

criminal in the lawless career of the rioters, and defining the offence to be a misdemeanor, excludes the idea of its being a treason. Let us turn to the act commonly called the sedition act. Congress have there declared; that fine and imprisonment should be the only punishments for the offence which appears on the evidence to have been committed by the prisoner. I ask you, gentlemen, to reflect one moment upon the testimony that you have heard upon this trial, while I analyse the first section of the law: Has John Fries been guilty of a combination and conspiracy to obstruct the execution of the laws? In this act, his punishment is prescribed. Imprisonment and fine. Did he intimidate a public officer? Here is the punishment. Is there in the whole transaction any counselling, or advising, or any efforts towards producing an insurrection, it is punishable by this law. The law contains these descriptions of offence: First, combination with intent to oppose any measures of government, or to impede the operation of the laws of the United States. This offence, notwithstanding its generality, is only punishable with fine and imprisonment. Secondly, an intimidation of persons, who are applied to for the purpose of executing a law, so as to prevent their accepting the office, or having accepted it, to deter them from discharging the duties annexed to it. This is the offence that will be urged upon you: all the disturbances of Northampton county; all the tittle tattle and alarms of commissioners and assessors, will be arrayed against the unfortunate prisoner to affect his life: and the aggregate will be swelled into the size, and depicted in all the malignity of treason, though the law says it is nothing more than a misdemeanour. "Yes," you will hear it exclaimed, "Fries is the leader; he is the very life of the mob: it was he who advised, he who addressed, he who alarmed, he who intimidated, he who rescued!" Did he so? Then this law will punish him for a high misdemeanour; but I can discover no law to punish him for treason. I am sensible that if I err in my opinion, those who prosecute will be able to discriminate, between the case proved by the evidence, and the case defined in the sedition law. I have not the ingenuity to perceive it; and I hope you will only give that weight to the respective arguments which they respectively merit. Nay, I am persuaded, that the humanity of the prosecuting council, will induce them to abstain from any harsh exposition of the principle, as well as from any strained application of the evidence, involved in the controversy. The law provides for combinations formed for all these purposes, whether they have been carried into effect or not, the simple punishments of fine and imprisonment: Simple do I call it! respecting this man, do we not know how exemplary it may be rendered. Suppose the judge was to impose a fine of 5000 dollars, can 5000 dollars come from the purse of John Fries? And if it cannot come from his purse, then the power of remission is in the chief magistrate alone; and unless he thinks that the public will sustain no injury from the convict's liberation, his sentence of five years may be protracted to an imprisonment for life, and the total deprivation of the means by which his family can be rescued from wretchedness and ruin. It is not therefore, a simple punishment. But, permit me to repeat, that every description that can be given of the disturbances in the northern counties, is to be found in the law I have referred to; and if the legislature, which must be supposed to be as wise, as guarded, and as well-informed, as courts, or juries, in regulating the interests of the community, has thought proper

thus to describe the crime, and prescribe the punishment, shall we presume to be more wise, and assume a power to be more penal? If the legislature was contented to class these actions with misdemeanours, shall the designation be expunged by this court, or arbitrarily transferred to the catalogue of constructive treasons? Shall a jury sitting here;—shall a judge sitting there;—declare that though the offence is unequivocally pointed out by law, yet in their ideas of distributive justice, the penalty ought to be enhanced, and the man ought to be hanged! In every authoritative book, in regard to criminal cases, the most liberal interpretations are given to laws which mitigate punishments. Then let us suppose that the legislature when the sedition law was passed, contemplated the crime of treason without a view to the distinction of direct and constructive treason. The crime is defined by the constitution, but the punishment is not; and, therefore, an early act of Congress, agreeably to the power vested in that body, affixed the punishment of death: but, it will not be denied, that Congress might at that time have inflicted only the punishment of fine and imprisonment, as is the case in the penal code of Pennsylvania. If, therefore, Congress has the power to modify the punishment and if we discover in the Sedition act a full description of treason, whether direct or constructive, ought we not to consider it, upon the liberal principle of expounding penal statutes, as an intended mitigation of the punishment, and a virtual repeal of the pre-existing sanctions? If there is any inconsistency in the two laws, so that they cannot stand together, the former must be presumed to be annulled by the latter, and the greater punishment is superseded by the less, because enacted subsequent to it. The word *intimidate*, used in the Sedition act, is of extensive meaning; it is not a mere feeling which would arise from saying you will suffer among your fellow citizens; it is a feeling which operates upon the mind from an apprehension of personal danger, and may be the effect of every species of force or menace. 1 Hale's pleas 3 and 6 Bacon 513. These authorities show what arraying in arms is, with a view to commit a crime; but prove that if the intention is not treasonable, it is not treason, however violent the act might be, and whatever may be the military array of the actors; and the intimidation to which the law applies, embraces every description of force that can possibly be contemplated, in order to accomplish the meditated purpose;—the obstruction of process,—the rescue of prisoners, the surrender of office;—or the resistance of a law. Foster 219 Sect. 10: “Attacking the king's forces in opposition to his authority upon a march, or at quarters, is levying war against the king. But if upon a sudden quarrel, from some affront given or taken, the neighbourhood rise and drive the forces out of their quarters, that would be a great misdemeanour, and if death should ensue, it may be felony in the assailants, but it will not be treason, because there was no intention against the King's person or government.”

1 Hale's pleas 146. “If any of the King's troops be killed, it is felony.” An open resistance to the justices of Oyer and Terminer in the county of Surry was felony. Here a sudden attack upon the King's troops on their march, though this must be considered as a direct attack upon the government, yet, if any quarrel arise between them and the people, it is no treason. So, in the present instance, all the object of these people was to obtain a little time to procure information. To that we attribute their

conduct toward Rodrick Childs and other officers : it arose from the impulse of the moment, and though directed against public officers, ought not to be denominated levying war against the government. The whole purpose and extent of every violent word or gesture, terminated in the intimidation of those officers. Do we hear a variety of men whispering to Eyerly he was in danger of his life ? Look at the fact : he goes the rounds with the marshal, to serve the process against the very men, who are alleged to have pronounced the threat, yet no danger attends him : he appears repeatedly at the windows at Bethlehem amidst the tumult, yet no outrage is offered : the active leaders of the mob level guns at him, yet not a trigger is drawn ! It was in short, a mere system of *intimidation*, without a design to use force, much less to commit treason. Nay, I will pledge myself in saying that there was great art used on the part of the prisoner to accommodate the matter with the officers in every stage of the transaction, and to prevent personal injury or any kind of violence. The case of the judges of Oyer and Terminer, referred to in Hale, is surely as strong as the present. Those judges were as much authorized then, as the assessors are now ; and the non-reception, or acknowledgment of both, as public functionaries was the offence.

The acts committed during this scene of tumult, ought to be punished, and I hope will be punished ; but as acts of riot and sedition, not as acts of treason.

I am sensible that it is possible to draw distinctions, to refine upon the meaning, and pervert the language of the act : but on principles of humanity, I am confident the gentlemen opposed to us will abstain from a mere exercise of ingenuity and eloquence, while we, who contend in favor of life, have a claim to every indulgence ; a right to the benefit of every shade of discrimination.

It has been laid down by the opposite council, that there must be generality of object, in order to constitute the crime of treason. If an insurrection takes place, by which it is designed to oppose all the laws, it needs no reasoning to convince any man that a subversion of the government is intended, and that this is treason : But this I contend, is the only species of treason which ought to be recognized under a republican form of government, and to which alone the language of our constitution can be fairly applied. I am justified in the position, because the legislature has asserted it. If the constitutional language may be satisfied in that manner, the diversity introduced by the legislature ought at least to be judicially respected ; so that when the legislature having provided the punishment of death for levying war, provides a different punishment for offences, which according to the English books would be construed into that very species of treason, we are bound to say that the English constructions are fallacious and that taking advantage of Lord Hale's advice, the framers of our constitution have not only rejected the past decisions (by which they were never bound as the English judges are) but have guarded against the accumulation of interpretative treason. When, therefore, I say that to oppose all laws, and to resist all the authority of the government, is a palpable levying of war, which requires no technical aid to define or explain, I go as far as the terms of the constitution necessarily demand ; and I think we are not authorized to go farther. I think I am right, also, when I say, that the legislature has distinguished the offence committed by the prisoner, from treason, and provided a different punishment for it.

Recurring to the western trials, let me repeat that the direct, the avowed object of the insurrection of 1794, was to suppress all excise offices, and to compel a repeal of the excise law ; but can it be pretended that on that occasion, or on any occasion, a verbal menace to an officer, the rescue of a prisoner, or a temporary resistance to the execution of a law, arising from a doubt of its existence, was declared to be treason ? Where shall we stop gentlemen, if such constructive treasons are allowed ? It is impossible for human genius, or human study to provide a barrier against the consequences. The framers of our constitution, the legislature of the union, one would imagine had taken every practicable precaution against the admission of constructive treasons ; but if we are to adopt the expositions, and the principles of exposition, of the English courts, the wisdom of our own country has been exercised in vain. If a forcible opposition to the partial execution of a single law, by a particular set of officers, is treason as the gentlemen allege, with a parity of reason, it may be pronounced, that a non-compliance with any lawful requisition of an authorised officer, constitutes the same crime. Open that door, and the mischief will be carried much farther, will become more dangerous to civil liberty, and personal safety, than any thing which, the metaphysical disquisitions on the crime of compassing the King's death, have generated in England. If any act that will interfere with carrying the laws and measures of government into effect, is treason, what a privileged order our public officers instantaneously become, what an enviable security they attain ! Upon the whole discussion of this point of law, then, I conclude, that on the legitimate definition of levying war as applied to our form of government ; and on the authority of the American legislature, no treason has been committed. There was no force employed against the government ; no general object to overthrow the constitution and laws ; no direct attempt, by arms or intimidation, to compel Congress to repeal the obnoxious act : but the whole was a great and unjustifiable riot—seditious in its origin ; daring in its progress ; and iniquitous in its effects.

I proceed to the consideration of another point of law, and enquire that supposing this case to be treason, how is it to be proved ? The first clear rule is, that the overt act must be proved in the county in which it is said to have been committed, as on the present indictment in the county of Northampton. 4 Hawkins ch. 46. sect. 184, 5, 6. p. 454. It was mentioned by Mr. Sitgreaves, that the specific overt act, with which Fries is charged, was rescuing the prisoners at Bethlehem ; but this does not appear on the face of the indictment. If, however, that act was treason, then not only the act, but the traitorous intention, must be proved in the proper county, as the intention and the act, are both essential to the crime. Now, for a moment, overlook the general narrative of discontents and disturbances, dismiss from your minds all the previous, and all the subsequent transactions, and confining your ideas precisely to the affair at Bethlehem, pronounce whether there appeared at that time and place any thing more than a design to rescue the prisoners ? It is, I assert, my right to call for full proof of guilt, where the indictment states that the guilt was incurred. At Bethlehem, then, from the commencement to the close of the tumult, who can trace an act of levying war against the United States ? The truth is, that before John Fries came on the borders of Northampton county, the military array, of which you will hear a great

deal by and by, had taken place; and the people had got to the bridge of Bethlehem. But there is no evidence that any of the active men in opposing the assessors, were present at the bridge, at the time the rescue was contemplated; and from the first convening at Schwartz's 'till the moment of their taking the prisoners, what were the views of the party, as declared to Messrs. Henry, Balliott, and Eyerly? Why, that they came there simply to rescue the prisoners. The sincerity of the declaration is corroborated by the powerful consideration, that if there was a design to annihilate the laws, or to persecute and injure the officers, the opportunity as I before observed, could never be more favourable to ensure success. Such facts speak stronger than the strongest language: And is it not conclusive, that a rescue only was in view, when we hear, that in less than ten minutes after the surrender of the prisoners, the whole multitude dispersed, leaving the commissioners, assessors, justices and marshal uninjured and unannoyed upon the spot? There is one incident, however, which, perhaps you may notice: one of the two persons who were detained at Bethlehem in the morning, on being asked how he came there, said that he understood there was to be a meeting about those laws, and that he came to see what would be done about them; but with this single exception, it is observable that not a word was said at Bethlehem respecting the existence, execution, obstruction or repeal of any unpopular act; not a word escaped but in relation to the rescue of the prisoners. In that rescue, the prosecuting council say they discover the generality of object, which even the English doctrine calls for in the definition of treason by a constructive levying war; and insist that the particularity of object, which would extenuate and reduce the crime, is not to be found. Is it so contended, because the demand of surrender, was not founded on a tie of consanguinity? because an uncle, a brother, a father, a son, were not imprisoned? This, surely, is not a legal idea of particularity. But all the law regards is to be found in the present case. The party assembled with a view to release a particular set of prisoners, and not prisoners generally. Shankweiler was one who was there; three or four came with him to see that he should not be used ill, and to offer bail for him. What was their language at the bridge? "They have taken our *neighbours*; but if they have done wrong, they ought to be tried in their own county." That they should be transported to Philadelphia was the great objection—was the motive to the rescue: that they have been transported to Philadelphia, is a great inconvenience, is the principal difficulty in the defence.

Thus, then, in point of proof the prosecution is defective: it is not merely an act of violence, but a traitorous intention that must be shown at the place where the violence was committed. No such intention has appeared in evidence; while on the contrary we have pointed you to the parts of the evidence which prove that the people did every thing that they intended to do, and the moment they obtained their object, dispersed. With this view of the subject, why does the government prosecute for a capital offence? If this prisoner is acquitted on the present indictment, there is no probability of his escaping with impunity: though his life may be spared; there is no doubt but the attorney of the district, will present a bill against him under the act to which I have so repeatedly referred.

On the principle of the law that I have stated, 'till the overt act is completely proved in Northampton, the intention as well as the deed, I

take it you cannot go to another county for evidence, by proving there an independant and substantive act of treason. It is immaterial to Fries, as it respects this charge, what he did in the county of Bucks. He met at Kline's: and though I will deny the impropriety of his conduct at that meeting, no lawyer will assert that it amounted to treason. He did not meet at Mitchel's; but wherever he did attend, we cannot perceive any thing in his conduct, but a vague dislike of the land tax, and a steady regard for the safety of the assessors. It is immaterial what he did, and what he said, in the county of Bucks: the offence must be proved in all its parts in the county of Northampton.

And here, gentlemen, I am naturally led to guard you against another instrument in the system of state prosecutions, called accumulative treason, as dangerous and as unjust an instrument as constructive treason, of which I have already spoken. Accumulative treason, is, the artful combination of a number of circumstances, which in their original, unconnected situation were unimportant, but being thus combined become gigantic, and frightful to the eye. Mere indiscretions committed at different times, in different places, and under various impulses, collected into a mass, and exhibited at a moment, may be made to assume the complexion of the most odious crimes. None of the acts committed out of Northampton ought to be brought into the account against the prisoner, till, at least, the act of treason has been proved, legally proved, to have been committed there. For those extraneous acts, if they do not amount to substantive acts of treason, indictable where they were committed, he may be rendered responsible under the sedition law, or under the general law against rioters. If his actions in another county ought not to be taken into view, the reason is stronger for excluding his words. Words spoken may be an high misdemeanour, but can never amount to treason. 4 Black Com. 259. and yet it is attempted to prove the present charge by the aid of loose, equivocal, and ambiguous conversations. With respect to such evidence, arising under circumstances that are not clearly stated, communicated without regard to the order and connection of facts, and depending on the memory of persons agitated by terror, or by resentment, can it be necessary to caution an upright and enlightened jury? Take them, if you will, the language of the law declares that they cannot constitute treason; but the language of humanity instructs you totally to disregard them.

Let me advert to another circumstance with respect to the evidence. It is not necessary laboriously to distinguish what is hearsay evidence and what is not: and I admit that the testimony, which applies to a description of the general state of the country, is not to be disregarded, because it is of the nature of hearsay. Upon the detail, however, of specific facts, the rule is strict and beneficial. Whatever was heard from a second person, when that person might himself have been brought as a witness; or whatever has passed in relation to the prisoner, at a time when he was absent; the law will not allow to be the foundation of a verdict upon the present trial. Included in this description is every piece of information, all the tittle tattle, that passed between the subordinate and principal assessors or commissioners. Again: the assessors told the commissioners that the law could not be executed; but this is matter of opinion, which must be founded on facts; and you must take the facts, not the opinion, as your guide. Nor can a correspondence official or unofficial, between pub-

lie officers, be estimated as evidence on the trial of a third person. If it can be estimated as evidence, then it will be always in the power of the officers of government, to fabricate and produce evidence that will inevitably convict an obnoxious individual. God forbid that ever this should be the case here ; but the temptations to an abuse of power are not wanting. Without meaning a reflection upon Mr. Eyerly, it cannot be overlooked, that he, who was the commissioner for executing the unpopular law, had been recently an unsuccessful candidate for Congress ; and if a base motive could actuate him, do we not perceive his opportunity, to avenge the defeat upon the active opponents of his election ? Official reports are necessary to maintain the connection between officers of different grades ;—the facts stated in them are binding upon the reporters, and the reports are themselves sufficient evidence to be acted upon by the officers to whom they are made : but was it ever tolerated, was it ever conceived, that an official statement of facts should be conclusive in any case, even in a case of property, affecting the rights of a private citizen, in a court of justice. The facts depend upon books and vouchers, constituting an official record, and the books and vouchers, or authenticated copies, or exemplifications, can alone be admitted as legal evidence upon a trial at law.

There remains another point of law, to be introduced to the notice of the court and jury. I take it for granted, that no man can be said to oppose a law, unless the law exists ; no man can oppose a measure of government, unless his acquiescence is lawfully required. The judges will not view my position in the mistaken light which Mr. Attorney did, that the commission of every officer from the assessor to the President must be produced, before any act in execution of the land tax law could be performed : No, Sir ; I contend not for so extravagant a doctrine : but I assert, that every man who resists a public officer *de facto*, and in consequence of the resistance is indicted, has a legal, settled right to demand upon his trial, proof of the authority of the officer. In the first instance, the party who resists, does it at his peril ;—but if the person claiming to act as an officer, had no warrant, or commission, the resistance was justifiable, and the defendant must be acquitted. Let us apply this principle. The law being enacted by congress, it is an incontestable, though sometimes harsh rule, that ignorance, shall be no excuse for disobeying it : but suppose that a man, calling himself an assessor should come into my house, and insist on going from room to room to take the rates, without shewing me his warrant ; and that in consequence of his refusal I should turn him out, and he should prosecute me ;—what is the result ? If he was *de jure* an officer, I am liable to the penalty of the act ; but if he was not, then I am not only innocent, but entitled to an action of trespass against him for his intrusion.

We have, with this view of the case, repeatedly called for proof of the appointments of the assessors, in conformity to the act of Congress. Such appointments could only be legally made by a majority of the board of commissioners for the division, at a regular meeting. Now, as the evidence proves, that one of the assessors was not so appointed ; and that bundles of blank warrants were left in the hands of each commissioner, to be filled up with any names he pleased ; which took in one instance a commissioner assigned to an assessor ; sufficient is shewn to justify our exacting on a capital trial, the best evidence of regular appointments, that the case will

admit : the best, the only evidence, is the record of the commissioners, which the law directs to be kept by the clerk of the board. There can indeed, be no room to justify the transfer of the discretion and authority, vested in the commissioners by Congress : it is not like the common case of blank certificates, to authenticate, ministerially, the signature of a magistrate, notary, &c. which, I as a public officer have often filled up on behalf of the Governor : but it is the case of a discretion, arising from the judgment, information, and integrity of the party, who is confidentially appointed to exercise it ;—such a discretion as is vested in the Governor to appoint Judges, of which he could not have transferred to me, in the shape of blank commissions, without, I believe, exposing both of us to the jeopardy of impeachment.

2. Having thus delivered my sentiments upon the points of law, that arise on the evidence, I shall now enter upon the consideration of the second proposition,—“ the general state of the discontents in the northern counties ; and how far the rescue at Bethlehem was connected with “ the previous disturbances.”

And here I find, gentlemen, that the source, from which proceeds much if not all, of our political good, discharges, likewise, much, if not all of our political evil: I mean the business of elections. You will recollect the testimony of Mr. Horsefield.

That gentleman, when he wished to give you a description of the origin of all the mischief that we deprecate, pointed his finger emphatically, at the election of 1798. Now, I pray that I may not be misunderstood in the progress I shall make through the scene which is thus disclosed ; let it not be supposed, that I am depraved enough to justify the misconduct that has been exhibited ; because I am firm enough to contend, that it did not proceed from motives directed to Treason, nor lead to consequences that amount to Treason. At the eve of our election, it is natural for the citizens of a free country, to canvass what has been done by the public agents ; to applaud the good, and reprobate the bad : and in doing this they exercise a right ; nay, they perform a duty. No intelligible and candid man will say that the constitution of a representative republic can be preserved in a vigorous and healthy state, unless the people, from whom it denies its vital principle, are vigilant and virtuous in the exercise of the elective franchise. For this purpose they retain the right of opinion ; and though they may use it upon mistaken, or erroneous grounds, if they use it fairly and peaceably, there is no power to controul or obstruct them.

I ask, then, what were the ostensible causes of discontent ? They will be delineated by the opposite council as spectres of the most visionary, yet most horrible aspect : but notwithstanding any sincere abhorrence of the manner in which the discontent has been manifested, I cannot admit that the causes did not afford a legal ground for exercising the right of opinion. For instance, the alien and Seditious laws. They are a novelty in this country, and their novelty might alone attract the popular attention and displeasure. But were the inhabitants of the northern counties of Pennsylvania the only dissatisfied citizens ? Peruse the debates, examine the files of Congress, and you will find the most pointed declarations of the public opinion, the most unequivocal marks of dissatisfaction, throughout the United States. Exercising the right of opinion, the people disapproved the laws, and the law makers. Exercising the right of Elec-

tion they endeavoured to promote the success of those candidates, who would regularly procure a repeal of the laws. Again : the stamp act was strongly objected to; and produced the nick name of " Stampers," which was applied generally to the friends of government. Now, in my opinion; there cannot be a more convenient mode of taxation than an imposition on stamps; but that was not the opinion of the people of Northampton and Bucks. They had imbibed a prejudice against a stamp act in the year 1775, and not considering properly the ground of American opposition to the tyranny of taxation without representation, they confounded the name with the principle of the law. I repeat that I do not agree with them; but I contend that they had a right to speak freely on the subject.

Again. The house tax was objected to; not from the real, but from the imaginary burdens which it imposed; for if it had been intended to devise a tax for the relief of the poor, at the cost of the rich, for the benefit of the country at the expence of the city, there could not, I think, be a more ingenious plan than the present law exhibits. The opposition must evidently; therefore, have arisen from misconception, or misinformation. But if their opinion of the law was sincere; however erroneous, it is entitled to indulgence. The fallibility of the human understanding, and the frailty of our passions, must be respected in every wise and benevolent system of politics, or law. A man who honestly acts under a false impression of facts, may be pitied as a weak man, but he ought not to be punished as a wicked one. Then, the rioters were under an evident delusion, as to the principle of the land tax, the purity of the government, and the compensation of public officers. They had not the ordinary access to information, since our laws are published in English, and most of them only understood German : and this being a question of property, they acted upon the first blind impulse of their avarice, proving the truth of Mr. Horfield's observation, " that the Germans are fond of their money, and do not like to part with it." But still there is a criterion which in applying a rule of law ought always to be regarded :—I mean the moral character, and mental attainments, of the men who are arraigned. If a discontent exists, we cannot fairly expect the same mode of expressing it, from illiterate, uncultivated men, the scattered inhabitants of a remote district, that we may reasonably exact from men of education and manners, formed by the luxury and refinements of a metropolis : These will take care, if they do express their discontents, to avoid personal indignity, and legal embarrassments; while those, without skill to ascertain the limits of the law; as without delicacy to respect the inviolability of the person, rarely act without being riotous, or complain without being abusive. Plain men, then, have but plain ways to manifest what they feel; and they ought not to be tried and condemned by a more perfect, and generally, a more artificial standard. A disturbance similar to the one under consideration is not uncommon in England; but the government, instead of entering prosecutions against the discontented, for treason, has sometimes thought it proper to acquiesce in the wishes of the people. We all remember the popular influence in depriving Lord North of the reins of government. The attempt of a minister (Mr. Pitt) to involve that nation in a war with Russia, was a very unpopular measure; murmurs and complaints reverberated through the kingdom, and, finally, he was obliged to abandon his project. The shop tax was

sanctioned by all the branches of the Parliament; but it generated clamours so loud and so acrimonious, riots so numerous and so outrageous, resistance to lawful authority so daring and so injurious, that the government itself might justly be said to be assailed; and the act of parliament to be repealed by force and intimidation; yet, not a single indictment for high treason was projected. Hence it is that I think risings of the people, like the present should be viewed with the determination to punish, on account of delinquency, but, also, with the disposition to mitigate on account of prejudice, or ignorance. In a country where party spirit beats high, there should be peculiar caution on the subject: For, even in the present case, has not the joy testified by the triumphant majority at the late election, been classed with the symptoms of popular discontent and hostility to the government? Nor will it be denied that there actually did arise in the minds of the people a serious doubt, whether the law was in existence or not; and although, I repeat, that ignorance is not a legal excuse, yet you must take into view the state of information, before you can ascertain the degree of guilt. Under this ignorance, in this state of doubt, can the refusal to permit the assessors to enter a particular township, be construed into a fixed and deliberate intention of levying war against the government? Though the law had been enacted, we find that the subject of the law had been brought anew before Congress, and petitions were sent in abundance praying for a repeal. These discontented people might have supposed that a repeal was effected, or intended; though we, who were at the seat of government, knew the object of the revision was merely to amend, and not to rescind the law. At the meeting at Kline's (acting, probably, under the mistake that I have suggested) there was an express declaration, that the people did not think the law was in force at that time: And here let me remark, that the prisoner, who is called the great parent of the discontents, was not present at Kline's, which appears to have been the first step in the opposition to the land tax. Such was the state of information at that period. Mr. Horsfield has said that there were general discontents prevailing throughout the country: but his allegation is too vague, too comprehensive, to be understood or acted upon. The citizens of a free government have a right, if they apprehend that a violation of their constitution is intended, or if they think that any encroachment is made on the bulwarks of liberty, or property, to express their opinion; but is it practicable so to express that opinion as not to encounter from their political opponents the charge of discontent and sedition? How, in the present instance, was the popular discontent expressed? At first petitions to the government were proposed, framed and subscribed. This was the result of Kline's meeting; and in this, I presume, no hostility, no levying war, can be discovered. At every subsequent meeting, whether convened by the assessors, or by the people themselves, the reliance on legislative redress was never abandoned; though, it is true there was great intemperance of manner and of language. The assessors were sometimes interrupted in their journies, and sometimes jostled in the crowd; and the unmeaning epithets of *Stamplers* and *Tories*, were rudely applied to the friends of government. But however censurable, where is the treason in such proceedings? A rioter and a traitor are not synonymous characters; and let us say what we please about nick-names and slander, the society that patiently submits to the scurrility of the Phi-

Philadelphia newspapers, will never be disgusted or enraged at the indecorum or vulgarity of the northern insurgents. But the insurgents went further; they *intimidated* the assessors: and is that treason? No; it is the very gist of the offence for which the sedition act explicitly provides. Is it not the very phrase of that act, that if any persons shall combine to intimidate an officer from the performance of his duty, he shall be deemed guilty of a high misdemeanour, and be punished with fine and imprisonment? Now let us go step by step through the evidence, and I defy the most inquisitorial ingenuity to discover any thing beyond the design, and the effect, of a system of intimidation. Is there any actual force resorted to? No! I find the bridle of one assessor seized, and his leg laid hold of; but the man is not pulled of his horse, nor is he the least injured in his person. I find that a witness thinks that he heard the word "fire" given, and that he saw two men from a neighbouring porch, present their rifles at another assessor: well, did the riflemen fire? No. They had guns; their guns were probably, loaded; and if any thing more than intimidation was meditated, how shall we account for their not firing? But we hear a great deal of the personal jeopardy of the commissioners and assessors; and yet who of them sustained an injury? Mr. Chapman, Mr. Foulke, and Mr. Childs are, generally speaking, treated as men of merit and consideration; and, in particular wherever the prisoner met them, they were respected and protected; as at Jacob Fries's and Robert's taverns. To repel the plea for favour founded on such correct deportment towards the officers, we shall be told, that the prisoner was an artful man, that he was the leader; and it will be strongly urged against him, that he called on the officers to surrender the public papers. Of his conduct as a leader, I shall speak hereafter; and of his demand of the papers, it is surely sufficient to observe, that in opposition to the sense of the rioters, and at the risque of his life, he returned the papers, privately, in the same state in which he had received them.

Having spoken of the Assessors, I would wish, likewise, to review the evidence with respect to Mr. Eyerly, the commissioner, and Col. Nichols, the marshal.

[Here Mr. Dallas entered into an investigation of the evidence, to shew, that although the people acted violently at the several meetings which Mr. Eyerly had called to explain the law to them: that although Mr. Eyerly accompanied the marshal in his whole progress for serving process, and that although he was conspicuously present at Bethlehem, no personal violence was ever offered to him, or to the marshal; and all the ill-treatment they encountered, amounted to no more than an attempt to intimidate them, but which they both declared was without effect. Mr. Dallas then continued as follows.]

And are we to be told, Sir, that these acts without force, without any apparent object but to intimidate the assessors of a particular district; that district acts of inconsiderate riot and folly shall, when connected and combined, constitute a deliberate treason, by levying war against the United States? If no treason was actually perpetrated, if none was intended; when the transactions occurred I insist, that nothing previous to them, nothing *ex post facto*, can make the prisoner a traitor; the intention *at the time* must have been treasonable; or the act can never be punished as treason.

Let us now, however, proceed to enquire into the circumstances of the

rescue at Bethlehem, and its connection with the previous disturbances. I think the evidence is strong in support of the assertion, that the sole, independent, consummate object of the assembling of the people at that place, was to rescue these prisoners. Is there any satisfactory proof of a combination between the people of Northampton and of Bucks? I know that an expression is said to have escaped the Prisoner, that, in this general discontent with respect to the land tax, certain persons of a part of Northampton would join the inhabitants of Lower Milford: but let the foundation of his opinions be tested by the facts, and it evidently arose, not from negotiation, conspiracy and compact, (as the prosecution supposes) but from a general knowledge, which he possessed in common with thousands, that the land tax was unpopular throughout the adjacent country. It is enough, however, for the defence, that no combination, or correspondence, is proved; since the rule declares, that in legal contemplation, what does not appear, and what does not exist, are the same. You do not find the people of Bucks attending any meetings but in their own county; nor entering into the county of Northampton at all previously to their appearance at Bethlehem.

Gentlemen, it might surely be expected, that a concerted insurrection for treasonable purposes, prevailing throughout the three counties of Bucks, Northampton and Montgomery, and cemented by common interests and passions, would have been inspired and conducted by one common council: but is there the slightest proof of such a co-operation? I am aware of the communication made by Captain Staeler to the son of Conrad Marks; but the communication itself was merely accidental; and amounts to nothing more than the request of one individual of Northampton to an individual of Bucks. I am aware, likewise, that a message was received at Quaker town (as one of the witnesses says) mentioning the arrest of the Northampton prisoners, and inviting the people of Bucks to assist in rescuing them. Who brought this message, and to whom it was delivered, I don't recollect; but it seems, that a compliance was resolved on; and a paper expressing the resolution, was prepared and signed by Fries, with a number of other persons. But was the object of the invitation, or of the resolution to comply with it, treason, or rescue;—to commit a riot, or to levy war against the United States? I repeat, that the sole, independent, and exclusive purpose was to rescue a particular set of Prisoners.

Now, if in the previous part of this transaction, nothing has struck your minds as traitorous in the acts, or the intention of the people, I beg you to follow me, gentlemen, with strict attention to a consideration of the object that was actually effected, and the means of effecting it. The object was to obtain a rescue; a rescue was effected, but it was effected with circumstances of military array: will this alter the original character of the riot? No, sir:—if the people did not repair to Bethlehem with a traitorous intention, their arms and military equipments will not convert them into traitors. As on the one hand, I grant, that the circumstance of military array is not necessary to an act of treason, if the intention is traitorous, so I insist, on the other hand, that the circumstance of military array will not constitute treason, without such intention.

[Here Mr. Dallas entered into an investigation of the evidence in relation to the assembling of the people, their march to Bethlehem, and their conduct there. In the course of the detail he endeavoured to estab-

lish, that the sole object of the rioters was to rescue the prisoners ; that no injury was offered, or intended against the marshal, the commissioners, the assessors, or the posse comitatis ; and that although the prisoner was forced into a conspicuous station among the rioters, his conduct had been marked with civility towards the public officers, and a solicitude to avoid the effusion of blood. On the last of these points, Mr. Dallas concluded as follows :

And here permit me to remark, that if the conduct of John Fries was such as to justify his being selected as a subject for capital punishment, I cannot see the policy or justice of the selection ; nor forbear from deprecating the consequences of the precedent. A good man may sometimes affect to join a mob, with a view to acquire and to exercise an influence in suppressing it : or an intelligent and temperate man may, for a while, be associated for an illicit purpose, with a furious and ignorant rabble, who will naturally look up to him as a leader : but in either case, the power and the disposition to avert, or to limit outrage, will be dangerous to the prominent individual who displays them ; and his only safety is in mingling with the crowd, whatever may be the direction or the devastation of the storm !

Gentlemen of the jury, I have now gone through two of the general propositions, into which I divided the consideration of the defence ; and, in the course of my observations, I have anticipated much that related to the third proposition—the particular conduct of the prisoner. I should here, therefore, break off, as I feel that my strength, and I fear that your patience are exhausted : but that the proclamation of the President demands a moment's further attention. By the laws of the United States it is provided, that, under certain circumstances, the President may call out the militia to suppress an insurrection, having previously published a proclamation, requiring the insurgents to disperse. This proclamation is obviously in the nature of an admonition ; and if the admonition produces the effect, I ask, whether in the present, as in every other case, it ought not to produce impunity ? Then I argue, on general principles, that if the rioters did peaceably retire to their homes upon this authoritative warning, they ought to be sheltered from punishment for any offence previously committed. Nor is the argument without a sanction from the positive authorities of the law. 1 Hale 138 : And the court will recollect, that the principle is incorporated into the statute, which is usually called in England, the riot act. There must surely, be some object in requiring the President to issue his proclamation ; and the one which I suggest is equally benevolent and politic. On the present occasion it produced an immediate and decisive obedience to the laws. Besides when we recollect, that the President has the power to pardon offences, to discontinue prosecutions, and to grant a general amnesty, as in the case of the western insurrection ; why may we not consider the proclamation as emanating from that attribute of mercy, since no specific formula is prescribed, by which its exercise shall be expressed, or announced ?*

* Judge Iredell interrupted Mr. Dallas, observing that he thought it irregular to make any use of the proclamation as a pardon, without pleading it. Mr. Dallas said, that he only meant to infer from the facts of the warning and the dispersion, that the insurgents never meditated treason.

Mr. Dallas then proceeded to point out the differences in the nature, progress and turpitude of the Northampton insurrection, and of the western insurrection : 2 Dallas's reports 349, and analysing again the case of lord George Gordon, he contended that upon that authority alone, the prisoner ought to be acquitted. In the case of lord Gordon, the direct, the avowed object, was to obtain the repeal of a law ; and as petitions and remonstrances were unavailing, a body of 40,000 men were convened and marshalled to surround, intimidate, and coerce the Parliament. Riot, arson, murder, and every species of the most daring outrage and devastation, ensued ; and yet, the only prosecution for high treason was instituted against the leader of the association ; and that prosecution terminated in an acquittal. View, then, the riots of lord George Gordon in their origin ; estimate their guilt by the avowed object ; aggravate the scene with the contemporaneous insults and violence offered to the persons of peers and commoners ; and close the retrospect with the horrors which the British metropolis endured for more than eight days ; and then say, (exclaimed Mr. Dallas) what was the guilt of John Fries compared with the guilt of lord George Gordon ;—what is there in the English doctrine of treason that has justified an acquittal of the latter ;—what is there in the American doctrine of treason, that will justify a conviction of the former ?

Gentlemen : I can proceed no longer. The life of the prisoner is left, with great confidence, in your hands. There are attempts to make him responsible under the notion of a general conspiracy, for all the actions and all the words of meetings, which he never attended, and of persons whom he never saw. But this is too, too harsh, in a case of blood : It is inconsistent with the humanity, the tenderness of life, which are characteristics of the American people, and especially of the people of Pennsylvania. Nor is it called for by the policy, or practice, of those who administer our government. I believe that to the chief magistrate, to every public officer, to every candid citizen, it will be matter of a gratification, if after so fair, so full a scrutiny, you should be of opinion, that treason has not been committed. Such an event will by no means ensure impunity to the delinquent ; for, though he has not committed treason, though the punishment of death is not to be inflicted ; the violation of the laws may be amply avenged upon an indictment of a different nature. The only question, however, now to be decided is, whether the offence proved, is like the offence charged, treason against the United States. The affirmation must be incontestably established, as to the fact and the intention, by the testimony of two witnesses to the same overt act : but remember, I pray you, what the venerable lord Mansfield stated to the jury on lord Gordon's trial,—remember, that it is enough for us, in defence of the prisoner, to raise a doubt ; for, if you doubt (it is the principle of law, as well as of humanity) you must acquit.

The council for the prisoner then called the following witnesses.

JOHN JAMIESON.

COUNCIL. We wish you to inform the court and jury, what you know of the conduct of John Fries.

WITNESS, Sometime after last February court, John Fries came to my house ; I had heard, on my way coming to Newtown, that there was to be a meeting at Kline's. I asked him whether there was many people there, and what they had done. He told me there was, and they had agreed not to allow the assessments to be made in the township as yet ; he said the reason was, because they did not know whether there was a law passed on it or not ; I told him I really believed there was, for though I had not seen it myself, I had heard of it. He likewise told me that Mitchel had undertaken to draw up an instrument of writing, but he could not go through with it, and that he called upon him to assist him to do it, which he did.—On the 6th of March, I had occasion to go to the township meeting on account of a pauper which was likely to become chargeable, calling at Jacob Fries's, I had been there but a short time, before a parcel of men came there, some with arms, and some without. They called for liquor, freely. They then proceeded to make enquiry whether any body knew whether the assessors were going about the township or not : I do not know whether they got any information or no, but they agreed to go up to Quaker town ; after they were gone a little while, Jacob Fries and I concluded that we would ride up after them : we went to the house of Enoch Roberts. We went into a room, but nothing occurred there, and I then asked Jacob Fries if he would ride down to Daniel Penrose's : after we had been there some short time, one of the family told us that our horses were getting loose, so we went out, and there we saw Mr. Rodrick, who halted : he appeared to be much frightened ; so I asked him what was the matter, he told me they had caught Foulke and Childs, and that he was afraid they would kill them, and insisted on my going back to try to prevent them being hurt : I told him I would not, except he would too ; he said he would if I would engage they should not hurt him ; I told him I would not do that, for I did not know what they had against him. However, at his desire I went to town, and when I got there, I think I was told they had Foulke in the stable ; so I rode up, and called him by name, and I think he answered me. At my desire, he came into the house : while we were walking along, I told him it was a pity he should assess the township till they were more reconciled : I told him I thought the best way to quiet the people, was to shew them the small assessments he had made, and promise not to go about again till they were satisfied. He said he was willing to do that. We then walked into the room, and soon after we were there, Conrad Marks walked towards us with a kind of sword in his hand, though I believe sheathed, and said to Foulke " What, I hear you are going about this business again ; did not I tell you not to do this business, but I cannot tell you in English like as I could in Dutch ; but it is for the sake of those few dollars that you go about this business." Foulke answered him that he did not do it for the sake of the money. Marks answered, " did I not tell you that if you could not do without, come to my house and I would keep you four or five days ; but if you had to do this for half a crown a day, the devil would not send you about the township. I then told Marks what I had advised Foulke : he said if he would do that, he would use him like a gentleman. Then the affair of Captain Seabome* took place, which seem-

* See Thomas's testimony.

ed to draw the attention from Mr. Foulke. I saw John Fries looking over some papers, but I did not know what they were, I went away.—

A day or two after the affair at Bethlehem, John Fries came to me and told me the circumstances, much the same as was related by the marshal to the best of my knowledge: he then said he did not know what to do with these Germans, for that they had got it grafted in them that general Washington was opposed to this law, and that, so poor a man as he was, he would not grudge half the expence of a man to go and get his opinion on purpose to satisfy the Germans. The next knowledge I got about it, was from two gentlemen who came from Philadelphia in order to carry the proclamation about, and they gave me some proclamations, desiring me to do all I could to get submission to the laws. I spoke to many of them, and there was a meeting called at Marks's on the Monday following. There were 150 people or more there from the three counties. It was agreed by several people that it would be best to have men chosen to form a committee, from the three counties, to consult what to do for the best. This was agreed to, and four men were chosen from each county. I was one of four chosen from Bucks, with George Kline, David Roberts, and Comad Marks. Dr. Baker, 'squire Davis, and I think 'squire Jarrett were some. We unanimously agreed to recommend to the people, as near as I can recollect, to desist from opposing any public officer in the execution of his office, and enjoined upon the citizens to use their influence, to prevent any opposition, and to give due submission to the laws of the United States, dated 18th of March.

Was there any opposition at all when this was reported?

I did not hear any body but did consent to what was done by the committee. The people of lower Milford thought it would be necessary to have the assessments taken. David Roberts said that he believed Mr. Chapman would agree for them to appoint an assessor in their own township. It was then agreed that we should ride to him to know; which we did next day: he said he had once made the offer, but it was now out of his power. He then said Mr. Clark had been first appointed, and that he had not yet given up his commission, and he did not know how another could be appointed now; that if Mr. Clark would go about it, it would answer the end. On returning home, I called at Frederick Henny's, and desired him to draw out some German advertisements, and send them over towards Marks's, to desire the people to meet, and consent to let Clark go about. I believe he did it. At the time of appointment, the people met at Mitchel's, perhaps there were about 40 there. John Fries, and Frederic Henny were there. The people in general agreed to let Clark go about, I believe Fries and Henny did not vote. I went to Fries and asked the reason: he said he had no objection to the people voting for him, and he wished it was done; but as he was first opposed to Clark going about the township, he thought it would not be right in him to vote. I believe Henny said about the same.—I saw Fries again a few days before he was taken: he told me he had heard a report which troubled him more than any thing in his life: I asked him what it was: he said that a report was in circulation that he was collecting up men to assist the French: he said, "damn the French, if they were now to come to invade this country, so old a man as I am, I would venture my life against them; but I want nothing to do with them."

COUNCIL. Did Fries make any opposition at Marks's ?

WITNESS. No, I heard of no opposition.

Has his house been assessed ?

I do not know.

Cross examination. Was there any proposition made there about signing a submission paper ?

I do not recollect any.—I recollect Fries said that if he was called upon, or summoned, he would come forward and deliver himself up.—This he said at Marks's.

JACOB HUBER.

COUNCIL. Was you at the meeting at Conrad Marks's ?

WITNESS. Yes.

What happened there ?

It was after the proclamation, and we were choosing the men to meet in the committee, Fries and I got a talking together. He says, now Jacob, you see the error we got into by going to Bethlehem. I answered to him, that the assessors would have to go about and assess the houses; he said they should not assess his before he gave them a dinner, then they might take the assessment of his house; and if I am not at home, said he, my son will give them a dinner.

After this meeting, what was the general situation of the township ?

Quiet. John Fries was peaceable and quiet as any man could be ; I never afterwards heard of the least opposition.

Cross examination. Did you see George Mitchel at Marks's ?

Yes.

Was you much with him ?

No, no conversation with him ; he was clerk of the meeting.

ISRAEL ROBERTS.

COUNCIL. Please to relate to the court and jury what you know of this affair.

WITNESS. After the proclamation arrived in our neighbourhood, there was a statement in the next weeks' newspaper, stating the conduct of John Fries, which I procured, and took to John Fries. After looking over the paper, he seemed pretty submissive, but said nothing : he appeared, I thought much distressed in his mind. I told him that I wanted to have some conversation with him, relative to it. I then asked him whether he had rightly considered this matter ? whether he had not run himself into danger inconsiderately, and told him the consequences as I thought might attend it. He said he never had considered it so much as he had within a few days before. He said he had not slept half an hour for three or four nights, and that he would give all he was worth in the world if the matter was all settled, and he clear of it : he likewise said, if the government would send for him, he would go with him, even if a little child was sent.

What was the general state of the township of Milford after the proclamation was read ?

I do not know, I believe there was some little opposition to the law.

Was any opposition made by the prisoner ?

I do not know that there was.—I recollect that John Fries farther expressed himself to me at that time, that he was charged with taking part with the French, which he took very hard, and signified his determination

tion to defend the country against any invasion, if any army should invade our land, he would, at any time lay all this aside, and turn out against them, and particularly France.*

There was a meeting at Mitchel's after that, to choose an assessor; Fries was there: he was asked to vote, but he said he would have nothing to do with it.

COUNCIL. Did you hear him express any doubts of the existence of the law?

WITNESS. Yes, more than once, I heard him say that he did not believe it was an established law, and therefore he was determined to oppose it.

COUNCIL. What time did he say so?

WITNESS. I think it was the 5th of March.

Cross examination. Where was he then?

Not far from Jacob Fries's tavern, on the road. He said he would oppose it, till he had known other counties had agreed to it, then, said he, we must submit; but he would choose lower Milford should be the last.

Cross examination. At the last meeting at Mitchel's, did there or did there not appear a disposition to wait till they should have assistance from any other place.

Yes, it was said that a letter had arrived to George Mitchel from Virginia, stating that there were a number of men, I think 10,000 on their way to join them: that letter was traced from one to another, through six or eight persons, till at last it came from one who was not there!

Were not some of the company at that time in arms and uniform?

Yes.

COURT. Do you recollect what was said when the letter was mentioned.

I do not recollect, but they appeared to be more opposed to the law than they were before.

ATTORNEY. Was there any declaration, from any person there, that they had their own laws, and would submit to no other?

Not that I recollect.—At the meeting at George Mitchel's at which Mr. Foulke and Mr. Chapman was present, which was held for the purpose of explaining the law, there were a number (about 12) came up in uniform, and armed with a flag and *liberty* on it. They came into the house, and appeared to be very much opposed to the law, and in a very bad humour. I proposed to read the law to them; they asked me how I came to advertise the meeting: I told him I did it with the consent of a few others: he asked me what business I had to do it: I told him we did it to explain the law. He looked me in the face and said, "We don't want any of your damned laws, we have laws of our own," and took the muzzle of his musquet in my face, saying, "This is our law, and we will let you know it."—There were four or five who wished to hear it, but others forbid it, and said it should not be read, and it was not done.

* Judge Peters said he must do these people the justice to say that from all he heard, and all he saw, they were generally disposed against the French; he found none at all in favour of them.

Cross examination. Did you see Fries on the evening of the 5th of March?

Yes I did.—He asked me if they had assessed my house? I told him they had: he then asked me if I had told any body of it; I said I had not: he then added that he had forbade them to come into the township, as he did not believe it was an established law, and others should be gone through with first. I think he then added that they could not get hold of Rodrick: they had got Foulke, but let him go, and added if they had got Rodrick they would have put him under guard for that night.

Did he appear in a good temper?

No, he did not, and he seemed very much opposed to the law.

ATTORNEY. Was Fries' objection to the tax law, or to what particular law?

He did not express his opposition to any one that I heard, but to the law for assessing houses, that night: in a conversation I had with him before, he appeared to be opposed to the alien and sedition law also.

ATTORNEY. Did he seem to talk about its being unconstitutional?

I do not recollect—I know that he expressed himself a number of times, that he did not believe it was an established law.

ATTORNEY. Did he mean by that, that the law had ever passed, or that it might be amended?

I took it that he did not believe the law had ever passed; he seemed to doubt of its being established.

EVERHARD FOULKE.

COUNCIL. What was the conduct of John Fries at Quaker town on the 6th of March.

WITNESS. As I was coming from the house of James Chapman with the other assessors (John Rodrick and Cephas Childs) when I came nearly opposite Enoch Roberts's, I saw the prisoner at the Bar, and a number of others with their arms, (though I don't know that he had any, but the others had.) Some of them held them nearly as high as my horse's side, on a level, with their arms hanging down. I spoke to them as I passed and rode on till I got nearly to the other tavern, David Zellers's. When I got there, a number ran out and cried "stop." Some of them addressing me by name, desired me to stop; which I did in a pleasant manner. Before any of them got to me, I think John Fries came over from Roberts's; when he was about a rod from me, he called me by my name, and told me he had told me yesterday that he would take me to day, and he was now come to do it, or it should now be done, I don't know which he said. Captain Kuyder then ran up, and seized my horse by the bridle, and a number of others came round me; the prisoner did not come himself. Some of the people there (Jacob and John Huber) came and took Kuyder off, and he then seized me by the foot, and endeavoured to dismount me, but he failed. He then again took hold of the bridle, but Hubers released me again. Fries came up and said, "Foulke, you shall be taken, if you will get off, there shall no man hurt you." He took hold of the bridle, and ordered Kuyder to hold it; I rode up to the stable, got off, and went into the house. When in the room, which was very thick of people, the prisoner came and demanded my assessment papers. I told him that I did not like to give them up; he told me not to hesitate, but to do it. In that situation I gave them to him, and told him

I was in hopes he would not take them away without giving them to me again when he had looked at them.—I then went into another room with some of them, who exclaimed much against the law. Huber said they were not willing to submit to it yet. Fries then gave me the assessment papers again unhurt, and told me that he had used me better than I deserved, and that if I had a mind I might return him to court, which I had before threatened. He then went with me to the bar, and took me to my horse through the mob, and held the bridle while I got on, and I rode off.

Then you received no injury ?

No.

Cross examination. Did, or did not the prisoner at the bar in the course of conversation at Quaker town express any consciousness that he had been engaged in a dangerous enterprize ?

Yes, he said he knew, or thought he had transgressed the law in such a manner as to endanger his life, and that I might return him if I would.

ATTORNEY Did he speak of any force that was expected to assist him ?

He did not that, he did the day before, when he attacked Roderick and me in the road. He said there would be 700 men there to morrow morning, pointing to Jacob Fries's house.

COUNCIL. Are not you an assessor for lower Milford ?

I was appointed assessor for the whole district.

What time were you appointed ?

I do not know.

Have you your warrant ?

Not with me.

Was your appointment so early as November ?

I believe not.

Was it early in February ?

I believe it was.—It was on the last day of the court. (January 28.)

Was it the same kind of warrant as other assessors had ?

Yes.

Who delivered the warrant to you ?

James Chapman brought it to me at my house.

When you were at Quaker town there was a cry for the papers from you, were these papers respecting the rating of houses under the land tax ?

Yes.

When were you first applied to, to become an assessor for that district ?

Perhaps about two weeks before.

Who by ?

By James Chapman, and several other neighbours.

Do you know whether there was a meeting of the board of commissioners for the purpose of appointing you ?

I cannot say.

 MR. EWING,

After the evidence on the part of the prisoner was closed, rose and addressed the jury as follows :

May it please your honors :

AND YOU, GENTLEMEN OF THE JURY.

YOU are now gentlemen in the discharge of the most important duty, which possibly has, or ever can fall to your lot as members of society.—This is a cause of the greatest magnitude, of the first impression.—Its importance is derived not only from a consideration that the life of the prisoner is now at stake, but also from the precedent that your verdict will establish in similar cases in future. From this view of it, it claims the highest and most serious attention that can be bestowed upon it.

When I address you on this occasion, I feel diffident, lest my ideas should not be cloathed with that perspicuity, or clearness, that I could wish ; or my sentiments delivered with that ease or Elegance that might ensure success. I shall rely upon your goodness to forgive any innacuracy of style or sentiment that your penetration may discover in my address to you.

When I address you on this occasion it is with an anxiety of mind, which I never before experienced, when I reflect upon the possible issue of this cause with respect to the unfortunate prisoner at the bar.

The situation of the public mind, now roused to resentment ; the place where this subject is made matter of enquiry ; together with the prejudices that may exist against the defendant, all conspire to form strong obstacles to the defence which I shall attempt on this occasion. But when I consider your characters gentlemen, I am fully persuaded, that you will suffer no circumstances of this kind to bias your impartial judgments, to destroy that inflexible integrity which characterizes you ; or prevent this defendant from receiving from your hands (which is all he asks) a fair, a candid and impartial trial ; that you will hear his cause under every presumption of his innocence, until the contrary is proved by the most uncontrovertible evidence.—That it is essential to the very existence of every government ; that it is essential to the preservation of life, liberty and property, that offences should be punished, and that the crime of treason, the highest that a member of society can commit, is what I will admit, but I contend that it is equally essential to the existence of a government, and to our security as members of it, that every man indicted, should have a fair trial ; to have the offence defined with certainty, and proved in such a manner, as to leave no possibility of doubt on the minds of the jury.

That this man has been guilty of a flagrant violation of the law, an offence for which he deserves to suffer, and which the good of society requires should be punished, is what I readily admit ; but I do contend, and I assert with confidence, because I think the law will bear me out, that no act the prisoner has committed can be construed treason, by the most rigid, or strained construction of law.

Gentlemen permit me to observe, that in proportion to the nature and magnitude of an offence, so ought the evidence to be.—As the accusation against this man is of the deepest dye, as it is the highest possible offence against the laws and government that he could commit ; so should the proof of it come from the purest sources, and be of that nature as to establish the crime beyond the possibility of a doubt.

He is indicted for the crime of treason :—happy for us that we are not now left to the construction of judges ;—to the opinions of men of any kind, or we might be led astray in a variety of instances, and at times introduce accumulative treason. The people of this country, knowing the magnitude of this object, and the propriety of good security against such constructions ingrafted into the constitution, the definition of the crime, and transmitted to us unimpaired. Congress recognized the constitutional definition, by ingrafting also the very words of the constitution into the act for the punishment of crimes : they have there prescribed the punishment ; they have said that the perpetrators of this crime shall suffer death. We are now to consider how far the defendant is guilty of treason, as laid in the indictment. I had meant to have gone more largely and fully into this subject from the authorities of law writers of eminence ; but my learned colleague has so ably, in so masterly a manner handled this cause, that less remains for me to do. I shall endeavour to show you what is to be understood by levying war against the government of the United States, and think I can rest on that ground with safety, to prove to your satisfaction, that the prisoner has not been guilty of the crime of treason.

The defence rests upon three grounds.

First. That he has not been guilty of the crime charged in the indictment.

Secondly. If he has been guilty of any crime at all, the act of Congress has sufficiently defined it, and prescribed the punishment not to be capital.

Thirdly. I contend that the proclamation of the President should operate as a pardon to take off the guilt of actions done previously thereunto, if not continued in.

Judge Iredell here interrupted Mr. Ewing, respecting the pardon ; and said that a plea must be put in, if that was insisted on, but the prisoner must plead guilty to plead pardon. The proclamation was read by Mr. Ewing, in which he observed, there was no pardon promised.

Mr. Dallas said he had begun speaking on this point before, but was interrupted from explaining his idea : he thought there was much difference between an assemblage before and after an admonition to disperse : it doubtless would have been treason had they continued in arms, but their future actions put a construction upon their past actions, and proved that they were guilty of riot, and not treason.

Mr. Ewing continued.—This opposition arose from ignorance ; they did not know, that the law was in force ; and the first time they knew that, was by the proclamation, when they actually did disperse, and submit to the law.

The prisoner at the bar is not guilty of the treason laid in the indictment, for First, there must be a traitorous intention, and Secondly, that intention must be carried into effect. In order to prove that, we must trace his conduct through Bucks county, and then proceed to Bethlehem, where the act of treason is said to have been committed. In order to discover what is meant by levying war, we are obliged to resort to the authority,

or decision of English courts on the statute of Edward the III. but though every thing that has been done there, is not to be considered as a proper precedent for us here, yet there are some rules and constructions in England that will apply to particular cases here.—Wherever a set of men take up arms to oppose themselves, to the government generally : to subvert the laws, or to reform them ; in that case they are said to levy war against the government. The great criterion to distinguish what amounts to this crime is the *quo animo*, or the intention with which the act was done. The object must be of a general nature, and not an assembly to do a particular act, this would not be treason. I shall now show by the conduct of the prisoner that his views were not of a general nature, and that it was by no means marked with that degree of malignity which the council for the prosecution have represented. You will consider that the residence of the prisoner was remote from the seat of government ; and from that source of correct information, which as a member of society he ought to have received, whereby to regulate his conduct. The people with whom he conversed were unacquainted with your language, warmly, and perhaps superstitiously attached to old established laws and customs of the place where they resided. Having been accustomed to be taxed and assessed by men of their own choice ; men whose conduct they had a right to scrutinize, and whom they had used to bring to account : You need not be surprized that these people would at least hesitate at admitting innovations into their customs : the ideas which struck them naturally were, “ From what source can this law arise, that should send a stranger into our townships to make assessments ; a right which exclusively, as we think, belongs to us ? ” They did not feel such prejudice against this law, considered as to its effects but from the manner of its breaking upon their view : The introduction of this new principle alarmed them, but they assembled not to oppose the law, but to gain time for information of the real existence of it. Under this delusion they laboured, because they had not the advantage we have, of enjoying information, and the illiterate state they were in operated as a great source of their opposition. This ignorance and delusion was peculiarly manifested throughout all their conduct. Their first meeting was held to consider whether it was a law or not ; not being satisfied about it, and disappointed in their information, they met again, in order to tell the assessors not to come about their township to make the assessments, until their doubts were removed : the assessors went on however, and all this while the people were enveloped in darkness. They warn the assessors ; they tell them “ we don't want to repeal this law by violence ”—No, if they had, arresting the assessors would not have done it, they must have gone to a higher source ; and if they had gone there with a determination to repeal or oppose it, the act might have received the stamp of treason. I deny that they arrested any of the officers of the government in the execution of their duty : we have repeatedly asked upon what authority these men acted ; we have asked, and have not obtained satisfaction, and we therefore presume the authority does not exist ; and where there is no law, there is no transgression. But suppose they had produced their authority, to what would their opposition have amounted ? To a riot, and no farther. What course did Fries take in this scene ? Humanity and tenderness, wherever his interposition was necessary, and he was present, characterized him. So far from subverting the govern-

ment : so far from preventing the execution of its laws ; so far from injuring, or punishing these assessors while entirely in his power : he prevented the very people who were with him from doing those acts, and he himself was industrious to release them, and lead them into a place of safety. If conduct like this is to be construed into the crime of treason ; what act, I ask, will not by and by : if this is treason, it is unhappy for us, for thousands in the United States have been guilty of the same thing. Because a law exists, must we acquiesce implicitly—have we not a right as freemen, to think—have we not a right to object to it ? It is impossible that we should be all of one mind, with respect to the beneficial consequences of a law—some difference of opinion will necessarily exist. The opposition was manifested in different places, but it was all to the same law ; but the opposition did, in no instance amount to a traitorous intention, nor was it ever manifested in their conduct from the beginning to the end. I ask you, if Fries ever took any active part in it, so as to distinguish him as their leader ? It has been declared that he opposed the law, and likewise that he took men to Bethlehem to rescue the prisoners, but we do not find there was any command given. There was a difference of opinion on their way, whether they should go to Bethlehem or not : If he had commanded these men, and had intended to levy war against the government, some of them would not have returned ; but he would have led them on to the object without consultation. Trace him towards Bethlehem : there were several who could not pass the bridge, because toll was demanded : when he came up he said “ count my men.” No doubt he meant only the men of his own company, because we do not hear that he paid for more than his own. It does not appear that he had any communication whatever, informing him that such a party were to meet there that day, much less can it be imagined there were any treasonable communication. He went up with his men, but we find while another company formed before the house, his men stood aloof ; they did not form there in the ranks, nor did they come there for that purpose. The consideration that some of their country people were taken prisoners, and they thought it was unconstitutional and oppressive for them to be taken to Philadelphia to be imprisoned and tried, induced them to insist upon the rescue. What did they say ?—“ We will bail them : if they are guilty, they ought to suffer.” Bail is refused : the marshal could not have granted that request, but they did not know that. When they found this their proposal was rejected, they determine they will have the men. Then John Fries appeared—a man who had used the assessors respectfully : a man whose character was that of humanity—he was chosen to go in to the marshal to demand the prisoners. One said he should be commander of them ; but it does not appear that he did take the command at all ; but we hear of two others who commanded on that day. Fries went in and conversed on the release of the prisoners with the marshal, who with great firmness said, that they must be taken from him. He went out again, and the men being pretty warm, he checked them : went a second and third time : all his aim was to prevent the shedding of blood ; he pledged himself to the marshal that no harm should come to him from him or his company.

If the object of these people had been of a general nature, men so obnoxious in the county as Bulliett, Henry and Eyerly would not have es-

escaped their vengeance, or resentment, when they were so much within their power: had their conduct been stamped with treason, they would not have been satisfied with rescuing the prisoners: the officers would have suffered; but not one we find was hurt. One strong trait, worthy your observation is, that their view in going to Bethlehem was not to prevent the operation of the law, but simply to rescue the prisoners; and in this, their conduct cannot amount to more than a riot and rescue: an offence defined as well as its punishment, in an act of Congress. As the overt act must be laid in the county where the offence was committed, and if it is true that treason was not committed at Bethlehem, where shall we look for it? the gentlemen will not attempt to prove, I presume, that the beginning of the treasonable act was in Bucks county, and its completion at Bethlehem. But Bucks has nothing to do with the present indictment at all, and ought not be brought into view.

Mr. Ewing then referred to Foster 210, and 1 Hale 143 and Lord George Gordon's case, each of which, he said, far exceeded the case of the prisoner at the bar. But, he observed, as the time and patience of the jury, to which he felt himself so much indebted, and which had been so severely tried already in this lengthy trial; and as the defence had been so ably handled by Mr. Dallas, and what remained would be, he had no doubt, well conducted by the justly acknowledged great talents of another learned advocate, he should forbear enlarging. The verdict you give, gentlemen, said he, will not only be of vast moment to the prisoner, but will also establish a precedent for future similar cases, and it will be to your immortal honour if you preserve and decide with impartiality and firmness; while on the contrary, it will be a source of shame and disgrace if you do otherwise, through the influence of prejudice or the operation of external circumstances. I can safely trust the life of my client in your hands, under a consciousness that these feelings of humanity, and a just estimation of the evidence, will outweigh all other considerations, and thus will your righteous verdict gain you the gratitude of your country, the approbation of your own consciences, and the warmest thanks of the defendant.

MR. SITGREAVERES:

With submission to your Honours.

GENTLEMEN OF THE JURY.

I ACKNOWLEDGE the propriety of an observation which dropped from one of the council for the prisoner in the course of his address to you: that is, that those who are concerned for the prosecution in criminal cases should not endeavour, by their eloquence or ingenuity to divert the attention of the jury from the truth, or to stretch that truth so as to give them more unfavourable impressions on the facts than they will bear. This I must acknowledge would have been unnecessary advice to me, because the views I shall be able to take of this subject will be but feeble and imperfect. In the course of my limited and short experience, I have

been but little conversant with criminal courts, and have paid but little attention to the criminal code, and never have been engaged in a case so important as the present, my public duties having, for some years past drawn me from the bar. It may not be wondered, then, if I have not been able to bring into this court talents equal to meet those called to the assistance of the prisoner. I must therefore say I shall not be able to do justice to the case. I confess I feel a desire that those persons who have been guilty of this second outrage and disgrace brought on the state of Pennsylvania, may feel the punishment the law inflicts. I hope you and every one who hears me will join in this sentiment, for on it hangs much of our peace and security. I have no objection to going still farther—my lot is cast in that part of Pennsylvania where this unfortunate circumstance occurred: I feel particularly for the good order, peace, and prosperity of that part of the state, but I have unhappily seen it in such a situation that all the harmony of society was destroyed, and if I were not to feel a strong desire that peace, harmony, and good order should be restored, I should be destitute of humanity; for we all know that crimes can only be prevented by inflicting suitable punishments on the delinquents. I wish, gentlemen, that the law should be executed against those who were criminal, but when I say so, let me not say that I wish the prisoner at the bar to be executed: No, my earnest wish is, that the general good of society may be procured: this man must be tried by the evidence that is brought against him, and upon that alone he must stand for his guilt or innocence.

Having said thus much, I begin now to premise one or two things which I think should be altogether set aside, but which has been much insisted upon. You have been told that the prisoner appears here on the charge of treason, under all the disadvantages of denunciation by the President of the United States in his proclamation. Any of the assertions of that proclamation are not to have weight on your minds, nor will it operate against the prisoner: he is to be tried by the evidence only, and you are not to regard any thing you have heard out of doors before this trial commenced: nothing should operate to doom the prisoner to an harder fate than the law, supported by fair testimony provides. It is also as true that nothing contained in that proclamation should operate to the benefit of the prisoner: if it should not convict him, no more should it acquit him. The analogy which has been drawn does not exist between this proclamation and the riot act of England, as you have been told, but even if it did, the inference would not be just. You were told that all who disperse on the reading of that act, are pardoned for crimes previously committed: it is not so. But more of that presently. The proclamation of the President was issued for one purpose, and the riot act, in England, is read for another. The President has no authority to call forth a military power but under certain circumstances: wherever a combination should form, which are too strong for the civil power to quell, then the military may be called in to aid the civil, but with a humanity intending to prevent the effusion of human blood, and to call out military force as seldom as possible, the law has provided that a proclamation shall be previously issued, that the offenders may disperse peaceably to their homes: but there is not a syllable about pardon in it. The President has the power to pardon, it is true, but he has not done it by that proclamation.

The riot act, which passed in the reign of George I. was enacted in order to prevent tumultuous assemblies: if people refused to depart within one hour after it was read, they were guilty of felony, for which they were to suffer death, although the offence before was only a misdemeanour, yet the refusal to depart makes it felony, but it cannot be pretended that any such departure excused them from the riot, but on the contrary, prosecution and conviction frequently takes place for that crime, although they should disperse; and therefore it does not affect the merits of the case. The proclamation is as a blank paper before us, and therefore we must examine this case upon its own independent merits.

Gentlemen, in summing up this case on the part of the United States, the method most natural to adopt is,

First. To consider the law as relating to this subject.

Secondly. What was the amount of the offences perpetrated at Bethlehem, and.

Thirdly. Enquire whether the facts produced in evidence are such as to convict the prisoner, and make him guilty of the charge in the indictment as applying to his particular case.

First, with respect to the law on treason. I should have expected it was so well understood that there would have been no difference amongst us, however we might differ on its application to the prisoner, yet unfortunately there is, and we must endeavour to meet those objections. The statement which was made to you at the opening by myself, and a statement by the attorney of the district, I believe to be correct: I am confirmed in that opinion, and have no doubt it will be given to you by the court in the charge as correct. We are not at this day to distract ourselves with theory: The law of Edward 3 of England, called by some "the sacred statute," and by others the parliament who enacted it, is called "The Blessed parliament," that law and our constitution have adopted the same words. The judges in England, as eminent for their patriotism, as eminent for their tenderness, and as eminent for their ability as any ever were in this country, have solemnly settled this particular in a variety of instances and unfortunately, young as this country is, there has been the necessity for a court of the United States for this district to settle the principle likewise. The adjudications under this statute were made by men all well known for their love of liberty. We have no need to conjure up a different exposition, or different form of construction, than what has already been admitted in both countries: indeed it is what cannot be shaken at this day. It is, *that all insurrections by a multitude of people with intention to usurp by violence or intimidation the lawful authority of the government in matters of a general and public concern, in which the insurgents have no interests distinct from the rest of the community is TREASON.* From the best consideration I have been able to give the subject, I have formed this definition, which I believe comprises the whole that can be said about it, and I believe no more: I think this assertion will appear to be justified by the best authorities. If this description is just, the offence is clearly settled and amounts to "levying war against the United States." In the most essential parts, I think this rule has been settled by the council for the prisoner.

The *Intention*, which constitutes the gist of the offence, is proved to have been to some general object; if the intention was to gratify some

private concern or interest, even if there be all the apparatus of war, as guns, fifes, drums, &c. whatever violence should be committed under it, it cannot amount to treason, because the intention is not to a public matter, whatever other crime it may amount to, and whatever enormities may be committed. This may be the case, in order to gratify some particular passion, or some particular interest. It is the intention, which distinguishes treason from other crimes: Riot, is generally much like it, but not being of a public nature, is only a misdemeanour: Treason on the contrary, is the greatest crime known to the laws of any country. Lord Mansfield at the trial of lord George Gordon, expresses the same opinion. If this is a true position, it is certainly an irresistible inference, that insurrection for the purpose of suppressing and preventing the execution of a public law, is to prevent or obtain a public object, and of course must be high treason within the rule of our constitution. Yes, this has been repeatedly denied, by the gentleman, to be high treason; nay, he even went on so far as to say that in England, no such thing had taken place; he says it must be a combination to oppose all the laws; or at least, to force the repeal of a law. Gentlemen, I think I have stated enough, to convince you that this is erroneous: If treason is the unlawful pursuit of an object of a public nature, then the suppressing of a public law is treason. But I would not have you rest on my definition if I cannot bring you full proof in favour of it. See 1 Hawkins Chap. 17, Sect. 25. 1 Hale, 133. And this position is confirmed still further, by a precedent of our own. 2 Dallas, 346, &c. I consider this settles the question beyond all doubt, and it ought to rest so forever, the decision was so serious and solemn in both countries. I shall assume this as an acknowledged point throughout the whole of my enquiry. I should have added the opinion of Mr. Erskine in lord George Gordon's trial. Speaking on the treason statute, he says, None of them have said more than this, that war may be levied, not only by destroying the constitution, or the government itself, but by assuming the appearance of war, to endeavour to suppress a law which it has enacted.

It is certain that British cases go much farther, and if it was necessary and the case required it, it could be justified by decisions in England upon points infinitely less strong, than those I have quoted: points which were settled at a very early period, which neither the parliaments nor the courts have ever interposed to change. Cases of public grievances, whether real or pretended, whether they grow out of law, or out of practice, as pulling down all enclosures, &c. which are the invasions of private right, from its universality—is high treason. Again, usurping the powers of the government by pulling down all bawdy houses, is High treason. The case referred to by Mr. Bradford in Missin county was, that a particular judge was driven from the bench: they did not oppose the sitting of the court, but they had a resentment against the individual, and therefore the prosecution was for riot. This will assist us in our farther enquiries upon the present occasion. This crime is said not to be treason but a rescue and bare obstruction of process, and within the sedition law, or within a clause of the penal code, and therefore not treason. But whatever nature an offence may be, of itself, if it is accompanied with this particular act of treason, the act becomes treason: I willingly admit that a rescue of prisoners may be without treason: a person may be willing to risk the law rather than

his friend should suffer, and may therefore rescue him ; this would be but misdemeanour : If ten men in arms go to an officer and rescue his prisoner, if it be done in a private manner, it is no more than a misdemeanour ; but if these same ten men in arms go from motives of a public nature, then it becomes treason. The intention therefore, makes the crime to differ.

It is said farther that the legislature of the United States have passed a solemn opinion upon it, and that they have called it no more than a combination of certain facts ; a rescue, &c. against which it has provided, and therefore it cannot now be called treason. I think this received a good answer by judge Wilson; 2 Dallas 351, and the objection was solemnly over-ruled by the court. The sedition act was not made at that time to be sure, but if it had, there can be no doubt but it would receive the same answer, and meet the same fate by this judge if read in objection. But the first section of the sedition act describes a different sort of combination, and is not levying of war. There must be of necessity a conspiracy in levying war, but there may not be in an unlawful combination.

JUDGE PETERS.—Whatever the crime would have been without a treasonable intention, with a treasonable intention would constitute the overt act.

MR. SITGREAVES.—The cases in the books are strongly demonstrative of this particular. 212 Foster. Benstead's case. "Certain unpopular measures having passed in the council, the odium was thrown on the archbishop of Canterbury. A paper was pasted up in London, exhorting the apprentices to rise and sack the archbishop's house at Lambeth, and accordingly some thousands went with a declaration that they would tear the archbishop in pieces."

It was not attacking the individual, but the officer that became high treason. The same with respect to the attack on general Neville's house during the western insurrection ; the attack on him was, because he was an officer, and therefore being upon the office and not the man, it was upon the government, and high treason.

Such is the general opinion of treason ; the great enquiry will now be what was the intention with which the offence at Bethlehem was perpetrated ? It is allowed to be a rescue ; it is conceded also that there was an obstruction of process : If it was so it was part of the general system which being of this public nature, obtains the magnitude and operation of treason. Before I go into the examination of this, I will make an observation on what has been said : that the overt act must be proved in the county where it is laid. I heard this position, but I did not discover any application of it, and therefore I am at a loss to know how to treat it. There exists in England, and in the state of Pennsylvania, a form in the direction to the grand jury, which deserves notice ; they are sworn to enquire for *the body of the county*. This causes considerable difficulty particularly where something done out of the county is required as an ingredient in the charge, and if the beginning of a crime was in one county, and its completion in another, the difficulty would be greater ; but even those difficulties are remedied. The idea of his honour judge Peters the other day, appears to be sound. That a district is the same as it respects the United States, as a county is to a state, and therefore, the grand jury

are drawn, not from the body of the county, but from the body of the district, and the whole extent of the district is equally connected with the *venue* if it be laid there. As to the evidence, therefore, I consider the crime may be laid in one county, and proved in another. 2 Hawkins, chap. 46, Sect. 182. I consider whatever rule applies in England or in our state governments relative to counties, is the same respecting districts under the general government of the United States; likewise, if the overt act be proved in the county where it is laid, you may go out of the county for evidence to show the intention with which it was committed. This, I think, cannot be denied. In Foster 9, we see that an overt act not laid, may be brought as evidence to support one that is laid, in order to shew the intention.

With respect to hearsay evidence, the rule of law is, that the circumstance of the oral testimony is regarded, as it may tend to establish other evidence, though of itself it be no proof. There are a variety of instances in which it is necessary to be admitted, though there is a rule against it in others. In all cases where proof is to be made by evidence of general reputation it is useful: so upon this occasion, it is competent to us to prove the general state of the country; if proper to shew the general state of a country where insurrection prevails, it is as proper in order to shew the general combination, the design and intention, because it may be the only effectual way of coming at that knowledge. For instance: this information which was received by the commissioner in the discharge of his official duty is proper evidence to shew why the law was not carried into effect, and consequently the criminal spirit of the country. Popham's reports 152.

Mr. Sitgreaves then went into the case of lord George Gordon, which had not been represented to the jury by Mr. Dallas to his satisfaction. He related the circumstances of that riot at length. He said the acquittal of that gentleman was not a certain proof of his innocence: doubts might have arisen on the minds of the jury as to the sufficiency, or character of the evidence, or there may have been a contradiction of testimony, by which all the credit of it would be taken away. Besides, it did not appear to him that the act of High treason was committed; the multitude who accompanied Lord George to the Parliament house did not go to compel a repeal of the law, or to overawe the Parliament, but from a report that the numerous signatures were not rightly obtained, they went to stamp truth on the instrument, and convince Parliament of the respectability of the signers. Besides the main point of evidence of what a person heard Lord Gordon say in the Lobby, was received doubtfully by the jury. Many things went to make the testimony not so unambiguous as it ought to be on a trial for life or death, and on that account perhaps the learned judge charged them, if a doubt hung upon their minds, to acquit the prisoner. Upon the whole no inference can be drawn from that case.

Gentlemen, another extraordinary position was taken by both the council in defence of the prisoner. It was said that it could be no offence to rescue prisoners who were taken up for acts committed against men who acted without authority, nor to oppose men who had not authority to assess under this law. It was attempted to be shown you that some of the assessors had not received their warrants agreeable to the act of Congress,

and thence all the outrages were tolerated ! I do not suppose that the gentlemen engaged for the prisoner means to go beyond the case in which they are engaged, but I must say that their zeal on this occasion has introduced a dangerous principle—if the apostle of any insurrection had come reeking from the gore of Europe, and had preached up to you this doctrine, he could not have done it more compleatly than those gentlemen ; agreeable to this the whole country may raise themselves into array against those who *de facto* exercise the authority of the government and the laws, yet if called to account the court must be informed, if the ingenuity of the council can find a fault in the appointment of the persons engaged in the execution of the laws, that they have not transgressed the laws and upon that account ! Is not this at once sapping the foundation of society, and by a kind of encouragement of insurrection, striking hard at the root of all government ? This is an opposition in my opinion upon a dangerous and destructive ground. I am not disposed at this time to enter into any argument whether it is necessary to prove the appointment of the officers, but admitting it is true, that upon the indictment of persons for obstruction of process or obstruction of a public officer in his duty, is no offence without he prove his due appointment, yet it does not follow that facts given in evidence to prove an outrage, should require all that strictness of examination. You will observe that the prisoner does not stand charged with any thing but the rescue at Bethlehem, he is not now charged with the offences he committed in Bucks, or any where else, much less with any thing where he was not present. These previous transactions are given you to show the intention with which the last outrage was committed : it is only to shew the tendency of the design. These gentlemen exercised the offices, and it does not appear that there was the least doubt expressed in those counties of their authority, neither by the prisoner nor any person whatever who associated with him, at any time or on any occasion : their opposition was not founded on any such pretext, but it grew merely out of the law, and therefore it must appear that the outrage was an unequivocal fact, conducted with the intention, so far as we can collect, to defeat the law. On these grounds there is no necessity for proof of due appointment. But what are the objections, or what proof do they require. There is no pretensions to a doubt respecting the legal appointment of any officer, but the two assessors at Penn in Northampton, and Milford in Bucks : Mr. Eyrely himself tells you that all the rest were appointed by the board of Commissioners, and that at Penn, the assessor refused, and Mr. Balliot had the blank to fill up. Respecting the other Mr. Foulke supplied the place of Clark who held his appointment, and Mr. Foulke was appointed to assist him. How then, gentlemen, from those two cases, could a general inference be warranted that *the* appointments were irregular, and upon that ground these outrages be justified ?

We have heard much about the danger of following English precedents, and about the words *high Treason*. There is a species of treason in England which cannot exist here ; that is, conspiring against the life of the king, and speaking of mere words which have frequently been construed into that crime. It has been a question of great doubt whether words can be called treason, but in that country or this, it is necessary to prove the intention with which a crime was committed, and therefore mere words, though it is true cannot convict, yet if a man has done a

lawless act, we may exemplify the design by words, even of the prisoner himself. With respect to an action done publicly and notoriously, that is a matter capable of positive and absolute evidence, plain to the senses; those who see it can tell of it, but there can be no way of diving into the heart: if the party himself, from that recess, should develop his designs, these declarations made, either by himself or others who heard him, can prove the intention of his actions, and for that purpose is good evidence.

Gentlemen I have now said all which I think necessary with respect to the law on treason. I am confident I have not done justice to it; but what I have omitted will be amply supplied by the attorney of the district, and their honours upon the bench.

I shall now proceed to investigate the facts as they have appeared in evidence, and apply the law to those facts, in order to show you what share of guilt the prisoner transacted. In doing which I shall only select the most prominent features of the testimony which may go to prove my position.

First, with respect to levying war. I think it will require but few words to show that there has been an insurrection in the three counties; that at Bethlehem there was a multitude of people in arms, amounting to the full sense of the words of "levying war with arms:" the insurgents had all the apparatus and accoutrements of a regular military force, and they went there in military array. This is proved by fifteen witnesses (not by two merely). It is farther certain that this multitude of people perpetrated atrocious and lawless offences, and in contempt of all legal authority, after solemn, reiterated and repeated warning; that the marshal, conformable to that humanity which characterized him, sent a deputation to them, requiring them to go home, and to abandon their purpose; that he selected persons who were most likely, from their political opinions to procure the object, but nothing would do for them short of what they set out upon, and the mission failed.

We will next consider for what purpose this outrage was committed: It was said to be simply for the purpose of releasing the prisoners: this was the abstract and naked design. If such is the fact, the prisoner must be acquitted, but if he had an object beyond that: if it should appear that this was one link in the chain of opposition to the laws, then it amounts higher; it amounts to treason. It is my purpose to show you that their designs were higher than a mere rescue, and that it did not flow from any particular regard to the prisoners in custody, but it was a public opposition, and one means used with a view to prevent the execution of a law of the United States. Gentlemen, the mere recital of one or two facts will be sufficient to bring this home to the mind of any man who is not determined to shut his eyes against plain testimony.

It is in full and compleat proof before you, that in the counties of Northampton and Bucks, the opposition was almost general, and that in the township of Milford; all along the river Lehi, and both sides of the mountain, there was an union in opposition to the law, uniformly conducted with system, menace, and threats; that the persons who thought proper to assist in the execution of that law, were previously intimidated not to accept of it, and after they had accepted, they were prevented from executing it, and in many places, until the march of the army, the law did actually remain unexecuted. I shall not state to you the particulars

of this evidence, but remark that the system was general, and that it was accompanied with threats and menace, and that the friends of the law, and those who were peaceably inclined, were prevented, under the influence of this terror, from speaking their minds on the occasion; and even the magistrates of the country were so impressed, or so intimidated, as not to perform the duties of their office: That the law was completely prostrate, and persons who would have given testimony against them for these proceedings were afraid to do it. In the course of this proceeding, it was repeatedly declared, that if any person should be arrested for opposition to the law, that they should be supported. This system of menace was general; it was not an opposition grounded particularly upon the obnoxious characters of persons who were employed in the execution of the law, but upon the law itself: There was an offer of a particular commissioner to use his influence, that they might choose their own officer, but that would not satisfy their object—no, they said if they accepted that offer it would be approving the law, and that they would not do. Mr. Eyerly the commissioner, had been for many years the representative of this district in the Legislature: Mr. Balliott had been in the Legislature, in the Council, and in the state convention, which proves they were men of confidence in their district, and that the particular dislike now exemplified was not to them as men, but as officers under the law. One of the council for the prisoner went minutely into all their views, and the veins through which they acted, and endeavoured to palliate, or excuse the conduct of these insurgents; while, at the same time he appears to know what were the views of government in prosecuting the delinquents; but there is no necessity to answer that, because the prisoner is not on his trial for obstruction of process. I most solemnly disavow that political party spirit enters at all into this prosecution, and beg the jury will dismiss all party spirit and prejudice from their minds: However we may differ on points of law, we must agree with them that the people had a right to examine and explain the law, and express their dislike to this or any other law. Their opposition to this law might have been right, or wrong; it does not alter the case, and God forbid that any motive of the kind should influence us to revenge: These are natural rights under a free government, which every citizen has a right to exercise. We are not now enquiring into the nature, or grades of any, or all those particular offences; whether this particular outrage is a riot, or that a misdemeanour, or whether it amounts to treason, we are simply shewing to you, from the evidence collected, the weight and force of those facts; to wit, that there was opposition to this law, and that universally, and that these people did their utmost, to endeavour to stop the execution of the law; and that these acts were in strict union with the last act at Bethlehem, of the intention of which, the previous acts collectively are plain proof, for certain it is, that an act illegal in its nature, may receive colour and complexion from one that is strictly legal. Suppose a man had reduced his thoughts on this subject to writing, without any intention of communicating it to any person; suppose in that writing his intentions are fully declared with which such writing was drawn; then this act, though innocent in itself, would be competent evidence to shew the intention with

which a subsequent outrage was perpetrated, and it would be in full proof to show that a violent opposition to the laws in that country particularly to the act for the valuation of houses, and that it was not from a personal or private motive, but generally an aversion to the law itself, so that a long time after the period fixed for its execution, the law actually remained unfulfilled. In several parts the people returned to a sense of their duty and submitted to the laws, and happy would it have been for the government as well as themselves if they had all done it; for then this investigation would have been prevented: but in some parts, the marshal, and those who were with him, who were not volunteers as has been insinuated, but acted in conformity to their duty as public officers.—These were insulted, arrested and obstructed as officers; The marshal was abused by numbers of people at Millar's town, and he was not able, though he touched Shankweiler, to execute process on him. Gentlemen, all I ask of you, is to connect the circumstances in your minds; the general course of events which gave rise to what afterwards was consummated at Bethlehem. The prisoners who were rescued were desirous of accompanying the marshal to Philadelphia; they would rather not be liberated;—they were taken from various parts of the country, unknown to each other, and more so to the persons who rescued them: there was no private attachment, regard, or resentment; What therefore could be the motive of the insurgents? Could it be interest? No, it would be bad policy to spend dollars to oppose a tax law rather than cents to support it. Was it a private distinct interest they had, which did not concern the community? If not, agreeable to Judge Foster, it was treason. I have said that these prisoners were not known to the insurgents; I would make the exception of Shankweiler; but you will observe that he never did surrender himself to the custody of the marshal, and though some said they were come to see him as a neighbour, others to see his partner, (accuser) &c. yet he was not *de facto* in custody: It could not be to rescue him that this large armed body met, because he could have been safe by keeping at home. But one solemn fact respecting the others demands a solemn inference: The Lehi prisoners had cordially submitted to the law, and thus desired to recommend themselves to the mercy of the government by penitence, and actually at last gave the marshal their individual assurances to meet him at Philadelphia: I ask then by way of inference what becomes of all the private object, or the neighbourhood esteem necessary to vindicate these insurgents? It was not for the prisoners' sakes, but through opposition to the law that they did this act, for it is plain that the persons in custody of the marshal were afraid as much to trust themselves in the hands of the mob, as Mr. Eyerly or Mr. Balliott were. They doubtless had a treasonable, a rebellious determination to oppose the government; the previous declaration of the party was, that "if any persons were there in confinement who were opposed to the law they should be rescued," was a plain indication of their opposition to the law, and that this rescue was a part of the general opposition. Mr. Sitgreaves then went into a review of the evidence respecting the meetings at Upper Milford, and at Schymer's, where, he said, opposition to the law marked the conduct of the people, but at Lower Milford, the prisoner at the

bar by his own confession, eminently displayed his intention ; three witnesses corroborated the fact : “ This was the third day he had been out on this business ; he had a skirmish yesterday, and would have another to day (7th of March) if the prisoners had not been given up.” This clearly proves that the business at Milford was closely connected with that at Bethlehem ; thus being all parts of one whole, the former acts are full and complete evidence of the latter. In Lower Milford they resolve that the law should not be executed yet, because they did not know it was a law : In reply to this we may say, it is inconceivable to suppose that any people should be so stupid as to doubt the existence of a law, when the assessors were actually going about the country in conformity to it ; this is incredible notwithstanding the charity we are forced to have for these people’s ignorance. They farther resolved, that their township should be the last to submit* to it, if it was a law. Is not this as much as to say, If others assist us in rebellion we will go on, but if all submit, then we will also. No thanks to them. The assessors found it so, for they were chased, insulted, and finally obliged to abandon the township, and yet, in that township the utmost possible means were used to convince them of their errors. At Mitchel’s it was proposed to read the law, but in vain ; they “ did not want any damned laws.” An offer was made to them to choose their own assessor, which was likewise treated with disdain : They set the most solemn warning of consequences at defiance, and defied even the government itself ; sometimes vainly flattering themselves, that they had all the people coming to their assistance, they set at nought the judicial authority, because they supposed they had arms and numbers sufficient to support their opposition. At Quakers town they resolved to go to the rescue, and there we find them all declaring opposition to the law, and defiance to the government : They were engaged in these acts when they received information from Northampton county that the prisoners were in custody, and then they signed a resolve to go to rescue them.

Gentlemen, when these facts are taken into view, so immediately preceding, and so directly pointing to what took place at Bethlehem, can you hesitate, as honest men desiring to do justice, and speak impartially between the prisoner at the bar and his country, that he went there, not merely to rescue prisoners, but to execute a part of the general opposition to that law of the United States ? If he has done so, he is guilty of Treason. Let us now attend to the evidence which grows out of the avowal of the parties themselves at Bethlehem at the time of the outrage. These are previous indications, which certainly point as truly to the intention, as the needle points to the pole.

Two persons appeared in arms just at the arrival of the posse : the Marshal thought proper to take and disarm them : upon being questioned, they answered they came there in order to see what was best to be done for the country. They did not come to assist Shankweiler ; they did not profess to have any friendship for the prisoners, but to see whether the interest of the country was to be promoted by treason and rebellion. Can there be a stronger proof than this that the object was of

* The council reminded Mr. Sitgreaves that this was sworn to by but one witness.

a public, and not of a private nature. Keifer said he heard "it was to be made out about them laws." This is positive proof that it was to be settled that day, whether the laws or the people were to be triumphant; if they could overawe the marshal, probably they thought they were to be triumphant. It is true this was not the declaration of the prisoner at the bar, but of another person: upon this you will observe, that where a great number embark with one general object and design, the acts and declarations of each are chargeable to all, and are proof against each and all. 6 Term. case of the king against Stone. Though a man does not act or say one word, yet abetting the object, it leaves him equally responsible for the whole with those who actually speak or do. That this design was of a public nature I farther prove, because it was not this, that, or the other prisoner they demanded but "the prisoners," without knowing who were in the custody of the marshal: they would not go from the ground until they had the whole of them. After the marshal had liberated them, supposing one was left, the demand was made for him, and the marshal was forced to give them proof that he was gone. Indeed the conference of Mr. Fries with the marshal is sufficient to show the object, and surely the application of his own conduct to his own case will not be disputed. Jamieson tells you that Fries' own story was correspondent with that delivered by the marshal: referring to the marshal's testimony it appears that Fries, in conversation with him, when he delivered up the prisoners, expressly avowed that it was not out of any friendship or attachment, but that his motive, was opposition to the laws; that the laws were unconstitutional, and that he would not submit to them, and for this reason he had come to take the prisoners, and he would persevere until he had them. The marshal told him "you will be hanged." He treated that with contempt, and told him it was not in the power of the Government, for if they were to send a military force, they would join in opposition to the law with them. Now this is a declaration of Mr. Fries, their leader; their spokesman; their representative, and shall we not give credit to it? From this declaration, and the concurrent testimony, I think there cannot be discovered a crevis at which a doubt is to enter. Mr. Fries, when he came into the entry, talking loud, and with an importance becoming his dignity, gave his general opinion upon politics, saying that those who were now at the head of affairs, were all tories during the war, and in this way found fault with the laws. I do not find fault with the word "tories." I believe it bears analogy with the ridiculous word "Stamplers," and only can tend to show the general disapprobation expressed against the government, but when a variety of things concur, of whatever little importance they may be in themselves, they are increased by their accumulative weight, and thus become worthy of notice.

Gentlemen, it is farther given in evidence that, during the time they were at Beekham, there were repeated threats of violence thrown out against Mr. Eyerly, Mr. Balliott and Mr. Henry, on which account the marshal desired them not to shew themselves to the people: these gentlemen who had been the confidential and favorite friends and servants of the people are now in a dangerous situation, the objects of resentment, which resentment, we have good reason to conclude was occasioned by their offices under the government.

Mr. Sitgreaves then answered some of the remarks of Mr. Dallas on the conduct of Mr. Eyerly, and explained away the inconsistency of his testimony. He said it was clear that John Fries, the prisoner was an active and influential character through this dark scene, in which he was recognized by all who were there, even by persons who had not known him before: he was not merely an aider and abettor of Treason, though that would have made him guilty of it, but a leading man; a conductor of the violence committed.

You will remember that when the marshal sent forward a deputation to those at the bridge, they were prevailed upon to halt, and attend to their propositions: when they agreed and promised upon their honours not to pass the bridge until the return of their own deputation from the marshal; though the horse did go over, yet the foot remained until the prisoner at the bar came up with his men. He instantly appeared the prominent, the active leader of the expedition; he settled the toll with the keeper, and they all went over. When Samuel Toon upbraided Captain Staer at Bethlehem with breaking his word and passing the bridge, his answer was we came over with Captain Fries and the Bucks county people. When the main body was coming up, he marched at the head of the footmen: when Mr. Mulhollen met them, the answer was received from Fries. It was he who was appointed by them to go to the marshal. Here let me make a remark upon what has been dwelt upon as a circumstance much in his favour; that is, that Fries always did his utmost toward the prevention of violence. Let not the merit of any man's actions be withheld: I agree in that with the council that he has avoided the effusion of human blood, and appeared to endeavour to prevent every severity, so far as was compatible with the accomplishment of his purpose: Nay, I will say that Mr. Fries has shewn an Urbanity and Humanity towards the assessors in Bucks county which has done him credit and honour. But let us not forget that every fact which displays his humanity, at the same time establishes his influences, and more—his authority over those who were with him. When he came into the room where they were abusing Mr. Childs, he says "point out the man who committed this outrage and he shall be punished" when he was gone, they began upon Mr. Childs again. At Bethlehem, when he told the people not to go on yet, we find them obey him, and if he had carried it farther, they still would have obeyed him. Thus you see, gentlemen instead of this rendering him assistance, it confirms his controul over them and makes him principal in the transaction. Again, amidst all his Urbanity did he not execute the whole of his purpose? Did he not say "Foulke, you shall be taken" notwithstanding the respect he had before professed? Did he not, when he said to Mr. Childs he was very sorry, for what had happened, demand and obtain his papers? Did he not say to the marshal, my men shall not hurt you, but I will have the prisoners? As much as to say all this shall be done as easy as possible, but it shall be done. While we admit his humanity on the one hand, we still find it coupled with his purpose, his determination to obtain his object. Twelve witnesses prove that the prisoner was active at Bethlehem so far then it is in full proof by six times the number the Constitution calls for. He was not only at Bethlehem a commander, but he was there a volun-

teer: he came there from a great distance; he was industrious, and made a great Sacrifice of his own private interest to go there; he came out of his own county to accomplish the general purpose for which they had assembled: he went there with all the insignia of military rank. I have observed that he was emphatically the great spokesman between the Marshal and the people, and therefore he alone was admitted up stairs; he came out to explain to his men the success of his embassy: that the marshal had said he could not comply: that he had arrested these people at the command of the judge, and at last, when the marshal told him he could not deliver them without force, he calls upon them to the outlet; he tells them he would be their leader; begs of them not to fire first; tells them they must go through an armed party on the stairs, and if he should drop, they must fire again, and do as well as they could for themselves. In consequence of his invitation, they went into the house: and at that critical moment the marshal delivered up the prisoner to them, to prevent violence.

I need only refer you to the testimony brought by the prisoner to prove that he was constantly active in the grand business of opposition through the whole course. He wrote the paper at Kline's and at Fries' to invite them to go to Bethlehem; he warned the assessors not to go on with their business, not even to another house. He declared he had a great regard for them, but it was against the law he shewed this hatred; to which he said he never would submit. He defied the government, telling how many men he had ready. In conversation with Chapman, he told him the number he could raise; Chapman told him it was impossible; that they could not cope with the number government would send "we'll try then who is strongest" he replied. He went away in a great passion when told that the assessments were going on, then, said he, it shall soon be as it is in France." He seems to have anticipated all the horrors of a civil war; for when told of the consequences, he said, if they once began, he knew not where it would end. He appeared to argue the point with as much zeal as though he thought he could prevail upon the government to desist from enforcing the tax. "You shall not go to another house," he said: but finding they did go, he attacked them at Singmaster's, with a determination to take Rodrick prisoner, but not taking him, he let Foulke go whom he had taken, and promised to take them the next day, he took two of them the next day, but let them go on a promise to desist from assessing; at the same time declaring his determination not to submit to this law, but that it should be repealed. The party then resolved to go to Bethlehem, but they did not separate, till he had procured from them their signatures to an engagement to go and accomplish their purpose. When on the march to Bethlehem, and met by young Marks, he was one who prevented their returning, and they actually did proceed, and got to Bethlehem, where this scene concluded.

Here then gentlemen the evidence closes. We find this man is not of a yielding texture; he still continued in his opposition even at the time there was a recommendation to submit to the laws: at a meeting at Marks's it was determined to recommend submission to the officers, and all the laws of the United States, and to *desist from opposition to the laws.* This is proof that there had been opposition to the Laws in the three

counties. When these things were done Mitchell asked Fries if he ever did intend to oppose the laws. "Yes I did," was his answer.

In the testimony of Mr. Roberts we have proved the general state of opposition, as well as the guilt of the prisoner: this witness was called by the prisoner's council. To be sure he proved the prisoner's penitence and submission. If he had not been guilty he could not have been penitent. He said he had not slept for several nights: an acknowledgment so much the more pertinent to prove that he had been doing what he knew was wrong.

Gentlemen of the Jury.—I have endeavoured to show you this subject in all the points of view I am able, so as to give you a right understanding of the facts; and permit me to declare to you that I have not wilfully perverted either the law or the facts to the best of my knowledge; yet it is possible I may have done it, if so you will be undeceived in those particulars by the court.—Gentlemen, you have a solemn duty to perform: we have all had a disagreeable and tedious undertaking I pray you to do it in such a way as may do justice to the prisoner and the bar, and at the same time consider how much the happiness, the peace, and tranquility of your country, depends upon a fair, impartial and conscientious verdict, which there is no doubt but you will deliver.

MR. LEWIS.

With submission to your Honors.

GENTLEMEN OF THE JURY,

IT is now become my duty to address you on behalf of the prisoner at the bar, who is arraigned before you on the important issue of Life or Death: I do it with the more confidence, because I have not been able to learn from the council for the prosecution, a single instance of English law that comes up to the present case, in good times or in bad times, so as to denominate it Treason, except in a determination during the bloody reign of Henry VIII, and that is mentioned among the evils of the time: I have not been able to find it under any existing circumstances whatever, and yet any person who is the least acquainted with English history or law, must know that the excise law and the shop tax, as well as some others, have led to riot and insurrections, and a variety of trials have been held upon them. It may be right to make the experiment upon the present case; but, unless this prosecution is warranted, established in good times, and upon solid grounds, I am sorry to say, but truth compels me to declare, that it is a burning torch in the hand of a madman; it is a flaming sword in the hand of a tyrant, and has done immense injury in England. I know there is no intention in the attorney in this case, to do any thing that is wrong; yet I wish more reflection had been used, before the prosecution had gone on. Thus it was in England respecting Hardy, Took, Thelwal, and

others; those who most understood the whole of the charges were not satisfied to call their crime a misdemeanour, though there was no direct point in ancient or modern law, warranting any other indictment, yet the experiment was tried, but an English *jury* appreciated it in its proper light, and they resolved to do nothing which their ancestors had not done, not even in the application of constructive treason; and therefore after a mature discussion they returned a verdict of *Not Guilty*. When, on the present occasion, the causes and proceedings are duly considered, I am satisfied you will feel it a duty you owe to the prisoner now before you, and to your country, to pronounce a like verdict. It is not because a circumstance any way similar to this has once taken place, and been argued upon the same grounds, that therefore it is right it should take place upon the present occasion; adopting a principle of this kind has often made courts in arbitrary times, take gigantic strides over the statute of Edward III, so that a man could not know how to look, act, speak, or even think, without difficulty and danger. I have said that I am not able except during the mandatory reign of Henry VIII, to find the trace of a single instance where rescue, under any circumstances whatever, has been found to amount to treason, and if succeeding ages did not consider themselves bound by that practice, I trust you will not sit here to establish a law, but to give it such a construction as justice demands of you. I have undertaken this cause the more readily, because I do not undertake to justify, to palliate, nor to excuse; but I censure the transactions which have given rise to this trial as much as the council for the prosecution does: I am sensible as they are, that those people violated the law without cause; and I came not here to set up a mock excuse for them: No, it is my opinion that they merit exemplary punishment, but that punishment must be conformable to *law*, or, when once the law is overturned, the consequences will be incalculable; offences higher than the present may be committed with impunity by some, while those of less grade will be severely punished in others. It is not for me to say that the prisoner is entirely innocent: To me, to the court, and to you it is totally immaterial whether he has acted wisely or foolishly; guilty or innocently, if not guilty of the offence upon which he now stands upon his deliverance. I may be asked here how I came to defend a man, who I admitted had violated the law, and in some degree set the government at defiance. My reasons are these: It is the privilege of every man to have a fair trial, and not to be condemned without being heard, especially in affairs of an highly criminal nature; few men are capable of defending themselves before a court, and in a capital case, from the perturbation of their minds, still less so than in any other: And woe betide that country, where a man so charged should not be entitled to every assistance that he can procure. By the statute of William III, which is the first that ever allowed council at all, the court were obliged to assign council, who were obliged to render all the assistance in their power; the same is allowed by our act of Congress, (p. 112. Sect. 29.) for without that, he may be considered as condemned unheard, and the public mind would be left unsatisfied as to the innocence or guilt of the accused. Those who have entertained the surmise I have hinted at, at my being thus engaged, have doubt-

less acted from the best of motives, but, not satisfied with this, and wishing to spill the blood of a man before he is proved guilty, some calumniating scoundrel has, in a public print, had the hardihood, during the present trial, to impute to the unhappy prisoner's council, the base influence of gold, when all concerned know very well that the prisoner has not a farthing to give, and not a farthing, nor even a promise of any, was ever given to those who have undertaken his defence. I will say no more respecting this vile attempt, but that the law says no publication shall take place which may tend to influence a court or jury, while a trial is pending, and therefore it is an high contempt thrown upon the court, and upon you, and the probability is that either the author or the publisher will be brought to answer for his conduct.

There is one thing, gentlemen, I would wish to caution you against: there are many citizens who suppose that the troops will never turn out again unless a conviction takes place on the present occasion, and that an insurrection will soon appear again: but this is paying a poor compliment to our volunteer troops, to suppose they would not be satisfied without shedding blood: Gentlemen, let no arguments or considerations have weight with you but what are supported by law, and then decide, regardless of the consequences. Another matter I would caution you against, is one with which I found very considerable difficulty to cope, but at length I divested myself of it, and I pray you to do the same: I mean all kind of prejudice as to the party tried and trying. Our Constitution, and our laws, are wisely calculated to preserve the happiness and interest of ourselves and posterity: our Government is composed of tried patriotic characters, and our political bark, with such men at the helm, need not fear a storm; but notwithstanding this, 't is villified and abused: These are grounds for prejudice to work upon, and it is difficult, I can say by experience, to avoid its influence; but when we come to the sacred temple of Justice, even if to decide between A and B, on a matter of trifling property, we are sworn to an impartial and unprejudiced decision; and how much more is it demanded of us in a case of life and death? It is necessary to enter that temple divested of opinion or bias, otherwise there is not a fair scope for our reasonable faculties to act, nor can our consciences be acquitted of guilt. I will take the liberty of reminding you that your oath is "that you will well and truly try, according to evidence;" this obliges you to expel every thing from your minds which you might have heard out of doors respecting the whole business of the insurrection, excepting such only as is proved by the evidence. Your present situation, gentlemen, imposes upon you a duty which is highly important; important as it concerns your country, the prisoner, and likewise yourselves: it concerns him, because his life or death is, in some measure placed in your hands; it is upon your verdict it depends whether he shall continue with industry to spend the remainder of his life with his family and friends, or whether he must leave them all, and be suspended between heaven and earth to a gazing multitude. Your decision is of importance to your country, because we are now treading upon the dangerous, and, I had almost said, unbeaten ground of constructive treason, and because it may and will operate as a precedent to future proceedings. Nor is it less important to yourselves

because, if owing to honest intention, and mistaken views you should go farther than a reflecting moment would dictate, in some circumstance of a public nature which might *possibly* occur, the work would be irretrievably done, the reflection would come too late, and pardon would be out of the question.

I will now proceed to consider the particular offence imputed in the indictment to John Fries, the prisoner at the bar, by which he must be convicted, if at all. [Mr. Lewis, here read the indictment.] To this indictment he has pleaded not guilty, and you are sworn to decide upon the issue. The question is not whether he has, or has not been guilty of a riot, or rescue: he may have been guilty of an high misdemeanor, of this or the other description, but the question is, has he ordered, prepared, and levied war against the United States? That is the language of our constitution, and the act of congress formed thereupon. In order to insure the conviction of this man at all events, it has been stated to you, and that with no small degree of confidence, that, as the framers of our constitution have adopted the words of the English statute, the courts are bound to admit the expositions which have taken place upon it, from time to time in the English courts: though we have laws of our own, yet in order to know the true meaning of our constitution we are to go back into the remotest and most dark ages of English history, to understand its meaning! The English statute, or the opinions of the courts of justice are equally become part of the code in that country it is true, and it was as possible for the framers of our constitution to have extended the one as the other to this country, had they chosen so to do, but their not doing it, is a presumptive proof that it was not acceptable. To me it appears strange that while the English statute is not in force here, the English construction of that statute should! that is a position I never mean to subscribe, but controvert it from the beginning to the end, of this case. As we have enacted laws of our own, and have not extended the laws of England to this country, we must put our own construction upon them, and not the determination of an English court. Neither the English laws, nor the opinions of English judges are to be regarded any farther than is consistent with our good, to appreciate which the situation of the times when those opinions were given, and whether the judges were dependant or independant are important considerations. I do not mean to find fault with English decisions in general: I believe that with regard to property, since the judges have been rendered independant of the crown, it is as wisely administered as the laws of any part of the globe are: but they were not always in a situation to give impartial opinions, when they held their station at the will of an arbitrary monarch, who could hasten or delay causes at his pleasure, to which the judges were the most obsequious tools. Such has been the decisions of some periods respecting treason. But it is not true that the very words of the English statute are adopted in our constitution; they very materially differ: the statute of Edward III, does not provide that confession must be made in open court if received at all: it does not specify that two witnesses shall be necessary to establish the fact, but it was left to the court upon principles of common law: nor does it say a single word about an *overt act*. Since, then, the

two statutes are so dissimilar in important points, it would be very wrong to admit of the same construction in both. So careful was our government of the lives of our citizens, viewing the injuries other countries had sustained by indefinite laws, they provided that the crime should be put in the indictment, and supported by the testimony of two witnesses. In England there might be one witness to one overt act, and another to another.

But I shall now proceed to show what does, or what does not amount to levying war: in doing this, we are not to go back to corrupt times, under corrupt judges, nor do I think the observations of those judges are in the least obligatory upon our courts, but how far they will be respected, in another question; we may rest assured they will be regarded no farther than reason will suggest. This I consider of importance, not only at present, but to posterity. Most of our laws, it must be remembered, are from England, and were brought with our ancestors as their birth-right: this was the case wherever British subjects emigrated, but as soon as we became independant states, we enacted laws of our own, although in a great degree copied from British states, but they became new under our constitution.

I think gentlemen, I shall be able to shew you, upon the opinions of men sound in law knowledge in England, that the definition of treason in our constitution will not bear the construction that has been put upon theirs at an early period. We have an express and distinct meaning of this crime in our own acts of Congress. An act passed 1790 (Vol. 1, page 100). Sect 1 shows what treason is, and particularises wherein it shall consist. Sect. 5 defines the punishment which should be inflicted on a rescue of persons committed to custody, or in the hands of the officer. But there was another act passed defining the precise circumstances attending this case, this was passed after the declaration of the judges on the case of the western insurrection, and from its being enacted subsequent to all others upon this species of crime, appears to me to be binding upon our courts: I mean the Sedition act. It appears to reach the present case in the fullest extent; the language of that act is, whoever shall combine or conspire, &c. shall be guilty of a high misdemeanor: this act does not specify the number: a township, a county, or twelve counties equally is within the law. Combining to *prevent* the execution of the law: this reaches the action, whatever may be the number or force used: it is a *misdemeanor* and shall be punished with *fine* and *imprisonment*, not death. Whether the object shall or shall not be effected, the law says the punishment shall be the same. Here then is a solemn declaration made by the legislature itself, the same body that enacted the punishment of death to what they termed treason by a prior law, and surely that authority had the greatest right to put a construction on, or make an alteration in their own law. If there is a legal definition of the crime committed by the prisoner at the bar, this act contains it: every case is here provided for by the punishment of fine and imprisonment, and had a prosecution taken place under this act, a conviction would have been certain, and the punishment would have been rigorous, and exemplary.

Under this head of English construction, I would ask how it can apply to us, when we consider that before the act of William III, no person charged with high treason was allowed council to plead for him, unless he stated some objection in point of law which made an argument necessary, and even then he could not do it without first admitting the truth of the fact charged against him, and yet all the decisions of English courts alluded to were formed before that period! Further. Not only was the accused not allowed council, but if he had hundreds of the most respectable witnesses to prove the falsity of the allegations, he never had a right to bring them forward until the reign of William III. These decisions, gentlemen, of the English courts, which are called up as precedents for us to regard, were formed under these arbitrary circumstances: No council allowed even though the prisoner was deaf and dumb, nor witnesses, if he could even prove he was hundreds of miles distant at the time. Further, to show what dependance can be placed on the sayings of these men, you will observe that until the time of William III. all the judges held their commissions during royal pleasure only, and even until the first of George III, the judges were never completely independent, and of course were obliged to study the royal pleasure; their opinions being extorted before the trial commenced. The consequence of all this is plain, that no impartial opinion could be given. It was common before trial first to closet these dependant judges and bring them to submission, if their opinions ran counter. Bacon, the greatest, wisest, but meanest of mankind, thus stooped to become the tool of his master. Those who could not thus be brought over were despised, and more obsequious persons placed in their room, and it was not 'till they could have a decision thus formed that persons were brought on their trial for high treason. And yet we are referred to these persons to tell us what is the meaning of our own statute on treason! Thus it was that many of the best citizens of England fell a sacrifice, and for no other purpose, many of them, than because they possessed exalted virtue. During the existence of this state of things, the judges would set silent on their bench during a trial for life, and hear the crown officers, instead of acts and expressions of humanity to the unhappy prisoner, abuse him with the most opprobrious and insulting language. Influenced by this meanness, Sir Edward Coke, while attorney general, descended to abuse the great and good Sir Walter Raleigh, with the vile epithets of *Traitor*, *Viper* and *Spider of hell*, &c. turning away from him with the greatest scorn: and this was the manner in which trials were commonly managed. See Foster, 234.

It was well known that the statute of Edward III, made no provision whatever respecting the charging of an overt act in the indictment, nor does it say any thing about proof, but a statute enacted in the reign of Edward VI, made two witnesses necessary in cases of high treason, but Foster says no great regard was paid to this better statute 'till near a century after, and the reason assigned was that it was not for the safety of the crown, or to the common well known rules of legal evidence. It was common to admit one witness of his own knowledge, and another by hearsay, if it was even from the mouth of that one, and at the third or fourth hand, and frequently the depositions were taken out of

court to be read, rather than bring them into open court. This must appear an uncommon representation of the administration of justice, but it is a fair picture of the times under which the decisions took place which are brought against us. At the period in which the seven bishops were tried, lord Cambden declares that justice Powel was the only honest man that sat on the bench. Blessed justice! I know that since the judges have become independant men in England, there has been as much independance in their conduct as in any country; but then, as Hale tells us, these decisions had already taken place, and therefore they must be abode by; but he takes care to caution future judges how they introduced new cases by putting new constructions. The question now is, whether this court and jury are prepared to be bound by judges thus principled and thus circumstanced, to form a decision upon *our own law*. I contend that these decisions are by no means binding upon us, we have the sedition law, which comprehends the whole case. In 1 Hale 132, and 1 Blackstone 69, it appears to be lamented that the independant judges of later days have no power to alter the rules of law established in the dark ages of English jurisprudence, otherwise, we have reason to believe, they would not be in existence at this day. Lord Kenyon, when council for lord George Gordon, declared, that he did not think the parliament of Edward III, ever had any design that constructive treason should exist at all, or any wish to leave room for it to be introduced. We are certainly, therefore, unentrammelled by every foreign rule, otherwise the question would be, what rules we should adopt, and what not. It is a rule in law that statutes affecting life, should never extend beyond the letter of the law, so as to leave the possibility of a doubt. If that is a rule respecting penal statutes in general, abundant more so is it necessary respecting the high crime of treason. Above all things, if bad times should even happen in this country, and bad times may come here as well as they have in all other countries, it will be of vast importance that the law should be known precisely: it will be of consequence to a citizen to know on what law he is to be tried, if he becomes the devoted object of any one's resentment, or commits a crime: it is of consequence that the flood gates of usurpation and tyranny should never be left open, and the liberties of our citizens be thrown away *ad libitum* on the uncertain ground of construction. 1 Blackstone 88. Foster 58. we read that it ought to be "clearer than life itself."

We now come to examine the true, full, just, and reasonable meaning of our own treason statute; for I do not admit that constructive treason ought to exist at all. A line is drawn, and if we ever cross it, where are we to stop? Treason against the United States, we find, consists in "levying war against them, &c." The question is, what is levying war? Levying war may fairly extend to the three following things:

First. Where a body of men take up arms, and array themselves in a martial manner against the government, with a view to put an end to its existence. This is its plain natural meaning, but cannot be said to have been transacted by the prisoner at the bar, and therefore requires no farther definition.

Secondly. It is expressly levying war, if a part of the union, throw off all allegiance and authority of the United States, totally disregarding

its laws and institutions, and act as a divided people as though they did not belong to them.

Thirdly. Where laws have been enacted by the union, pursuant to the Constitution of the United States, and a number of people, being dissatisfied, should, of their own authority, by numbers, or force of arms, take possession of the legislative or executive authority, and by this force of arms or numbers should undertake to compel either of the departments of government to act as they dictate, thus robbing the government of its legitimate power, by assuming it themselves.

No doubt the good of posterity was intended in the constitutional definition of treason, and we are to touch it with a trembling hand indeed, lest it moulder, and grow into, God knows what. Now, as this is an act which was deliberately formed, if we go upon the dangerous ground of construction, that cannot be done so deliberate: No, I say it was to be handed down pure to posterity, and we ought not even to depart from a letter of it. If liberty of construction is to take place in any degree, by so much it tends to render the constitution vague and uncertain, and we know not where it will end. If the constitution only intended the three definitions of levying war which I have laid down, it is clear that a man cannot overstep those constitutional limits without intending to do it. Go beyond this, and you leave jurors and judges to make the constitution any thing and nothing: a mere nose of wax, to be moulded into any form at their will, and they may be excused, because left to exercise their own judgment upon it, but lord Hale has charged you not to do this, even though encouraged by a parity of reasoning: agreeable to his apprehensions, it is deducible that if ever we have a bad president, presidential encroachment may wrest the constitution to every thing that may serve any particular purpose. But God forbid either should ever happen.

Stating these as expressly levying of war, (and I know of no other) I call upon the prosecutors to produce a single instance, except in the inconsistent reign of Henry VIII, wherein the rescue of one or more prisoners, by one or more people, has ever been said to amount to treason. I may go farther, and ask those gentlemen whether a refusal to obey the law, and resist the officers who came to execute it has ever been called treason but by themselves? We find that *universality*, a design to pull down *all* prisons, &c. is requisite to make the offence treason: it is only a general opposition to the government. But why are we to look for universality if we are to take a case like this, and call it treason? If an officer of the government, (agreeable to this doctrine) goes to execute process, and that process is resisted by one individual, does he not deny the authority of the government? Yes, as much so as though 50 or 100 were engaged in it: the whole intent the *mal animus* being exercised to resist it, it becomes treason. The offence now charged constitutes nothing more nor less than opposition to legal authority. The pulling down of a single meeting house, a single brothel, or a single prison, was not allowed to be a denial of the authority of the government in ancient usage, but when it was done with a general intent, it became treason. Now we contend that except the universality and generality of design in the act charged can be pointed out, it does not amount to

treason. When I said I know of no case whatever when resisting the execution of law amounted to treason, I should have mentioned the exception of resisting the *militia* law: this must be considered in a light of resisting the army, because it is part of the general army that this law provides, and opposing the army in any way would be treason, but resisting or opposing any other laws is only a misdemeanor, except an attempt be made to subvert all laws. Gentlemen, I repeat the exhortation; beware of constructive treason; it is a dangerous thing to admit into our tribunals; it is like the scythe of death, levelling alike the great and small, the guilty and innocent: whoever reads its history will see war, famine and pestilence; a dangerous disease without a medicine to cure it: beware how you establish a system in which your progeny, as well as yourselves, are materially interested. If it were possible for posterity to glance an eye on the proceedings of this day, no doubt but they would wonder, and await the important event with anxiety: It is putting your liberties into the hands of tyrants, if tyrants should ever torment this country, to prevent which you are now called upon to establish a rule for preventing injustice, should injustice ever appear. Montesquie says
4 Blackstone 75

The reason of this is plain; it is the point made use of by a government when it becomes corrupt, and should be disposed, by taking advantage of its power, to injure the people. Where constructive treason is not allowed, there can be no ground for apprehension from that dangerous weapon. But we are told that by adopting the words of the statute of Edward III, (which is not the case) we have admitted all the authorities of the courts of Great Britain. This I deny, we read the consequences of such a proceeding throughout the English books: See Keeling 7. Hale 134. 4 Blackstone 75, 79, 80. When once this dangerous principle was introduced, the courts soon ran to enormous extremes: and should you pronounce the prisoner guilty to morrow, it would be the established law of the United States, so far as a jury could do it. But there is one thing worthy of your notice: the parliament of Edward III, from the experience they had, defined treason in as clear terms as they could, they did not know but new cases might arise, in which case they provided what no honest judge could object to; they provided that if new cases should arise, the judges should not call it treason until the the parliament had determined it to be so; so extremely were they afraid of constructive treason that they would not trust a judge, even if there was a similarity to former cases, nothing was to be left to construction, or be called treason by the courts but direct levying of war. But the parliaments were so much under the crown that it could have been more safely trusted to the courts. However we are not bound either by the statutes of Edward III, or William III, because, as I stated before, they are not in force here, much less the decision of the judges or the parliaments under them: We must put a construction upon our own statute, alone confining it to the express word of levying war. This is an important question, and you are required to deliberate fairly and fully, uninfluenced in any manner whatever, but by your consciences.

Judge Hale 1 p 131 makes distinction between express and constructive treason: you will there see that the time when constructive treason began

and flourished, was in those dark, gloomy, troublesome and bloody days, when England was drenched with the blood of her best citizens ; when the soil was enriched with their gore, and yet to authorities passed at such times are we referred by the council for the prosecution, and upon those authorities are we to place our Constitutional definition of treason. Enhancing servants wages was one of the cases those gentlemen relied on, and we admit that it was denominated treason to rise for that purpose. Supposing that construction was not pronounced by the king or by his judges, but by the most upright decision, how might it operate on this case? Why, we admit that wherever a body of men in arms go and surround the legislative or executive authority, to compel the repeal of a law, it would be levying war : the wages of servants in those days was fixed by act of Parliament, and it could not be enhanced legally, but by an act to do it, and therefore any armed mob, going for the purpose of obtaining this object, is a treasonable assembly, because the object is to compel parliament to alter the law. Another definition referred to, is the pulling down inclosures, prisons, &c. generally. In reference to that I would ask if the one now before the court is not a new case? If it is not I am at a loss to find a new case. It has even been held that any number of men assembled to rescue any number of persons, provided they did not go with a view of prostrating all prisoners, and releasing prisoners generally, is only a great riot. It is a new case in England, and it is so here, and therefore ought to be cautiously handled. 6 Hume 402. in the case of Lord Stafford.

I shall now proceed more particularly to state my reasons for alledging that the crimes with which the prisoner is charged are fully comprehended, and punishment provided for them in the Sedition law. This I shall consider first, as it relates to the rescue independantly : Secondly I shall make some observations on the law, independant of the rescue, and thirdly, both together.

It is admitted, that the mere rescue of the persons from the custody of the marshal at Bethlehem, would not amount to treason, and it would not be necessary for me to say a word about that were, it not for the following reasons. Speaking of pulling down meeting houses, brothels, prisons, &c. the crime is defined : 4 Blackstone 129, " offences against public justice, is obstructing the execution of lawful process." This, there can be no doubt, is an offence at common law, and persons found guilty of a rescue of a person convicted of a crime, is adjudged guilty of the same crime, and would be punishable accordingly, had it not been for our act of Congress, (the Sedition act) but that act reduces a rescue, generally, to misdemeanor. But agreeable to law, persons rescuing others not committed for treason, does not amount to treason. A case in 4 Blackstone 86. the party himself was guilty of felony at common law by making escape, but I believe it to be an entire new doctrine to make the offence of the accessories or assistants higher than those who are rescued : Rescue of persons for felony has been always felony, treason, treason, &c. I think therefore it is clear to prove that every exertion has been used to attempt to make treason of this crime, by the gentlemen, but it is as clear that they have searched and tried in vain.

But it is farther said, that this business assumed a generality, and that the object was to defeat a law of the United States, for which purpose a number combined and conspired together, and more effectually to accomplish this they rescued the prisoners, and therefore committed treason. Were I to admit this I might call upon the gentleman to support his conclusions by authority, to show that preventing the execution of process, or releasing prisoners before they were carried to jail, is treason. I repeat that the only case mentioned is in the disgraceful days of Henry VIII. which I think is inadmissible. But I deny the fact: I deny that there was any combination or conspiracy between the people of lower Milford in Northampton county and those of Bucks county at all upon the business. First, the people of both counties were alike averse to this law, and for similar reasons. I believe there are many unprincipled men who wish to injure their country, and go about preaching up sedition to the people, which communicated in different directions, catch fire in the same manner, and perhaps at nearly one period; hence it is that their prejudices and opposition may appear from the same cause, without parties holding the least correspondence. I ask you whether there is a tittle of evidence to prove that ever the prisoner went into Northampton county till this circumstance occurred? was there any communication by writing, or any other way? no, not at all. Upon what foundation can a conjecture arise then, that there was a combination? You are not to try by conjecture, or wild supposition: No, you are sworn to "well and truly try according to evidence." Does it appear, I ask you to recollect, gentlemen of the jury, that he was instigated to this conduct by any intercourse in any way held with Northampton county? No, it does not; but there is a strong presumption that the discontents took root and grew to that state without any combination at all. But whether or not treason was committed in Milford township, is not for you at present to say; the overt act is laid at Bethlehem, and there it must be proved, that he levied war upon the United States with a number, or by force sufficient for the purpose, and that with them he combined and conspired, &c. If he did this at all, he did it on the 7th of March, for it does not appear that he ever was there before in his life; now if there was a conspiracy, it must appear that he acted previously and in concert with others, and the act would have been alike chargeable to all; but this does not appear. It is true Fries was heard to say "we will oppose you, and all the people of Northampton will join us," but this could easily arise from his having heard that the people of Northampton were dissatisfied with the law, but it does not follow that, because there were discontents in Northampton county, he should be responsible for their actions, particularly since it all, at least, depends upon conjecture. Keeling is has a case to answer this, where rebellion existed in two parts at one time, but it was determined that this might happen without correspondence, since no such evidence appeared, and therefore no notice was taken of it. Then, gentlemen, if I were for a moment to admit that John Fries had committed treason in Bucks county, which I deny, it would be immaterial upon the present occasion, because upon every

indictment for treason, the overt act must be proved in the county. But it is said that doctrine does not apply, each state being to the whole United States, as a county to the state, because the grand jury have the district at large to inquire for; and therefore it is immaterial whether laid in one county or the other. If this be sound law, dreadful indeed must be the situation of the people of the United States, if the government should ever fall into different hands from these in which it is now happily placed, because an attorney may, at any time, keep a person, arraigned for a capital offence, in ignorance, till he comes to the place of trial, and of course not be prepared to repel it at a very distant place from where the act is laid. But this, I will be bold to say, cannot be law. My reasons for thinking so are, First, the law of Congress called the judiciary act, sect. 29, vol. 1. page 67, says, that in cases punishable with death, the trial shall be had in the county where the offence was committed:" here I would remark that the law takes notice, not of a State or a district, but of a county, and therefore the analogy drawn by Mr. Sitgreaves, that a district to the United States, is the same as a county to a state, is not in point. The trial is to be had in the county unless the judges shall determine that it cannot be had there without great inconvenience, (See Foster 194) but let the offence be where it may, twelve jurors must be summoned from the county, see 237 of the same book: if we examine these authorities they will appear different from what they were represented. 2 Hawkins C 46, sect. 34, is an authority to prove that upon a plea of not guilty to a specific charge as to place, &c. in an indictment, if the least variance appears from that place, it is sufficient to acquit the party, and is fatal to the prosecution. It is not necessary for me again to say that you are totally to exclude from your views whatever the prisoner did in Bucks county, since the charge is laid in Northampton, and since an acquittal from that charge will not prevent a prosecution in Bucks county. If it appears that no treason was committed by him on the 7th of March at Bethlehem, you must pronounce him not guilty.

Mr. Lewis then reviewed the testimony of Dellinger on the circumstances which led to the expedition to Bethlehem, which he contended had nothing to do with it, save the *quo animo*. It appeared that they heard Shankwieler was to be there, but it is not pretended that going there upon that account would be treason, and particularly as Shankwieler was not in custody, and it does not appear that the prisoner knew of any others being there at that time. Then the object particularly was to see Shankwieler. When they came to the bridge, it appeared to them that two men were detained at Bethlehem, and it seems they went forward to rescue them. In this they were justifiable; for if the law was violated, it was by Major Nicholls, in making an arrest which the law did not authorize him to do. They were illegally detained, and it was lawful for any body to go and rescue them. 2 Lord Raymond, 1301. I am not disposed to blame the marshal; but I cannot justify him in point of law: his situation, no doubt, rendered it a prudent measure; but it was detaining men by false imprisonment, and was enough to alarm all the people of the state. I mention the circumstance only to prove that there can be no rescue, unless the persons liberated are legally confined.