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FRIDAY, MARCH 15, 1807.

SUPREME COURT OF THE UNITED STATES, FEB. TERM, 1807.

The United States vs. William Burr, et al. Defendants on a commitment for treason.

Chief Justice MARSHALL, on the 21st ult. delivered the following opinion of the Court.

[Concluded.] Their agents now with Burr say that if we will proceed their religion and will not subject them to a foreign power, in three weeks all will be settled.

This is apparently the language of a people who from the contemplated change of their political situation, feared for their religion, and fearful that they would be made the subjects of a foreign power.

There certainly is not in the letter delivered to general Wilkinson, so far as that letter is laid before the court, one syllable which has a necessary or a natural reference to an enterprise against any territory of the U. S.

That the bearer of this letter must be considered as acquainted with its contents is not to be controverted. The letter and his own declaration evidence the fact.

After having himself been passed through New York and the western States & territories, without inquiring if he had performed on his route any act whatever which was connected with the enterprise, he states their objects to be "to carry an expedition to the Mexican provinces."

This statement may be considered as explanatory of the letter of Col. Burr, if the expressions of that letter could be thought ambiguous.

But there are other declarations made by Mr. Swartwout, which constitute the difficulty of this case. On an enquiry from Gen. Wilkinson, he said "this territory would be revolutionized where the people were ready to join them, and that there would be some seizing, he supposed, at N. Orleans."

If these words import that the government established by the United States in any of its territories, was to be revolutionized by force, although merely as a step, or a mean of executing some greater project, the design was unquestionably treasonable, and any assemblage of men for that purpose would amount to a levying of war.

But on the import of the words a difference of opinion exists. Some of the judges suppose they refer to the territory against which the expedition was intended, others to that in which the conversation was held.

Some consider the words if even applicable to a territory of the United States, as alluding to a revolution to be effected by the people rather than by the party conducted by Col. Burr.

But whether this treasonable intention be really imputable to the plan or not, it is admitted that it must have been carried into execution by an open assemblage of men for that purpose, previous to the arrest of the prisoner, in order to consummate the crime as to him; and a majority of the court is of opinion that the conversation of Mr. Swartwout affords no sufficient proof of such assemblage.

The prisoner stated that Col. Burr with the support of a powerful association extending from New-York to New-Orleans, was levying an armed body of 7000 men from the State of New-York and the western States and territories, with a view to carry an expedition to the Mexican territories.

That the association, whatever may be its purpose, is not treason, has been already stated. That levying an army may or may not be treason, and that this depends on the intention with which it is levied, and on the point to which the parties have advanced, has been also stated.

The mere enlisting of men without assembling them is not levying war. The question then is whether this evidence proves Col. Burr to have advanced so far in levying an army as actually to have assembled them.

It is argued that since it cannot be necessary that the whole 7000 men should have assembled, their commencing their march by detachments to the place of rendezvous, must be sufficient to consummate the crime.

This position is correct, with some qualification. It cannot be necessary that the whole army should assemble, and that the various parts which are to compose it should have combined. But it is necessary that there should be an actual assemblage, and therefore the evidence should make the fact unequivocal.

The travelling of individuals to the place of rendezvous would perhaps not be sufficient. This would be an equivocal act, and has no warlike appearance. The meeting of particular bodies of men and their marching from places of partial to a place of general rendezvous would be such an assemblage.

The particular words used by Mr. Swartwout are that Col. Burr was levying an armed body of 7000 men. If the term levying in this place imports that they were assembled, then such fact would amount, if the intention be against the United States, to levying war. If it barely imports that he was enlisting or engaging them in his service, the fact would not amount to levying war.

It is thought sufficiently apparent that the latter is the case in which the term was used. The fact alone, or if taken in the former sense, is of a nature to to take itself upon the public view, that if the army had then actually assembled either together or in detachments, some evidence of such assembling, would have been laid before the court.

The words used by the prisoner in reference to raising at New-Orleans, and borrowing money by force from the bank, though indicating a design to rob, and consequently importing a levying of war, do not designate the specific crime of levying war against the United States.

It is therefore the opinion of a majority of the court, that in the case of Samuel Swartwout there is not sufficient evidence of his levying war against the United States to justify his commitment on the charge of treason.

Against Erick Bollman there is still less testimony. Nothing has been said by him to support the charge that the enterprise in which he was engaged had any other object than was stated in the letter of Col. Burr. Against him, therefore, there is no evidence to support a charge of treason.

That both the prisoners were engaged in a most culpable enterprise against the dominions of a power at peace with the United States, those who admit the affidavit of Gen. Wilkinson cannot doubt. But that no part of this crime was committed in the district of Columbia, is apparent. It is therefore the unanimous opinion of the court that they cannot be tried in this district.

The law read on the part of the prosecution is understood to apply only to offences committed on the high seas, or in any river, haven, harbor or bay, not within the jurisdiction of any particular State. In these cases there is no court which has particular cognizance of the crime, and therefore the place in which the criminal shall be apprehended, or, if he be apprehended where no court has exclusive jurisdiction, that to which he shall be first brought is substituted for the place in which the offence was committed.

But in this case, a tribunal for the trial of the offence wherever it may have been committed, had been provided by Congress; and at the place where the prisoners were seized by the authority of the commander in chief there existed such a tribunal. It would too be extremely dangerous to say, that because the prisoners were apprehended, not by a civil magistrate, but by the military power, there could be given by law a right to try the persons so seized in any place which the general might select and to which he might direct them to be carried.

The act of congress which the prisoners are supposed to have violated, describes as offenders those who begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the dominions of a foreign prince or state, with whom the U. States are at peace.

There is a want of precision in the description of the offence which might produce some difficulty in deciding what cases would come within it. But several other questions arise which a court consisting of four judges finds itself unable to decide, and therefore as the crime with which the prisoners stand charged has not been committed the court can only direct them to be discharged.

This is done with the less reluctance because the discharge does not acquit them from the offence which there is probable cause for supposing they have committed, and if those whose duty it is to protect the nation by prosecuting offenders against the laws shall suppose those who have been charged with treason to be proper objects for punishment, they will when possessed of less exceptionable testimony and when able to say at what place the offence has been committed, institute fresh proceedings against them.

The order of the court was as follows: The United States vs. William Burr, et al. Defendants on a writ of Habeas Corpus.

The arguments of the attorney general and of the attorney of the U. S. for the district of Columbia, and the arguments of counsel for the prisoner having been heard; and the record of the circuit court for the county of Washington containing the order by which the said Samuel Swartwout was committed on the charge of treason in levying war against the U. S. and the testimony on which the said commitment was made having been inspected and attentively considered, the court is of opinion that the testimony does not furnish probable cause for supposing that the said Samuel Swartwout has levied war against the U. S. and doth therefore direct that he be forthwith discharged from the custody of the marshals.

The same order with regard to Bollman.

STATE PAPERS, Relative to the Negotiations between France and Great-Britain.

No. XXV. Paris, 17th August, 1806.

The undersigned has the honour to inform his excellency the minister for foreign affairs that his Britannic majesty has been pleased to accede to the solicitation of Viscount Yarmouth by permitting him to return to England, conformably to the tenor of the full powers of the undersigned already communicated to their excellencies, the French plenipotentiaries, he is authorized to treat conjointly or separately with the French government and he has just received from his court new and precise instructions for that purpose, should the answer to his note of the 11th instant permit the undersigned to continue the negotiation.

The undersigned has the honour to renew to his excellency the assurances of his high consideration.

LAUDERDALE.

No. XXV. Paris, 21d. August 1806.

The undersigned minister plenipotentiary of his Britannic majesty, finds himself under the necessity of reminding his excellency the minister for foreign affairs, 1st, that on the morning of the 12th inst. a note signed by the undersigned and by Viscount Yarmouth, dated the 11th, was transmitted to his Ex. Gen. Clarke, in which the undersigned observed that the British government far from pretending to require of the French government, all the restitution which may be convenient for them, without their being bound to any restitution towards France, have manifested no other desire than that of treating with the French government on the basis proposed by France herself, as expressed in Lord Lauderdale's Note, viz. to treat generally upon the basis of the ut possidetis, which ought scrupulously to be observed, excepting in the case of Hanover, which was proposed to be ceded, wholly to his majesty.

Even were it possible to mistake the results to be necessarily drawn from this principle, the discussions which took place by word of mouth on the 9th inst. between the French plenipotentiaries and the undersigned, left no doubt that the proposal thus brought forward was perfectly understood by these plenipotentiaries. The undersigned has in consequence only to repeat that, conformably to the instructions of their government, they can do no otherwise than to insist upon this principle being previously acknowledged. It is only on this condition that they are allowed to continue the negotiation.

That the 14th of this month the undersigned, conjointly with Viscount Yarmouth, had the honour to follow by writing, his excellency the minister for foreign affairs; that the silence of their excellencies the French plenipotentiaries with regard to his note of the 11th inst. induced the undersigned to presume that at the present moment they were not to expect

such an explanation as had been required in the note of the 11th, to authorize the undersigned in conformity with their instructions, to continue the negotiation.

That conformably to this idea, we wish to set bounds to the general expectations of both nations, as there is so little appearance of seeing them realized. We feel that the request we make under such circumstances for passports for our return, is susceptible of interpretations of a nature to delay the happy moment when the views of the French government shall approximate more to those it was supposed to entertain. It is to prevent even the possibility of such an inconvenience that we think it our duty to assure your excellency that any step whatever which would have the effect of laying obstacles in the way of the renewal of the negotiation, would be thence contrary to our intentions—notwithstanding that owing to the reasons we have detailed, we see ourselves obliged to put an end to our mission.

The undersigned on seeing the answer to these communications so long retarded, persisted himself that this delay might arise from positions favorable to the progress of the negotiation, and that he should be finally compensated by an answer conformable to this interpretation. When even none arrived, he in like manner persevered in a conduct which must have incontestably proved the sincerity of the desire that he manifested, to receive the explanations which might enable him to continue the object of his mission.

But if, on the 14th inst. the undersigned conjointly with Viscount Yarmouth, found himself obliged to observe to his excellency the minister for foreign affairs that he apprehended in consequence of the silence of their excellencies that no answer would be made on this subject, &c. and if at this period they thought it their duty to declare the necessity under which they lay, conformably to the orders of their sovereign, to ask, for passports for their departure, it is not necessary for the undersigned to remark to his excellency the minister for foreign affairs, how much the new delays which have taken place since that date imperiously prescribe to the undersigned to renew this request.

At the same time the undersigned must observe that being unable to persuade himself that in case the reply was of an unfavourable nature, his excellency the minister for foreign affairs would have deferred for so long an interval the adoption of the only alternative of the sending of passports, he cannot entirely even now give up the hope, of seeing the proposal once more established in the manner the ministers of his Britannic majesty comprehended it to have been made on the part of the French government, since it is only in this manner that the expectation of the two nations can be at length realized.

Should even these hopes prove unfounded, the undersigned will never regret a delay which has afforded him the opportunity of proving in an unequivocal manner, the sincere desire of a solid and honorable peace, with which his Britannic majesty has given the best proof by authorizing the undersigned to treat on the basis proposed by France. It is in this very view that the undersigned has supported so long an uncertainty without making in this respect the smallest claim.

At present, on intrusting his excellency the minister for foreign affairs to send him provisionally to be made use of in the cases already pointed out, the necessary passports for himself and suite, the undersigned thinks he has adopted the means of preventing the necessity, under which he might otherwise find himself to accompany it with claims such as are authorized by the rights of persons and the dignity of his sovereign.

LAUDERDALE.

FRIDAY, MARCH 13, 1807.

FOR THE AMERICAN.

TO THE PEOPLE OF THE U. STATES.

A CITIZEN of the United States, attached to no party, conforing with no faction, bound by no ties of sympathy to the personal interests of any man; and disdaining alike to advocate the cause of traitors, or to connive at a plausible infraction of the constitution, steps forward to address you, with the feelings of a patriot, in the language of truth.

A plan had been concerted in the bowels of your country, by a man once bearing high honors about him, to sever your union, to destroy your constitution, your form of government, and to sacrifice your liberties at the shrine of "energetic" rule. (a) The fact is supported by pointed and positive testimony: The evidence is not light, rash, nor presumptive; but plain, clear and decided. Burr, the projector of the design, declared it himself, in a personal interview, to general Eaton; who, on his oath, before a judicial and competent tribunal, with deliberation and circumspection, on the Holy Evangelists, in the presence of his God and his country, solemnly proclaimed it to the world. Numerous incidents corroborated the disclosure of Eaton. The emissaries of Burr were roaming through the Western Country. (b) Many of them were not men accustomed to the pursuits of laborious life, or such as would justify a supposition that they were about to settle lands, to engage in agricultural pursuits, and by their industry make a blooming garden of the wilderness; most of them were men reared in fashionable life, teeming with lofty notions of human nature; some ardent, vigorous, and enterprising; some thoughtful, beardless, and boyish. These circumstances no hypothesis, no cunning, no art could conceal. Connected with the cyphered letter, (c) the confessions, and broad hints (d) of several of the associates, they leave little room for doubt: And however the chief of the plot may evade or prevaricate; however he may affect innocence, or play off the arts of recrimination, (e) the voice of the unbiased and temperate citizen will pronounce him guilty. Among the associates there were also men of years and experience, who had been respected by their countrymen, and distinguished by the honors of office. The names of these were used more early to damp the young and the volatile; and were agitated, setting the example, by a higher tone to the nerve of youth.

Completing throughout the Western Country, and conspiring against the unity of these States; reducing individuals to embark in the undertaking (f) building boats; (g) purchasing provisions; (h) drawing large sums of money from the Banks; (i) and veiling his actions in mystery; (k) the nation became justly suspicious of Burr's proceedings; and rising to a sense of danger, one universal alarm pervaded the country: The enemies of liberty smiled at the prospect of approaching ruin which threatened your republican institutions, whilst the friends of free principles, collected and firm, stood ready to meet the impending danger in whatever shape it might present itself.

At such a crisis, when your laws were powerless (l) to arrest the impetration of treason; when the Emporium of the West was threatened with speedy, certain and overwhelming ruin, the commander of your army, acting under the obligation of an oath to support and preserve the constitution; (m) in full possession of strong evidence of the guilt of certain of the associates, (n) resolutely supplies the deficiency of the laws, seizes on several noted persons of the conspirators, whom the civil authority was too embezzled to secure; and not willing to insult the Courts of Judicature by retaining them prisoners within their jurisdiction, and refusing to deliver them up when in his actual possession and demanded by the Habeas Corpus, sent them to the seat of the general government, there to be dealt with, not according to martial forms, but agreeably to the provisions of the laws—of those laws, which the event has proved inefficient to punish them. Yet something was gained by the transportation of their persons: The members of a dangerous and daring cabal, existing in New Orleans, were widely dispersed, and a concert of design, in the most critical moment for their scheme rendered impracticable.

Grave hypocrites, when thwarted, will be sturdy; and inexperienced youth obstinate of temper, if arrested in its designs. When detection overtakes the first they assume the language of indignant virtue; and when exposure reaches the last, they become violent and unruly. In these reflections may be found the solution of the conduct of Bollman and Swartwout, of Livingston and Alexander, of Adair and Ogden. Hunted to their secret recesses, where were found many proofs of their guilt, they turn with brazen and unblushing fronts on general Wilkinson, who, like Ithurbu, with his spear, exposed them in their truest shapes to the world.

Up they start, "Discover'd and surpris'd. As when a spark Lights on a heap of nitrous powder, and Fit for the tuneful magazine to store "Against a rumor'd war, the mutiny grain "With sudden blaze diffus'd inflames the str: "So hurried up, in their own shapes, the Fiends."

They have denounced him as a military tyrant, seizing innocent men and confining their persons, whilst engaged alone in lawful pursuits. To these denunciations the commander of the army opposes nothing but fortitude and perseverance—the heroism of Cook with the cool resolution of Di Gama. He had, like either, to struggle in a tempestuous element, and pursued an unrequited course: Happy, if at last he can encompass his laudable intention, without being destroyed by savages, and explore his way along the dangerous path he has adventured on for the salvation of his country.

When summoned before a judicial tribunal at New Orleans, the commander of the army divested himself of his military habiliments, and appeared in the plain garb of a citizen: He held himself accountable to the laws of his country, and explaining his motives with manliness and freedom, he threw himself on the good sense and justice of the nation. He had not seized the culprits with the view of deportation to a foreign clime, immuring them in a dungeon, or consigning them to military execution or the scaffold; but with the intention of delivering them to the executive authority at the seat of the general government, to be dealt with as their crimes might deserve. Conveyed to Washington City, by the President of the U. States, the Associates of Burr were delivered to the custody of the law. By the highest judicial authority in the country, which invaded the jurisdiction of an inferior but independent court, (o) they were declared entitled to their freedom, having committed no crime which the existing laws of the country could reach and punish.

Thus acquitted, the coadjutors of Burr, with rankling vindictiveness, commenced the yell of vengeance—and, like artful necromancers, strove to divert the general attention from themselves, their chief, and his fell purposes, to the man who at the risk of fortune, fame, and life, had boldly traced their iniquitous steps and arrested them on the threshold of treason. They who had daringly looked forward, through robbery and murder, to the destruction of the liberties of the people, appealed, audacious caricats! to the constitution of their insulted country. They denounced, boldly, the commander who had prevented the accomplishment of their traitorous project, and complained, unblushingly, of being deprived of the rights of citizens. The press, which should be alone the vehicle of virtuous sentiments, and unprevaricating truths; was to them the medium for the manifestation of their foul passions, fierce anger, and hypocritical averberations.

Exposed to their fury, to their calumnies, their malicious machinations, will you, my countrymen, abandon Wilkinson! Will you give him up to the barfing vengeance of his infuriated enemies? Will you behold him like Ixion, surrounded by serpents, without raising your all potent voices in his defence, after he has nobly ventured his all to save you? He has isolated your name—But he has saved the Republic. This is at once the admission and the apology of his friends. Had he folded his arms, lay quietly down, and permitted treason to

proceed to the verge of accomplishing its unholy purpose, to a point where he would have been unable to arrest it; would you not, when the triumphant traitors had gained the ascendant; when you would have been prostrate at their feet, claiming the most common right of man to the greatest favor; would you not, in the agony of your souls, have cursed the slow, cool, cautious conduct of the commander of the army, and have execrated with your last breaths the name of an officer who had hesitated to act with decision, when the liberties of the nation at the moment, and perhaps for ever, was at issue on the crisis?

And shall the public opinion afford nothing but a bed of Procrustes for this brave, deserving soldier? Forbid it the magnanimity, the liberality of the nation! He submits himself to the laws—let the laws be satisfied: But in the name of gratitude let the general sentiment appear in his favor. If, ruined in his fortunes by legal persecution, a prison should be his destiny, cheer, I beseech you, the gloominess of his fate, by public attestations in favor of his honor, his integrity, and patriotic motives. Let not posterity reproach you with the weakness of an imbecility which is swayed indifferently to advocate wrong and right.

There are those who, in the fierceness of their zeal to appear the champions of popular rights, have compared the conduct of Wilkinson, to that of the British government previous to 1777: But who is there that does not see the wide difference between the usurpations of a government claiming sovereign and exclusive jurisdiction over these States, and the conduct of an officer, acting for the general welfare, and acknowledging his responsibility to the laws of his country? Do they, who are too blind to perceive such a palpable distinction, presume to offer their commentaries for public inspection? Is there a man weak enough to be deluded by them?—Heaven forefend! Even though afflicted by the vaporing of Alexander, the sarrago of Adair, or the whining of Livingston.

It was well observed by cardinal Pole, that when men are conscious of their rectitude, they are seldom clamorous or vindictive. The conduct of the Associates—has it been that of men conscious of their innocence? Has it been the result of minds serene and at quiet? Judge of it you who are best skilled in the operations of the human intellect! you, who are conscious of yours in the convulsive ebullitions of guilt, and the placid tranquility of innocence.

With you these considerations—and do justice to Wilkinson—to his motives—and his actions.

A FREE-MAN.

NOTES.

(a) He (Burr) said he would turn Congress neck and heels out of doors; assassinate the President; seize on the treasury and the navy, and declare himself the proprietor of an energetic government." See Eaton's deposition.

(b) See the various accounts contained in letters from respectable characters to the well-wisher, as published in the different newspapers in the United States.

(c) The cyphered letter is a curious document, & its genuineness has never been questioned. Dr. Bollman who was the bearer of that letter to Gen. Wilkinson was seen on this head as silent as the grave. The letter plainly indicates a project contrary to the laws of the United States. After stating that Burr had obtained funds, and actually embarked in the enterprise, it says, "Detachments from different points, and under different pretences, will rendezvous on the Ohio." And adds, "Send me four or five of the commissions of your officers, which you can borrow under any pretence you please." Then observes, it will be necessary "to determine whether it will be expedient to seize on or pass by Baton Rouge." All this proves that the enterprise was unlawful. Why placid chemists at different points under different pretences? Why seize on Baton Rouge, if the undertaking was legal? Honorable enterprise does not need a justice; he must have wanted the commissions for a sinister purpose; and the question of seizing on Baton Rouge was very unlike a justifiable procedure. In all the letter there is not a word of acting by authority from the United States—Burr quoted a higher power—"The Gods (says he) invite to glory and fortune." By appealing to plural Deities, it is likely he meant the Heathen Gods; for surely none else would "invite" him to such a diabolical business.

(d) See the conversations held by Gen. Wilkinson with Swartwout, Bollman, and Alexander—the latter his declarations of innocence to the contrary notwithstanding averring vehemently, that "If the conspiracy will succeed—Burr will be here (at New-Orleans) by the beginning of next month. Vide the President's communication to Congress of the 26th of January.

(e) Burr, in the rancour of his heart, after detection and discomfiture, terms Wilkinson "A man notoriously the pensioner of the Spanish government." This charge is wicked and foolish. However guilty Wilkinson may be, that circumstance does not justify nor lessen Burr's crime. By this charge, under Burr's own hand, in his letter to Cowles Mead, one might be led to doubt whether Burr is really that man of great mind which he has been represented to be.

(f) See John Smith's deposition before Matthew Nimmo, wherein he says Burr declared, "If I would consent to let my funds go, I would provide well for them" and many other accounts that have been made public.

(g) The building of boats, and great numbers of them, is a fact notorious to every person.

(h) The cyphered letter says, "Already are orders to the contractor sent to forward six months provisions"—and all the information from the Western States that large quantities of provisions were being bought.

(i) The drawing money from the Bank has been a fact ascertained by Aaron Burr, (says the cyphered letter) have procured funds—"The dupes, it seems, have paid for their faith in Burr to the tune of a few hundred thousand dollars."

(j) Burr never told the same story twice—He was all things to all men—and always moved so much in the dark that it was difficult to trace him.

(k) The laws were, emphatically, powerless—and therefore the president recommended in his message at the opening of the late session of Congress, to remedy the evil. There is a law to punish enterprises commenced against foreign powers; but any such law which would be very far towards a reason for his committing Burr and Swartwout to prison, and perhaps for ever, without coming within the provisions of the con-