A. To the transactions in the western country.

Q. Did your opinions amount to the charge of treason?

A. My opinions have changed, as the lights of evidence seemed successively to rise upon me. It was my first impression, that col. B. had nothing more in view than the settlement of the Washita lands. I next supposed, that it was his intention to conquer Mexico: and last of all, that his plans were of a more complicated nature; and that the taking of New-Orleans was to be a step towards the invasion of Mexico.

Mr. Wickham. Did you think, sir, as the result of all these considerations, that col. B. was a dangerous man?

A. I did.

Mr. M'Rae. Have you formed or delivered an opinion, that he was guilty of the act charged in the indictment?

A. No: I have neither formed nor delivered such an opinion.

Mr. Baker. Have you in your part of the country supported the ground that col. B. was guilty: and have you thus argued in conversation?

A. Yes; I have so thought, on the presumptive evidence that was before me; and I have not only supported such opinions; but have gone on to vindicate the energy of the measures that were taken by the government.

Mr. Burr. Enough, I think, has appeared to prove that Mr. U. has taken up deep-rooted prejudices against me.

Mr. M'Rae. Have you any personal prejudices against the prisoner?

A. None: I have no prejudices against him, but from his supposed designs against his country.

Mr. Burr. Had you not taken up some prejudices against me anterior to these rumored transactions in the western country.

A. I had formed impressions rather unfavorable to you, from your conduct during the pending presidential election of 1801: but I had no positive evidence on that subject. Here Mr. Upshaw was suspended, to make way for a general argument on the doctrine of challenges.

Mr. Martin rose to proceed with this argument: he stated, that it was one of the soundest principles of law, that every man had a right to be tried by an impartial jury; that this rule was as well applicable in civil as in criminal cases; but that in criminal cases, it had been particularly secured by the constitution.

Mr. McRae apologised for interrupting Mr. Martin; but begged leave to enquire, whether it would not be a saving of time, first to know the objections of all the jurors, and then to hold one general argument to settle the principles that would be applicable to all; instead of thus holding an argument on each particular case as it might successively occur.

Mr. Martin. And does the gentleman, sir, pretend to dive into our hearts that he thus understands whether we are to hold twelve separate arguments? He talks, sir, of economy of time. And is this the way to economize it? I had a specimen of this mode when I was here on a former occasion. Yes, Sir, I well know how these gentlemen would save our time. They would, if they could, deprive col. B's counsel of an opportunity of defending him; that they might as soon as possible hang up their victim to gratify the feelings of the government.

Mr. McRae. That is a most unprincipled and unfounded assertion; I say it, sir, to his face.

Mr. Burr. We have entered into this argument, because we thought it more precise to fix the principles on this subject at once; and then to apply these to the particular cases.

Mr. Hay. It is our wish, sir, to pursue this enquiry as soon as possible, and to save time: but, sir, it is impossible for us to hear such gross insults as have been cast upon us; insults, which are offensive to humanity itself.

The Chief Justice had hoped that no such allusions would have been made: the government ought be treated with respect.

Mr. Burr had hoped, when he was up before, that he had made sufficient apologies, were any necessary, for any expressions which had been used; and that no allusions would be made to the subject: in his own person he had carefully avoided such language, though the prosecution had certainly furnished him with good reasons for it; and when it had been used by his counsel, it had met his decided displeasure. He again repeated his hope that no allusions would be made to the past; he would answer for it that his own counsel should furnish no occasion for censure.

Mr. Martin declared that it was not his wish to hurt any one's feelings; but that when he was so often interrupted and accused of a disposition to waste time, he could not repress them. As to the point before the court, what does the constitution most emphatically require? That the jury should be impartial; that they should have no impressions on their mind to the prejudice of the prisoner; but that they should come here to take all their impressions from the facts exhibited on evidence and upon oath. To this effect he would take the liberty of quoting Reeves's history of the English law, vol. 1, p. 329, and vol. 2, p. 446, and Carey's English Liberties, p. 245, 248, 249, to prove the rigid degree of impartiality required by the laws of England.—These authorities would shew that a juryman ought to be completely indifferent to either party; that he ought to have neither enmity nor friendship; and that even a particular familiarity, and at the same table, was sufficient to disqualify him. But if a man was to be divested of all affection and all relationship in a civil case, how much more should he be in that situation, in a case of life and death? It was one of the most sacred maxims of the law too, that every man was presumed to be innocent, until there was sufficient evidence produced to remove this presumption. Mr. M. did not understand this halving and quartering of prejudices. It was not sufficient that this man should have one fourth of the prepossession of that; or that he should be three-fifths or four-sevenths less prejudiced than another; but the law requires that he should be wholly and perfectly impartial. The constitution forbids courts of justice ever forcing upon a criminal any juror that is not perfectly unbiassed. Gentlemen may say, indeed, that we must either take such men, or have no trial at all. But it was not so: he should contend that under the constitution a man should not be tried and hung because a court cannot get impartial jurymen to try him. The spirit of that instrument declares, that no man should be tried, until he could be tried by an impartial jury.—Mr. M. quoted 2 M'Nally, page 667, to shew, that a trial may be put off on an affidavit, if the public mind is so prejudiced by publications, as to exclude the chance of a fair trial. To the same effect also he cited the case of the King v. the Dean of St. Asaph; and the case of Brookes and others, where the trial had been put off to another term, because an imperfect statement of part of the evidence had been given to the public; that public, from which the jury was to be selected. What is the situation of jurymen in the present case? They are to determine upon the subject matter growing out of transactions in the western country. These gentlemen may say that they are satisfied of Col. B's treasonable purposes: It would be enough if they had conceived that these purposes were dangerous; because it is the court which is to give a name to these crimes. Can then a man, whose mind is impressed with an opinion of certain practices dangerous to the union be looked upon as an impartial juryman? His mind is already half made up; and that half is perhaps the most material part. The acts themselves might be innocent if uncoupled with the intentions: twenty boats assembled at Blannerhassett's Island, and their crews armed with rifles, are as harmless an apparatus, as if the men were going to shoot game: but it is the intention which stamps them with a different character. Men whose minds are made up as to the intentions, need only have proof of certain acts; and the business is done. The constitution and common sense both require that a jury should be as free from impressions as to designs as to overt acts. The principle is the same as in a case of burglary. It is to be lamented that the public mind is in the state which gentlemen have described; but it is certainly not so to the extent which they have represented. The 48 men who are on this pannel, are not an accurate specimen of the whole state. And who is it that commenced with these inflammatory publications? Was it Col. B's counsel? No—it was the public papers, under the patronage of the administration. And it was the gentleman on the other side who has contributed to keep up this spirit. It was his zeal; it was he, who was supposed best acquainted with the evidence against him, that pronounced upon his guilt, and prepossessed the public mind against him. No man can be looked upon as impartial who has been prejudiced by such publications.

Mr. Botts observed, that every crime consisted of a great many component parts; and the question was, when upon Analysis a jury-man says he has not committed himself upon two or three of these points, he can be regarded as an impartial juryman. The *intention* is certainly a most important feature in the crime. Fix upon twelve jurymen, whose minds are made up as to his designs and col. Burr is already half condemned. These men would be prepared to find a verdict of guilty if the acts only could be proved, when 12 other impartial jurymen might be willing to acquiesce in the evidence of the acts, when they could not be satisfied from the testimony, that there was the least guilty intention. With what face could col. Burr's counsel stand before a jury thus predetermined, urging upon them an innocent intent?

Mr. Burr rose to narrow the argument, not to extend it, not to add any thing more, but to throw out of the discussion what had been accidentally introduced. That the public mind was prejudiced against him was an obvious fact; but how this prejudice had been produced, he knew not. He had not wished this point to be at all introduced. Certain analogies had been introduced between treason and other crimes. It was his hope, that the court would, for the present dismiss such analogies, as they might be hereafter construed into opinions. It was evident enough that no juryman could be impartial, whose mind was made up as to the intention. In the case of slaying, for instance, the act might be differently construed. It may be a murder: it may be a clergyable felony. Could a juryman be considered as impartial, that thinks the accused person guilty of a murderous intent?

Mr. M'Rae stated that it had never been his wish in this controversy before the court, to wander from the way, in order to defend a government that needs no defence; or to give an unnecessary wound to the bosom of the prisoner. He had most studiously avoided to excite the resentment or disturb the feelings of the opposite counsel. Frequent as had been the occasions when he was prompted to imitate their example; he had carefully avoided profiting by the opportunity; unless on one occasion when he had been forced to retaliate the attack. He should not, however, always pursue this course, if some of the opposite counsel should still persist in disregarding the admonitions of the court. He should attempt to retort with the force which such attacks deserved in every case, and more especially in cases of this description. He declared before that court, before that people, and before the God of his being, that he had never felt the inhuman wish of demanding the blood of the prisoner; or any human being. That man was a stranger to him, who should attribute to him such a disposition. He wished the prisoner to have an impartial jury; and if there was a single one among those set over, who was not impartial, who was not capable of passing between the U. S. and A. Burr, he requested the court to reject him. As to the principles stated by Mr. Martin, he did not intend to controvert them. He only differed with him in their application to the present case. Which of these jurymen has informed the court, that he has an ill will against A. Burr? A personal prejudice? And that on the question of treason, he has a biass against him? It is true, they have formed some opinions about his intentions; but they have received no evidence on which they can form any opinions as to the question of actual treason. And as to these intentions, they may have related to other acts, than those charged in the indictment; to acts done without the district; which are not now before this court. The distinction which they have drawn between intentions and acts, is perfectly clear and rational. These jurymen prove that they have adverted to this distinction, because they quote the opinion of one of the judges now on the bench, who has formally adopted it.—And if this impartiality does not reside in the bosom of the judge, what reason is there to ascribe less of it to the minds of the jurors?

Mr. Hay admitted that the prisoner was entitled to an impartial jury; but the question was, who was an impartial juryman? He must be one, said Mr. Hay, that partakes of the common sentiments of the majority of the people among whom he resides. Will the court undertake to say, that the majority of this district is incapable of judging properly? If so, he would unite with Mr. Martin in saying, that it was a libel on the state; and the majority would very truly return the compliment, by saying, you alone who brand us with this censure, prove by this very act, the prejudices with which you yourself are actuated. The opposite counsel have spoken of newspaper publications. He would venture to say that there is not a man of however remote a situation, or of supine a disposition, who has not received some impressions on this subject. These impressions were taken up without any sentiment of ill will to the accused; or without even knowing him. Is it reasonable then to pronounce that with these impressions the majority is incapable of deciding fairly?—There may perchance be some one ignorant man who has received no impressions on this subject, some solitary hermit that is shut up in the hollow of a tree; some human being cut off from all human concerns; into whose solitary bosom the history of these transactions has never yet penetrated: but such is not the picture of the world at large. Our society is divided into two great parties; he knew that these two were not to a man united on this occasion; but he knew too that there was not a man among them, who had not taken his side one way or the other.—Some authorities had been cited from Reeves and M'Nally; they did not bear upon this case; but he should cite two others which did. The first was the case of Callender, where it was supposed sufficient to ask the juryman, whether he had formed and delivered an opinion on the point at issue. The other was from 2 Hawkins, ch. 48, p. 418, on the subject of challenges, where it is said to be no good cause of challenge, that a man is a juryman on an indictment similar to that on which he has already found a verdict.—Mr. Hay commented upon these authorities at considerable length.

(A sketch of the remarks of Messrs. Wirt, Wickham and Randolph in our next.

The *Chief Justice* observed, that the sole object of the constitution when it required an impartial jury, was to have a fair trial—that is, that no man should sit as a juryman, was not ready to judge by the testimony. Why were the most distant connections excluded? Not because they were connections, but because the law presumed that they would not hear the testimony so impartially, as those who were not in that relation. Very probably the man himself might think that he was capable of giving a fair result, but the law will not admit of an exception. Now, it would have been strange if the law had excluded a connection on the supposition that this might have influenced his judgment, and yet would have been regardless of a man's having actually formed and expressed an opinion on the subject! it has been said (and perhaps truly said) that in such a case as the present, an absolute state of indifference cannot be obtained. There certainly are cases, where the law must bend to positive necessity; but then this necessity must first be proved, before it can be proper to bend the law to its dictates. (The chief justice illustrated these positions by the rebellions of England and of Ireland.) The alternative, would in such a case be, either to have no trial at all, or to have it decided by partial jurymen. but the principle of law does not certainly bend, until it be established that all mankind are impressed with prejudices. This brings us then back to the law; and that disqualifies every man from serving, who has made up and declared an opinion as to the whole case itself. The court has not said, that every slight impression brings him under this disqualification. There are different degrees of impressions. If these are so strong as to combat all truth and evidence—if they dispose a man to one side with great complacency, and to resist the other with great force—reason declares that such a man is an incompetent juryman. If a man declares, on a trial for murder, that he knows not whether the man was killed, but he was sure that the prisoner had malice prepense and was determined to kill him, he is clearly an incompetent juryman. The same principle is applicable to the cases of Burglary, and uttering false money. As to the particular case, relative to the *intentions* of the prisoner, the court is of opinion, if a man thinks that the prisoner has been machinating treasonable designs *up to the time* charged in the indictment, that in this case the impression is too strong to be consistent with that fairness due to the prisoner. In this case, the court is of opinion that the juryman ought to be set aside. The chief justice made many additional remarks—and then proceeded to apply his opinion to the cases of the jurymen, who were suspended yesterday.

1. *John H. Upshaw. Ch. Justice.* Did you conceive that the prisoner was pursuing his treasonable designs up to the time charged in the indictment?

A. Yes.

C. Justice. Mr. Upshaw is not then qualified to serve, because his opinion of the treasonable design has extended through the whole of these transactions.

2. *Miles Selden*; 3. *Lewis Trenchard*; 4. *William Yancey*; 5. *Thomas Prosser*; 6. *Nathaniel Selden*; 7. *John W. Ellis*; *and Armistead T. Mason*, were successively set aside.

Mr. Hay then moved the court to award a new venire; & for such a number as would probably supply the number of deficient jurymen. He conceived that this number ought to exceed even the first pannel. Perhaps 130 would not be too few.

Mr. Burr was sorry that any such inferences should be drawn from that pannel. He conceived that very different ones ought to be made; and that when it was once demonstrated, that the officer of this court was honestly to seek for proper jurymen, the number could easily be completed.

Mr. Wirt hoped, that when insinuations were thus thrown out against the marshal of the court, a man of as respectable a character as any in the state, he might be called in to justify himself..

Mr. Wickham objected to this pannel, that it contained too many members of assembly & candidates for public office. The marshal should have gone among those, who were not so much in the habit of expressing their political opinion.

Mr. Wirt appealed to the pannel itself as the best proof of the intelligence and integrity of those who had been selected. It had been announced from the bench itself, that some very complicated doctrines of treason were to be settled during the trial—It was natural therefore that the marshal should look out for the most enlightened men—and that he should light upon some of those very persons, whom the people had before selected for their public concerns.

The *Ch. Justice* stated, that the difficulty of getting jurors was now, in some measure, removed, as the opinion of the court was now known and the marshal would not summon a man, whose opinions he had previously understood, although he ought not then to interrogate him on the subject—and he would have a good reason for not placing him on his pannel, if he should inform him that his opinions were strongly in conflict with the test laid down by the court.

After a desultory conversation, the court awarded a venire for 40—*& then adjourned.*

THURSDAY, August 13.

A list of the 48 men summoned on the *tales* by the marshal was delivered to *Col. Burr*; but, as he declared himself not prepared to judge of them, and wished a little time to be allowed him for that purpose, the *tales* were not called over, and the trial, of course was postponed.

Gen. John Pegram of Dinwiddie (one of the persons summoned) was excused on the ground of his being busily engaged in carrying into effect within his brigade the orders of Major General Woodson, obedient to the requisition made by the President of the U. S. of 11563 men from the state of Virginia.

Mr. *Thomas Lewis* (of Kentucky) was excused, as not having a free-hold in this state.

Mr. *William Moncure* of this city was also exempted from serving, in consequence of his bad state of health.

Mr. *Hay* suggested the propriety of adding three other names to the pannel, in lieu of those who had been excused; to which Col Burr said, he was willing to consent; provided it should be the act of the court.

The *Chief Justice* answered that no order need be made on the subject, but it might be so understood by the marshal.

Col. *Burr* mentioned that a Mr. Neal who had been summoned as a witness for him, (for the purpose of proving the disqualification of one of the venire,) had been discharged by him; and the marshal had refused to pay for his attendance.

Mr. *Hay*, objected to the great number of witnesses which he understood had been summoned on behalf of col. Burr, perhaps wantonly, for the purpose of increasing exorbitantly, the already enormous expences of this prosecution.

Col. *Burr* said he was glad that this circumstances was mentioned; since it afforded him an opportunity of making some explanations which were necessary. He declared the rumors which had gone abroad of the multitude of witnesses summoned for him to be altogether groundless; that he had indeed directed many to be summoned to prove circumstances relative to the venire-men; (concerning whom it had been impossible for him to foresee that they would voluntarily state their own disqualifications) but, on purpose to save expence to the U. S. he had, as soon possible, discharged them from farther attendance; and that, in the end, he did not expect half as many witnesses to be attending on his part as on the part of the U. States.

Mr. Hay said he understood that all the rejected venire-men had been summoned as witnesses.

Col. Burr. It is a mistake. They have all been discharged except two or three.

Mr. Hay. I did not speak on this subject from report only. Fully 170 subpoenas have been taken out from the clerk's office.

Col. *Burr.* The great number of subpoenas taken out arose from this; that many of them were rendered useless by the form in which they were issued; being directed to the marshal; and, in consequence of the widely dispersed situations of the persons whose testimony was wanted, I found it necessary to obtain others directed to those persons themselves.

It was understood that the marshal was directed to pay Mr. Neal for his attendance; and, at the instance of Mr. Hay, he was recognized as a material witness for the U. S.

Mr. Hay moved that the entry on the record, concerning the swearing of the four jurors who had been accepted, should be erased; being of opinion that no part of the jury ought to have been sworn until the whole pannel was completed. Some conversation took place on this subject; but nothing definitive was done.

Col. Burr mentioned that gen. Wilkinson's letter to the President, dated the 21st of October last, (for the production of which a *subpœna duces tecum* had been awarded some time ago,) was not yet produced.

Mr. Hay said the President's return on the *subpœna duces tecum* had been satisfactory; in which he had stated that the letter was not in his possession, but had been delivered to Mr. Rodney the attorney-general of the U. S. to whom directions were given to send it to the attorney prosecuting at Richmond; that Mr Rodney had promised to do so; and had sent him a large number of papers among which that letter might be; that he had arranged those papers alphabetically; but had not found among them the letter in question; that it could not be ascertained, whether that letter was among them, without opening and examining each paper particularly; which would be a very troublesome task. He observed, however, that gen. Wilkinson had furnished him with a copy, which he would produce, and have it verified by the general's oath.

Col. Burr refused to accept of a copy so verified.

Mr. Hay then promised to give all the papers which he had received from Mr. Rodney a careful examination, and to produce the letter, if to be found.

The court then adjourned to sit again on Saturday.

Valuable Seats for Iron Works.

THE subscriber offers for sale between Five and Six Thousand acres of Land bounded on one side by James River, including big and little Owen's Creek, and situate in Amherst county in the state of Virginia. This land is in the midst of a well and thick settled country, about 100 miles above the city of Richmond. There are not more than 30 acres of it cleared. The remainder is heavily timbered—consisting of large pines, white oaks, poplar, black walnut and chesnut. On Big Owens creek, and within 600 yards of James river, which is navigable for boats at all seasons of the year—there is an excellent site for any kind of water works. The stream is rapid and constant, and about three miles from the seat are, as it is believed inexhaustible banks of Iron ore, which the subscriber has secured and which will be sold with the land. This ore has been tried and proved to be of a very superior kind. The land adjoining the seat is of excellent quality. Two hundred acres of timothy meadow might be made on the creek. The upland although hilly in places is well adapted to small grain, and a great proportion of it suitable to the raising of tobacco. Immediately around the site for water works are inexhaustible LIMESTONE Quarries, together with great quantities of the best building stone. In short there are many advantages combined to render this a most eligible spot for the erection of iron works, or any other kind of water works. It is deemed unnecessary to say more concerning this property than to request those who incline to purchase to view it. It will be shewn by captain Henry Halloway in the neighborhood. The price will be moderate, terms of sale, which will be made very easy, will be made known on application to the proprietor residing in Georgetown district of Columbia.

NATHAN LUFBOROUGH.

Georgetown, February 16—wtf