

committed on the charge of treason in levying war against the United States, and the testimony on which the said commitment was made, having been inspected and attentively considered, the court is of opinion that that testimony does not furnish probable cause for supposing that the said Samuel Swartwout levied war against the United States, and doth therefore direct, that he be forthwith discharged from the custody of the marshal."<sup>1</sup>

On the nineteenth of February Colonel Burr was arrested by a military force while riding with a guide on the road to Pensacola, near the Tombigbee River, in Mississippi Territory, and taken to Richmond, Virginia, where he arrived on the twenty-sixth of March. On the thirtieth he was brought before Chief-Justice Marshall.

"After an argument of three days' duration, the chief-justice decided to commit the prisoner on the charge of misdemeanor only, leaving the charge of treason to be investigated by a grand jury. By this decision Colonel Burr was freed from the immediate apprehension of imprisonment. Five gentlemen of Richmond gave bonds in the sum of ten thousand dollars for the appearance of the prisoner at the next circuit of the United States, to be held at Richmond, on the twenty-second of May. He was then discharged from custody."

The court opened on the appointed day with two judges on the bench: John Marshall, chief-justice of the Supreme Court of the United States, and Cyrus Griffin, judge of the district of Virginia.

The prosecution was represented in the persons of George Hay, attorney of the United States for the district of Virginia, William Wirt, of the Richmond bar, and Alexander MacRae, lieutenant-governor of Virginia. The defence by Edmund Randolph, of Virginia, John Wickham, of the Richmond bar, Luther Martin, of Maryland, and Benjamin Botts, of Virginia.

Washington Irving, writing to James K. Paulding, from Richmond, on the twenty-second of June, speaks of the beginning of the famous trial, saying:

"The lawyers are continually entangling each other in law points, motions, and authentics, and have been so crusty to each other that there is a constant sparring going on.

"Wilkinson is now before the grand jury, and has such a mighty mass of *words* to deliver himself of, that he claims at least two days more to discharge the wondrous cargo. The jury are tired enough of his verbosity.

"The first interview between him and Burr was highly interesting, and I secured a good place to witness it. Burr was seated with his back to the entrance, facing the judge, and conversing with one of his counsel. Wilkinson strutted into court, and took his stand in a parallel line with Burr on his right

<sup>1</sup> Reports of the trial of Colonel Aaron Burr for treason and for a misdemeanor in the Circuit Court of the United States. By David Robertson, Phila., 1808, vol. i., pp. 21, 25, 26, 27, 28, 30.