

the scale of proximity between the accessory and principal must be extended in proportion to the extent of the theatre of the treason; and that, as the prisoner must be considered as legally present, he could not be an accessory but a principal. If I have succeeded in this, I have in fact proved that his conduct cannot be deemed accessorial.

But an error has taken place from considering the scene of the overt act as the theatre of the treason, from mistaking the overt act of the treason itself, and consequently from referring the conduct of the prisoner to the acts on the island. The conduct of Aaron Burr has been considered in relation to the overt act on Blennerhassett's Island only; whereas it ought to be considered in connection with the grand design, the deep plot of seizing Orleans, separating the Union, and establishing an independent empire in the west, of which the prisoner was to be the chief. It ought to be recollected that these were his objects, and that the whole western country, from Beaver to Orleans, was the theatre of his treasonable operations. It is by this first reasoning that you are to consider whether he be a principal or an accessory, and not by limiting your inquiries to the circumscribed and narrow spot in the island where the acts charged happened to be performed.

Having shown, I think, on the ground of law, that the prisoner cannot be considered as an accessory, let me press the inquiry whether on the ground of reason he be a principal or accessory; and remember that his project was to seize New Orleans, separate the Union, and erect an independent empire in the west, of which he was to be the chief. This was the destination of the plot and the conclusion of the drama. Will any man say that Blennerhassett was the principal, and Burr but an accessory? Who will believe that Burr, the author

and projector of the plot, who raised the forces, who enlisted the men, and who procured the funds for carrying it into execution, was made a cat's-paw of?

Will any man believe that Burr, who is a soldier, bold, ardent, restless and aspiring, the great actor whose brain conceived, and whose hand brought the plot into operation, that he should sink down into an accessory, and that Blennerhassett should be elevated into a principal? He would startle at once at the thought. Aaron Burr, the contriver of the whole conspiracy, to everybody concerned in it was as the sun to the planets which surround him. Did he not bind them in their respective orbits and give them their light, their heat, and their motion? Yet he is to be considered as accessory, and Blennerhassett is to be the principal!

Let us put the case between Burr and Blennerhassett. Let us compare the two men and settle this question of precedence between them. It may save a good deal of troublesome ceremony hereafter.

Who Aaron Burr is, we have seen in part already. I will add, that beginning his operations in New York, he associates with him men whose wealth is to supply the necessary funds. Possessed of the mainspring, his personal labor contrives all the machinery. Pervading the continent from New York to New Orleans, he draws into his plan, by every allurement which he can contrive, men of all ranks and descriptions. To youthful ardor he presents danger and glory; to ambition, rank and titles and honors; to avarice the mines of Mexico. To each person whom he addresses he presents the object adapted to his taste. His recruiting-officers are appointed. Men are engaged throughout the continent.

Civil life is indeed quiet upon its surface, but in its bosom this man has contrived to deposit the materials which, with

the slightest touch of his match, produce an explosion to shake the continent.

All this his restless ambition has contrived; and in the autumn of 1806 he goes forth for the last time to apply this match. On this occasion he meets with Blennerhassett.

Who is Blennerhassett? A native of Ireland, a man of letters, who fled from the storms of his own country to find quiet in ours. His history shows that war is not the natural element of his mind. If it had been, he never would have exchanged Ireland for America. So far is an army from furnishing the society natural and proper to Mr. Blennerhassett's character, that on his arrival in America he retired even from the population of the Atlantic States and sought quiet and solitude in the bosom of our western forests.

But he carried with him taste and science and wealth; and lo, the desert smiled! Possessing himself of a beautiful island in the Ohio, he rears upon it a palace and decorates it with every romantic embellishment of fancy. A shrubbery that Shenstone might have envied blooms around him. Music that might have charmed Calypso and her nymphs is his. An extensive library spreads its treasures before him. A philosophical apparatus offers to him all the secrets and mysteries of nature. Peace, tranquillity, and innocence shed their mingled delights around him.

And to crown the enchantment of the scene, a wife, who is said to be lovely even beyond her sex, and graced with every accomplishment that can render it irresistible, had blessed him with her love and made him the father of several children.

The evidence would convince you that this is but a faint picture of the real life. In the midst of all this peace, this innocent simplicity, and this tranquillity, this feast of the mind, this pure banquet of the heart, the destroyer comes; he

comes to change this paradise into a hell. Yet the flowers do not wither at his approach. No monitory shuddering through the bosom of their unfortunate possessor warns him of the ruin that is coming upon him.

A stranger presents himself. Introduced to their civilities by the high rank which he had lately held in his country, he soon finds his way to their hearts by the dignity and elegance of his demeanor, the light and beauty of his conversation, and the seductive and fascinating power of his address. The conquest was not difficult. Innocence is ever simple and credulous. Conscious of no design itself, it suspects none in others. It wears no guard before its breast. Every door, and portal, and avenue of the heart is thrown open, and all who choose it enter. Such was the state of Eden when the serpent entered its bowers.

The prisoner, in a more engaging form, winding himself into the open and unpractised heart of the unfortunate Blennerhassett, found but little difficulty in changing the native character of that heart and the objects of its affection. By degrees he infuses into it the poison of his own ambition. He breathes into it the fire of his own courage; a daring and desperate thirst for glory; an ardor panting for great enterprises, for all the storm and bustle and hurricane of life. In a short time the whole man is changed, and every object of his former delight is relinquished. No more he enjoys the tranquil scene; it has become flat and insipid to his taste. His books are abandoned. His retort and crucible are thrown aside. His shrubbery blooms and breathes its fragrance upon the air in vain; he likes it not. His ear no longer drinks the rich melody of music; it longs for the trumpet's clangor and the cannon's roar. Even the prattle of his babes, once so sweet, no longer affects him; and the angel smile of his wife,

which hitherto touched his bosom with ecstasy so unspeakable, is now unseen and unfelt.

Greater objects have taken possession of his soul. His imagination has been dazzled by visions of diadems, of stars, and garters, and titles of nobility. He has been taught to burn with restless emulation at the names of great heroes and conquerors. His enchanted island is destined soon to relapse into a wilderness; and in a few months we find the beautiful and tender partner of his bosom, whom he lately "permitted not the winds of" summer "to visit too roughly," we find her shivering at midnight on the wintry banks of the Ohio, and mingling her tears with the torrents that froze as they fell.

Yet this unfortunate man, thus deluded from his interest and his happiness, thus seduced from the paths of innocence and peace, thus confounded in the toils that were deliberately spread for him, and overwhelmed by the mastering spirit and genius of another—this man, thus ruined and undone, and made to play a subordinate part in this grand drama of guilt and treason, this man is to be called the principal offender, while he by whom he was thus plunged in misery is comparatively innocent, a mere accessory! Is this reason? Is it law? Is it humanity?

Sir, neither the human heart nor the human understanding will bear a perversion so monstrous and absurd! so shocking to the soul! so revolting to reason! Let Aaron Burr, then, not shrink from the high destination which he has courted, and, having already ruined Blennerhassett in fortune, character, and happiness forever, let him not attempt to finish the tragedy by thrusting that ill-fated man between himself and punishment.

Upon the whole, sir, reason declares Aaron Burr the prin-

cipal in this crime, and confirms herein the sentence of the law; and the gentleman, in saying that his offence is of a derivative and accessorial nature, begs the question and draws his conclusions from what, instead of being conceded, is denied. It is clear from what has been said that Burr did not derive his guilt from the men on the island, but imparted his own guilt to them; that he is not an accessory, but a principal; and therefore that there is nothing in the objection which demands a record of their conviction before we shall go on with our proof against him.

But suppose you should think otherwise, suppose you were of opinion that on principles of law and reason (notwithstanding the seeming injustice and inhumanity of considering him as inferior in guilt to them), Aaron Burr was not a principal, but an accessorial offender in the treason; would you, for that reason, stop the evidence from going to the jury! Now, to inquire whether the conduct of Aaron Burr makes him liable as a principal or accessory is only arguing in a different shape the whole question whether he has committed an overt act of war or not. The jury are to consult and decide whether he be a principal offender or not. Whether he be a principal or accessory is a question of fact which they are sworn to decide. The court must judge of the weight of evidence before it can say that the accused is either a principal or accessory. Suppose one part of the evidence contradicts another. Is it not judging of the weight of evidence to decide whether he be a principal or accessory? If it be not, I know not what judging of the weight of evidence is. Nothing is more peculiarly within the exclusive province of the jury than the sufficiency or insufficiency of the evidence.

But the court never says that the evidence is or is not sufficient to prove what it is intended to establish. No court has

such right. The course in such cases is to give instructions in a general charge to the jury after all the evidence shall have been heard. Will you, because of your impressions on this subject, from a merely partial view of the evidence, compel the jury also to decide on that necessarily partial view? If you do, do you not thereby divest the jury of their peculiar functions? Their province should not be invaded. The invasion is big with danger and terror. I trust that you will see this subject in the awful light in which it really stands, and that you will suffer the trial to take its natural course.

Mr. Martin has referred you to a number of cases from Cooper and other authors, but they do not prove the position intended. The court, in all these cases, leaves the jury to decide on the overt act. You will find those cases to amount simply to this: a dialogue between the court and the counsel of the prisoner as to the overt act. The court was required to say whether the overt act were proved or not. There was no judicial determination. The judge merely told his opinion; but he told the jury at the same time that the decision belonged to them and not to him.

There is a wide difference between criminal and civil cases; and as it is of much more importance to preserve the trial by jury in the former, to protect the lives of the people against unjust persecutions, than in mere civil suits, to preserve the rights of property, the constitution has secured that trial in all criminal prosecutions.

Should the court interfere for the purpose of stopping the evidence and to wrest the cause from the jury in favor of the accused, would there not be a reciprocal right? If it can interfere to save the prisoner, can they not interfere equally against him? A thing unprecedented in the annals of jurisprudence. Have the counsel on either side a right to call on the other

side to state all their evidence before it be introduced, and then to address the court without hearing it, if they think they have a better chance before the court than the jury? Has either party a right to substitute the court for the jury, or the jury for the court, at pleasure; to address the court on facts, or the jury on points of law? Such an attempt would not be a greater encroachment on the right of the proper tribunal than the present motion is on the rights of the jury.

