NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

VOL. VII. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | No. 1068.

FIVE DOLLARS PER ANNUM | WEDNESDAY, AUGUST 19, 1807. | PAID IN ADVANCE.

TRIAL OF COL. A. BURR.

Monday, August 10.

Herman Blannerhasset was this day brought into court.

The following gentlemen appeared and were recognized: Return J. Meigs, Maurice P. Belnap, Charles Duval, James Taylor, Tunis Dills, Benoste Cook, Hezekiah Lewis, and G. B. Vanhorne.

Mr. Wirt moved the court to discharge Dr. Wardlaw one of the Venire. His wife was in extreme danger, and required the assistance of a sea voyage. The vessel would sail to-morrow.

Chief Justice. Is the court to understand that there is no objection to this measure?

Mr. Burr. If the remark be addressed to me, sir, I can only say, that I shall remain passive during the transaction. Dr. Wardlaw was then discharged.

Mr. McRae, also moved the discharge of Mr. Randolph Harrison whose extreme indisposition was attested by a certificate from Dr. Adams.

Mr. H. was accordingly dismissed in the same manner.

Mr. Hay moved that H. Blannerhasset be arraigned for high treason; which Mr. *Botts* opposed on the ground that he had not been furnished with a copy of the indictment for three days. After some desultory conversation on this circumstance, Mr. *Botts* requested that B. might be re-conducted to the Penitentiary, as he was extremely indisposed, and the heat nearly overpowered him. No opposition was made, and Mr. B. was accordingly re-conducted to his prison.

At Mr. Hay's request, the pannel of the jury was called over by the deputy marshal, and also, at Burr's request, the list of the witnesses, whom he had subpœnaed for the purpose of investigating the qualification of some of the Venire.

Mr. Hay read a certificate from Dr. Upshaw, stating that Mr. James Henderson is sick of a bilious fever and incapable of attending.

Mr. *McRae* then read a certificate from Dr. Greenhow, shewing that David Bullock, esq. one of the Venire was prevented by indisposition from discharging his duties. Mr. B. was accordingly excused.

The Clerk informed Mr. Burr, that he was at liberty to challenge such of the Venire as he might object to.

Mr. Burr begged leave to inform the jurors, who were within hearing, that a great number of them may have formed and expressed opinions about him, which might disqualify them from serving on this occasion. He expected that as they came up, they would discharge the duties of conscientious men, and candidly state all these objections.

The deputy marshal then summoned

1. *Hezekiah Bucky.*

Mr. Botts. We challenge you for cause. Have you ever formed and expressed an opinion about the guilt of col. Burr?

Mr. Bucky. I have not, sir, since I have been subpœnaed.

Q. Had you before?

A. I had formed one before in my own mind.

Mr. Hay wished that the question of the opposite counsel could assume a more precise and definite form. If this question were proposed to this pannel and to every other man, he would venture to predict, that there could not be a jury selected in the state of Virginia; because he did not believe that there was a single man in the state, qualified to become a juryman, who had not in some form or other, made up and declared an opinion on the conduct of the prisoner. The transactions in the west had excited universal curiosity; and there was no man who had not seen and decided on the documents relative to them. Do gentlemen contend, that in a case so peculiarly interesting to all, the mere declaration of an opinion is sufficient to disqualify a juryman? A doctrine of this sort would at once acquit the prisoner; for where is the jury that could try him? Such a doctrine amounts to this; that a man need only do enough to draw down the public attention upon him and he would immediately effect his discharge. Mr. H. concluded with a hope, that the question would assume a more definite form; he should not pretend to decide the form in which it should be proposed; but it was a privilege to which every court is entitled, and one which the court had exercised, that had presided in the case of James T. Callender.

Mr. *Botts* considered it as a misfortune ever to be deplored, that in this country, and in this case, there had been too general an expression of the public sentiment, and that this generality of opinion would disqualify many; but he had never entertained a doubt, until the prosecution avowed it, that twelve men might be found in Virginia, capable of deciding this question, with the strictest impartiality. He still trusted that the attorney for the U. S. was mistaken; that the catastrophe was not so completely fixed; and that every man in the state had not pledged himself to convict col. Burr, whether right or wrong. He was not present at the trial of J. T. Callender; but all America had heard the question which was then propounded to the jurymen; and that was: Whether he had made up and expressed an opinion respecting the guilt of the prisoner.

Mr. Hay would put Mr. Botts right in a matter of fact. The court would recollect that on the trial of Callender, the question was not whether the jurymen had formed and expressed an opinion on that case generally; but on the subject matter that was to be tried—and concerned in the indictment. The question then in the present case should be. Have you formed and expressed an opinion on the point at issue; that is, whether A. B. is guilty of treason? On the trial of Callender, the court would particularly recollect, that Mr. Bassett having objected to himself, because he had read the libelous publication, was actually overruled, because it was not on the book itself, but on the subject matter of the indictment that he was called upon to say, whether he had ever expressed an opinion.

Mr. Burr declared there was a material distinction between that and the present case. Mr. Bassett's acknowledging that he had seen the book did not disqualify him from serving on the jury; in the same manner the person who had seen a murder would not be an incompetent juror in the prosecution for that crime. But if a man pretended to decide upon the guilt of a prisoner upon mere rumor, he would manifest such a levity and bias of mind, as would effectually disqualify him. Mr. Bucky however has not yet come out completely with his declarations. Let him be further interrogated.

Mr. Hay observed, that the question would even be too general and vague, if it were even to be—"have you expressed any opinion on the treason of A. B." for the case stated in the indictment was infinitely more specific. It was treason in levying war against the U. S. at Blannerhasset's island. Unless this particular allegation be proved, it defeats all the other parts of the accusation; and it was probably on this point that the juror had never made up any opinion.

Mr. Martin contended that it was the province of every juryman to come to any case with the most perfect impartiality—and more particularly in one, where life and reputation were at stake—that it was a libel upon Virginia, a blot upon the whole state, to assert that 12 men could not be found to decide such a case, with no other knowledge than what they had picked up from newspapers; that there was a material distinction between this and Callender's case; the libel was a book in every man's hand—but does any juryman in the present case pretend to know the testimony on which this charge depends? The gentleman proposes to ask the juryman, whether he has made up an opinion on col. B's treason: but it is extremely probable, that most of them know not what treason is—and though they may decide upon the guilt of col. B. that they may be ignorant, whether it comes under the name and description of treason.

Mr. Botts quoted authorities in support of his opinion: 3 Bacon 358; a case from Hawkins; the cases of Smith and Ogden; and judge Iredell's opinion in the case of Fries.

The *Chief Justice* observed, that it might save some altercation if the court was to deliver its opinion at the present time; that it was certainly one of the clearest principles of natural justice that a juryman should come to a trial for life with a perfect freedom from previous impressions; that it was clearly the duty of the court to obtain such men, if it were possible to produce them free from such a bias; but that if it were not possible from the very circumstances of the case; if rumors had reached and pre-possessed their judgments, still the court was bound to obtain as large a portion of impartiality as possible; that this was not more a principle of natural justice, than a maxim of the common law, which we have inherited from our forefathers; that the same right was secured by the constitution of the U. S. which entitles every man under a criminal prosecution to a fair trial by "an impartial jury." Can it be said, however, that any man is an impartial juryman, who has declared the prisoner to be guilty and to have deserved punishment? If it be said, that he has made up his opinion, but has not heard the testimony; such an excuse only makes the case worse; for if the man has decided upon insufficient testimony, it manifests a bias that completely disqualifies himself from the functions of a juryman. It is too general a question to ask whether he has any impressions about col. B. The impressions may be so light, that they do not amount to an opinion of guilt; nor do they go to the extent of believing, that the prisoner deserves capital punishment. With respect to Mr. Bassett's opinion, it was true he had read "the Prospect before us;" and he had declared that it was a libel; but Mr. B. had formed no opinion about J. T. Callender's being the author. It was the same principle in the present case. If a juryman was to declare that the attempt to atchieve the dismemberment of the union was treason, it would be no complete disqualification; but it would be the application of that crime to a particular individual—it would be the fixing it on A. B. that would disable him from serving in his case. Let the counsel then proceed with the enquiry.

Mr. Botts. Have you said that col. B. was guilty of treason?

Mr. Bucky. No. I only declared that the man who acted as col. B. was said to have done, deserved to be hung.

Q. Did you believe, that col. B. was that man?

A. I did, from what I had heard.

Mr. Hay. I understand then, that the question proposed in Callender's case is to be overruled?

C. Justice. My brother judge does not recollect whether it particularly went to the indictment.

Judge Griffin. I think the question was, "relative to the matter in issue."

Mr. Hay. The very position that I have laid down.

C. Justice. The simple question is, whether the having formed an opinion not upon the evidence in court, but upon common rumor, a man is competent to decide upon the real testimony of the case. But in my opinion this very circumstance only disqualifies him the more.

Mr. Wirt, (addressing Mr. Bucky.) Did I understand you to say that you concluded upon certain rumors you may have heard, that col. B. deserved to be hung.

A. I did.

Q. Did you believe these rumors?

A. I did.

Q. Would you, if you were a juryman, form your opinion upon such rumors?

A. Certainly not.

Mr. McRae. Did you form and express your opinion upon the question, whether an overt act of treason had been committed at Blannerbassett's island?

A. It was upon other rumors; and not upon *that*, that I had formed an opinion.

Mr. Martin submitted it to the court, whether he could be considered as an impartial juryman. The court decided that Mr. Bucky be put aside.

2. *James G. Laidley* stated, that he had formed and expressed some opinions unfavorable to col. B. that he could not pretend to decide upon the charges in the indictment, which he had not heard; that he had principally taken his opinions from newspaper statements; and that he had not, as far as he recollected, expressed an opinion, that col. B. deserved hanging. Mr. Laidley put aside.

3. *James Hamilton* being challenged for cause and sworn, stated that he had formed and expressed an opinion from hearsay, that col. B. was guilty of treason, and in that particular line of treason, in which col. B. stood charged, as far as he understood. *Put aside.*

Mr. Burr observed, that as gentlemen on the part of the prosecution had expressed a willingness to have an impartial jury, they could not refuse that any juryman should not state all his objections to himself; and that he had no doubt, in spite of the contrary assertions which had been made, that they could get a jury from this pannel.

4. *Hamilton Morrison* upon being called, said, that he had frequently thought and declared, that col. B. was guilty, if the statements which he had heard were true; that he did not know whether they were so; but only thought from the great clamor which had been made, that it might be possible they were true; that he had not passed any positive opinion; nor was he certain that he had always qualified it by saying "if these things were true;" that he does not recollect to have said that col. B. ought to be punished, without stating at the same time, "if he was guilty."—Mr. Morrison was put aside for further examination.

5. *Yates Y. Conwell,* had formed and expressed an opinion, from the reports he had heard that Col. B. must be guilty of High Treason. *Set aside.*

6. *Jacob Beeson declared,* that he for some time past had formed an opinion, as well from newspaper publications as from the boats which had been built on the Ohio, that col. B. was guilty; and that he himself had borne arms to suppress this insurrection. *Set aside.*

7. *William Prince* declared he had nearly the same impressions as Mr. Beeson: that he too had borne arms; as well on Blannerhassett's island as on descending the river in search of Blannerhassett. *Set aside.*

8. *Nimrod Saunders* declared that he had expressed an opinion, previously to his being summoned on the jury, that the prisoner had been guilty of treason. *Set aside.*

9. *Thomas Creel* had no declaration to make, and was challenged for cause. Upon being interrogated, he stated that he had never asserted that the prisoner ought to be punished; that he had said that he was a sensible man, and if there was any hole left, he would creep out of it; that he had conceived that colonel Burr had seduced Blannerhassett into some acts that were not right; that he had never positively said that col. Burr was guilty; that he had said that Blannerhassett was the most blameable, because *he* was well to live, whereas col. Burr was a desperate man, who had little to lose; that he had never said that col. Burr had directly led Blannerhassett into guilt, but only through the medium of Mr. Blannerhassett; and that there was no determinate impression on his mind respecting the guilt of the prisoner.

The *Chief Justice* did not think that this was sufficient to set him aside, and suspended his case for further examination.

10. *Anthony Buckner* had frequently said, that the prisoner deserved to be hung. *Set aside.*

11. *David Creel* had formed an opinion from the statements in the newspapers, and if these were true, the prisoner was certainly guilty: He had expressed a belief that he was guilty of the charges now brought against him, and that he ought to be hung. *Set aside.*

Jurors from the body of the District.

1. *John Horace Upshaw* declared, that he did not conceive himself to stand there as an unprejudiced juryman; that he had formed opinions hostile to the prisoner; if opinions they can be called, which are formed from mere newspaper testimony.

Mr. Burr. We challenge Mr. Upshaw for cause.

Mr. Hay. Then, sir, I most seriously apprehend that we shall have no jury at all. I solemnly believe that Mr. U. is an impartial juryman; and I will venture to assert (whatever credit my friends on the other side will allow to my assertion) that I myself could do justice to the accused—I believe that any man can, who is blessed with a sound judgment and integrity. We might as well enter at once a *Nole Prosequi.*

Mr. Wickham. Then according to the gentleman's doctrine, any honest man, no matter what his impressions may be, is a competent juryman. Is this agreeable to the principles of law? Does the gentleman mean to insinuate, that when we object to a juryman, it is from his want of honesty. No, sir—every man is subject to partialities and aversions; which may unconsciously sway his judgment. Mr. Upshaw does no doubt deem himself an impartial juryman: but Mr. U. may be deceived.

After some desultory argument between Messrs. Hay and Wickham, Mr. Wirt proceeded to ask Mr. Upshaw, whether he had understood him to say that notwithstanding the hostile impressions he had taken up from newspaper reports, these impressions had not received that determinate character which might entitle them to the name of opinions? A. Such is my state of mind. I have received impressions hostile to col. Burr, and have expressed them with some warmth. Mr. Upshaw stated that his impressions had been drawn from the documents furnished by generals Eaton and Wilkinson; that he had conceived that the prisoner had been guilty of some criminal act against the public; and that he had gone on further to vindicate the conduct of those gentlemen who would appear as the principal witnesses against him, and also of the government in the measures which it had taken to suppress his plans.—Mr. Upshaw's case was suspended for subsequent examination.

2. *William Pope* declared, that his impressions were nearly the same with those of the gentleman who had preceded him; that he had thought at first from newspaper representations that it was col. B's intention to make his fortune in the west by the settlement of lands; that when he had afterwards understood that he had formed an union with Wilkinson, to proceed to Mexico, he had regarded the prisoner's conduct with a venial eye; but when he had afterwards understood that there was treason mixed with his projects, it was impossible for him to view his conduct without the deepest indignation: If these impressions could be called prejudices, he trusted that he should always retain them; because what other sentiments could he feel against such a crime perpetrated against the very best government on the surface of the earth. But from his heart he believed, that he could divest himself of these unfavorable impressions, and give col. B. a fair and honorable trial. He would add that in pursuance of the spirit manifested by them, the constitution, which required two witnesses to an overt act of treason; he should think it necessary to require that the evidence for the U. S. should be so strong as to make the scales preponderate.

Mr. Wickham. You will not misunderstand me, Mr. Pope, when I ask you whether you had not been a candidate for your county, and are now a delegate?

A. Yes.

Q. In canvassing among the people, have you not asserted that the government had acted properly in commencing this prosecution?

A. Yes. I believe I have said generally that I thought col. B. guilty of high treason. *Set aside.*

3. *Peyton Randolph* declared, that it had never been his wish or intention to shrink from the discharge of a public duty; but that he had peculiar objections to serving on this occasion; one of which only, he should state. He had been enrolled and was qualified as a lawyer in this court; and he would submit it to the court, whether this did not exempt, nay even disqualify him from serving.

Chief Justice admitted Mr. R's. privilege, unless there was an express interposition on the part of the prisoner to retain some of the Venire: for this would call a conflicting privilege into operation.

Mr. Burr said, that he should be passive. *set aside.*

4. *John Bowe* did not recollect to have said that the prisoner was guilty of treason; but of something hostile to the peace and happiness of the U. S. Upon being interrogated, he observed, that he was a delegate from the county of Hanover; that there had been a competition at the last election; that he had had occasion to speak at that time, of the views of the prisoner, but had always done it cautiously; had never asserted that he ought to be hung, but that he was guilty of something unfriendly to the peace of the U. S.

Mr. Wickham. You have said that the prisoner was guilty?

A. Yes.

Chief Justice. Did you ever make up an opinion about his levying troops and making war against the U. S.

A. Yes: but I have never expressed it.

Mr. Burr. Take the whole together, and it amounts to an opinion of treason. Mr. Bowe has said that col. B. was guilty; and of what? Of that which in Mr. Bowe's mind amounts to the difinition of treason. *Set aside.*

5. *John Roberts* had thought and declared that the prisoner was guilty of treason; though he had no doubt, that his opinion might be changed by the production of other testimony. *Set aside.*

6. *Joshua Chaffin* excused from indisposition.

7. *Gervas Storrs* stated that the state of his mind was like that of the gentleman who had gone before him; he was in the habit of reading newspapers, and could not but examine their statements relative to these transactions. If he could believe Gen. Eaton's assertion that the prisoner had threatened to turn Congress out of doors and assassinate the President, he had said and would still say so, that col. B. was guilty of treason. If gen. Wilkinson's letter was true, he had surely been guilty of something in the west, that was hostile to the U. S. He did not know whether in the multifarious conversations he had had on this subject, he had always expressed this opinion of his guilt with that reservation. Mr. S. confessed that it might be prejudiced against the prisoner; and that he might be judging too highly of his own mind, to entertain the belief that he could divest himself of all his impressions. *Set aside.*

8. *Miles Selden* declared, that it was impossible not to have entered into the frequent conversations which had occurred on this topic; and to have declared some opinion; that he had always said, that Col. B. was guilty of something, and that if he was guilty of treason against such a government, he would deserve to be hung; that he could not assert that he had always accompanied his opinion with this reservation; but that he was not afraid to trust himself in the rendering of a verdict. Upon being interrogated, he said that he had frequently jested on this subject; and particularly recollected to have said in a sportive conversation with col. Mayo, that this was a federal plot and that Burr had been set on by the federalists. *Suspended.*

9. *Lewis Truehart* had said, if the reports were correct that col. B. had been guilty of something inimical to the country, and that he always qualified his opinions in that manner. Colonel Tinsley was then called in, who stated that from a conversation with Mr. Truehart he thought he had discovered that he had a general prepossession against col. B. *Suspended.*

10. *William Yancey* had expressed an opinion that col. B. was guilty on newspaper testimony; but that he had no doubt, he should entertain a different sentiment, if other testimony were produced. *Set aside.*

11. *Thomas Prosser* had made numberless declarations about col. B. that he had believed him to be guilty of a treasonable intention, but not of the overt act; on this point he had suspended his opinion, but he was rather inclined to believe that he had not committed it.

Mr. Martin. Can this gentleman be considered as an impartial juryman, when he thus comes with his mind made up on one half of the guilt? *Suspended.*

12. *John Staples* had been under the same impressions, which had been de-