National Intelligencer.

& WASHINGTON ADVERTISER.

VOL. VIII. | WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. | NO. 1225.

FIVE DOLLARS PER ANNUM, | FRIDAY, AUGUST 19, 1808. | *PAID IN ADVANCE.*

SENATE OF THE UNITED STATES.

April 9.

Case of John Smith.

CONTINUED.

Mr. Adams.—Mr. President, I had not intended to have risen again upon the discussion of this question, nor should I now rise but that the gentlemen from Virginia and from Kentucky (Mr. Giles and Mr. Pope) have so emphatically called upon the members who have expressed their intention of voting for this resolution, to lay their fingers upon specific facts which will warrant their votes. I agree perfectly with those gentlemen, that suspicions, however strong, are no sufficient foundation for such censure as this upon the conduct of a public man. I certainly would not give my voice to the passage of this resolution upon mere suspicion. And I may confidently say to the members of this Senate, who have longest witnessed my conduct here, that suspicion and jealousy form no part of my character. If in this respect, I have ever been chargeable with error, I believe it may be thought to have proceeded rather from an excess than from a deficiency of confidence in the political integrity of other men.

The reason assigned in the resolution, is the participation of Mr. Smith in the conspiracy of A. Burr, against the *peace, union,* and *liberties* of the nation. The conspiracy against our peace, consisted in the projected Mexican invasion. The unquestionable fact which establishes Mr. Smith's participation in this part of the plan, is his engagement of his two sons for it, when communicated in special confidence by Mr. Burr. The other part aimed against the *union* and *liberties* of this country, consisted in the systematic attempt to instigate the people of that part of the country to a separation from the Atlantic states. The fact which establishes Mr. Smith's participation in this, is the conversation attested to by col. James Taylor, in which we see Mr. Smith's active cooperation towards the accomplishment of that object, in the mode which Mr. Burr himself says in his letter to him, is the only practicable mode for effecting it. These two facts demonstrate Mr. Smith's participation in the whole plan. The testimony of Peter Taylor, proves a consciousness in Mr. Smith, of unlawfulness in the whole enterprize. The pains which he took to avoid the grand jury at Frankfort, on the second arrest of Mr. Burr, and his declarations to so many persons that he knew nothing of the business, after Burr had so fully disclosed it to him, are something more than suspicions. The denial and subsequent admission of many material facts, the attempts to discredit witnesses of the fairest character, the varieties in Mr. Smith's own narratives, and the incredibility of many things upon which he principally relies, all concur in proving, that there is another narrative of the real transactions which has not been told. These are the foundations of inferences, which may indeed possibly be erroneous; but the engagement of his two sons is admitted by himself, and his promotion of disunion is fully proved by Col. James Taylor.

The gentlemen from Virginia and Kentucky make very light of these facts. The first of them says, that Mr. Smith's testimony could not have proved any thing against Burr, because Burr had told him he should attack Mexico if a war should take place. Why, sir, if this justifies Mr. Smith, it justifies Burr himself. He *always* declared his intentions against Mexico were to depend on the event of a war. I will not repeat what I have said before, and urge the utter impossibility that a man of common sense could at that time be the dupe of this pretence; but if he were, Mr. Burr's preparations then were equally in violation of the law, whether a war had or had not ensued. If there can possibly remain a doubt of this, I must ask your leave, sir, to read you the section of the law itself.

"And be it further enacted and declared, that if any person shall within the territory or jurisdiction of the United States, *begin* or set on foot, or *provide or prepare the means* for any military expedition or enterprize to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States *are at peace*, every such person so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years."

Now, sir, the offence is beginning, or setting on foot, or providing or preparing the means for an expedition against a foreign prince, with whom the United States *are at peace*—no exception for those with whom they shall be at war. Indeed the moment when there is a prospect of war, is the very time, when the remedies of this act are the most important and necessary. For such private enterprizes have the strongest of possible tendencies to involve the nation in war; and they are precisely the things against which the law was intended to guard. Mr. Smith knew we were not at war with Spain. He knew that until war was declared, Burr's preparations were in the face of the law. Yet he engaged his two sons, and hurried away from Frankfort to avoid the grand jury, under the express and repeated allegation that he knew nothing of the business.

The gentleman from Kentucky says, that there were perhaps five hundred persons of distinction beyond the mountains, who gave as much countenance to Burr's projects, as from the evidence before us appears to have been given by Mr. Smith. Sir, I am very sorry to hear it, and I hope the gentleman is mistaken. If there are five hundred, or even fifty persons of a standing in society, on the level of Mr. Smith, who after personal and confidential communication from Burr of so much as Mr. Smith avows, gave him so much countenance as to engage themselves, or any part of their families, in his projects, the situation of that country and of this is truly alarming. Consider, sir, the character of Mr. Burr's projects and preparations even as they were avowed. The very act of raising men for military purposes, is a usurpation of the sovereign power—a usurpation of the most dangerous description. The determination to invade Mexico, was not even pretended to be dependent upon authority from your government. Mr. Burr was to be *not hostile*—he was to be a good *neighbor*. In every one of these terms, independent and sovereign power is directly implied. Is it possible, sir, to consider this as an offence of trivial magnitude?

I ask once more, had the war broken out, would you have consented to the appointment of Aaron Burr as the commander in chief of your army? Would the President have nominated him to this body? Would you have confirmed his appointment if nominated? I can speak but for one—but so far would he have been from receiving my vote, that I should have considered the appointment of him, as a calamity to this nation, heavier than the war.—Of what avail are all the guards of your constitution and laws, if a private individual by raising troops, can compel you to place him at their head, in the heat of war? Are you aware of what import to this nation in case of war, would be the character of your commander in chief? If we need warning let us ask counsel of the days that are past. What was it that carried this nation triumphantly through that tremendous conflict of the revolutionary war; and secured to us the enjoyment of all the blessings which we have since possessed as an independent people? Was it not under Heaven, in a great measure attributable to the character of the man who was selected as the commander of your armies? A man, whom adversity could not break down—a man whom prosperity could not corrupt—in defeat, a pillar of strength—in victory, a crown of glory to his country? Whose triumphs were the triumphs of the nation; in which every honest heart could participate? But what could have been the condition of this Union then; what would it be now, with a war upon your hands, if a desperate—an unprincipled—a profligate military adventurer, by levying bands of armed men without any authority, could intrude, could force himself upon this people as the leader of their armies? There is no danger that can befal us, from which our ruin would so inevitably follow. Under such a general, defeat would be the mildest form that misfortune could assume. Every victory he should obtain, would be but a step to his own aggrandizement at the expence of our freedom and the more brilliant his success; might be, the more formidable would be his means for rivetting chains upon this country. Sir, a design like this ought to have met from a Senator of the Union, from one of the guardians of the people's rights, instead of encouragements, the most determined opposition. And from this Senate it ought, as I conceive, to meet the most pointed reprobation. It is my deep conviction of this, and certainly no personal animosity to Mr. Smith, which has occasioned the zeal in the course of this proceeding, which has been made the occasion of reproach against me. The gentleman from Virginia, with all the powers of his eloquence, has this day appealed to the sympathatic feelings of the Senate; and roused every sentiment of compassion, which good men always delight to indulge, in behalf of Mr. Smith. He has painted in colors glowing with ardent benevolence the sufferings which must ensue to Mr. Smith, and the distress of an amiable family, which a decision unfavorable to him would occasion. Sir, I honor the source from which such observations proceeded; to the sentiments which dictated them, I trust, our hearts all instinctively respond. But permit me to say, they are not the sentiments upon which the merits of this question can be properly decided. In the feelings of the man, we are not to forget the duties of the citizen and of the legislator. We have seen the highest judicial authorities of this Union unable to execute justice upon a crime of the most heinous and aggravated character. We are now to determine, whether another of those great political institutions, on which the liberties of the nation are founded, shall be laid prostrate before the artifices of conspiracy and treason. The resort to the tenderness of our nature, and to the afflictions of an innocent family, augurs indeed not very auspiciously to the innocence upon which we are called to pronounce. It is an act of duty, and not of inclination which I feel myself bound to discharge, and that duty will still compel me to vote for the adoption of the resolution.

Mr. Giles—Mr. President, I must acknowledge my obligations to the gentleman from Massachusetts (Mr. Adams) for the display of candor he has just given to the Senate. The gentleman from Georgia (Mr. Crauford) misconceived the object of my call upon the favorers of this resolution. I did not call upon them to put their fingers upon any particular paper or document, which proved any particular criminal act; but I called upon them to put their finger upon any criminal act, which they conceived to be proved by the whole or any part of the evidence, by one link or any number of links, or the whole chain taken together. The gentleman from Massachusetts has so understood me; and has undertaken to comply with the call. I have so much confidence in the candor and judgment of the gentleman, that I always deem it a misfortune to differ with him in opinion; but I cannot help observing, that on the present occasion his observations have added greatly to my confidence in the opinions I before expressed. I conceive the subject now before us to be stript of most of its difficulties; it is now reduced within very narrow limits. The gentleman has put his finger upon only two acts of criminality against Mr. Smith. It is therefore fairly to be presumed, that in his judgment there cannot be any others imputed to him. These two acts consist in Mr. Smith's giving his two sons permission to accompany Burr in the settlement of his Washita lands; and in his conversation with Col. Taylor respecting the separation of the union. Let these two acts of imputed criminality be examined. With respect to Mr. Smith's giving permission to his sons to accompany Burr in the settlement of his Washita lands, it should be remarked that all the information we have upon this subject, comes from Mr. Smith himself, that it was communicated to the Secretary at War immediately after the receipt of the President's proclamation, and long before Mr. Smith had been accused or suspected; and when he could not possibly have anticipated either suspicion or accusation. If Mr. Smith therefore conceived this to be a criminal act, is it possible to conceive that he would have communicated it to the Secretary at War? Would not conscious guilt have induced him to conceal the circumstance? Mr. Smith communicates the fact and the object; in neither of which can I see the smallest semblance of criminality. There can be nothing criminal in permitting his sons to partake of Mr. Burr's promised bounty in the distribution of his Washita lands; as little criminality do I see in his permission to his sons to accompany Burr in an expedition against Mexico, *in the event of a war with Spain*—the condition alone, upon which the enterprise was to be undertaken; nor was this declaration of Burr's at all calculated to alarm Mr. Smith's suspicions, or to lessen his misplaced confidence in Burr. Suppose any gentleman in this Senate, residing in our north eastern frontiers, were to say in debate, that in the event of a war with Great Britain, he would head a company of volunteers, and be the first to march into Canada; would it alarm our suspicions? Would it lessen our confidence in his integrity or patriotism? Certainly not. Why then should Mr. Smith be condemned, when under precisely similar circumstances, the same expression did not alarm his suspicions, and enable him to penetrate into Burr's treasonable designs? It should be recollected that Mr. Smith's confidence in Burr continued until the arrival of the President's proclamation; before that was known, he believed Burr's views to be honorable; but as soon as Burr was denounced by the President, Mr. Smith with a laudable confidence in the proceedings of government, surrendered his good opinion of him, and used the most active and effectual exertions to detect and suppress the conspiracy. What offence then does this transaction disclose against Mr. Smith? Why, nothing more than this; that he did not penetrate into Burr's treasonable designs; that he was not a keener observer of the human character, and a better judge of human nature; but it discloses no act of participation in Burr's conspiracy—it discloses no crime. It was Mr. Smith's misfortune, the deplorable effects of which he feels at this moment; but it furnishes no evidence of even any intention to commit a crime, nor any knowledge of the intention of Burr to commit one. With respect to the other act of criminality imputed to Mr. Smith; his conversation about the separation of the union—so far from this being a criminal act, amounting to a participation in Burr's conspiracy; it is no act at all. The evidence only discloses the impressions on the mind of the witness as to the general result of a conversation. This impression is also proven to have been mistaken, by positive and irreproachable evidence. But, sir, in all cases, evidence of inferences from conversations ought to be received with great caution and limitation. How often, sir, do we hear the results of conversations differently related by different auditors; even the most discerning and honest? How often do we see on this floor inferences made from observations in debate, which are not attributable to them? Recollect, sir, a conversation during this present session, related from the President's table, respecting the additional army proposed to be raised. Gentlemen with the best intentions, I was informed, related it very differently; yet so much attention was paid to this uncertain mode of communication, that it was said to have arrested for several days the progress of the bill in the House of Representatives. In the case before us, the impressions of the witness are not only positively disproved; but the witness himself admits that this is the only solitary instance in which expressions to the same effect were used by Mr. Smith, within his knowledge; and several respectable witnesses depose to their intimacy with Mr. Smith, and that they never heard such sentiments delivered by him at all; but often the reverse. I have, therefore, no hesitation in saying, that I am perfectly convinced that Col. Taylor was mistaken in his impressions of the conversation, and I think it not improbable that if he himself were here, and could attend to the evidence, he would admit it was probable he was mistaken; because in his evidence he speaks of it rather as a questionable, than as a positive point. I hope then, sir, I may be excused from making a solemn declaration to the world, that John Smith participated in the conspiracy of Aaron Burr, when the chairman of the committee of investigation, who has bestowed so much labor upon the subject, and is so entirely qualified for it, when called on, refers me to circumstances of the character just described, as the only acts of criminal participation on the part of Mr Smith.

But, Mr. President, when in the United States, on all former occasions, we justly boast of our laws, and our liberality; of the security of the citizen in his property and reputation; of tempering our justice with mercy and forbearance; how does it happen that in this case alone, the rules for the ascertainment of truth, long settled and approved, should be completely subverted, and these sacred considerations disregarded? How does it happen on this occasion that all the presumptions in favor of innocence, should be converted into presumptions in favor of guilt? When did it before happen, sir, that former good conduct and uniform good character, were discarded in an estimate of questionable incidents? When did it before happen, that laudable acts for the detection and suppression of offences, were brought in evidence to prove a criminal participation in those offences? When did it before happen, sir, that a citizen was solemnly declared guilty of a participation in offences, when those who pronounce the sentence, cannot even name or describe the acts amounting to such participation? And when before did it happen, sir, that a citizen was stripped of his honor and his reputation, without the proof of a single act of criminality; and when his amiable and unoffending family was remorselessly involved in his unmerited doom? It surely cannot in this case be intended as an expiatory sacrifice to popular sensibility. It surely cannot be intended as a substitution for the punishment of the arch traitor, who has strangely escaped from the clutches of the law. No, sir, it cannot be ascribed to such motives. It must be ascribed to a patriotic detestation of the whole conspiracy, and a *fatal* inaccuracy in discriminating the innocent from the guilty—fatal indeed, sir, to the accused and his family!—Sir, to behold the honor and fame of an innocent fellow citizen thus sacrificed, is an awful spectacle. I acknowledge that my feelings are much excited by a contemplation of the novel and extraordinary scene before us; but I hope the Senate will not accuse me of an attempt to influence their feelings in a case, where the judgment ought to be so materially consulted. No, sir, I have no such design. I have only indulged the honest impulse of my own. I hope at the same time, sir, that my opinions are not to be the less respected, because they are approved by my feelings. I should suppose that the *union* of judgment and feeling, would give a more sacred sanction to opinions *it* approved. I will, however, indulge myself no further in this investigation; but conclude with observing, that I shall vote against the resolution, solely from the conviction of the innocence of the accused.

St. Andrew's Society.

A Stated meeting of the Society will be held in the house of William Rhodes, in George Town on Friday next, of which the Members will please to take notice.

JOHN MURDOCH, Sec.

August 17—2t

THE COMMISSIONERS

APPOINTED to open books in the city of Washington for subscriptions to shares in the "*Columbia Manufacturing Company*" give notice that the books were this day opened at the Office of the Clerk of the Circuit Court, and will remain open a [illegible] the requisite number of shares shall be subscribed for.

W. CRANCH,
WM. [illegible]
GEORGE [illegible]

August 1, 1808.