the cities of Breſt and Antwerp are declared to be in a ſtate of ſiege. The ſenator Abbeville is appointed governor of Breſt & ſenator Ferino, governor of Antwerp.

The inſpector general of the military hoſpitals, Mr. Deſgenetier, has received orders to go to the grand army.

The Hamburgh papers contain a great number of advertiſements of the largeſt houſes, country ſeats, gardens, &c. for ſale in and about Hamburgh, which confirms the verbal account, we have had of the total ſtagnation of trade of that great emporium.

PARIS, APRIL 13.

For ſome days paſt the political horizon has brightened. The cataſtrophe with which the Ottoman empire ſeemed threatened is no more to be feared. The appearance of the Engliſh has only ſerved to reveal to it its reſources, and to awaken its energy. It ſeems as if they had come under the walls of Conſtantinople, merely for the purpoſe of letting Ruſſia, their ally, be acquainted with the diſpoſition of the Turkiſh people for reconquering their independence,

Until now the temerity of the ambaſſador and Engliſh admiral has already had a moſt fatal reſult for the intereſt of their nation. They have changed the influence which the French owed to the glory of their ſovereign, and of their arms, into frank alliance, indiſſoluble and ſuperior to all religious prejudices which had prevented the Turks from fighting under the ſame banners with the French. This alliance, rendering the natural valor of the Ottomans uſeful, gives to that great body the ſoul which it wanted: It is the greateſt victory France could obtain at this moment for the ſalvation of Europe. The firſt reſult is depriving England, as is were by the drag of a fiſhing-net, of the immenſe commerce which it made almoſt excluſively in the poſſeſſions of the Grand Seignior. The ſecond effect of this aggreſſion is the forming between Perſia, Turkey and France a military line of operations directed againſt the common enemies, from the extremities of Europe to the centre of Aſia.

ELBING, APRIL 1.

The Emperor is expected here every moment. There is a great number of cavalry cantoned in the neighbourhood of our city, and every workſhop is buſily employed in working for it. 4000 horſes are eſtimated to have been drawn by the French from the Iſle of Nogat which is, doubtleſs, one of the fineſt countries in Pruſſia. Conſiderable parks of artillery have arrived from Warſaw, by the Viſtula, before Dantzic.

CONSTANTINOPLE, MARCH 10.

ENGLISH EXPEDITION—The English ambassador, Mr. Arbuthnot, perceiving that he alone could not succeed in frightening the Grand Seignior and his ministers, ventured to go himself in person and bring the English squadron with which he had threatened the Divan for so long a time. It was in the afternoon of the 20th of February that intelligence was received here of that fleet, consisting of 7 ships of the line, two of which were 110, three 84's, and two 74's, besides two frigates of 40 and two fire ships, having passed the Streights of the Dardanelles, almost without any resistance, a few hours afterwards it was seen casting anchor 3 leagues from Constantinople.

The appearance of these forces, which found us in some measure unprovided, excited at first an unfavorable sensation upon the minds of the inhabitants. The Divan itself seemed uneasy and irresolute. A great consternation spread throughout the city.

The French ambassador, without suffering himself to be moved by the effects of that crisis, threw himself as it were upon the helm, undertook to inspire courage and confidence, and to drag out an order for defending the city. He succeeded. From that moment the French military obtained every thing, from the good will of the ministry and the Turkish engineers. The people seeing in the morning the dispositions, which had been made during the night, showed themselves disposed to second this movement of energy.

The preparations for defence could not yet, however, be very considerable. They consisted only in a battery of 13 pieces of cannon, hastily thrown up before Topnana, another battery of 10 cannons placed on the coast of Asia; and lastly, in 4 or 5 small cannons which had been put up in an advanced tower. All this might have incommoded the English squadron had it entered; but not being supported by the cross fires of the point of the Seraglio, would have been far from sufficient to preserve the city, the Turkish fleet, the magazine, &c.

Happily the English admiral, though he had with him Sir Sidney Smith and fire ships, knew not how to take advantage of this moment, he suffered himself to be driven into a kind of negociation which the Porte carefully kept in suspense until she found herself in a situation to repulse every aggression. The dispositions that were making soon put her in a state to raise her tone, and she rejected the odious propositions of the enemy. We had at that time 300 pieces of cannon in battery, mortars and howitzers—three ovens for red hot bullets in full activity, 200,000 men armed with rifles and fusils, and animated with the best spirit, 80 gun shallops forming the advanced guard of 9 ships of the line; 6 heavy frigates and 6 corvettes in the road; and 5 large ships front of the fort.

All this has contributed no little to shorten the negociation. The English admiral judging, no doubt, from these dispositions that similar measures would be taken to shut the passage of the Dardanelles against him, hastened, after having reconnoitred our position, to make his retreat. He has passed the Dardanelles; but the Turkish garrison, animated by the example of the capital, fired desperately from the only battery which time had allowed to erect there. It disabled and retook the corvette which the English had taken on their passage, and it sunk a polacre loaded with ammunition. Four days later, and the enemy would not have come out so easily.

The English ambassador had, in his negociations with the Divan, demanded as preliminaries, that the Porte should turn away the French ambassador and