passings, imaginations and intentions of him the said A. Burr, against the said U. S. and to carry on the war thus levied as aforesaid against the said U. S. the said A. Burr, with the multitude last mentioned, at the island aforesaid in the said county of Wood within the Virginia district aforesaid, and within the jurisdiction of this court, did array themselves in a warlike manner, with guns and other weapons, offensive and defensive, and did proceed from the said island down the river Ohio in the county aforesaid, within the Virginia district and within the jurisdiction of this court, on the said eleventh day of December, in the year one thousand eight hundred and six aforesaid, with the wicked and traitorous intention to descend the said river and the river Mississippi, and by force and arms traitorously to take possession of a city commonly called New Orleans, in the territory of Orleans, belonging to the U. S.; contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said U. S. and against the form of the act of the Congress of the U. S. in such case made and provided.

HAY, *Attorney of the United States for the Virginia district.*

Endorsed—"A TRUE BILL—JOHN RANDOLPH."

A Copy. Test.

WILLIAM MARSHALL, CK.

MR. HAY then rose to *open the case*, on the part of the prosecution. His speech was luminous and instructive. He spoke upwards of two hours. As we have no time *at present* to report it in detail, we must be satisfied with a *very short* sketch of its principal points. Mr. Hay expatiated at considerable length on the definition of the crime of treason. The question was, what constitutes the overt act of levying war against the U. S.? He stated that there was an immense interval between the first movements of a treasonable conspiracy and actual hostilities; that individuals might meet together and make arrangements for bringing forces into the field; this conspiracy was not treason; that they might go on to levy forces without treason; & that it had even been adjudged by the Supreme court of the U. S. that the travelling of these persons to a place of rendezvous, was no treason; but that the crime of treason was constitutionally complete, when there was an assemblage of force at any place of rendezvous, which force was intended to be used for treasonable purposes before it was dispersed: He stated his reasons at great length for excluding from this definition, 1st, the possession of arms; and 2dly, the actual employment of the force; and shewed that his definition of treason was compatible with these ingredients, as well on the principles of common sense, as on the decision of the Supreme Court of the U. S. in the cases of Bollman and Swartwout, and also on British authorities.

He stated, that it was consequently incumbent upon him to shew, 1st, that there had been a treasonable design, and 2dly, a meeting to effect that design: that it would be proved to the jury that it was the design of the prisoner, not only to wage war upon the Spanish territories, but to take possession of New Orleans, with a view of effecting that object, and with a further view of dismembering the union; that to facilitate his own designs, he had spoken disrespectfully of the government of his country wherever he went: to the persons in the Atlantic states, he had denounced the want of energy in the administration, and asserted the facility with which the present government and liberties of the people might be overthrown: to the people in the west, he had denounced the existence of that holy union which bound them to their brethren in the east; that wherever he went he attempted to scatter disaffection; that he had not only spoken in this spirit to the people of the west, but that writings had been published by one of his associates to dissatisfy that gallant people and prepare them for his plans: that to accomplish these plans, in the summer and fall of 1806, men were actually enlisted; boats built; provisions to an enormous amount purchased and ammunition laid in, that about 40 men had assembled at Blannerhassett's island; that Burr was not there; because he had been warned not to go, although such had been his intention; that he had joined them when they had descended to the mouth of Cumberland river, that this joint force of about 100 men had then descended the river under the command of Burr and Blannerhassett to a point, perhaps Bayou Pierre, where he first understood that all his preparations had miscarried through the means of the commander in chief; his letter put into the hands of the President, and it was then that he had expressed his surprize and indignation to a certain person at having been thus betrayed. That chimerical as these projects may appear, there was only one thing wanting to their accomplishment; the cooperation of the commander in chief and of the American army, and that it was to his exertions, that the country is indebted for the dissipation of this impending storm.

A short time after Mr. Hay had concluded, he was about to proceed to the examination of the witnesses: General Eaton was sworn; when

Mr. *Burr* rose and objected to this order of examining the witnesses. He said, that Mr. Hay had not stated the nature of Mr. Eaton's testimony; but he presumed that it related to certain conversations at Washington.

Mr. *Hay*. Our object is to prove by him what is contained in his deposition.

Mr. *Burr*. Then we call upon them first to prove what the court has already established to be the course of proceeding, an overt act. Why waste 5 or 6 weeks to no porpose—at great expense and great trouble; and after all to know nothing which is relevant to the point at issue?

An argument then ensued upon this question, which detained the court till 7 o'clock at night. Messrs. Botts, Wickham, Lee, and Martin advocated the necessity of proving the overt act first.

Mr. *Wirt* opposed the motion.

The first laid a great stress upon the decision formerly given by the court, relative to this same point, on the motion for holding col. B. to higher bail—they stated that the order of evidence was a part of the law of the evidence; that the court was to judge of the competency of evidence, and that it had a right to stop any evidence, which they deemed immaterial; that it was of no avail to prove intentions, before an overt act had been established; that as in a writ of ejectment it would be ridiculous to begin with the boundaries before the title was proved, so it was improper to begin with the declarations of col. B. or with any conversations, until the overt act was shown; that these declarations could only be admitted as confirmatory evidence; that it would be peculiarly hard on any individual for his whole life to be exposed in a court, every conversation which he had held, or every innocent declaration which he had ever made, before it was known whether any actual crime could be proved against him; that if the prosecutor was thus proceeding to develope the evidence as to intention only, the court had a right to stop him, and require him to give evidence of the act itself; that if it was not so, he might be going on to charge a man accused of murder with a malignant intention, when the man said to be murdered was actually alive; or of arson, when the house was standing. They cited a variety of opinions and cases: Judge Iredell's opinion in the case of Fries, p. 164 Vaughan's case, 5, St. Tr. p. 17, 22. Messenger's, 2, St. Tr: p. 585. 8. St. Tr. p. 219.

Mr. *Wirt* contended, that from the first foundation of courts to this day, it was the practice for the prosecutor who was supposed to know the evidence best, to display it in his own way; and that it would be a disrespect to the attorney for the U. S. to wave this practice on the present occasion; that the chronological order which the attorney was about to pursue, was the lucid order of nature herself; that the proper course for enlightening the minds of the jury was to take the conspiracy from its first birth to its consummation; would a man begin a tale at the end of it?—Would an historian commence the American revolution at the siege of York?—That the rule was to bring in nothing which did not touch the issue; but that the intention was an important feature in that issue. And how are the jury to be disposed of? The court knows they have no right to keep from them any evidence touching the issue. If the prosecutor states that he is about to proceed to the intention, can the court say, that it proves not the overt act, & then send the jury out? Iredell's opinion in Fries's case, p. 174 5. And who is to be the judge of the evidence to prove the overt act? The court? Is the court to stop the prosecutor? Is then the court to usurp the right of deciding upon the evidence? As to the former decision of this court, there were two circumstances to explain it: 1st. The court wished to avoid poisoning the public mind by a needless display of evidence and called upon the prosecutor to prove the overt act first. 2dly. The court was then both judge and jury. It might say when it was satisfied with the evidence, & when it might stop it: but the jury is now to sit upon the trial and the court is stript of half its character.

The *Chief Justice* will most probably deliver the opinion of the court this day (Tuesday.)

Adjourned until to-morrow 10 o'clock.

Tuesday, August 18.

The court has just decided that the attorney for the prosecution is at liberty to pursue his own judgment; and the court will arrest any evidence which does not appear at its introduction to be relevant to the point at issue. The opinion in our next.

In Chancery, July 28, 1807.

Abraham Umstattd,
versus
Charles Howard, Alexander Howard and others.

The object of the bill in this cause filed, is to obtain a decree for a conveyance from the defendants, heirs of Jacob Howard to the complainant of a parcel of land lying in Montgomery county, bounded on the south by the Old Paths, on the east by the lands of Edmund Jenings, on the north the Cotta Branch, and on the west to extend so far as to make fifty acres with the cleared lands and improvements belonging to said place.

The bill further states that the defendants Charles Howard and Alexander Howard are non residents of the state of Maryland.

It is thereupon adjudged, and ordered, that the complainant by causing a copy of this order to be inserted in the National Intelligencer printed in the district of Columbia three successive weeks before the first day of September next give notice to the absent defendants of this application; and of the substance and object of the bill, that they may be warned to appear here on or before the 2nd day of January next to shew cause, if any they have wherefore a decree should not be passed as prayed.

True copy,
Test NICHS. BREWER, Reg. Cur. Can
August 12—w3t

FROM THE AURORA.

LIBERUM MARE.

Bell's Weekly Messenger of London, contains the following publication, founded principally upon the outrage committed by Whitby at New York, which is at once remarkable for its liberality and intelligence. The miserable emissaries of Britain in this country, dared not avow sentiments so candid and correct as we thus find even in a London print; there is scarcely a principle laid down in this article, that has not been disputed in this our neutral and highly interested country.

The rights of trade are, in this article, well defined, and in such a way as this country demands. In one particular only, there appears an error or deficiency—mention is made of *main sea* in a loose sense, and leaves room to conjecture, that the writer made an exception for the narrow seas, as St. George's channel. It ought always to be understood, that the claims of Britain on this point, are not allowed—nations make no discrimination between the Atlantic and St. George's channel; they contend what may be exercised on one may also be performed on the other, without molestation. The question of jurisdiction over such seas, as the British term narrow, is settled at least by general consent. The Portuguese at one time claimed exclusive jurisdiction over the Indian ocean; and the navigation of the Baltic and Adriatic, has given rise to repeated wars: but there has been no assent to the claim of any nation, to control a greater extent of sea from the coast, than could be passed by a cannon shot fired from shore. The remarks in the seventh paragraph, indeed, define the jurisdiction beyond which it is unlawful to exercise hostilities; but occasion ought always to be taken to deny the claim of a belligerent to a greater extent on its coasts.

We have here English authority, too, for saying that the administration of Pitt was distinguished by arbitrary and despotic measures towards neutrals—the men now in power are the underlings of that minister, and pursue the very same despotic system that he did.

We recommend this article to particular attention—justice could not have been expected, when Whitby had at his command the oaths of men, who put little value on them, and who were all indirectly implicated with him. If the testimony of our witnesses could have had effect, the commission of the outrage within our jurisdiction would have been established.

EXTRACT.

The unfortunate affair of the death of *Pierce*, by a shot fired from the Leander, has excited much attention, not only in America, but amongst the neutral nations in Europe. We have some cause to believe, that it was not without some difficulty and great address, that a general remonstrance of all the neutral powers has been prevented. It is with regret, that, our sacred regard to truth and our national honor, requires us to concur in this opinion.

The whole question turns upon the single point—whether it was done in the main sea, or in the waters of the U. States?

By the principles of the law of nations, the main sea is considered as common to all nations—that all have the right of uninterrupted transit, and none any right of property or dominion. The *Liberum Mare* is a fundamental principle in the public law of Europe.

The sea is thereby considered as a wide road, an extended path, and the freedom of transit as a part, and a most essential part of the general liberty of nations.

It has hence become a question, how far the right of search, with regard to neutral vessels, is founded upon the strictness of this law. Let us not be supposed as the willing advocates of new opinions, if we assert, that *it can have no possible foundation*—that it is, on the other hand, *a direct violation of neutral rights.* Our *maritime superiority*, however, gave it an *enforced introduction*, and *the nations of Europe submitted to what they could not prevent*: they acknowledged, at least tacitly acknowledged it, as a branch of the general law, and gave us credit for the discovery. It was doubtless more consoling to their pride to obey a general, and therefore mutual, law, than to submit to force. Hence the introduction of the right of search, *the first infringement of the fundamental principles of commercial liberty—the Liberum Mare.*

But in what manner soever introduced, this right is now established, and as the practical public law is founded almost as much in usage as in neutral right, *so has this original innovation become now in a degree sanctioned into a legitimate law.* It has become a law of compact, if not of right, and as such *will ever be acted upon by any nation which shall find it to its advantage.* With regard to us, it has been adopted as the basis of our neutral code, and is adhered to, and will continue to be adhered to, with scarcely less tenacity than our navigation act.

But though the main seas, as we have said above, are considered as the common right of all, and the property or dominion of none, this liberty and commonage is confided to the main seas. In municipal regulations, with regard to navigable rivers, the *stream* is public property, the water on the *immediate edge of the banks* is the property, at least so far as it does not interfere with the public commonage, or right of transit, of the proprietor of the bank; if a tree, a post, a fishery exist within so many feet of the bank, it belongs to him.

The same limitation with regard to *Liberum Mare* exists among nations. The *coasts* and *waters of the coasts*, are the *peculiar waters*—the *property and dominion of the nation which owns the coasts.* Thus Spain prohibits all ships from approaching within a certain distance of her bays, rivers, and her coasts on the American main, and seizes as contraband and smugglers all vessels which transgress these limits. Thus the most contemptible of all nations, Portugal, is still more despotic with regard to the Brazils. *The sea upon the coast, and in the harbors, is invariably acknowledged to be the waters, the property and dominion of the nation.* Nothing more is claimed or allowed to other nations but a *neighborly use and transit.*

Here is the point of the present question. It is asserted upon the American side, that the American vessel was in the waters of the United States, i. e. was entering the harbor of New York, when the shot was fired from the Leander, and Pierce was killed.

If this be true, it was a most undoubted and most unjustifiable violation of neutral rights, and the officer should be brought to answer for his conduct.

It is further asserted, that the Leander and Cambrian were stationed off the harbor of New York, for the purpose of Blockade.

If this be true, it is an equal violation of the respect due to neutral powers. A belligerent has *an undoubted right to intercept the ships of his enemy*, but in so doing *he has no right to harrass a neutral power—he has no right to block up a neutral harbor*, and commit acts of hostility upon the vessels of his enemy, in neutral waters.

We are indeed mistaken, *or there is in this transaction too much of the character of the late ministry—too much of that arbitrary and despotic method of preceeding, which distinguished that administration, and rendered our maritime superiority an object of invariable jealousy to all others maritime powers.*

Such appears to us the state of the question, *i. e.* that an act of violence, a positive injury, has been committed and that compensation should be made.

From the Public Advertiser.

The following article is from the Quebec Mercury. The style is couched in the true spirit of Boston toryism. When the outrage committed on the Chesapeake can find apologists there, we are not surprised at the insolence of the print of a British Province.

"Whilst the unhappy differences" says the Mercury, "between the United States, call up our deepest regret, we cannot help thinking the late attack on the Chesapeake, by the Leopard, fully justifiable, it being the only mode of recovering *our deserted seamen*, which the Americans refused to deliver up. They plead that the men demanded were Americans. This we must be permitted to doubt, because we think it improbable that the officer of the Halifax, in taking four men into the boat with him, should have stumbled upon four Americans. But supposing them to be Americans, they were in the British service—in leaving that service they were deserters, and ought not to have been detained in the American service, after being claimed, particularly on the water. It is not in the nature of things that Great Britain should at this period, suffer her bulwark, the navy, to be undermined, by tamely submitting to the loss of her seamen, from too scrupulous a regard to abstract theories of the rights of nations, especially when those rights are trampled upon by sea and land, without any kind of compunction or consideration, by her arch enemy, the present ruler of France.

"The details we have given in this day's paper, it must be recollected, are *American accounts*, consequently it may be supposed that every thing is as favorably represented on their own side, as possible. But even by their own story we must repeat that we think there was sufficient ground for the conduct of the Leopard. Powerful and elevated among nations, as Great Britain, at this day is, she would be wanting to herself did she passively submit to any willfully, injurious, and atrocious conduct, from a people who, *to the thunders of her navy, have only to oppose such impotent weapons as proclamations, resolves, wailings and clamors.*

"Did Americans reflect aright, they would rejoice in the strength of a navy to which they are so greatly indebted for defence and protection, instead of weakening it, by withholding from us our seamen. If in doing herself justice, greater liberties be taken by Great Britain with American vessels, than with the ships of other nations, it is easily to be accounted for, there not being the same danger of our seamen engaging with other nations as with the United States, between whom and Great Britain there is a similarity of language and manners. This may be considered as a particular unforeseen case, to which, especially in these times, general theoretic principles ought to bend.

"In this paper will be seen observations of an Albany editor, on a laughable paragraph respecting the Driver, published in one of our numbers. Is it necessary then to remind Americans of the gross abuse of our king, government and people, with which many of their papers are daily filled? Can they forget their declaration of independence, of which they have lately renewed their annual reading? Are the scurrilous revilings and calumnies of Duane, Cheetham, *cum multis aliis*, including the letters to farmers to be brought to their recollection? Let them, when they revolve these things in their minds, *blush for their ingratitude to a nation to whom they owe so much.*

"The Americans plume themselves much on their importance, from the supposition that our West India Islands and shipping depend on them for supplies; but if full advantage be made, of which there is every prospect, of the benefits offered by our acquisitions on the river Plata, we may very well do without the states, for the article of provisions. The resources of the La Plata for cattle are immense. Our people have but to kill and salt. *It is said that contracts are already entered into for the purpose.*

"We hope and trust that all differences will be amicably adjusted. The times require *large allowances from neutrals*, for the conduct of Great Britain, when engaged in so arduous a contest, with a power whom no consideration can stop in its progress to aggrandisement and universal sway, *particularly when it is considered that those neutrals are immense gainers by the contest.*"

[Such is the language of a British print—without deigning to admit the smallest palliative, it comes forth in the boldest terms, applauds the deed of shame, and adds to the outrage the aggravation of scorn and defiance. We must teach these haughty Canadians inside the walls of Quebec, that we know how to resent their insults and the perfidy of their masters.]

From the Essex Register.

It is said the United States navy encourage the escape of deserters from the British navy. This is not true. The government have always discountenanced the enlisting such persons. But who before ever charged an American seaman with desertion, when he only regained his liberty from a British man of war? Hundreds of impressed Americans have run away from British public ships—nothing is more common. They have no other method of leaving a service they abhor and detest, or of ever again seeing their families and friends in their own country. British ships visit our coasts—they come into our waters—they bear on their accursed decks the hardy sons of America, in a state of bondage! Tantalised with the sight of his native shore, the towering steeple of the church in full view before him, where his fond parents in his infancy pledged him to the service of his God and his beloved country, the free-born American indignant at his wrongs, rapidly revolves all the chances of escape—or of horrid death on one hand, but on the other there is restoration to the embraces of a fond wife and darling children, the welcome greetings of the friends and companions of his youthful days—in a word, to the possession of sweet liberty and unbounded happiness. Who could long hesitate? Alas! he is surrounded by his enemies—closely watched, and every action, every look, raises suspicion. But it is none—the purpose is unalterably fixed—he resolves to gain the shore or perish in the attempt—one desperate effort is to be made. In an instant, with one bound, he finds himself in the boat—he hurries, he flies from the detestable ship, as the arrow shot from the archer's bow, or as the deer escaping from pursuit of the huntsman. The balls of the deadly musket are heard to whiz in every direction around him—he heeds them not. By the strength of his nervous arms the boat is propelled to the hospitable shore—he gathers fresh courage as he proceeds. On board the floating castle of **** all is confusion. A *deserter, deserter*, is re-echoed from the mouths of hundreds of slaves. The bullets are ill directed—not one is permitted to take effect. It is God that tempers the rude winds to the shorn lamb. It is God that turns aside the winged instruments of destruction. Infidels, blush—hang your heads, ye crouching slaves of the tyrant George, and confess the power and goodness of the Almighty ruler of the universe, the protector of innocence and the avenger of guilt. The *deserter*, where is he!—He recedes from the sight of his pursuers! the land of his fathers is near! his heart beats for joy! his palpitating bosom can scarcely contain it! he stretches out his arms in a transport of extacy! the boat strikes the shore!!—In one leap, almost exceeding the powers of nature, he finds himself once more standing erect on his native land! HE IS FREE!! and prostrating himself kisses the earth in rapture, adoring God for his escape, and the providential interference of his mercy—while his vile pursuers gnash their teeth in despair, resolving to wreak their malice on the guiltless heads of other Americans within their power. Will you deliver up *such deserters?* Will you deliver up any deserters? Say, ye venal apologists of Britain, will you surrender your friend, your countryman, your brother? He who would do it, is but "*himself a slave, or the fit instrument of slavery in others*"

FROM THE DEMOCRAT.

After the tory papers, upon the supposition that the seamen demanded by the Leopard were not American citizens, had indulged themselves in high strain of censure upon the obstinacy and injustice of our government in refusing to Great Britain the right of searching for and demanding deserters, &c. on board our vessels—The late documents respecting the seamen in question seem to have driven them to some miserable shifts—(except Tom Turner's incendiary who insinuates, even now his disbelief of the President's assertion)—