WASHINGTON CITY.

FRIDAY, JANUARY 15.

We have at length the pleasure of announcing the arrival of Mr. ROSE in this city. After the cloud of ephemeral untruths which has so long obscured the public vision with regard to the sources of embarrassment as well as actual situation of this gentleman, his certain arrival at the seat of government may be properly considered as cause of felicitation. We understand that the instructions sent by our government to the Collector at Norfolk, were considered by Mr. Rose as perfectly satisfactory, and that on the 9th inst. he took passage in a packet for this place. On Wednesday, in consequence of the accidental detention of this vessel below Mount Vernon, a barge was dispatched for him from the Navy Yard, (in virtue, we presume, of directions from the Navy department): in which he reached the Navy Yard on the ensuing night. We venture, confidently, to say that every facility, towards his prompt reception, in the power of the Executive, has been rendered.

Extract of a letter from a gentleman at Chillicothe to Mr. Tiffin dated Jan. 3, 1808

"To-morrow the Circuit Court of the United States commences at this place. The Judges have arrived, but Burr and Blannerhasset have not, the general opinion is that they will not make their appearance, the town is full of stangers, many of the members of the General Assembly have gone to private lodgings and the citizens have exerted themselves to make them all as comfortable as possible.

Extract of a letter from Chikago, dated Nov. 23, 1807.

"We learn that the British government of Canada are making every preparation for a war with the United States, that is practicable; they are using all the influence that money and language will have with the Indians, to excite them to hostilities with the U. States; and I am confident they have so far accomplished their object, that if there is a war with Britain, we shall have almost all the Indians of this western world to contend with. They have sent belts and speeches to all the nations and tribes of Indians east of the Mississippi and north of the Ohio, requiring them all to come and see their father the governor of Canada, saying that he has many things of great importance to say to them; that they expect a war with the U.S. and the Indians must all join them; that it is expected they will have to wade up to their knees in blood, and that their great father the King will give them every thing they will require for their services, &c.

"We have now upwards of 1000 strange Indians within 30 miles of this place, exclusive of those belonging here; they pretend that they have come to this quarter for the purpose of hunting, which is a fallacious account indeed; as there are no good hunting grounds of consequence more than what is occupied by the native Indians. Many of them are from Lake Superior, and others from the Mississippi, &c.

"What can be their object time only will determine."

Extract of a letter from an intelligent person residing among the Indians, near Fort Wayne, in the Indiana Territory, dated 5th December, 1807.

"This is to inform you that speeches from the British agents at Malden, are, at this time, passing through this country, informing the Indians, that their Father, king George, had sent seven large vessels to America, loaded with soldiers, to relieve his Red Children from oppression, and restore their country to them again; and inviting them to repair to Malden as soon as possible."

An extract of another letter from a person residing on the borders of Lake Michigan, on whose information confidence may be placed, dated Dec. 3, 1807.

"I hold it my duty to present you my opinion respecting the Indian, called the Prophet, be assured that he is immediately under British influence, and exercising his arts to induce a war against the U. States. How far he will be able to effect the object I am not prepared to determine. The British agent no longer covers his intercourse with the Indians with the common veil of decency; but with exaggerated accounts of the arrival of British forces inviting them from all quarters to war against America."

Having been engaged, on Wednesday, at the Court of Enquiry until some time after the Senate took up the report in the case of Mr. Smith, we are only able to present a general view of their proceedings on that day. The business, we understand, was opened by the Vice-President informing Mr. Smith that this was the day assigned for hearing him by counsel, and desiring him to name his counsel; on which he named Francis S. Key and Luther Martin. It was then moved that the sense of the Senate be taken on permitting Mr. Smith to be heard by the counsel thus named distinctly. With regard to Mr. Key there was no objection or division; on admitting Mr. Smith to be heard by Mr. Martin, the Senate divided, and seventeen members, a majority of those present, rising in the negative, permission was consequently refused. Mr. Key thereupon appeared as counsel for Mr. Smith.

Mr. *Smith* then stated that he had an application to make by his counsel; on which Mr. *Key* rose, and after a few preliminary remarks read an affidavit signed by Mr. Smith, expressing his confidence in being able to invalidate the prominent allegations against him, as exhibited in the report before the Senate, and specifically stating the names of persons who could disprove the charges.

Mr. *Key*, on this affidavit, made an application for allowing Mr. Smith a reasonable time and the proper means for obtaining testimony.

Some progress had been made in the discussion of this application before we entered the Senate chamber. The argument, which subsequently ensued (as well as that, as we are informed, which preceded) was of a desultory character, and by no means sufficiently interesting to give in much detail.

Those who advocated an allowance of the application contended that on a motion of expulsion the accused member ought to enjoy the privilege of vindicating himself by having extended to him the means of obtaining proper testimony; and that although a considerable delay might arise from the exercise of this privilege, yet he had a right to demand it, such delay being a much lesser evil than that of condemning a man of high standing unheard; that to come to a decision without the allowance of this right was virtually to condemn him without a hearing; that the application in its present *general* shape, was the most correct that could be made, as, after agreeing to it, the Senate would be at liberty to fix the time proper to be given, and determine the requisite means for obtaining testimony. They further contended that the Senate possessed the power of enforcing the attendance of witnesses, as incidental to several important powers vested in them by the constitution, without which authority those powers would be idle and altogether inoperative; that in the present instance, however, it might not, perhaps, be necessary to coerce the attendance of witnesses, as it might be agreed to take depositions.

On the other hand, it was said that the application was couched in terms which were too vague and general; it was not denied that a reasonable time and the proper means should be allowed to the accused to make a defence, but it was contended that it became the Senate in the first instance to fix the time and means, instead of adopting an abstract proposition which might by future misconception be productive of great & injurious delay. The right of an accused Senator to all the forms and principles of judicial trial was strenuously denied; and it was insisted that the Senate did not, in such a case, either possess the power of coercing the attendance of witnesses, or of compensating them for their attendance; that in this case such an attempt would be in the highest degree injurious, if not impracticable, as a great number of public men in remote parts of the union were named either as witnesses, or as implicated in the conspiracy.

Of those who, we heard speak, Messrs. *Bayard* & *Hillhouse* expressed the former, and Messrs. *Giles*, *Adams* & *Anderson* the latter opinions. Neither of these gentlemen, however, took the whole ground ascribed to them collectively.

About 3 o'clock a motion was made to postpone the further consideration of the application, and carried without opposition.

It was then determined to print the affidavit of Mr. Smith, & the *second* report of the Select Committee, the substance of which we have heretofore stated.

Yesterday the Senate were engaged until a late hour on the case of Mr. Smith. After a wide debate on a variety of propositions relative to the time proper to be allowed to Mr. Smith to make his defence, and the species of testimony proper to be admitted, and the means of producing it, the various resolutions, with the affidavit of Mr. Smith, were, without a division, referred to a select committee, composed of Messrs. Anderson, Giles, Adams, Crawford, and Bayard.

We shall in a future paper give a sketch of the arguments.

COURT OF INQUIRY *in the case of* GEN. WILKINSON.

On Wednesday, a little before noon, the court was opened; when the Judge advocate said, that having a motion to make which required deliberation, he would move that the court should be cleared. The court was accordingly cleared and remained cleared for near an hour. On the doors being opened, the Judge advocate read the following decision of the Court:

Perceiving the Editor of a public New-paper in the act of taking notes, it was thought proper to consider whether the daily publication of the proceedings was, or was not, consistent with the rules which the impartial administration of justice render indispensable.

The rule in all military courts respecting evidence is, that in order effectually to guard and preserve its purity, no person cited to appear as a witness shall be allowed to be present during the examination of any of the previous wistness.

It would a species of subornation and afford a valid objection to testimony, if a witness by hearing all that had been previouly testified, should model his evidence by that of the witnesses before examined; [see Tytler p. 130.] yet who can say that this previous testimony would not influence even well intentioned witnesses? and it would certainly give consistency and uniformity to any combination that impure witnesses might make, either to persecute an accused person, or save a criminal.

By the Constitution of the U. S. no man can be convicted of treason without two witnesses to each overt act; the probable intention of this was to prevent combination, for by examining two witnesses to any one act separately and apart from each other, a combination would be detected; but if a transcript of the previous testimony were put into the hands of a succeeding witness, this wise provision in the Constitution would be rendered nugatory, and the injury done to the administration of justice would be the same, whether the effect were in the nature of mercy or cruelty.

It might be said that in crowded courts of justice persons cited to be witnesses *are* generally present when previous witnesses are examined; but to say nothing of the nature of the case where owing to a numerous audience, the court cannot tell *who* are present, there is a wide difference between what may be retained in the memory by hearing what is delivered, and having a fair copy which might be learned by heart; indeed the chance of inaccuracy in remembering oral testimony is so great, that the discovery of a combination is not merely probable but almost certain by the confusion such witnesses would be liable to.

Military courts generally sit in garrisons or camps, and naval ones always sit on board of ships; under these circumstances persons cited to be witnesses are always kept out of court while previous witnesses are under examination; and where the audience happens to be numerous or from any other cause there is a possibility of such evidences being accidentally present, the Judge Advocate expressly gives public warning for them to retire.

No witness is allowed to read his testimony, and so cautious are courts, and so anxious to guard against subornation that preliminary questions, whether the witness has been instructed what to say, are sometimes put: all a witness can be allowed is to recur to notes in cases where detail as to dates, and such like minutiae, are necessary to establish a fact with accuracy.

A court of enquiry is in its nature a preliminary court, and may be succeeded by a court of judgement. It therefore has no power to inflict punishment, nor even to give opinion as to the guilt or innocence of the accused, unless specially required so to do. If therefore the defendant now before this court were to be hereafter brought before a court martial, the publicity of the testimony would be a violation of the fundamental principles of justice, which (as far as human nature is capable) requires that the mind of the Judges should be uninfluenced by any previous information on the subject:—The publication of matters within the jurisdiction & in possession of a court is esteemed a contempt, and attachments have issued on the publishers who being brought before the court have been sentenced to imprisonment.

From the foregoing it is clear that no person not a member of the court, except the prosecutor and the defendant, can be allowed to take notes of the testimony; but it may be asked why not publish the proceeding daily under the restriction not to note the testimony.

In answer to this it may be asked how is such a restriction to be carried into effect? Once admit the writer and the power is in his own hands. But how could the best intentioned writer avoid running into the testimony in detailing the proceedings, which are made up of testimony, observations upon it, questions arising out of it, and decisions which would convey no idea if unaccompanied by it. What then is the reporter to publish? The mere ordinary forms usual in all courts? This would not be considered by the public as worth the reading; it might indeed excite curiosity but could never satisfy it.

Besides the foregoing reasons the court are uninformed of any precedent in this or any other country where the proceedings of a court of enquiry were published before they were concluded and submitted to the authority by which the court was constituted.

The Court have therefore decided that no person, except he be either a prosecutor or defendant, can be permitted to take notes at any of its sittings.

NOTE.—*This decision arose from the Editor of the National Intelligencer having attended the sittings of the Court, with the view of taking down their proceedings and publishing them.*

The court then adjourned to Friday at 10 A. M.

We understand that Messrs. John Randolph, Daniel Clarke, and John Rowan, have been notified to attend as witnesses.

DEBATE in the SENATE of the UNITED STATES on the report relative to the expulsion of JOHN SMITH.

THURSDAY, JAN. 7.

Conformably to a previous order of the Senate, the report of the select committee was read—Mr. Smith being at this time in his seat.

MR. ADAMS observed that on Monday a letter had been received from Mr. Smith addressed to the Senate, which had been then read, and on which it was perhaps proper that some order should be taken before the report was acted upon. Several requests were made on which some determination ought to be previously had.

[Mr. Adams here read the letter.]

Mr. A. proceeded by observing that the letter represented that all the evidence adduced by the committee, excepting the two bills of indictment, was either taken exparte, or without allowing Mr. S. a sufficient time to interrogate the witnesses; that it asked for the aid of counsel; for time; and for the means of adducing proof in his defence. It represented that a more summary procedure was recommended in the report. It admitted that there was no necessity of a legal conviction previous to the expulsion of a member of the Senate: but contended that proof of the facts charged must be first established in a legal way; and that the Senate could then only exercise this constitutional right of expulsion.

Mr. A. observed that the letter contained two distinct requests; one to be heard by counsel, the other, to have an opportunity of a trial under the same rules of evidence as prevail in judicial tribunals.

Mr. JOHN SMITH rose, and said he would submit the requests he had to make in the form of a motion; which he accordingly did in the following terms.

That John Smith be informed specifically of the charges against him; that he be allowed to make a defence against such charges, and have process to compel the attendance of witnesses, and the privilege of being heard by counsel.

The *Vice President* enquired whether this motion were seconded. After pausing for a reply he said he should, without a second, consider it as an application of Mr. Smith to the Senate.

Mr. ANDERSON intimated an opinion that it would be best to consider the requests distinctly.

The *Vice President* having read the *first* request—

Mr. ADAMS said he had been looking for precedents that bore on this case. With regard to the first and second requests, he was of the opinion that it was neither consistent with the powers of the Senate, or proper, to grant them. With regard to the third request there was a precedent in favor of allowing counsel on one point, viz—to shew cause why the report of the committee should not be adopted. [Mr. A. here cited the case of Wm. Blount to this effect.] To the last request, therefore, he had no objection. To the two other requests he had an objection. He considered it neither necessary or proper that the specific charges should in such a case be made out. The charges in this case were repeatedly stated in the report to be founded on the bills found by the grand jury. These, and the evidence on which they are sustained, had been communicated to Mr. Smith.

As to the request to be entitled to the benefit of all the rules of evidence enforced in courts of law, and to compulsory process for the attendance of witnesses, Mr. Adams had great doubts whether such a power existed in the Senate. The compulsory process issued by a court was a supoena to a judicial officer of the United States commanding the witness to attend in person. If this order was not obeyed, the court had power to issue an attachment to bring the witness into court by force: and the laws had provided that every such person should be compensated. He would ask, by what process, and under what penalties the Senate could compel the attendance of witnesses. If they refused to attend, would it be said the Senate possessed the power of issuing an attachment for contempt.

Mr. Smith complains that the proceedings against him have been exparte. Mr. Adams said they must necessarily be so on a question of expulsion. If the member were tried as before a court, there must be a prosecutor. Who was in this case the prosecutor? There was none unless they should appoint an Attorney General.

Another complaint, made by Mr. Smith, was the taking depositions as evidence. But if we go by the rules of courts, not only these depositions, but the message of the President [containing the proceedings in the case of Burr] are mere waste paper. We must have all the witnesses here.

Another thing. It had been decided in the courts that the President was liable to process, and that he might be required to adduce papers. If this rule apply in this case, we can receive no communication from the President as testimony. We must issue our supoena duces tecum, to bring him before us, and have him sworn. Mr. A. would ask gentlemen whether this was practicable, or possible. He conceived not.

As to the reasoning in the report he should say no more about it. The letter and spirit of the Constitution, and every precedent that could be adduced, concurred to shew that proceedings of this kind must be summary, and, consequently were not in the least analogous to the rules of courts.

Mr. Smith had charged the committee with an error in citing the case of Blount in support of their opinion. But the report stated that Mr. Blount was called to give evidence relative to a letter with the writing of which he was charged. Was that such evidence as would be admitted in a court of justice?

The report also stated that in that case a comparison of hands had been admitted as evidence, which would not have been admissible in a court of law. A witness would be allowed there to express his belief that such were the hand writing of another; but there was a great difference between this and a comparison of hands. In the case of Algernon Sidney, the latter species of proof, it was true, had been admitted; and he had been convicted and executed; but it was known that the admission of this species of evidence had afterwards been the ground for a reversal of his attainder.

MR. MITCHILL remarked that the authority under which the Senate were acting was given by the constitution, which provides that "each House may, with the concurrence of two thirds, expel a member." This was a broad power; and there was no particular form or course prescribed for its exercise. The request of Mr. S. is to have the proceedings *here* similar to those established in the judicial courts. Mr. M. said he did not conceive that the organization of the Senate admitted this. He certainly considered himself in a light very different from that of an accuser. It was sufficient for him, on this point, that if the gentleman wished a trial, he might have had it at Richmond, by giving his attendance there, instead of remaining at a distance. In this way he might have undergone a purgation by law on specific charges. Why he had not done this, he could himself best say.

Mr. M. viewed the power of expulsion as one which was to be exercised under a sound discretion, and on the principles of honor and justice, and that the Senate, in discharging their duty, were bound by higher rules than the mere technical rules of law, by the great rule "to do unto others as you would others should do unto you." The organization of the Senate was such as to preclude it from sitting as a court of justice in such a case. Should it resolve itself into a judicial form, the trial of a member would be protracted to an endless length. He could have no idea of their getting through the case this session, and the member might in all probability continue to hold his seat until the expiration of the time of his appointment. For these reasons he believed that another course than that desired by the gentleman must be taken; one, which, although not conformable to the proceedings of a court of law, would be equally conformable to the principles of justice.

Mr. M. said that with regard to the conduct of the principal in this conspiracy, there could be no hesitation in the mind of any man in believing that the design was to sever the union, and to invade the territory of a foreign power at peace with the U. S. and that the circumstances of the acquitals at Richmond were such that the impression was very strong on the public mind that the individuals acquitted had not wrought an exoneration from suspicion. To these circumstances the committee in their report refer, so far as relates to an alleged accomplice.—