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[illegible] DOLLARS PER ANNUM. FRIDAY, AUGUST 8, 1806. PAID IN ADVANCE.

United States vs. Colonel Smith.
(*CONTINUED.*)

Richard Platt, sworn.

The witness says that he frequently conversed with Col. Smith while Miranda was at Washington, and observed that the expedition was a British one under the guidance of Miranda. Col. Smith told the witness that the President said to Miranda that it did not suit the views of government to go to war with Spain, but that he, Smith, might do as he pleased. Col. Smith told the witness that he had a letter from Mr. Duncanson, at Washington, in which he (Duncanson) told him (Smith) that he had just seen Thomas Jefferson, who said that Smith would soon have it in his power to give him (Duncanson) a commission. Col. Smith told the witness that his son was aid to Miranda. The witness says that the expedition was a topic of frequent conversation ten or twelve days before the Leander sailed. Col. Smith told him that government knew as much about the expedition as he did; that his name had been mentioned to the President and to Mr. Madison, who said that in their opinion he was a fit person and might go if he chose. Colonel Smith told the witness that he had pointed out a proper ship and had introduced Miranda to captain Lewis, and Ogden, and that he had nothing to do with men and money as to enlisting.

John M'Lean, commissary of military stores.

The witness says that Col. Smith applied to him some time in January last after his (the witness's) return from Washington; that he received a note from Smith to wait on him at his house. The witness called. Col. Smith said he wanted to get artillery-men, practical men who could manage field artillery. He wanted too, some artificers who were acquainted with their duty. This the witness thinks was pretty much towards the latter end of January; it was before the Leander left the dock.

John Fink, butcher, sworn.

Do you know col. Smith?

I do; he applied to me and said he wanted to enlist men for an expedition that was to be sent off by our government. I afterwards acquainted him that I had found some men. He said he wanted about 10 men and a serjeant, and informed me that they should choose their own serjeant and corporal. He would not tell me the subject of the expedition, but said there was a particular man in the city who would give him several thousand dollars to tell it, but he would not tell it. He represented that there was a detachment made by government, and that they were wanted. The men rendezvoused at my house. He told me that his son was a captain and was commissioned by our government. I saw col. Smith at his house several times, and once he shewed me a large bundle of papers which lay on his table, and said they were orders and directions to get the men. He told me that a similar expedition was to go from the other states, and that his son was to be captain; he said he would give the men 15 dollars bounty and half a dollar a day. He delivered me the money, 620 dollars, to pay the men a month's pay, with each man's name written upon paper. Capt. Durning took the command, as young Smith was to be aid-de-camp. Col. Smith said he was going himself in the spring to take command of the expedition. He said that the young men listed were to be cavalry, and to act as the general's guard, & that every equipment for horse-men was furnished on board the ship. He represented that when they should arrive at a certain place, they might return if they did not like the service. The people got to be uneasy, not knowing where they were going, but he showed me a bundle of papers and said there is a bundle containing the orders. I was with serjeant Burke when Smith told him so.

The following papers were shown to the witness, who said they were written by col. Smith in his presence, and given by him to the witness to read to the men, to remove their uneasiness. We print them exactly by copy.

No. 1.

"Men,

"Every thing that has been told you will be honorably fulfilled, believe what Mr. Fink tells you and act honorably."

No. 2.

"One month's pay advanced, calculated from the 1st day of January, 1806—four shillings per day regularly paid, clothing and rations supplied—after correct service of 12 months, each man will receive fifty dollars and a regular discharge if they wish to return to their friends—if they remain longer and chuse to reside in the country and continue in service three years, they will receive a bounty in land not less than one hundred acres perhaps more and may have leave of absence for six months to visit their friends, who may return with them, should their situation be inviting and agreable—all this will be confirmed to them on board ship, and their officer will be accountable to them that every thing here expressed shall be sacredly fulfilled—they may receive their pay weekly or monthly as will be arranged or they shall be paid here, any sum which may be in arrears, by an order, signed by the paymaster, drawn in their favor, when they return, they may rest assured they are neither going into English or French service."

These two papers have neither dates nor signatures.

The following papers were also introduced by the counsel for the prosecution as testimony against col. Smith. The papers were identified by Mr. Fink. The introduction to No. 3, is in the hand writing of col. Smith; the names are written by some person who scribuled for the listed men, who made their marks. The names of the second column are sureties for those of the first who had received the bounty. No. 4 is in the hand writing of serjeant Burke.

No. 3.

"Muster Roll
"for Presidents
"Guard.

"Received New-York, January 16th, 1806, of Mr. John Fink, fifteen dollars 50 cents in full pay for the current month of thirty one days, agreeable to an arrangement made with him which we sacredly promise to fulfil, or return the money now received, the surplus due as per agreement with John Burke and Richard Platt, to be passed to their credit, and at their order when on board.

Names of men engaged	"The undersigned acknowledge ourselves as security for those whose signatures are in a line with our respective names
Mathias X Boekman	David Williams
David X Vinton	William Goss
John X Scott	David Williams
Mathias X Morgan	James Mooney
Joseph X Bundrug	Wm. X Chapman
John X Stagg	Peter Forbus
John X Parsels	John Pell
John X Etsell	
Ellicot X Bhannan	John Kaper
James Onnes Richard Platt Moses Smith	} Ichabod White
Robert X Laghety	William Laverty
Benjamin X Davis	
John Burk—SJ—	William Goss
Thomas Lee	Christian Harriot
Henry Sperry, paid 1 month	
Joshua Crylser	
Stephen Burtis	James Howell
Joshua X Highee	Jonathan Titus
George Levisoa	
Adam Tinbrook	his Blaze X Tenbrook mark.'

No. 4.

"We the subscribers solemnly engage volunteers in the government service for one twelve month.

John Burk Se	John X Parsels
Richard Platt Cp	Mathias X Daves
his	John X Etsett
David X Vinton	Adam X Tenbrark
cross	Mathias X Morgan
Mathias X Bhanon	John X Stagg
his	John X Miller
Robt. X Lawhenty	Moses Smith
cross	Joseph X Brundrag
William Raggons	Thomas X Lee
James Onnes	Samuel Ferris."
John X Scott,	

Peter Rose, sworn.

The witness is a carpenter, was born in Vermont, and came to New-York 10th December last. He was engaged to go on board the Leander by Captain Gardiner, who said he was to go to New-Orleans. He was engaged January 26, and went on board the same day. When on board he found that the vessel was not going where he had been told she was. He then wanted to go on shore, but they would not let him. Mr. Ogden came on board. The Leander went from New-York to Jacmel, but there was no commerce transacted there. There was a considerable number of guns on board the Leander, and a great quantity of ammunition, but none was taken out or landed at Jacmel. There was also on board a printing press, which was set up at Jacmel. Proclamations were printed on board, with Miranda's name at the head of them. The proclamations were put up in boxes, and packed away in the hold. —There was no sort of commercial business done at Jacmel; for he should have known it if it had been done. They were five weeks at Jacmel. Two or three of the men swam ashore and escaped. He thinks there were 300 people on board—About 200 went from Jacmel to the Island of Aruba—Here they landed, mustered, and had a military parade; it was a tolerable muster: This was getting ready——From Aruba they went to Porto-Cavallo, on the Spanish Main; thence to Bonaire, where preparations were made to land——From Aruba an English schooner sailed with them, besides two schooners which were in company with the Leander——The two schooners parted a little from the Leander to look out for a landing place. Here two Spanish armed ships hove in sight, and intervened between the two schooners and the Leander; the schooners were thus cut off from the Leander. The Spanish ships attacked the Leander, a close action of half an hour ensued, but the Spaniards sheered off, made sail, bore down to the two schooners, and captured them. We now proceeded to Bonaire, having given up the intention of landing, & thence to Barbadoes, where they met with the Lilly sloop of war. The men said they would sacrifice their wages if they could get leave to quit the Leander, but they could not; some of them jumped overboard and swam ashore——Owing to the discontent of the men the situation of the arms was changed; they were put into the steerage and locked up. The witness was employed on board the Leander in making spades and intrenching tools; he also made handles for 700 pikes—Miranda was called general, Armstrong colonel, Sands brigade-major, Loudon captain of artillery, Bilop a captain; there were more officers than men——At Barbadoes, after our return, and when the men were discontented, some of them were taken out of the Leander and put aboard the Lilly——Miranda refused to discharge the witness who wanted to come home——On his cross examination he says that the schooners were equipped at Jacmel, where about a dozen men were procured——He was informed that it was their original intention to get additional force at Jacmel—They were all landed at Aruba by the general. From Aruba they returned on board willingly for aught he knew, he never heard that it was optional with any one of them to go on board or not——When they left New-York they were not in a condition to enter upon the enterprise.

Adjourned to Tuesday morning, July 22.

Tuesday Morning.

Richard Platt.

Colonel Platt, the witness, came up this morning to retract his former testimony. What he before stated as testimony was principally founded on a letter from Mr. Duncanson to Colonel Smith which the latter had read to him, and which he had in some measure misconceived——He wished to recall his former testimony, and to rest it on Duncanson's letter which he produced and read to the court. The letter is a rhapsody, and in some parts of it represents a mind not quite sane——It is this.

December 28, 1805.

"I this morning called on Thomas Jefferson, & understood that something must be done against the enemies of my adopted country——I am at your service, and if you step forward, and I think you will if it be true that an old coachman likes a smack of the whip. You know I ought to have an immediate answer."

The witness said he believed that Colonel Smith acted under a persuasion that government approved of the measures of Miranda.

Dr. Douglas sworn.

The witness knew a number of young gentlemen who went out in the Leander—He understood that the defendant had the nomination of a number of a young men to Miranda. At one time colonel Smith said that Miranda was going home to see his grandmother, and he wanted some young men to go with him to see her farm. The defendant told the witness that our government knew of the enterprize—Some time before Miranda arrived in this country, I rode out with the witness who said there was a great business on hand. When questioned on the nature and object of the expedition, while it was preparing, the defendant said that a gentleman had seen the President, and that it was unnecessary for him to go to Washington—Colonel Smith assured the men that he was authorised by government to do what he was doing. He told them that he was to go with Miranda, that they would stop at a friendly island, that if they did not then choose to go, they might return, and that their passage back should be paid—He said he was authorised to do this by our government. What I (the witness) understood was that the defendant was an intimate friend of Miranda, and he said that whatever he, (the defendant) promised them (the men) would be fulfilled when they got aboard. I do not know whether they were referred or not to Miranda, but I recollect that they went out as surgeons, and that they were to make their engagements with captain Lewis as surgeons; and when they got to the friendly island and Miranda explained to them the enterprise; if they liked it, they might engage, and have what had been promised by colonel Smith. I heard colonel Smith say, that if Miranda found Sands a very clever fellow he would make him a major. There was only one who engaged to go out as surgeon of the Leander—The witness said that the impression on his mind was, that colonel Smith only recommended. Colonel Smith said the men were going out under Durning as their leader, and were now satisfied, but the men whom he saw said they were not satisfied. The witness remarked that he was known to be the intimate friend of colonel Smith.

Benjamin R. Hobson sworn.

This witness said that colonel Smith applied to him to embark in an expedition, but would not tell the particulars at that time. Dr. Douglass also applied to him. He went to colonel Smith's on a Sunday, when the witness's name was handed in to him. He saw Smith, but he would not tell the witness what the expedition was—He said it was an honorable expedition, and that the President and Secretary of state authorised it. He said the witness should have the place of surgeon, and that it should be in military land service. The witness was not to go out of America, Colonel Smith said we were going out with our friends. We might succeed well, but if we did not we must take our fate.

Charles S. Cutting sworn.

Mr. Cutting said that he called on colonel Smith but was not perfectly satisfied with his explanation. He then called on the colonel again who promised him a military station—lieutenant and adjutant. He did not however choose to go without pay, and in case of being made a prisoner he did not know what country to look to for protection—He thinks this was in December. When he applied it was in reference to the Leander. He understood that he was to go in the Leander as a passenger, & that he was to receive his commission and an explanation on board. Colonel Smith said that when we got to our half way destination we should have our option to return.

Adam Tenbrook sworn.

I was applied to by Fink to enlist to go to Washington to follow the President. I was to be one of a military guard to the President—I did not engage for I thought there was some *trepanning* in it. I was on board the Leander twice, but did not go with her. Colonel Smith's papers were read to me—I saw Burke write—I was very uneasy.

John Ripley sworn.

Colonel Smith saw and mentioned to me an expedition. He asked me to accept of a commission. He said that there was an expedition fitting out in the country under the authority of the British government, against Carraccas, and was to be conducted by general Miranda. He said that application had been made to the President for leave of absence for him, and that the President said that colonel Smith *could travel if he pleased.* He pressed the witness to take a commission for the command of a regiment.

Adjourned to Wednesday 23d.

WEDNESDAY.

Henry Mack sworn.

Did colonel smith apply to you last winter to enter into the military as an artillerist?

He did, he applied to me to enter into our service, which I understood to be the service of our government. I was to be second lieutenant—He gave me an order to get uniform.

Did you get it?

Not I. I quit the scheme the next day—I went to the colonel next day and told him I did not choose to go. The witness was at captain M'Lean's; he was there because he was acquainted with him.

Godfrey Crawbuck sworn.

Were you enlisted last winter to go into the military service?

I was.

By whom?

By Mr. Fink.

What was you to do?

Fink said I was to guard the mail of the United States to New Orleans.

Thomas Lee sworn.

Was you enlisted to go into the military service?

Yes.

What for?

I was to be in the horse service.

What was you to be?

A trumpeter, sir.

Who enlisted you?

Fink.

James Owens sworn.

Was you enlisted last winter for the military?

I was.

Who engaged you?

Fink.

What was you to do?

I was to be the President's guard.

Horse guard?

Yes, sir.

Richard Platt, a minor, sworn.

Was you enlisted?

I was.

By whom?

Fink.

For what service?

I was to be a corporal, sir, for government service—I was to go to Washington—They said the President was going to travel and wanted a guard—Colonel smith told me I was not to go out of the United States—The witness and other young men were told expressly that they were not to go out of the *U S.*

Who told you so besides colonel smith?

Fink told me I was to guard the President, but when I was again referred to colonel smith, he said he would not tell me all the particular service, but I was not to go out of the *U S*—He signed an article—On being further questioned by the defendant's counsel, he observed that he knew that colonel smith said they were *not* to go *out* of the *United States*—He said his son was to go with them, and would never be from them.

Here the evidence was closed on the part of the prosecution.

Before we proceed to notice the arguments of the counsel for and against the defendant, we deem it just and expedient to lay before the reader the names of the Grand and Petit Jurors empannelled in the April and July terms of the circuit court to pronounce on the accusations laid before them of offences committed against the laws of the *U. S.* We shall do this because the community are entitled to this information, because we are convinced, for can any man who knows any thing of the proceedings, be otherwise than convinced, that the defence has been conducted on party principles adverse to the administration of the general government, and because what we may hereafter say upon this subject purposely made interesting by the federal party, we intend to appeal to the discernment and integrity of the *public* for a decision upon it.

Smith and Ogden were bound over to appear at the April term of the circuit court to answer allegations preferred against them of offences committed against the *U. S.* To the previous proceedings (I mean the examinations of the accused) I shall hereafter advert, for although the light and puerile remarks of Mr. Coleman upon them do not deserve, they shall nevertheless receive an answer—They were then to appear at the April term, and it therefore became the duty of the marshal for the district to *select* & summon a grand and petit jury. They were accordingly *selected*, and summoned—Here they are—

Grand Jury for April Term.

Matthew Clarkson,† Nicholas Fish,† Philip Brasher,† Amasa Jackson,† Frederick Babcock,† Charles Ludlow,* Josiah Blackwell,† Ralph B. Forbes,† John B. Coles,‡ James H. Maxwell,† James Manning,‡ Henry Rutgers,* Garrit Gilbert,* Gerrard Steddiford,* Jacob P. Giraud,† Jonathan Lawrence, junior,† Grove Wright,† Joshua Barker,‡ Abijah Hammond,† John Kane,† Jacob T. Walton,† James Davison,† James I. Roosevelt,† Isaac Pierson,‡

† Federalists—* Republicans—‡ Burrites who act with the federalists.

The grand jury then consisting of 17 federalists, 4 republicans, and 3 Burrites.

So irrefragable, however, was the testimony against the accused, that the grand jury after a tardy and sorrowful sitting of nearly a week, found a bill against each.

They nevertheless did not omit to perform a political duty. By way of a set off for what they had done, they presented Judge Tallmadge, the presiding judge, for "illegal, tyrannic and oppressive conduct, in the previous examinations of the accused." I give it as my opinion that among the *seventeen* federalists and *three* Burrites who thus pronounced upon the judge's conduct, of which they had no testimony, of which they had no proof, and perhaps of which they had made no enquiry, there was not a man competent to decide on the law question which the presentment involved. Like the subsequent presentment of myself by a similar *grand jury* for the publication of a notorious fact, I take the presentment to have been entirely *malicious.*

Petit Jury for April Term.

Charles Stewart,† Elis Burger,‡ Robert Brett,† Thomas Cadle,† Abraham Boudoine,‡ Gardon Buck,† Garret N. Bleecker,* Joseph Otis,† Thomas Vail,* Silvester Robinson,† Henry Ten Brock;† William A. Davis,† John Tom,* Andrew Mitchell,† Jacob Shieffelin,† John T. Duryee,† Thomas Rodman,† Henry Saydam,† Benjamin I. Moore,† John Church† John Stanford,‡ William S. Champman,† George F. Hopkins,† George Beament,‡ David G. Hubbard,† Isaac Heyer,† James Bailey † Anthony Bartow.‡ John L. Broome,* William Thorne,† John Bedient,‡ Francis Aglburry,† Joseph Strong,* John Mason,† Benjamin Seixas,† Andrew S. Norwood † Thomas Hammersley;‡ William Dustans,‡ Ebenezer Irving,‡ Alexander J. Hamilton,† William M. Pruymert,† John Hagerty,† Charles Snowden,† Bernard Hart,† Wm. Neilson, jun.† Henry Cotheal† James Swords,† Timo Green,‡

† Federalists—‡ Burrites—* Republicans.

The Pettit Jurors then selected and summoned by the marshal, from whom twelve were taken to try the indictment during the April Term, were 34 Federalists—9 Burrites, and 5 Republicans; making 48.

The accused were not however in April term tried. On an affidavit of the absence of material witnesses the trial was put off to July. The Marshal had therefore to *select* and summon a *new* grand jury to enquire, at that