Inſtead of Fries being guilty for that action, a very worthy man (the marſhal) was guilty of aſſault and battery in the act of detention. If this is fact, how does the affair ſtand afterwards reſpecting univerſality and deſign? I have juſtified Fries and the others in leaving the bridge to go up to Bethlehem, and the laws of their country will juſtify them, becauſe it does not appear that they knew theſe people were diſcharged. When they got to Bethlehem, it appeared there were a number of perſons under arreſt; for, it does not at all appear in evidence that they ever heard before that Fox, Ireman, or the Lehi priſoners, were there: The gentlemen on the other ſide only preſume it; but you, gentlemen, muſt not go upon preſumption. "You muſt "well and truly try, and true deliverance make, according to evi- "dence." It does not appear they knew of it; they came from a great diſtance, and from quite another part of the country than where the Bucks county people came from; Fox and Ireman had been juſt brought in, and none of them knew they were there: however, when they were got there, *upon a lawful occaſion*, hearing of a number of perſons being confined there, and that they were to be taken to Philadelphia for what they conſidered to be no crime, they generally waxed warm, but Fries was cool, he endeavoured to pacify them: he had brought his ſword with him, but when he was appointed an embaſſador of peace to treat with the marſhal, he left it behind him.

The whole of the tranſaction muſt be viewed as a ſudden affray, like numerous caſes mentioned in Hale, Foſter, &c. where great and ſudden riots aroſe. Where is the proof, I aſk, of combination, of aſſociation or of correſpondence? None at all: they came there to a man without the leaſt treaſonable views, for it was merely by chance they came there at all. There was much rage among the people upon the firſt impreſſions, the knowledge of the priſoners in cuſtody made, and had it not been for the cool couduct of the priſoner at the bar, blood and maſſacre would have been the immediate conſequences, for no doubt liquor was operating pretty much in their brains. An altercation took place: they inſiſted on the priſoners, and in the proſecution of his delegation, from the preremptory demands of the people, he made uſe of language which I admit was unjuſtifiable, and violating the law, for which he ought to be puniſhed, but not with *death*. 1 Hale 153. But further: the perſons were not in priſon, they were only in cuſtody of the marſhal: theſe are materially diſtinct; the releaſing of perſons taken to priſon, is only a miſdemeanor while releaſing them after they are in priſon, which is in ſome meaſure the ſanctuary of the law, is felony: 4 Blackſtone 130. The breaking open of priſons generally is treaſon, but in no caſe is the releaſing priſoners before they are taken there. Keeling 75. 63. Lord Gordon's trial, Demarree's caſe 4 ſtate trials 844 and 900. It would not have been treaſon, therefore, if a number of perſons had actually conſpired to reſcue theſe priſoners from the marſhal, nor even if they had been confined in a gaol, inſtead of a room, becauſe it was not a general deſign to break open all priſons, but one only: but on the contrary they were not in priſon they were only in cuſtody of the officer who ſerved the proceſs; how then, in the name of reaſon and common ſenſe will it be made to

amount to treaſon when it would not, if they had been in gaol. But ſays the gentlemen, we will not call it reſcuing of priſoners, but a general obſtruction of the execution of the law, and the means here uſed was to ſupport that general object. The reſcue is of itſelf a ſpecific offence, and of itſelf admitted by Mr. Sitgreaves to be only a miſdemeanor. If it is ſo, how is it poſſible to convert a miſdemeanor into a treaſon, and thus to take away the life of a man when impriſonment only is his deſert! But what ground is there alledged for this poſition? It is ſaid that the arming and arraying a number of men was with this intent. I deny the fact, and it has by no means been proved. The caſes referred to in England are treaſon to a demonſtration. Enhanſing ſervant wages could not be done by force but by ſurrounding the parliament houſe, and this was juſtly denominated waging war againſt the king. Any riſing to alter religion muſt be effected the ſame way: Religion is eſtabliſhed by law in England, and that law muſt be altered by the parliament, therefore it could not be forcibly altered but by levying war. 4 Blackſtone 81. Reforming the laws muſt be done the ſame, if at all. 1 Hawk. C 17. ſect 25. ſee Erſkine in Gordon's trial 32. Not only open rebellion, but reſiſting the laws as enacted is treaſon. The laws are a proof of the authority of the commonwealth, and reſiſting thoſe laws is making the parties independant of the commonwealth, and therefore a defiance of the authority of the ſtate. Lord Mansfield in the charge on the ſame trial ſays, among other enumerations, that combinations, &c. to arreſt the execution of *militia laws* is treaſon. This ſtrongly merits obſervation. Why does the learned and experienced Lord Mansfield particularly ſpecify militia laws and no other? Why does he not ſay to arreſt the execution of any law? Why the militia law? For the beſt of all reaſons, the ſame reaſon as the taking or attacking a fort or a caſtle belonging to the king, becauſe that is the place where he keeps his military forces, and becauſe the military is the ſtrength of the kingdom, and this is reſiſting the military authority. Therefore it muſt be allowed that a reſiſtance of militia laws are upon a very different footing than any others, and in time of danger reſiſting this law would prevent the militia being drawn into the field when there is occaſion for them.

Now, gentlemen, theſe things all conſidered plainly ſhow that what is now attempted is a *novel experiment*, like modern philoſophy, an entire new thing, ſaving the ſolitary inſtance in the reign of Henry VIII, and it is clear that the reſiſtance of no law is treaſon, but the militia law. I agree alſo with the doctrine Lord Mansfield lays down that any attempt to oppoſe the laws by *intimidation* and *violence* is levying war, and treaſon.

It is unneceſſary for me to turn to the books to prove that confeſſion of the party, or words ſpoken by him, taken perhaps in the time of fear, are not to be regarded by you. This was ſo plainly improper, that the law of William III, making two witneſſes neceſſary, or confeſſion in open court, was enacted: I need only turn to our own laws (judiciary act.) There muſt be one of two kinds of proof: the party in open court muſt confeſs, for confeſſion out of court cannot avail even if made before 10,000 witneſſes: or elſe two witneſſes muſt prove

the ſame overt act, and he muſt be convicted upon that indictment, if any. If you are to go to all parts of the country for heated words, heard by any body, in any circumſtances, I muſt conſider it as a very ſcandalous abuſe of the ſtatute of Edward III. I think it impoſſible to heſitate at what was the meaning of Congreſs when they made this act, and therefore ſhall barely recur to the evidence.

Here is a proof, that the priſoner came up to Bethlehem, where he acted in a certain manner; but the gentlemen concerned for the proſecution, think that does not ſufficiently indicate his deſign, and therefore they travel to Jacob Fries's, to Kline's, and a number of other places: now ſuppoſe you convict him, I intreat you to inquire from what evidence you do convict him? Is it from the overt act committed at Bethlehem, or from that and other circumſtances together? If this is the broad ground upon which you go, do you convict him upon the evidence of two witneſſes, to the ſame overt act, tranſacted at the ſame place? No, you do it upon the evidence of two, and a number of other evidence beſides, on a variety of circumſtances. Let me ſuppoſe for a moment, that two witneſſes had come forward, and given an account of his conduct at Bethlehem, but that evidence was not ſufficient to anſwer the indictment: you hear of ſuch and ſuch conduct at Quaker town, at Kline's, &c. &c. I aſk, would he have been convicted upon the evidence of thoſe two independent of any other? No, he would not. This is by no means agreeable to the ſtatutes of William III, or Edward VI, and in my view totally inadmiſſible. What is the conſequence of ſuch a verdict? Why, a man charged with murder, aſſault or what not, may know who the witneſſes againſt him are, while one charged with treaſon, the higheſt poſſible crime, may not know, if you can travel from town to town, and from county to county for the evidence; if you can bring correſpondence, &c. from every part, of which the priſoner knew nothing until brought before the court. No man would be ſafe in the admiſſion of ſuch things, but you muſt form your opinion alone from the evidence of two witneſſes relating to the act committed at Bethlehem agreeable to the indictment. The ſtatutes, and our act of Congreſs mean and intend to prevent this kind of rambling over the whole ſtate for evidence, or indeed upon the doctrine of the gentleman, notwithſtanding the act ſays otherwiſe, they can with equal propriety go throughout the United States to collect evidence to ſupport the proſecution, which was never ſeen nor heard of before.

I now contend, gentlemen, that the caſe of the priſoner at the bar does not come within the ſtatute of treaſon; and I alſo contend that it does come within one of two other acts, for the judiciary act 22 and 23 ſections, page 109, vol. 1. ſpeaking of reſiſtance of proceſs and reſcue, compleatly extends to the priſoner. No, ſay the gentlemen, it is not a mere reſcue, but a reſcue for certain intentions and deſigns. Have the Congreſs diſtinguiſhed any particular deſign, or have they not in this law? No they have not: then permit me to ſay where Congreſs have not diſtinguiſhed it, nor the books, it is not for judges nor juries to diſtinguiſh: it belonged to Congreſs to make or except ſuch caſes as they thought proper, they have not thought proper; and you have no right whatever to do it.

But leſt any objection ſhould appear of weight to except it from the judiciary act, there is a very good law, but which has been ſhamefully villified and abuſed, called the ſedition bill, providing fine and impriſonment for any high miſdemeanor, under which, as I obſerved before, the very actions of the priſoner are defined. This act has paſſed ſince the trials of the weſtern inſurgents in 1794, ſo that the opinions of the judges reſpecting treaſon at that time, is moſt clearly and fairly ſuperceded by this act, which has pointed out, whatever has heretofore cauſed doubts about the meaning of treaſon in the ſtatute, and thus put an end to any judicial conſtruction. That act provides, that if any perſons ſhould combine or conſpire together, to impede the operation of any law of the United States, or to intimidate any perſons holding places or offices under the United States—This laſt, is one of the many little things collected together, in order, that when brought into a maſs, they may amount to treaſon—It goes on, that if they ſhould adviſe, attempt, or procure any inſurrection, riot, or unlawful aſſembly or combination, he or they ſhall be deemed guilty of an *high miſdemeanor*. The very crimes which are here enumerated are charged upon John Fries, the priſoner at the bar: *whether it is carried into effect or not*. Now, if any act or deſcription can be more juſt than this, I ſhould wonder; it anſwers preciſely every part of the crime charged, and every concomitant circumſtance. Now the queſtion is, whether or not, as the conſtitution did not define the puniſhment of treaſon, and as a miſdemeanor is deſcribed here, to be what ſome have thought uſed to be levying war, and as the puniſhment is leſs, than what the other law reſpecting treaſon enacts; whether this ſhould not operate as a repeal of the former law, ſo far as related to theſe points. As to the caſes of Vigal and Mitchel, weſtern inſurgents, I ſhould doubt whether it would affect them at all, even if the law had then exiſted, becauſe the circumſtances very much differed from the inſurrection in Northampton county. Wells and Nevil were inſpectors, and their offices were ſtrictly belonging to the United States, and were depoſits of the United States, and equally under the protection of the law, with caſtles or citadels: in addition to this, the officers of government were driven from their own homes, and upon pain of death, they dared not approach their homes. Their offices were burnt by the inſurgents, and there was no law that touched their caſe but the conſtitutional act defining treaſon; on which account, they were tried and convicted under it. I would introduce theſe ideas, to ſhow you, that the deciſions then formed by the court, are inapplicable at this time, ſince the Sedition act is ſince paſſed, and agreeable to theſe circumſtances, which materially differ from thoſe of 1794.

It is now time to cloſe. Gentlemen, the talk which you have to perform is very ſerious, and very important; but I will not inſult your underſtandings, by ſaying more than my indiſpenſible duty claims from me, in behalf of the priſoner. You will, I have no doubt, conſider the caſe calmly, wiſely, and deliberately. You know the law, under the direction of the court: and I have no doubt, you will decide according to the impulſe of your conſciences. I will only add, that the priſoner received, and has held his life from the authority of Him, who is all-wiſe great and good, and by Him only, can it be deſtroyed, except he has

violated thoſe equitable laws made by his country for the preſervation of peace and order in ſociety: he is therefore entitled to an equitable verdict: if he has done the acts named in the indictment, I have no doubt, you will pronounce him guilty: if he has forfeited his life, go he muſt, and if he is to go, it is not in the power of men to prevent it. I ſhall therefore reſt aſſured, that you will give a conſcientious verdict, upon which you are bound to anſwer.

Mr. RAWLE.

AFTER his exordium, in which he expreſſed the importance of his ſituation as public accuſer—he hoped that while his duty peremptorily impoſed upon him, the neceſſity of doing juſtice to the United States, he ſhould not be diveſted of candour towards the unfortunate priſoner at the bar, to whom he hoped full juſtice would be done.

He propoſed in the firſt place to collect the detail of tranſactions, the clear and unequivocal train they had been teſtified by the ſeveral witneſſes, not only called to ſupport the proſecution, but unhappily for the priſoner, corroborated by the witneſſes called by himſelf. In the ſecond place he ſhould apply theſe facts to the laws and Conſtitution of the United States: from both of which he thought it would evidently appear to the jury that the priſoner was guilty of treaſon in levying war againſt the United States.

The priſoner ſtood indicted for oppoſing in a warlike manner, two laws of the United States, the one entitled "an act providing for the valuation of lands and dwelling houſes," &c. paſſed July 9, 1798, and the other entitled an act for levying a direct tax within the United States, paſſed July 14, 1798. agreeable to theſe acts certain commiſſions and aſſeſſors were to be appointed to carry the proviſions thereof into execution. It appeared in evidence that Mr. Eyerly, one of the witneſſes produced, had received a commiſſion conformable thereto in a part of Pennſylvania, which he received in Auguſt, 1798, together with a requeſt from the ſecretary of the treaſury, that he would find ſuitable characters to ſerve as aſſeſſors to act in the diviſion aſſigned to him. In the execution of this requeſt Mr. Eyerly found very great difficulties, although there was a perfect acquieſcence in all other parts of the union. Many whom he nominated declined on account of the unpopularity of thoſe laws, although Mr. Eyerly very induſtriouſly, and in a praiſe worthy manner endeavored to remove thoſe objections.

In order to ſhow the general difficulties there was in the execution of theſe officers' duty. Mr. Attorney recited the teſtimony of Mr. Eyerly (page 47) and its confirmation by Mr. Chapman, Mr. Henry and others. He alſo went into an examination of the teſtimony demonſtrative of the difficulties the aſſeſſors found in the execution of their duty and the inſult they frequently meet with, when engaged in their pacific efforts to explain the law to the miſled rabble.

But ſorry was he to ſay, that theſe commendable efforts were outweighed by the influence of certain leaders, among whom he found ſeveral captains of militia, and Fries with the reſt: he throughout the whole ſcene appeared the moſt prominent, and inſtead of attending to the good advices given him by his beſt friends, flew in a rage and renewed his oppoſition. A part of the effects of their hoſtility was accompliſhed in preventing Mr. Clark from fulfilling the office which he had undertaken, and the general reluctance there was in others, and indeed finally the abandonment of the aſſeſſments; for it appeared that, not only thoſe who were unwilling to give their rates, refuſed, but thoſe who were willing, were intimidated from doing it. To ſuch a pitch was intimidation and diſſaffection arrived, that he was ſorry to ſay, the very *Magiſtrates* of the peace had ſo far neglected their duty as to join the oppoſition, and nearly all of them, from one or other of theſe motives, refuſed to iſſue proceſs for the apprehenſion of delinquents, or examine perſons who oppoſed the laws: and thoſe who did attend to their duty, found the greateſt difficulties to procure the attendance of evidences, who were prevented by the impulſe of fear from coming forward. Many attempts were made to pacify theſe deluded people, who were under the moſt baneful advice, and the attempts accordingly miſcarried, even though propoſitions were made in ſome townſhips to indulge them with the choice of their own aſſeſſors.

Their town meetings were ſometimes attended by military bodies, in all the parade of war, with arms, muſic, and colours flying, who conſtantly employed the moſt violent and indecent menace towards the officers of the United States, which made even their perſonal ſafety doubtful. In this ſtate of things, the marſhal of the diſtrict was diſpatched to ſerve proceſs on a number of the violaters of the public peace, and having ſerved ſeveral warrants in Lehi townſhip, he went to Lower Milford, and thence to Millar's town, where the gentlemen who were with him, aſſiſting in the duty, met with repeated inſults and even perſonal abuſe. The aſſeſſors were ſtill unable to proceed in meaſuring the houſes, and finally obliged to abandon the buſineſs altogether; ſome of them having been compelled to reſign on account of the oppoſition they met with, and the threats which were thrown out, ſo that they were in actual danger of their lives if they had proceeded. While theſe officers were going the tour of their duty, in defiance of oppoſition, the principal leader, and indeed principal mover of the inſurrection, John Fries, makes a diſtinguiſhed figure upon the ſtage: he was not yet appriſed that they had proceeded to aſſeſs the houſes in his townſhip, as ſoon as he learnt that they had, deaf to the arguments and reaſoning of Mr. James Chapman, he flies into a rage, and exclaims, pointing to a man near him, "If I were to ſend that "man to my houſe to inform them that the aſſeſſments were going "forward, I ſhould have 700 men here by day light to-morrow, and "not only that, but we have men in Montgomery, and all Northamp-"ton county to join us." This, gentlemen, certainly evinces a general oppoſition to the law, as clearly as words can do it. When told tha the aſſeſſments were going on, it operated on him like an electric

ſhock, and he ſullenly retired having firſt adverted, with threats, to the melancholly ſcenes which has tranſpired in France. He afterwards meets the aſſeſſors at Jacob Fries's, to ſome of whom he expreſſes much reſpect, but certainly not very much like a friend or a neighbor, if we conſider the anger which he diſplayed. No; it was not friendly admonition, it was the mark of enmity in diſguiſe, and the ſpecial declaration of war: this will be evinced in obſerving the affair near the houſe of Singmaſter: (p. 71.) Fries, with ſome attendants, met three of the aſſeſſors, one of whom (Mr. Rodrick) they endeavored to ſeize. Fries was at the head of the band, but miſſing his mark, and taking Foulke he let him go, with a threat that they ſhould all be taken the next day: on the next day, when the aſſeſſors were to meet at Mr. Chapman's, Fries, and his party, met at Jacob Fries's, whence they march in military pomp to Quaker town to execute their threat. They ride up to the tavern, and there, after diſcharging their pieces, give an huzza to the much profaned name of *Liberty*. When the aſſeſſors came into the town, ſwolled with large drafts of guilt and whiſkey, the latter of which it appears that Fries kept clear of, but of the former he had a large portion. Seeing Mr. Rodrick ride through the town, they ordered him to ſtop, which he refuſing, the cry of *fire* was given. Mr. Rodrick did not know who it was gave the word, but they levelled at him. However, gentlemen, on the other ſide ſay, *they did not fire*. This is the kind of defence which is held up to you: if they had fired, perhaps it would have been ſaid, they did not hit; if they had hit, that they did not kill, and if they had killed, then it would have been only homicide! Mr. Foulke next came, he was ſtopped by a number, and among them Fries appears. So far as relates to the priſoner at the bar, it appears to have been his ſtudied object to abſtain from actual violence and outrage at all times; but his plans are regularly accompliſhed, notwithſtanding his ſeeming moderation; and from his attention towards Mr. Foulke, and ſome others, it was clearly proved that the *officer*, and not the *man*, was obnoxious. Fries had told Mr. Foulke the preceding evening that he would come to his houſe, and bring ſeven hundred men with him, rather than that the law ſhould be executed.

The oppoſition to the aſſeſſors, the general tranſactions of the 6th of March, and the reſolution they entered into to go and liberate the priſoners the next day, Mr. Rawle ſaid he conſidered as the beginning of the treaſon. On this day, (March 6th) the priſoner at the bar, the cool, deliberate leader and adviſer of this aſſembly, whoſe minds and meaſures were thoſe of their leader, in which he exhibited his power, particularly on the arrival of Mr Foulke, commanding him to get off his horſe, and come into the houſe, when he demanded his papers; but, on that gentleman making ſome demur, he broke out, ordering him not to heſitate, on which they are delivered up, and then it was he made uſe of the declaration, that they would not ſubmit to the law, till *the other states* had ſubmitted. "The law ſhall be repealed; we will not ſubmit," he ſaid: this we have from a reſpectable witneſs. When the papers were returned, it was with a ſtrict

injunction not to proceed in the aſſeſſments, accompanied with a bravado: "You may return me if you think proper." Having done this, there was another aſſeſſor who was to be alſo brought, and maltreated (Mr. Childs.) Fries goes to a neighboring houſe, and accoſts him in a friendly manner, telling him he muſt go and *see* his men. When arrived, he leaves him amongſt his men. It is unneceſſary here to recapitulate the orgies of that tranſaction, in which the venerable name of Waſhington was uſed by their profane lips: they even extend their madneſs ſo far as to call upon Mr. Childs to ſwear allegiance to them. Suffice it to ſay, that the whole period of his ſtay was filled with huſſling and abuſe; but being a robuſt man he was not hurt. When Fries returned they were quiet, and he expreſſed concern at the treatment, and inquired for the man who did it, but ſoon he makes a demand of the papers, which being given, he went out exulting at the acquiſition; mean while Mr. Childs was again ill uſed, and which again ceaſed on the return of Fries, who being diſappointed in their contents returns the papers. Mr. Childs, in this ſituation, does what any man would do, promiſes not to go into the townſhip again to aſſeſs, and the aſſeſſments were perfectly ſtopped in Lower Milford. If this had been a mere local matter; if no promiſe of aſſiſtance had been received, if no preconcerted, but unexecuted plan had not been deſigned, their labors might have reſted here, having accompliſhed their profeſſed purpoſe of effectually preventing the aſſeſſments going forward amongſt them; but their views were more hoſtile to the government, under which they were protected, and which was that moment extending its wings to ſhield them from aſſault, in common with their fellow-citizens. Their triumph was incomplete; "nothing was done, while aught remained to do" was their language; for, upon returning to the houſe of Jacob Fries, a meſſage was ſent by Dillinger, at a late hour, to give more general notice that next morning they were to go to Bethlehem in order to reſcue the priſoners. Shankweiler and others were named as the priſoners whom they were to reſcue. This, gentlemen, is an important proof of the ſyſtem with which this reſcue was conducted, in which it is clear the people of Northampton and Bucks were connected: thoſe people of Bucks were informed that certain perſons of Northampton had been arreſted by a Judges' warrant, and were to be taken down to Philadelphia; but, they reaſoned to themſelves, "If this is "permitted, our plan will fall through; our intimidation of the aſ"ſeſſors will be at an end; they will proceed in their buſineſs, and "we ſhall not be able to carry our plan of defeating the law; we "ourſelves ſhall be taken next. No; Shankweiler, and all the others, "muſt be liberated." The meſſage is communicated; and with a view of holding to this ſteady purpoſe, all who were preſent, the priſoner at the bar drew up a writing, binding thoſe who ſubſcribed it to meet at Millar's town the next morning: What are the particulars of that inſtrument we are ignorant, it not having been produced to us; but, I am ſorry to ſay, upon his own declaration, that he never ſigned it: in this he appears to deſert his comrades, and leave them in a predicament into which he had led them; for, having gone ſo far,

they would not think of abandoning their plans. The next morning they met by appointment; their proceeding would then have been ſtopped by intelligence given them by young Marks, but on conſultation, the priſoner at the bar ſays, "No, we will proceed as we come ſo far." They proceeded until they came to the bridge.

During this period the Marſhal, who had been diſpatched up to ſerve warrants from the judge of the diſtrict, arrived, and after a variety of inſtances of oppoſition, as related by himſelf (p. 37) by Mr. Henry (p. 24) and by Mr. Eyerly (p. 45.) He was going forward in the execution of his duty as well as he was able, but being informed of the deſign which was formed to reſcue the priſoners who had promiſed to meet him at Bethlehem, by virtue of the powers deputed to a Sheriff, he procures a *Posse Commitatus* to aſſiſt him, on which account, owing to the generally diſſatisfied ſtate of the neighborhood, he was forced to ſend ſo far as Eaſton for ſome of thoſe aids. The next day the Marſhal was ready to receive his priſoners: two men armed then made their appearance.

Mr. Rawle here retorted pretty ſtrongly on Mr. Lewis's reference to 2 Lord Raymond 1301. adverting to the *falſe impriſonment* (as that gentleman called it) of Keiſer and Paulus at Bethlehem, previous to the commencement of the general outrage, in which he recited the evidence reſpecting the arrival of thoſe two men, and juſtified the Marſhal for his prudent precaution to prevent the ſhedding of blood, becauſe, from his information, he appeared to be in a delicate and dangerous ſituation. I would rather, Mr. Rawle exclaimed, ſpend my life in voluntary exile on the bleak ſhores of Botany Bay, than live at large in a country where a Marſhal in the execution of ſuch an invaluable duty, ſhould be held up as an object of guilt: this is at once deſtroying all that we hold dear—our judicial ſyſtem, on which depends our ſecurity. The act was laudable, becauſe it was an act of perſonal ſafety and general prudence.

Mr. Rawle then proceeded to examine the evidence until the arrival of Fries at Bethlehem, contending that neither the arreſt of thoſe two men, nor that of Shankweiler particularly, who had never ſurrendered himſelf priſoner at all, was the cauſe of the aſſembling Fries and the party at Miller's town, their march from Milford, or their arrival at the bridge near Bethlehem: it was not till after their arrival at the bridge that the party were informed of the detention of theſe two men, when they ſent to demand them. They were liberated, but in order to beg this *armed force* to come no farther, the Marſhal diſpatches four of his *poſſe* to reaſon with them. But the object was not yet attained, for while theſe two men were delivering up, the Marſhal perceives the priſoner at the head of his party, with a ſword drawn, marching up with all the appurtenances of war, although the others had engaged to await an anſwer at the bridge. They appeared to be inſtigated to paſs the bridge by the arrival and example of Fries, and from that moment affairs aſſumed the awful ſpectacle which the Marſhal had been previouſly led to apprehend, and this John Fries who had obtained the rank of a Captain in the Militia, which he ought to have uſed ſolely to defend his country, proſtitutes his command to the baſe and dan-

gerous purpoſe of rebellion againſt the government. All the evidence agree that the only leader; the only diſtinguiſhed character; the only ambaſſador, negociator, and adviſer that appeared throughout the whole tranſaction was the priſoner at the bar: It is he that goes firſt to demand the priſoners: a recital of his conduct may be ſeen in Thomas's and Mitchel's teſtimony, corroborated by others. He declares, "Gentlemen, if you are willing *we will* take them, I will go fore-"moſt; none of you fire till they fire on us firſt; till I give the word; "if I drop, then take your own command." To give him all the credit due to his humanity it is obſervable that he wiſhed to obtain his object by intimidation, but if it was not attainable by threats, force muſt be reſorted to. No doubt there muſt have been a moment when he attended to perſonal ſafety; as commander, and foremoſt man in a narrow paſſage, he muſt have fallen firſt, he had a very fair chance of receiving a blow or a bullet, and therefore that precaution for his men not to fire became indiſpenſible. The object of theſe inſurgents was not to commit murder, the priſoner is not charged with it, but to prevent the execution of the law, and this was to be obtained beter without a loſs of life than with it, but the expreſſions of Wm. Barnet, reciting thoſe of the priſoner, were "Stick, Stab, and do as good as you can, as I expect firſt to get it."

Gentlemen, Treaſon may ſometimes, and indeed often does call into its aid the commiſſion of acts horrid and atrocious, but ſuch atrocities are not neceſſarily component parts of Treaſon. Actual homicide, deſtruction, or ſeizure of property may, and often does occur: if the Marſhal on that unhappy occaſion had ſtood out five minutes longer, I leave it to yourſelves, or to any diſpaſſionate perſon to judge whether *lives*—more than the life of the priſoner would not have been loſt, and ſtill the crime would have been but *Treason*; But that it did not arrive to ſuch an horrid ſcene we are indebted to the judicious conduct of the Marſhal, who acted *above all praise*: influenced by the advice of two of the neighboring magiſtrates, whoſe powers were inſulted and ſuſpended, and who muſt, with himſelf, have fallen a ſacrifice in the execution of their duty, he determines to make the ſurrender: "the reſcue, ſaid Mr. Horſfield, I conſidered was perfect, other-"wiſe the deſtruction of human lives was certain: you are a ſtiff Of-"ficer. (to the Marſhal) When I ſee thoſe guns levelled at the win-"dow: when I hear thoſe ſavage ſhrieks, I now think you will be juſ-"tifiable in giving up the priſoners." The Marſhal, after much heſitation, acted very laudably in giving them up without farther oppoſition. I grant that Mr. Eyerly and Mr. Balliot retired unhurt, but obſerve, gentlemen, they were not the object; the liberation of the priſoners, and thus preventing the Marſhal executing proceſs, was their only aim, and when they obtained that, they deſiſted from farther violence.

I might with propriety apply to this Treaſon words which were uſed for a different purpoſe by Pope,

"All are but parts of one ſtupendous whole:"

A general plan of oppoſition to the law was contemplated, and the releaſe of the priſoners was but one of the parts, if not of "one ſtupen-

" dous whole," it was of one *great system*. Having obtained their object, they retired from their ſucceſsful expedition, the trumpeter ſounding the triumphal blaſt before the conquerors, in defiance of the legal authority of the United States, and thus departed, we hear no more of them.

Theſe are facts;—not founded on the teſtimony of a ſingle witneſs, which is ſufficient to convict a man in common caſes; nor are they confined to the teſtimony of two witneſſes, which is all the conſtitution requires; but they are corroborated by numerous witneſſes, produced in order to remove every doubt from your minds as to the material facts of the crime. There is no caſe in our books more clear than the preſent, the evidence is ſo uniform, that even the ingenuity and talents of the priſoner's counſel have not been able to conteſt one fact that has been related; indeed the whole is ſo fair, that the moſt incredulous muſt be ſatisfied of the accuracy of the charge, independant of the confeſſion of the priſoner, which confirms the whole: it proves to a demonſtration that his main object was nothing leſs than to prevent the execution of the laws which all men are bound to obey.

Gentlemen, the counſel for the priſoner have endeavored to diminiſh the force of that voluntary confeſſion by telling you that no man can be convicted upon his own confeſſion out of Court, nor without the teſtimony of two witneſſes: the ſame arguments have been uſed to nullify the expreſſions which we have produced proof that the priſoner frequently made uſe of, from which we evidently diſcover his intention. I allow that no man ſhould be convicted for treaſon unleſs upon the teſtimony of two witneſſes, or confeſſion in open Court; but when all the facts neceſſary to ſubſtantiate the crime proved by two witneſſes, the declarations of the priſoner, as well as his confeſſion may be produced as good evidence as to his intention, and this is not neceſſary to be proved by two witneſſes; this tends to ſhow the deſigns of his heart, which can only be known to his Creator and himſelf. Theſe declarations ſhould be known to the Court, in order to diſcover the intention with which the crime was perpetrated. In the caſe of Lord Gordon, the words ſaid to have been uſed by him in the lobby of the houſe was not rejected by the jury becauſe it required two witneſſes, but on account of the improbability of a declaration having been publicly uſed which no more than one individual could be produced to prove. We have proved by two witneſſes that the overt act was committed by the priſoner, and have produced much corroborative teſtimony, in which we have not been confined to two, having heard it from twelve reſpectable witneſſes. If we have ſucceeded to prove the intention, it is ſufficient for the law, and if you believe the teſtimony, it indubitably ſubſtantiates the fact. *

I ſhall now proceed to conſider what is the law ariſing upon theſe facts, in going into the examination of which, I ſhall put out of the

* *Mr. Rawle, in the examination of the teſtimony, went more at length than we have thought it neceſſary to follow him, becauſe no reference can be made to it.*

queſtion two objections, one of them only has been produced, the other having barely been alluded to, rather than held up.

A proclamation was iſſued by the Preſident, on which Fries did then go to his home, whereupon it has been argued that no inſtance can be produced to prove a proſecution being commenced for acts committed prior to the reading of the riot act in England, if the mob thereupon diſperſed, becauſe they had complied with the proclamation. It is right in part: if the people do not diſperſe, the remaining mob are guilty of felony: but I aſk the gentlemen has the defence been at all ſet up on the ground of compliance with the proclamation? In the riot at Drury Lane theatre by the footmen; and that which was held up in which the earl of Eſſex and others were engaged, many of the rioters did diſperſe in conſequence of the riot act being read, and yet were afterward puniſhed for the enormities they committed while they were there. Alike trivial is the objection reſpecting the undue appointment of aſſeſſors. It is ſufficient that ſuch a perſon acts as commiſſioner or aſſeſſor, if he uſurps that power the law has provided a remedy by other means than the dangerous one of an inſurrection to know merely whether A. B. or C. are regularly appointed to office. There are legal modes of application to aſcertain the fact; there is the whole board of commiſſioners, or even an higher power may be applied to, to aſcertain the authority, and no virtuous honeſt citizen would think of oppoſition on that account. We do not think it neceſſary to trouble the court, ſince it was fully in the power of the priſoner's council to have brought the commiſſioners under this act before them, but not having availed themſelves of it, nor preſſed it home to your notice, gentlemen, why was ſuch a ſcare-crow inſinuated, but to miſlead you? there can be no doubt of the legality of thoſe commiſſioners, if there was, it would not alleviate the crime of rebellion. But that was never uſed, neither by the priſoner himſelf, nor any of the inſurgents, as a ground for the rebellion; it was not even a colouring for it, nor does it appear that the inſurgents ever doubted in the ſmalleſt degree, the legality of the appointments, their declarations were repeatedly "no aſſeſſors ſhall act in the townſhip, nor ſhall any aſſeſſments be made." No doubt was ever made of the powers uſed by the officers, and therefore the oppoſition to the law is alone to be conſidered.

Having diſpoſed of thoſe two points, I wiſh now to impreſs upon your minds a moſt ſolemn conviction, to wit, That the law under which the priſoner at the bar ſtands indicted, without being in the leaſt doubtful, ambiguous, obſcure, or perplexing, is well defined in, and compoſes a part of the Conſtitution of the United States, art. 3. ſect. 3. It is certainly momentous that you ſhould be fully ſatisfied of the true meaning of that part under which the preſent crime is placed, to wit, "levying war againſt the United States." I would premiſe that the indictment is worded preciſely in the uſual form, and that the only queſtion now is, what is that levying war with which the priſoner is charged?

To aſcertain what is levying war, it is neceſſary for us only to conſider what is the nature of civil and political ſociety in the United

States. The government is the organ which the people collectively have thought it their duty and intereſt to eſtabliſh for their mutual ſafety—their will, publicly expreſſed in the laws, is the legitimate will of the majority of the people: all our laws are the acts of this majority, and it is a radical principle, which will not be controverted, that the will of the majority is always binding upon the minority, and ſhould be acquieſced in quietly by them, whether the adminiſtration of that government be in the hands of one perſon, or of many; thoſe, therefore, who do not chooſe to continue in that ſociety, ought to withdraw quietly from it, rather than diſturb the quiet of the whole. Allegiance is a quiet ſubmiſſion and acquieſcence to the ſupreme power—In monarchical governments it is placed in the king; but the citizens of America know of no allegiance but to the laws, for they alone are the binding principle by which ſociety at large is kept in domeſtic peace and ſecurity. If, therefore, deviating from this allegiance to the laws, meaſures are taken to diſturb the public peace by a reſiſtance of the laws, accompanied by force of arms, or by the intimidation of numbers ſufficient for the purpoſe, and it be applicable only to a grievance of a public or general, and not of a particular or private intereſt, ſuch reſiſtance then becomes the crime of *treaſon*, and particularly ſo if the views are to bring about the ſuſpenſion or repeal of *any* of the laws; for there is no particular kind of law liable to exception; it is treaſon, becauſe it is an attempt to overturn the fundamental principles of ſociety, by endeavoring to impoſe into the ſyſtem the will of a minority, which has no right to be there; it is creating a new agency, a new ſpecies of legiſlature, and eventually diſſolving the powers legally ordained. This definition may apply as well to any *one* law as to *all* the laws, for each is equally ſtamped with public approbation, and to none particularly is ſanctity attached, all proceeding from one power, thoſe who undertake to reſiſt *any* one, may with equal propriety reſiſt the whole, and treaſon appears to me to be the inevitable inference, otherwiſe it would be impoſſible to aſcertain the limits at which this dangerous licentious conduct muſt ſtop, we ſhould be at once thrown back into a ſtate of natural ſociety; which God prevent. I aſk the gentlemen who argued for this diſtinction, to point out to me which law may be reſiſted with impunity! If one may be, the evil principle will go on to another and another, and where will it ſtop!

I have no occaſion again to recur to the authorities we have produced which the gentlemen paſs over as the acts of bad times, corrupt judges, a profligate court, &c. The counſel with all their learning and induſtry ſeem to be ſatisfied with this general diſcharge of our authorities, but whatever might have been the baſeneſs of the attorney generals of thoſe times, the meanneſs of the judges, the profligacy of the court, or the merits of the priſoner, we ſtand upon broad eſtabliſhed, and general ground, which is not pretended to be obligatory upon us merely beeauſe it has heretofore been decided, nor is it obligatory in England upon that account, although you have been ſo told, but we go upon it, becauſe it is *right*. That Sir Walter Raleigh was groſsly abuſed by Sir Edward Coke as notorious: it was the bad practices of

thoſe times, but this reference more regards the proceedings on trials, than the deciſions : the deciſions uniformly were, that uſurpation of *publiic* authority in a certain manner, amounted to Treaſon. What ! ſhall a man be permitted to attack the government by piecemeal ? to take out a plank here and a plank there, till our political ſhip ſinks, and ſuch conduct not be called a treaſonable diviſion of the government ! With reſpect to the authorities wherein it was ſtated to be neceſſary that the deſign ſhould be to pull down meeting houſes, brothels &c. *generally* in order to conſtitute high treaſon, it muſt be obſervable that it was the aſſumption of the *legal powers* which conſtituted the crime ; to pull down meeting houſes as ſuch, was interfering with the toleration granted by government, and therefore treaſonable. With reſpect to Bawdy houſes, government, and not individuals, have a right to correct them, and if individuals pretended to correct the evil, they were attainted of high treaſon.

We are told that no caſe is to be found in which a mere reſcue is called treaſon. Hale 133, in my opinion is an authority in point. Bethlehem was the priſon of the United States under the marſhal, there the marſhal held ſeveral perſons in cuſtody, and levying war, or attempting by force or intimidation to deliver thoſe priſoners out of his cuſtody is certainly treaſon. Here we ſtand upon ſettled ground we ſay, and I appeal, gentlemen, to your recollection, that there was no particular view to relieve any *particular* perſon, but that the words were " Shankweiler and others" the claim was general, and the object was general—the repeal of the law was that object, and theſe were the means uſed to obtain it. This is declared to be treaſon even by that great and virtuous man who is held up to your notice as guarding us to beware of introducing more conſtructive treaſons : Sir Matthew Hale, whoſe very name carried authority at the period of 1668, and with him, all the judges, upon mature deliberation, have declared this to be found law. As Burglary, Arſon and Murder may be made the means of treaſon, ſo may reſcue ; Treaſon muſt have ſome means : ſometimes the moſt atrocious, ſometimes the means may be newly invented, but becauſe newly invented it cannot leſſen the crime with reſpect to the murder of Sir Theodoſious Boughton, by capt. Donnelan in England, becauſe it was merely by a draught of laurel water (which in that country is poiſon)—a new invention for murder, the counſel might have argued againſt the conviction becauſe no former caſe had occurred, as well as that the innocence of this reſcue ſhould be held up, becauſe new. But there was no ſuch thing. A ſtrong and important part of the combination was actually carried into effect, and it was not abſolutely neceſſary to prove the reſcue in order to prove the treaſon : it has been evidently ſhown to you in the tranſactions at Quaker town, ſo that the reſcue was only a part, and the termination of the general plan ſo far as it proceeded.

I have no need to take up more authorities to prove that this is treaſon : it was ſo before the birth of our conſtitution : this principle was coeval with the reign of Edward III, in 1340. I take it to be a true and incontrovertible principle, that when we find an act, on which previous deciſions have been made, theſe deciſions have been acted

upon, and we ſhould think proper to paſs that act by engrafting it into, and making it a part of our conſtitution, thoſe deciſions are of courſe adopted as our direction, whereby we are to underſtand the applications of that act. I would barely obſerve that while thoſe gentlemen are telling us that we are not to have recourſe to thoſe volumes of laws, (which we ought all to be acquainted with, as volumes of ſcience, explanatory of the code by which we are bound) they themſelves reſort to the ſame ſpecies of authority, to endeavor to prove that treaſon under the act of Edward III, is not treaſon in America. We have heard much about conſtructive and interpretative treaſon, and conſtructive levying of war. Agreeable to the form of government in England, the king is recognized as king in two capacities, one in his natural, as king, and one in his political, as ſovereign: now, when that part of treaſon called compaſſing the king's death is mentioned, it refers to his natural capacity, but when of levying war againſt the king, it refers to his political capacity, and it was therefore neceſſary to ſhow the diſtinction between different ſpecies of treaſon: this latter is termed conſtructive treaſon; but from the variety of its modes of introduction, cannot be ſo well defined; but its exiſtence is neceſſary in order to ſupport ſociety and preſerve it ſecure: this is what is termed levying of war; it may conſiſt in oppoſition to the king's forces, or by threats or force attempting to compel the king to remove his miniſters, or alter eſtabliſhed laws. If you expunge what is direct levying of war, there can no ſuch thing as treaſon be found; either the law is wrong, or the arguments uſed on the other ſide. Gentlemen, the law is eſtabliſhed, but the argument's vaniſh like vapour before the morning ſun; what, then, in England is called conſtructive levying of war, in this country muſt be called direct levying of war. The framers of our conſtitution were as learned, and as wiſe as any gentlemen now at the bar; they certainly ſaw that this was the only kind of direct of levying of war that could exiſt in this country, and therefore if they had not intended that what was called conſtructive in England ſhould conſtitute what they called "levying of war againſt the United States," they would not have introduced the crime at all: this is an abſurdity they never would have been guilty of.

The learned gentleman admits that reſiſtance againſt one particular law may be termed conſtructive treaſon, and may be the crime of treaſon here: he ſays that reſiſtance to the militia law would be a reſtraint upon the principle dependance of the government, and therefore treaſon; gentlemen try our arguments by this teſt, and ſee whether reſiſtance on the preſent occaſion is not equally ſo. I aſk you what is to become of the militia, the ſtanding army, the eventual army, or the civil power itſelf, if you are unable to raiſe revenue? Who will fight, who will tranſact your civil concerns if they are not paid? If by oppoſing revenue laws the government itſelf as well as the army is fundamentally undermined, is it not at leaſt as much treaſon as though the militia law alone were more openly (but not more effectually) attacked? Nothing is ſo much entitled to reſpect and ſubmiſſion as laws which are the direct means of keeping ſociety together. At the preſent time, when the feudal ſyſtem is no more, but from neceſſity ſubſiſtance muſt be obtained from

employment and labor, the defence and preſervation of the country muſt come from the revenue, and to deſtroy that is to give a mortal wound to the government itſelf.

Mr. Rawle then went into a review of ſome of the circumſtances, alluded to by the oppoſite counſel, which characterize the inſurrection, and the trials thereupon in 1795, which he inſiſted, though thoſe gentlemen would not allow it, were very ſimilar in circumſtances to the unhappy affair now before the court, in which he drew the following parity between the caſes:

In 1794, the diſturbance was to prevent the execution of one law—the exciſe law:

In 1799, the houſe and land-tax laws.

In 1794, four counties were engaged in oppoſition.

In 1799, but 3: Northampton, Bucks, and Montgomery.

In 1794, the exciſe officers were attacked and prevented executing their duty.

In 1799, the aſſeſſors were the ſame.

In 1794, the inſurgents collected into an army, in battle array, diſplaying their enſigns of triumph, with numbers ſufficient to procure their object; ſay, 6000 men in Braddock's field.

The object of 1799, was to do it in a ſimilar manner, and they actually did, by their militia y appearance and boaſts of much larger increaſe, impreſs a general opinion of their power, *ſufficient* to accaccompliſh their purpoſe.

In 1794, the inſurgents made public declarations that the exciſe law ſhould never be executed.

In 1799, were not declarations of the ſame nature made by theſe inſurgents; for that other counties, and even other ſtates would ſupport them, and it ſhould never be done?

The object of 1794, was to obtain a repeal of a law—the exciſe law.

In 1799, it was the ſame, ſo far as related to them—the houſe and direct tax.

In 1794, the exciſe officers were compelled to promiſe, that they would not execute the law in that part of the country.

In 1799, the ſame promiſe is exacted, and obtained reſpecting Lower Milford and other parts. There was ſome difference, it is true, as the gentleman ſtated, ſome of the officers at that time being baniſhed from their houſes, on pain of death. It was farther argued, that there was this ſtriking diſtinction; that General Nevil's houſe might be conſidered as a caſtle of the United States, becauſe it was an office of exciſe; but the analogy ſtill holds good; it was General Nevil's dwelling-houſe, however, that was attacked; the attack was made only becauſe he was an officer employed in the ſuperintendance of a tax they diſliked: Mr. Levering's tavern at Bethlehem was made the priſon of the United States, and there was an executive officer of the United States, it was as much ſo as any other priſon in the Union: this was the caſtle, the fortreſs of the United States, to protect which the marſhal had aſſembled his *poſſe comitatus*, provided with weapons

of defence. I conſider this, therefore, a more violent breach of the law than the attack upon General Nevil's houſe; ſo far as it went—admitting that no guns were fired, nor lives loſt, nor was any houſe burnt, otherwiſe ſo far as it went the caſe was rather ſtronger than the former. Happy is it for the priſoners that the ſcene of riot was not farther from the ſeat of government: if it had been more remote from the power of government, we cannot calculate upon the conſequences, or increaſe of revolt and exceſs which would have been evinced. I will not pretend to anticipate them, for I wiſh not to inflame my own mind by the ſad calculation, nor the minds of the jury; I only wiſh the facts to appear in their native colours.

Why then can we entertain a doubt, viewing all theſe circumſtances, that the priſoner is guilty of treaſon? There can be none. We are told that the legiſlature have paſſed a law, entitled the Sedition Act, which ſhows the offence of the priſoner; and that the opinion of the legiſlature was to bring under this law the conſtitutional definition of treaſon, making it a miſdemeanor! To me, of all the weak arguments which have been brought in behalf of the priſoner, this is the weakeſt. This law, which has been cried up from one end of the continent to the other by ſome perſons as unconſtitutional, is now to be brought into court to explain away what the conſtitution poſitively defines to be treaſon. If this ever had been the intention of the legiſlature, there certainly would have been ſomething like treaſon, ſomething like levying of war introduced into that bill, but we find no ſuch thing; the words do not at all occur in it, and that it is not intended, I think is clear. Sedition and treaſon are two diſtinct crimes, and two diſtinct puniſhments are enacted to meet them. The deſcription of crime in the ſedition act, is thoſe who combine with intent to impede the operation of the law, and thoſe who intend to raiſe an inſurrection—theſe are to be conſidered as guilty of an high miſdemeanor. Now, thoſe who *conſpire* to commit treaſon are not conſidered guilty of treaſon; the treaſon muſt have been carried into effect. It cannot be treaſon for a man to counſel, adviſe, or attempt to procure inſurrection with intent to impede the operation of any law of the United States; but this is declared to be a miſdemeanor, whether executed or not. Beſides, the word "*treaſonable*," is not inſerted in the ſedition law: thus, if a man be indicted for taking the property of another, unleſs the word *feloniouſly* is introduced, he is not liable to the charge. So in this caſe, the act muſt be traitorouſly done, or it is not treaſon. To ſhow the abſurdity of this doctrine, we need only for a minute ſuppoſe, that in the commiſſion of any of the crimes ſpecified in the ſedition act, lives ſhould be loſt, houſes burnt, &c. The laws of the United States have previouſly declared, that ſuch offenders ſhould be puniſhed with death, and ſurely it ought to be carried into execution—not be mitigated by a future law to the mere penalty of 5000 dollars, and five years imprisonment. If this was the intention of the legiſlature, might it not, at leaſt, be expected that they would have declared ſo in the act; but they have manifeſted no ſuch intention, in that, nor in the preſent inſtance, with reſpect to which, had they done it, they would have overleaped their conſtitution-

al powers; for the conſtitution is an ark, into which the legiſlature itſelf dare not place its feet; if they were to do it, the judiciary have the power, and it is their duty to bring them back again, and ſay, "You have gone too far:" They can as much reſtrain an unconſtitutional act, as Congreſs can make a conſtitutional act. This conſtitution gave Congreſs the power to declare the puniſhment that ſhould be inflicted on what it had defined to be treaſon. Congreſs had nothing to do with the crime, and if they have declared it, as the gentleman ſuppoſes, they have done it without authority, and it can be of no avail whatever. But no, they have rather, in the act alluded to, declared what ſhould not be conſidered treaſon, or removed doubts upon that head. This being the caſe, the ſame opinion which operated on the judges in 1795, is ſtill in force; becauſe no legiſlative act has intervened to change it. Certain it is, that Congreſs did not intend to enact an unconſtitutional puniſhment for treaſon; but if they had intended it, they have not a right to do it, nor have they done it.

Now, gentlemen, whether theſe things are as we have repreſented, or not, are for you to judge, and decide upon your information, if you are ſatisfied that the priſoner at the bar was engaged in the affair at Bethlehem, and that affair was connected with other previous arrangements, you muſt convict him, otherwiſe you muſt not. We conſider, and think the evidence muſt prove to you, that all are parts of the ſame whole, were began long before the 7th of March; and that they partly exiſted in Northampton and partly in Bucks counties. It muſt be upon a full conviction in your minds that the treaſon was committed by him in Northampton county, that you can convict the priſoner: and if you have not that full conviction, I firmly hope you will acquit him; if you have, you are bound to pronounce him guilty.

CHARGE OF JUDGE IREDELL.

GENTLEMEN OF THE JURY,

I AM perſuaded that every perſon, who has attended to the preſent very awful and important caſe upon which you are now called to decide, muſt be impreſſed with a juſt reſpect for the patience and attention you have ſhown, through the long period which unfortunately has been taken up; but this, though much perſonal inconvenience muſt have been experienced, not only by you, but by all concerned, is unavoidable; none of us can repent that, in a caſe of ſuch moment as the preſent, the time which is abſolutely neceſſary for a complete inveſtigation, has been employed.

Gentlemen, it is with great ſatisfaction to me, on the preſent occaſion, that my ideas on the points of law directing our concluſions, upon which it is the duty of the court to give opinion, abſolutely

coincides with that of the reſpectable judge, with whom I have the honor to ſit. Before I ſtate to you any obſervation, with regard to the facts which have appeared from the evidence, I ſhall previouſly deliver my opinion upon ſome points of law, ſo far as they are unconnected with the evidences; thoſe which are, I ſhall ſpeak to in their proper place.

This, gentlemen of the jury, is an indictment againſt the priſoner at the bar, for levying war againſt the United States; the firſt inquiry therefore is, what is meant by theſe words of our conſtitution. "Treaſon againſt the United States, ſhall conſiſt only in levying war "againſt them," &c. Theſe words are repeated verbatim, I believe, in an act of Congreſs, called the Judiciary Act, defining the puniſhment of the crime of treaſon, purſuant to conſtitutional authority. This crime being defined in the conſtitution of our country, becomes the ſupreme law, and can only be altered by the means therein pointed out, and not by any act of the legiſlature; and, therefore, the repetition of the words of the conſtitution in the judiciary act is quite unneceſſary, as the only power left to Congreſs over this crime was, to deſcribe the puniſhment: the ſame act, in another part, makes proviſion for the method of trial. Agreeable to their power, Congreſs have deſcribed the puniſhment, and thereby declared the crime to be capital. It is clear therefore, that, as the conſtitution has defined the crime, the Congreſs, drawing its ſole authority from that conſtitution, cannot change it in any manner, particularly as it is ſo declared; yet the counſel for the priſoner ſay, that the legiſlature have given it a legiſlative interpretation, and that their interpretation is binding on this court. They ſay that Congreſs did not mean to include the offence charged upon the priſoner at the bar, under the definition of levying war; becauſe the ſedition act deſcribes a ſimilar offence, and becauſe a reſcue is provided for in another act, the puniſhment extending no farther than fine and impriſonment. Several anſwers may be given to remove theſe objections:

Firſt, If Congreſs had intended to interpret theſe words of the conſtitution, by any ſubſequent act, they had no kind of authority ſo to do. The whole judicial power of the government is veſted in the judges of the United States, in the manner the conſtitution deſcribes; to them alone it belongs to explain the law and conſtitution; and Congreſs have no more right nor authority over the judicial expoſitions of thoſe acts, than this court has to make a law to bind them. If this was not an article of the conſtitution, but a mere act of Congreſs, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory ſections to it. In this we differ from the practice of England, from whence we received our juriſprudential ſyſtem in general; for they having no conſtitution to bind them, the parliament have an unlimited power to paſs any act of whatever nature they pleaſe; and they, conſequently, cannot infringe upon the conſtitution. The very treaſon ſtatute of Edward, III. itſelf, contains a proviſion giving parliament an authority to enact laws thereupon, in theſe words: "Becauſe other like caſes "of treaſon may happen in time to come, which cannot be thought

" or declared at preſent: it is thought, that if any ſuch does happen, " *the judges ſhould not try them without firſt going to the king and par-* " *liament, where it ought to be judged treaſon, or otherwiſe felony.*" On this point Sir Matthew Hale was very careful, leſt conſtructive treaſon ſhould be introduced.

This, gentlemen, you will obſerve, only relates to any caſe not ſpecified in that act. But, on the occaſion now before you, it is not attempted, by any conſtruction or interpretation, that any thing ſhould be denominated treaſon, that is not preciſely and plainly within the conſtitution. No treaſon can be committed except war has actually been levyed againſt the United States.

But farther, nothing is more clear to me than that Congreſs did not intend in any manner whatever, to innovate on the conſtitutional definition of treaſon, becauſe they have repeated the words, I think, verbatim in their own act, with regard to the reſcue and obſtruction of proceſs which is mentioned in the act alluded to: it will not be pretended, by any man, that every reſcue, or every obſtruction of an officer in ſerving proceſs, or even both together, amounts to high treaſon, or elſe to no crime at all: No; the crimes are differently ſpecified, and reſcue or obſtruction of proceſs may be committed without that high charge. This, I think, was ſufficiently explained by the counſel for the United States. Suppoſe 1000 men riſe in arms, avowedly to deſtroy the government, and in the execution of their deſign commit murder, burn houſes, purloin property, &c. does it make the deſign leſs evident, becauſe they committed other atrocious crimes in order to obtain their main views? No; it was to deſtroy the government, and that crime would be charged upon them, being the higher crime, which the concomitant ones only tended to aggravate, as they were committed, not for the purpoſe of committing murder, but to intimidate the government, and accelerate their object. With regard to what is ſtated in the ſedition act—*combinations and conſpiracies to raiſe an inſurrection*,—theſe, gentlemen, may be committed without the parties being guilty of treaſon: men may combine and conſpire for a private purpoſe; poſſibly to injure an individual, merely to gratify ſome private motive: if ſo, they come within that act, and that only. It is only when they carry their projects farther; when they aim at the deſtruction of the government, that the nature of the offence attains the aſpect of, and eſſentially becomes *treaſon*; and therefore it is neceſſary to prove the *intention*, otherwiſe there can be no treaſon. There can be no levying war without a number of perſons unite, and that number cannot levy war without ſome previous intention; and therefore under this law, there being no previous intention defined, but merely an unlawful combination, the act termed *treaſon* in the conſtitution, it is plain it is not intended, nor is it of the nature of treaſon.

With regard to the authority from which the opinion of this court is founded, and of which you have heard much already, I ſhall trouble you with a very few obſervations. When this conſtitution was made, it was in the power of thoſe who formed it either to define treaſon or not, or, if they thought proper to do ſo, to do it in what

manner they chose, in which they might have followed the example of the country whence their ancestors came, to which they were accustomed, and in which they were most experienced in their own several states, where the crime of levying war was denominated treason. I believe this has been generally followed through the states; in some I know it has. This term of levying war is an English expression, borrowed from the statute of Edward III; but notwithstanding this, the principal provisions respecting treason are taken from an act of the British parliament in the reign of William III, which is principally calculated to guard the independence of the court against the power of the crown, and the prisoner against his prosecutors. Now, I must confess, as these able and learned framers of our constitution borrowed the act, in terms, from the British statute alone, an authority with which they were familiar, that they certainly at least meant that the English authorities and definition of those terms should be much respected. Those gentlemen knew as well as any counsel at the bar, the danger of constructive treasons: they knew how to guard themselves against the bad times of English history, and were equally acquainted with the better, and more modern decisions. Would it not have been natural for men so able, so wise, so cautious of their liberties, had they entertained a doubt of their insufficiency, to have introduced some new guards, some new interpretations, and not to have left us in later times in the dark, exposed to so much danger as the gentlemen of the bar apprehend? Gentlemen who know any thing of that country, know that arbitrary times have existed, and also that a number of decisions have taken place since that period. I do not believe that any judge since the revolution in England have ever considered that he was bound to follow every arbitrary example of the English courts, or the crown laws which had taken place in dark ages. Can any man suppose that, if a man was to be prosecuted for either of the crimes referred to by one gentleman (Mr. Lewis) so absurd a prosecution would be for a moment indulged by the judges of this age. No, they would highly resent such an insult offered to an enlightened court. Such instances have ever been reprobated as much by the courts, as by the gentleman who quoted them.

With respect to this doctrine of precedent, I will take the liberty of submitting to you a case of a civil nature; suppose it a case of great moment; suppose in this court, or any other from which an appeal could not be had, a solemn decision had been had respecting a title to a piece of land; upon this adjudication a gentleman wishes to purchase this land, taking this title to a lawyer he is confirmed in the opinion that the title is good, and that he is safe *because of the decision of the court.* On the faith of this decision alone the man lays his money out, and therefore it must be important how precedents are formed. If precedent is so important in a civil case, how much more so must it be in one like the present. If a case is new altogether, and no precedent can be found, it ought to be much in favor of the prisoner, but if a solemn declaration has once been made that such and such facts constituted a certain crime, that declaration ought to

be abode by, and for this plain reaſon: every man ought to have an opportunity to know the laws of his country (if he will take pains to inform himſelf) leſt he ſhould involve himſelf in guilt ignorantly. The propriety and neceſſity of this muſt be manifeſt, and if ſo, it is as neceſſary that the proceedings of our courts ſhould be uniform, otherwiſe their can be no dependance upon their judgment. If, therefore, a point has been ſettled in a certain way, it is enough to direct any court to ſettle a future caſe of a ſimilar kind in the ſame way, becauſe nothing can be more unfortunate than when courts of juſtice deviate in deciſions on the ſame evidence.

This leads me, gentlemen, to point out to you a conſideration of great magnitude: this is not the firſt time, as I have been informed, that theſe queſtions have been diſcuſſed in the court. During the trials of the perſons concerned in the weſtern inſurrection, they were diſcuſſed, and I have no doubt with great ability on both ſides. Judges Patterſon and Peters were then on the bench, and after all the diſplay of ſplendid talents uſed in argument on both ſides, and all the authorities produced that men were capable of, from the beſt judgment that could be formed, the court, without heſitation, declared it-ſelf in favor of the proſecution. As I do not differ from that deciſion, my opinion is, that the ſame declaration ought to be made on the points of law at this time. Vide Dallas's reports 355.

It is, however, objected, that after this ſolemn deciſion had taken place, the Legiſlature, by the ſedition act, ſettled the matter differently, and that we are bound by that act. This has been anſwered, ſo as to remove it beyond all doubt, and conceſſions were made at the bar ſufficient to remove the ſerioufneſs of this objection out of the way. It was acknowledged that if it had been an oppoſition to the militia act, then the crime would have been treaſon; or if it had been done to compel the repeal of an act, it would have been treaſon. For my part, I cannot perceive what kind of ſanctity there is in the militia act more than any other, that ſhould make any oppoſition to that act *particularly* ſerious: all the acts of congreſs flow from the ſame authority, and all tend to the ſame end, to wit, the happineſs and ſecurity of the community: individuals may differ in their views of the magnitude of them; ſome may think the militia law, ſome the revenue law, ſome another, but the Legiſlature have thought all theſe laws equally neceſſary, and they having thought ſo, it is our duty to obey them all alike. But, if the oppoſition to the militia law, by force of arms, is to have this extraordinary ſanctity, becauſe it ſtrikes immediately at the exiſtence of the government, then I ſhould be glad to know what can be ſaid about a revenue law? Government cannot exiſt a day without revenue to ſupport it! Farther: oppoſition by force to one law, is of the ſame nature as oppoſition to all the laws; the offence is levying war againſt the government; oppoſing, by force of arms, an act of congreſs, with a view of defeating its efficacy, and thus defying the authority of the government, is equally the ſame in principle, if done in one inſtance, as it could be in many. In monarchical governments it will ſometimes happen that a rebellion breaks out in an endeavor to depoſe, or monarch, and ſet

another on the throne: in ſuch a caſe the treaſon plainly and unequivocally diſplays itſelf, and there can be no doubt about it; but this cannot occur in a republican form of government: men are ſeldom found who will be guilty of ſuch open treaſon, as to come forward, in the face of day, and declare their deſign to deſtroy the *conſtitution* or *all* the laws. No, if men of ſenſe go to promote inſurrection, whether they mean to deſtroy the government or not, they muſt be wicked; they go about their deſign by more inſidious means, art will be uſed, and pains taken to promote a diſlike to a certain law, this evil prejudice is encouraged until it becomes general among the people, and they become as ripe for inſurrection as in the preſent caſe. Nor would the evil ceaſe with the deſtruction of one law: they may declare they mean to ſtop at that one act, but having deſtroyed it, and finding their power above that of the government, is it not to be apprehended that they would deſtroy another, and another, and ſo on to any number they diſapprove of: if they would not be particular in one caſe, they would not in another. During the weſtern inſurrection the exciſe law was unpopular: in this caſe it is the houſe tax act, and if this is permitted, it will be impoſſible to know where we can reſt ſecure, nor how ſoon the government itſelf will fall a prey. This reaſon may account for the introduction into the Engliſh ſtatute book, and our conſtitution, with the determination of the courts in both countries, of the principle that an attempt by force and violence to impede the operation of a ſingle act ſhall be treaſon, and under the deſcription of levying war, as much as what ſhall at firſt appear more dangerous, ſince the effect may be the ſame.

There is another preliminary point, meriting a few obſervations, that is with reſpect to the proclamation of the Preſident. It was contended that, becauſe that proclamation required the people to diſperſe, and commit no more crimes, it amounted to a pardon of all they did before. It is ſufficient to obſerve here, that had this objection been ſeriouſly made, a plea of pardon upon the ground of that proclamation muſt have been preferred, or it could not have been admitted. But the plea was not made, nor if it had, would it have been effectual, becauſe, if this did amount to a pardon, it did ſo only on certain conditions; the attorney of the United States and the party are both allowed to ſhow whether or not the priſoner has complied with the conditions of the pardon. It is poſſible alſo that the pardon has not been offered in ſuch a manner as the conſtitution permits, in which caſe the attorney muſt be permitted to put in a demurrer. Of the force of theſe objections the court are to decide, and of courſe the plea muſt be referred to them.

Again, this pardon might have been pleaded in due ſeaſon. Of this the counſel for the priſoner were informed, and had time to conſider, but they did not chooſe to avail themſelves of it. But if it had been propoſed, nothing is more clear to me than its inſufficiency; for in my view, the proclamation contained no pardon at all. The circumſtances which gave riſe to, and the nature of the proclamation, ran thus: Certain information was received by the government of a

diſturbance having broken out in that part of the country, which baffled the power of civil authority, but as it is neceſſary to prevent any inſurrection with as little trouble as poſſible, after inferior means have failed, the law provides that the Preſident ſhall make proclamation, inviting and commanding ſuch diſturbers of the public peace to diſperſe in quietneſs to their homes by a certain time: this muſt be done before the military can be ordered out againſt them. This is in order to prevent more people joining the ſtandard of rebellion afterwards, and to admoniſh others not to commit farther crimes, but there is not a word in the proclamation implying an offer of pardon for any thing committed before.

The riot act of England was cited in ſupport of this doctrine, but there is no ſimilarity in the two caſes: that act ſays, a magiſtrate ſhall go to the mob, and endeavor to prevail upon them to diſperſe, if he cannot do it, he reads the act, and if they ſtill continue combined, they are guilty of felony, but then this felony is a crime created merely by that act, but even that act does not intimate that they ſhould be pardoned for crimes committed before the magiſtrate came, even if they do diſperſe. Inſtances to the contrary might be cited.

Having now, gentlemen of the jury, ſtated my opinion in the beſt manner in my power on the law, independant of the facts, or the particular application of that law to the priſoner at the bar, I ſhall, agreeable to my duty, ſtate to you in the beſt manner I am capable of, the nature of the iſſue which you are now called upon to determine. It is an iſſue of an aſpect the moſt awful and important that any juror can ever be called upon to determine. It is your duty to diveſt yourſelves of all manner of prejudice and partiality one way or the other. Diſmiſs from your minds as much as you can all which you might have heard or thought on this caſe before you came into this court, and confine your opinions merely to the evidence which has been produced. No extraneous circumſtances whatever ought to have the leaſt weight with you in giving your verdict: you ought not, and I hope you will not take into your conſideration at all whether the ſafety of the United States requires that the priſoner ſhould ſuffer, on the one hand, or whether on the other, it may be more agreeable to your feelings that he ſhould be acquitted. It is ſolely your duty to ſay whether he is guilty of the crime charged to him or not. No man can conceive that the intereſt of any government can poſſibly make it requiſite to ſacrifice any innocent man, and I can reſt perfectly ſatisfied, which I have no doubt you alſo are, that this government will not, and God forbid any conſiderations whatever ſhould ever influence ſuch an action.

I do not think it neceſſary to go into a minute detail of all the evidence which have been produced, it would be only miſpending time. The general ſcenes which paſſed at Bethlehem muſt be fully in your mind; theſe ſcenes are ſupported upon the evidence of twelve witneſſes, but I think it my particular duty to bring to your recollection thoſe parts of that tranſaction in which the priſoner at the bar was concerned, leaving the reſt as much as poſſible out of view. On

this occaſion I muſt requeſt the gentlemen of the bar, if in any inſtance I ſhould err in ſtating the evidence, that they will correct me; but I ſhall endeavor to be accurate.

The judge here ſtated the prominent features of the evidence given by Meſſrs. Henry, John Burnett, William Barnet, Winters, Col. Nichols, Schlaugh, Horſefield, Eyerly, Toon and Mitchel, ſo far as related to the conduct of the priſoner at Bethlehem, which, he ſaid, he thought proper to ſtate firſt, becauſe the offence charged in the indictment was ſaid to be committed at Bethlehem. Gentlemen, he continued, if you are not well ſatisfied that the overt act of *treason* was committed at Bethlehem, and that that overt act is ſupported by the evidence of two witneſſes at leaſt, you will not find the priſoner guilty.

Now, gentlemen, is the proper time for me to ſtate one or two points concerning the law of evidence, of which you have heard much from the bar. As I obſerved, there muſt be *two at least* to prove that the act of treaſon was committed at Bethlehem. It is the opinion of the counſel for the priſoner that you muſt be convinced, not only of the fact by two witneſſes,—not only that he was concerned in a certain act, but that you muſt have the evidence of two witneſſes, at leaſt, by evidence drawn from the ſame place, that it was done with a treaſonable intention, before you can pay any attention to any other evidence whatever. The fact is, that when the overt act is proved by two witneſſes, it is proper to go into evidence to ſhow the courſe of the priſoner's conduct at other places, and the purpoſe for which he went to that place where the treaſon is laid, and if he went with a *treaſonable deſign*, then the act of treaſon is concluſive. In this I am ſupported by a very reſpectable authority on crown law: Foſter in the caſe of Deacon, from which it appears that it is enough, to prove that a rebellious aſſembly of armed men were there, and that the priſoner joined them. In order to prove to you fully the deſign with which the priſoner went to Bethlehem and joined in this great outrage, I ſhall ſelect ſome of the evidence reſpecting thoſe previous tranſactions; it is not neceſſary to ſtate the whole.

The judge here read the evidence of James Chapman, John Rodrick, Cephas Childs, and William Thomas reſpecting the conduct of Jacob Fries, on the 5th of March, and reſpecting the meeting with Foulke and Rodrick near Singmaſter's; and alſo the tranſactions of the 6th, at Quaker town which evidence he ſaid ſo confirmed each other, that no doubt could be entertained.

We now come to the confeſſion of the priſoner, voluntarily made on his examination before judge Peters. Here is a point of law relied on by the priſoner's counſel—that no man ſhould be convicted of treaſon but on the evidence of two witneſſes, *or upon confeſſion in open court*. This is the proviſion in England as well as here, and the meaning is, that no confeſſion of the priſoner, independent of two witneſſes, or without the facts have been eſtabliſhed by two witneſſes, ſhould be ſufficient to convict him: but if two witneſſes have proved a fact, the confeſſion of the party may be received by way of confirmation of what has before been proved. In former days in Eng-

land it was allowed that confeſſion out of court and the proof of the witneſſes ſhould be ſufficient to warrant a conviction; but happily our conſtitution would not admit it, if an hundred would ſwear to it; that danger is wiſely avoided. Inſtances enough are in the recollection of the court, of a civil and criminal nature where confeſſions have been received, but the jury are to judgefrom other evidence how far that is to be regarded.

Evidence may ſometimes be given which may be doubtful, and wants corroboration; you will judge whether that is or is not the caſe at preſent. But if the confeſſion of the priſoner ſhould go to confirm the evidence, if ſworn to by two witneſſes at leaſt, it may be received, but unleſs it does go to corroborate other teſtimony, I do not think it admiſſible. You will conſider whether any part of this confeſſion has not before been proved by two witneſſes: if it has, it goes to corroborate what they ſay, if it has not, you are to diſregard it. I think there ought to be great caution in receiving, as evidence, a confeſſion which any man makes himſelf, becauſe it poſſibly might be obtained from him by artifice or intimidation, with reſpect to this confeſſion, you have the teſtimony of my honorable colleague, judge Peters, that he gave the priſoner deliberate warning, that he was not bound to convict himſelf, and that no intimidation was uſed. Whatever objections, then, there may be as to confeſſion in general, it does not apply in this caſe, becauſe it was voluntarily given.

The priſoner on his part introduced ſome witneſſes, thinking they would be favorable to him: one of them appeared to be ſo in his teſtimony, which I ſhall endeavor to relate, the other three did not anſwer his expectation [The judge related the evidence of John Jamieſon.]

With regard to the point of law ſtated reſpecting the ſufficiency of the warrants, the evidence to this fact ſhows the general diſpoſition of that part of the country to reſiſt the execution of the law, and prevent it by force or intimidation; our means of ſhowing that, is their conduct towards the aſſeſſors. Thoſe who were appointed to that office, ſo far as they had it in their power, ſhowed a depoſition to act as ſuch. It is contended that their warrant ought to have been produced. With reſpect to the blank commiſſion which there was a ſuſpicion was unlawfully filled up, there ought to have been the books produced, but it was not material. This indictment it will be obſerved, is not for any reſiſtance to the aſſeſſors, or obſtruction of them in the diſcharge of their duty. I ſuppoſe it is not neceſſary to ſhow that theſe officers were *de facto* engaged in the execution of the law; that they were conſidered as aſſeſſors, and no ſuſpicion ever was entertained but that they were properly authorized to be aſſeſſors. This doubt if there was any, could be removed by reference to a very reſpectable authority. It was ſufficient if the warrants, given under the ſeal of the commiſſioner, were produced to the court.

The honorable judge entered pretty largely into the examination of the objection reſpecting Mr. Foulke's appointment in the place of Mr. Clarke, which he contended was not material, ſince the warrant was filled and he acted under it.

With reſpect to another point of objection ſtated at the bar, that the marſhal in detaining the two men at Bethlehem was liable to an action, he ſaid that under the circumſtances of that period he could not, becauſe, under certain circumſtances, he was warranted to call out the *posse commitatus* i. e. the power of the county, to aſſiſt him, if he was likely to be overpowered: it could not be preſumed that the circumſtance did not empower and warrant him to call them out, and therefore we may conclude that danger was really to be apprehended, and thoſe apprehenſions muſt be heightened by the arrival of thoſe two men in arms. In the opinion of judge Henry, who was preſent, the danger was ſuch as to juſtify the act of detention of thoſe two men. Was it with a view of depriving theſe men of their liberty? No, but ſuppoſing them to become with intent to aſſiſt in the reſcue which they acknowledged they had heard was contemplated.

Gentlemen, in looking to the law on this point, I do not think it is encroaching at all upon the liberty of any man to take him in cuſtody: an officer in ſuch an action muſt be at his peril, and could only be juſtified on the exigency of the circumſtance: if he did it unneceſſarily, a jury would teach him to take care how he ſported with the liberties of his fellow citizens; but ſuppoſing, from good evidence that he was in danger of aſſault, if he waited the United force of the aſſailants, ſhall it be contended as unreaſonable, that the marſhal ſhould take meaſures of ſelf-defence while it was in his power, and detain what he might reaſonably ſuppoſe a part of them? He ſurely acted the part of a prudent man, and was juſtifiable in the act.

Before I diſmiſs this general ſubject, I think it an indiſpenſible duty which I owe, to declare that, excepting the ſingle inſtance, wherein I do perceive ſome impropriety of conduct, in the filling up the blank, commiſſion, what has been diſcloſed in the courſe of this examination of the conduct of the commiſſioners or aſſeſſors, has reflected on thoſe officers the greateſt honor: at the ſame time they acted with induſtry, fidelity, and firmneſs, in the diſcharge of that duty they did all in their power to make it eaſy to the people, accommodating themſelves to endeavor to give full ſatisfaction, undeceiving the deluded, and removing the errors which the people had fallen into. If the people ſtill continued in ignorance and oppoſition, thoſe gentlemen acquitted themſelves of blame, and their conduct merited high praiſe.

As to the plea of ignorance, the law ſays ignorance ſhall excuſe no man, otherwiſe, how could it be poſſible to prove whether a perſon knew the law or not: if ignorance could excuſe a man of crimes, no crime would be brought to juſtice, or there muſt be, what is not to be expected, ſome ſelf-evident proof of the guilt. A compleat knowledge of the laws cannot be expected to find every corner of our country; but thus much we may ſay, to remove thoſe kinds of excuſe; if a man does not know when a law is paſſed, he knows how to obtain that information, and the law itſelf; for if he cannot come to Philadelphia, or ſome other town where they may be purchaſed himſelf, he has opportunity of ſending from time to time. But in the preſent caſe any doubt could have been removed by application to the aſſeſſors, who were ever ready and willing to ſhow the law, and therefore no plea of ignorance can poſſibly be ſet up.

Having ſpoken in commendation of the conduct of the commiſſioners and aſſeſſors, perhaps it is alſo my duty to ſay that the conduct of the marſhal has been equally exemplary: he did every thing in his power, by fair and honorable means, to avoid going to extremity, and as long as he had a hope of retaining his priſoners, he diſplayed a degree of courage which few men would do; he even offered to expoſe his life to this armed mob, by proceeding with the priſoners to Philadelphia, which he would have done but for the advice of three or four gentlemen with him, who thought it madneſs to proceed. He accordingly deſiſted, and in the event delivered up the priſoners.

This trial has laſted ſo many days, that we muſt be all very much fatigued; and I declare, gentlemen, I have ſcarce had power to examine the various points with minute attention, much leſs to prepare ſo proper a ſtatement of them as I intended to have done; the fatigue I have felt many nights at going out of this court has prevented me doing it: under theſe circumſtances I have no doubt of your excuſe, which I ſhall the more readily meet, ſince your fatigue muſt alſo be very great.

Gentlemen of the Jury. The occaſion is undoubtedly the moſt awful and important that ever could ariſe in any country whatever: the great queſtion for you to decide is, whether the priſoner has been guilty of levying war againſt the United States at Bethlehem, in the county of Northampton, as charged in the indictment, or not—in order to diſcover the nature of his conduct, you muſt examine into the motive with which he went to Bethlehem: it is neceſſary for you to examine the whole of his previous actions relating thereto: if it ſhould appear to you that the priſoner formed a ſcheme, either on the way or at Bethlehem, by any kind of force to obtain this object, then, in my opinion, you ought to declare him guilty of the charge laid in the indictment. On the contrary, if you think he had no public and evil motive in view, he is not guilty of the crime.

Before I diſmiſs you, gentlemen, I would remind you of one conſideration which muſt impreſs your minds: a great and important end of bringing perſons guilty of public crimes to juſtice is to preſerve inviolate the laws of our country: men who commit crimes ought to be puniſhed, otherwiſe no ſafety nor ſecurity can be had. On the other hand, it is of conſequence, that no man's life ſhall be taken away unjuſtly; if a man is not guilty of a crime, he ought not to be puniſhed for it; and it cannot be for the intereſt of the country to put a man to death for what he has not committed: therefore you are not to regard the conſequences, but determine merely by the facts in a manner for which you will be anſwerable at a future day, as well as myſelf, for all the conduct of our lives, as well as for the verdict you now give.

Mr. Lewis ſtated a queſtion to the court, whether the overt act laid in the indictment in a certain county, muſt not be proved to the ſatisfaction of the jury, both as to fact and intention in the ſame county, or whether the overt act did not include both fact and intention. To which judge Iredell replied, that he conſidered Foſter's crown law as ſettling that point—when two witneſſes are produced, which proves the overt act laid in the indictment, there might be then evidence

drawn from other countries respecting the intention: this is the opinion of judge Foster, and it is my opinion. But there is another thing: it goes to a point which is inadmissible; it is not for the court to say whether there was a treasonable intention or act as charged in the indictment; that is for the jury to determine; we have only to state the laws, we therefore should have no right to give our opinion upon it. Again, if no evidence could regularly be admitted out of the county until both the fact and intention were established where the crime is laid, the consequence would be, that there ought to be some way of taking the opinion of the jury, whether they believed that the crime was committed at Bethlehem, before the court could proceed to extraneous testimony! This cannot be done, a jury must give verdict upon all the evidence collectively; if the evidence is admitted, then the jury is bound to respect the weight of it: the competency of that evidence is for the court to decide, but the jury must estimate its weight.

The question for you to decide at this time, gentlemen of the jury, is, whether upon the testimony of two witnesses there is ground to believe the act was committed, and whether, from the prisoner's conduct at Bethlehem or elsewhere, it is proved to be with a treasonable intention.

Judge Peters—I think the overt act and the intention constitute the treason; for without the intention the treason is not compleat. If a man goes for a private purpose, to gratify a private revenge, and not with a public or general view, it differs materially. The intention may possibly be gathered at the place where the act was committed, or it may not; if not, evidence is admissible to prove it elsewhere.

The jury then withdrew, and the court adjourned for about three hours, when they returned with the verdict GUILTY.

Judge Iredell then dismissed the jury, with the thanks of the court for their patience and attention during the very fatiguing trial.*

Mr. Wynekoop, the foreman of this jury, made a short reply thereto, and the court adjourned.

* *This trial occupied the unremitted attention of the court and jury from April* 30 *until May* 9, *inclusive, (*9 *days) during which time the jury never separated.*

TRIAL

OF

JOHN FRIES,

FOR

TREASON:

Recommenced, on account of a Motion made by MR. LEWIS *for a new Trial; grounded on the disqualification of* JOHN ROADS, *one of the Jurymen on the former Trial.* *(See Appendix, No. II.)*

CIRCUIT COURT OF THE UNITED STATES.

PENNSYLVANIA DISTRICT.

JOHN FRIES was again arraigned on the indictment for treason*, before the Honorable SAMUEL CHASE and RICHARD PETERS, Eſquires.

The priſoner pleaded, NOT GUILTY.

MR. LEWIS and MR. DALLAS, before engaged to plead for the priſoner, on account of the conduct directed by the court, to be obſerved by the counſel, withdrew their aſſiſtance; ſo that the priſoner was left without counſel; and on being aſked by the court, if he would wiſh to have ſome aſſigned, he did not accept the offer.

THURSDAY, *April* 24.

Before the jurors were ſworn in, they were individually aſked (upon oath) theſe queſtions: "Are you any way related to the priſoner?"

* *See page* 17.

They all anſwered, "No." "Have you ever formed or delivered an "opinion as to the guilt or innocence of the priſoner, or that he ought "to be puniſhed?" The anſwer generally was, "Not to my know-"ledge." Some of the jurors ſaid, they had given their ſentiments generally, diſapprobatory of the tranſaction, but not as to the priſoner particularly. Theſe were admitted.

One of the jurors (Mr. Taggert) after he was ſworn, expreſſed himſelf to the court to be very uneaſy under his oath: he then meant that he never had made up his mind that the priſoner ſhould be hung, but very often had ſpoken his opinion, that he was very culpable; he did not, when he took the oath, conceive it ſo ſtrict, and therefore wiſhed, if poſſible, to be excuſed.—The court informed the juror, it was impoſſible to excuſe him, now he was ſworn.

The court informed the priſoner, that he had a right to challenge 35 without ſhowing cauſe, and as many more as he could ſhow cauſe for. *Thirty-four were challenged*, and the following admitted and ſworn on the jury:

Samuel Wheeler, Foreman; Henry Pepper; John Taggert; Cornelius Conegys; Ephraim Clark; Thomas Bailey; Lawrence Cauffman; John Edge; Charles Deſhler; Henry Dubois; Iſaac Dehaven; John Balliot.

Counſel for the Proſecution,

MR. RAWLE,
MR. INGERSOL.

MR. RAWLE

Then opened the charge exhibited in the indictment—He obſerved, that the jury muſt be aware of the very unpleaſant duty he had to perform: he felt an extreme difficulty of ſituation—called forth by his duty to exhibit a charge againſt the priſoner at the bar of the higheſt magnitude, who now ſtood to anſwer, unattended by any legal advice; he felt impreſſed with the neceſſity of ſticking more than uſually cloſe to the line of his duty, which he ſhould endeavor to diſcharge as faithfully as poſſible. And he truſted that, while the jury felt their relation to their unfortunate fellow-citizen at the bar, they would, at the ſame time, make all ſuitable allowance for any errors which might appear on his (Mr. Rawle's) part, though it was ſincerely his deſire to avoid any, either in laying down the facts or the law, which he ſhould do under the direction of the court; and, he hoped, that the jury would carefully ſift and examine the law and teſtimony which his duty called upon him to advance, in order to ſubſtantiate the charge.

MR. RAWLE then proceeded to open the charge—he ſaid, he ſhould be able to prove, that John Fries, the priſoner at the bar, did oppoſe the execution of two laws of the United States, to effectuate which

he was provided with men, who, as well as himſelf, were armed, with guns, ſwords, and other warlike weapons, which, by their numbers and military appearance, were ſufficient to accompliſh their purpoſe, which was, not only to intimidate the officers of the government appointed to execute the above laws themſelves; but to releaſe from the cuſtody of the marſhal of Pennſylvania a number of perſons who were held in priſon by the ſaid marſhal, and to prevent him executing proceſs upon others. All this was done, as ſtated in the indictment by a combination and conſpiracy to oppoſe thoſe laws, by a large body of armed men, of whom the priſoner at the bar was the chief, and commander.

Mr. Rawle then proceeded, under the direction of the court, to ſtate the law.—The treaſon whereof the priſoner was charged was, "Levying war againſt the United States." U. S. Conſt. Art. 3. Sect. 3.

What he aſked, was levying war againſt the United States?

He conceived himſelf authorized, upon good authority to ſay, levying war did not only conſiſt in open, manifeſt, and avowed rebellion againſt the government, with a deſign of overthrowing the conſtitution; but it may conſiſt in aſſembling together in numbers and by actual force, or by terror oppoſing any particular law or laws. Again, there can be no diſtinction as to the kind or nature of the law, or the particular object for which the law was paſſed, ſince all are alike the acts of the legiſlature, who are ſent by the people at large to expreſs their will. Force need not be uſed to manifeſt this ſpirit of rebellion, nor is it neceſſary that the attempts ſhould have been ſucceſsful, to conſtitute the crime. The endeavor, by intimidation to do the act, whether it be accompliſhed or not, amounts to *treason*, provided the object of thoſe concerned in the tranſaction is of a general nature, and not applied to a ſpecial or private purpoſe.

In order to effect the object of thoſe embarked in crimes of this high nature, it is well known that various means are neceſſarily employed; various acts may be perpetrated to accompliſh the main end: they may proceed, by the execution of ſome enormous crimes, as burglary, arſon, robbery, or murder, either, or all of them; but even if one or all of theſe crimes were committed, except the purpoſe ſhould be of a general nature, they may form diſtinct and heinous offences; but the perpetrators may not be guilty of treaſon. If a particular friend of the party had been in the cuſtody of the marſhal; if even a number ſufficient for the purpoſe ſhould ſtep forward and reſcue ſuch a perſon, if it was not with a view to reſcue priſoners *generally*, it would amount to no more than a reſcue; but, if *general*, it is treaſon. It is the views of the party that fixes the crime, and therefore only the deſign is neceſſary to be known.

To prove that this doctrine was well eſtabliſhed in the United States. Mr. Rawle turned to 2 Dallas, 346 and 355, ſtating the opinions of the court in the caſes of Vigal and Mitchel, charged with, and convicted for treaſon. The attack on Gen. Nevill's houſe was of this general nature, becauſe he was an *officer* appointed to execute the obnoxious law; and being to the *officer* and not to the *man* that they objected, it was thought to be treaſon, and that deciſion was well grounded.

He obſerved, that the clauſe in our conſtitution was founded on a ſtatute which was paſſed in England, to prevent the ever increaſing and ever varying number of treaſons, upon the general and undefined oppoſition to royal prerogative: the ſituation of things was ſuch, previous to that period, as to call forth from the ſtateman, from the philoſopher, and from the divine, even in thoſe dark ages, the moſt vehement complaints: in attendance to theſe reaſonable and juſt murmurs, the ſtatute was paſſed.

Mr. Rawle was then producing an authority, when Judge Chaſe ſaid, the court would admit, as a general rule, of quotations which referred to what conſtituted actual or conſtructive levying war againſt the king of Great Britain, in his regal capacity: or, in other words, of levying war againſt his government, but not againſt his perſon, becauſe it was of the ſame nature as levying war againſt the United States would be applied here: ſo was that part called adhering to the king's enemies:—they may, any of them, be read to the jury, and the deciſions thereupon,—not as authorities whereby we are bound, but as the opinions and decilions of men of great legal learning and ability. But even then, the court would attend carefully to the time of the deciſions, and in no caſe muſt it be binding upon our juries.

Mr. Rawle quoted Hawkins, B. 1. chap. 17. ſect. 23. as an authority of authenticity to prove, that not only thoſe who rebelled againſt the king, by taking up arms with the avowed deſign of dethroning him; but thoſe who withſtood his lawful authority, and who endeavored to oppoſe his government; who withſtood the king's forces, or attacked any of his fortreſſes—thoſe, in fine, whoſe avowed object was of a public and general and not of a private and perſonal nature, were guilty of high treaſon. He alſo read Sir John Friend's caſe from Holt, 681. and Damarree and Pinchaſes' caſe, 8 State Trials, 289.

Judge Chace begged the attorney to read only thoſe parts of the caſes which referred to what could be treaſon in the United States, and nothing which related to compaſſing the king's death.—It would be found, he obſerved, by an attention to the laſt caſe, that becauſe the intention was a riſing to demoliſh ALL meeting-houſes, generally, it was conſidered to be an inſurrection againſt the toleration act, by numbers and open force, ſetting the law at defiance. This would be found to be the opinion in Foſter 213.

Mr. Rawle ſaid, thus he conceived it—even if the matter made a grievance of was illegal, the demolition of it in this way was, nevertheleſs, high treaſon, becauſe of the people ſo aſſembled taking the law into their own hands; thus in Foſter it would be ſeen that demoliſhing *all* baudy-houſes, as ſuch was high treaſon, as much as demoliſhing *all* meeting-houſes, being equally an uſurped authority. He alſo read Douglas 570, Lord George Gordon's caſe, when it was Lord Mansfield's opinion that any attempt, by violence, to *force* the repeal of a law, or to prevent its execution, is levying war, and treaſon.

He conſidered, from thoſe few authorities, that he was juſtifiable in ſaying that a riſing, with intent by force to prevent the execution

of a law as well as laws in general, preventing the marſhal executing his warrants, and preventing the other officers charged with the execution of the laws in queſtion, amounted to levying war, agreeable to the conſtitution of the United States.

Mr. RAWLE then proceeded to ſtate the moſt prominent facts which could be produced in the courſe of the evidence, in which it would fully appear, he preſumed, that John Fries, the priſoner, was the moſt active in his oppoſition to thoſe laws and to every attempt to carry them into effect; that he in every inſtance ſhowed his averſion of, and oppoſition to the aſſeſſors, and determination by threats and menaces to prevent them doing their duty, and that whenever any force was uſed, or terrific appearances held up, he was the commander and gave the orders to his men who, at times in great numbers joined him: and that finally by threats and intimidation, equally the ſame in the eyes of the law as force, he, the priſoner, did attain his object, to wit, the releaſe of a number of priſoners who were confined for oppoſing the execution of the law, and were actually in cuſtody of the marſhal in a houſe at Bethlehem, which by reaſon of his having priſoners there, and his having an armed *posse* to protect his lawful authority, was to all intents a fortreſs of the United States—and further that he did, compleatly for a time, prevent the execution of the laws intended, in thoſe parts, and thus did bid defiance to all lawful authority.

COURT, to the priſoner.

John Fries, you will attend to all the evidence that will be brought againſt you; will attend to their examination, and aſk any queſtions you pleaſe of the ſeveral witneſſes, or of the court, but be careful to aſk no queſtions wherein you may poſſibly criminate yourſelf, for remember, whatever you ſay to your own crimination, is evidence with the jury, but if you ſay any thing to your juſtification, it is not evidence, the court will be watchful of you, they will check any thing that may injure yourſelf: they will be your counſel, and give you every aſſiſtance and indulgence in their power.

WILLIAM HENRY, ESQ. called.

See his former teſtimony page 24, and page 82.

Mr. Henry related the firſt information he received of this oppoſition to the laws in queſtion, and their unwillingneſs to ſuffer the aſſeſſments. That on application by Mr. Eyerly (the commiſſioner) he iſſued a number of ſubpœneas to bring before him ſundry perſons to examine theſe facts, which he found ineffectual from the intimidations of a number of people who were met where the examinations were to be held. The witneſs, underſtanding that the marſhal was to meet a number of perſons upon whom he had executed proceſs, thought it proper to go to Bethlehem on that day, in order to prevent any extremities that might be attempted. He related the arrival of Keefer and Paulus and others, and afterwards of about 70 or 80 foot, generally armed with guns, having ſhot pouches and powder horns, and alſo of about 50 light horſemen with ſwords and piſtols, that of theſe men

Fries appeared to be the leader; that he was the perſon engaged in negotiation with the marſhal for the priſoners, whom the witneſs underſtood he ſaid he would have. That there were frequent cries out of, "we will have the priſoners," and frequent threats thrown out, particularly againſt Mr. Everly, Mr. Balliot, and himſelf (the witneſs.) ſometimes pointing their guns to the windows.

COURT. Was the priſoner preſent at theſe threats?

WITNESS. I cannot recollect, as I was about in different parts of the houſe—one perſon I ſaw cock his piece ſeveral times to thoſe ſtanding on the ſtairs. One of the riflemen came into the back room and ſwore, that if theſe damned *ſtamplers* had given them an opportunity, they would have ſhown them how they could have fought, and they would ſhow them yet.

How long has the word *ſtampler* been in uſe in thoſe parts?

Only ſince about the fall of '98.—The witneſs farther depoſed, that Fries was diſtinguiſhed from the reſt by a black feather in his hat—that the perſons who were in cuſtody of the marſhal reſided from 30 to 40 miles from moſt of thoſe who came to reſcue them, and near 45 miles from where Fries lived.

WILLIAM BARNETT (ſee page 28.)

Being one of the poſſe, was appointed by the marſhal to meet and endeavor to prevail on the armed party not to come into Bethlehem; he depoſed that he mentioned to them the weſtern inſurrection, and told them of the conſequences of reſiſtance, but to no effect: Fries, the priſoner, ſaid, he had had a fight yeſterday, and would have another to-day; the witneſs expected he had been in a frolic. That the captain of the riflemen ſeemed determined to releaſe the priſoners, and indeed that was their common cry. The witneſs aſked them if they would not allow that if the priſoners had done wrong, they ſhould ſuffer for it: they anſwered they had no objections to that, but they ſhould not be dragged to Philadelphia, they ſhould be tried at Eaſton, their own county town. They appeared to be in liquor a little.

The witneſs was aſked if he had any recollection about who would get the firſt blow, or who were expected to fire on them (Fries and his followers.) The witneſs had not a perfect recollection of it.

ATTORNEY. Do you not recollect any perſon ſaying "you muſt ſay, ſtrike, and make as good as you can, if I fall or get the firſt blow," or ſomething like that, in the German language?

WITNESS. I do not recollect any ſuch words.

JOHN BARNETT (ſee page 31.)

Depoſed that he was one of the poſſe at Bethlehem; that he ſaw the armed men come into the town, the horſe with their ſwords drawn, in battle, when they went to war. When the witneſs ſtood guard on the ſtairs, Fries and another wanted to go up; Fries had a ſword, and the other a piſtol: upon their aſking for the marſhal,

he was called, and Fries was let up to him, but the other was not ſuffered to go up: one at a time the witneſs thought was enough. The witneſs heard ſome of the priſoners at Bethlehem ſay, that they did not know the men who reſcued them, nor did they know of their coming, or wiſh to be reſcued.

CHRISTIAN WINTERS (ſee page 34.)

Was one of the marſhal's poſſe—he related ſome converſation between the marſhal and the priſoner on the ſtairs: after he was relieved from that ſtation, he went down, when he aſked the people out of doors what they were doing: they ſaid they would obey their captain's orders; the witneſs did not know what captain they meant; they were all ſtrangers to him.

ATTORNEY. Did any man ſtrike at you?

WITNESS. No, but after the affray was over, there was one of them walked under the ſtairs with his ſword, of whom the marſhal ſent me to inquire his name: he anſwered he did not mean to do any harm. Another ſaid he did not mind theſe damned ſtamplers.

PHILIP SCHLAUH (ſee page 41.)

Depoſed that he was at Bethlehem on the 7th, of March where he ſaw the priſoner at the bar, who ſaid to his company that he had been up with the marſhal, and that the priſoners were refuſed by the marſhall, who ſaid if they were taken it muſt be by force—"Now boys," ſaid he, "I give you my orders; we don't mean to hurt any body; we have to paſs between 4 or 5 centries, I expect I ſhall get the firſt blow, and when I get the firſt blow you muſt do as well as you can; will you agree to it boys?" "Yes" they ſaid.

Judge Peters—Do you recollect the very words Fries mentioned.

WITNESS. The very words were, ſtriking his breaſt "I ſhall be the foremoſt man, I expect I ſhall get the firſt blow, then do as well as you can."

ATTORNEY. Did he ſay any thing about firing?

WITNESS. No.

COURT. Do you remember any words he uſed?

WITNESS. No.

Chriſtian Winters returned—Having forgot to mentioned that: when the demand was made of the marſhal, he told the priſoner he could not deliver up the priſoners: Fries ſaid "you are not to be blamed; you do your duty, and I give you my word you ſhall not be hurt by my men, as for the reſt I cannot anſwer."

SAMUEL TOON (ſee page 52.)

Related ſomething of the company proceeding to the bridge, the converſation and occurrences there, and the miſſion to Bethlehem, in which he, and two others were ſent for the releaſe of Kiefer and Paulus—That when Stahler's company were drawn up before the

houſe, one of them, named Henry Hoover, ſaid if he only had eight men, he would go up and reſcue the priſoners, when the witneſs heard Fries anſwer that he ſhould not behave himſelf ſo, for that was not the way to go on. After a little time Fries ſaid to his company "come on boys, dont be afraid." This was after he had been up with the marſhal. They then wanted to preſs up ſtairs, and then the priſoners were delivered up. The witneſs heard no other expreſſions from Fries.

ANDREW SHIFFERT (ſee page 56)

On the company meeting at Ritter's tavern the witneſs aſked them what they were going to Bethlehem for? They ſaid "to releaſe the priſoners." Then ſaid the witneſs, you muſt either fight or hide yourſelves in the Buck wheat ſtraw. Ritter anſwered there was no danger of that, for when they come to ſee ſo many in arms they would ſoon draw back, and would let the priſoners free.

ATTORNEY. Was there any thing ſaid about whether to go with arms or without arms?

WITNESS. There was nothing ſaid againſt it, that I know of. I told them I would rather go home.

WILLIAM NICHOLS (marſhal) (ſee page 37.)

Related the receipt of the warrants, which he produced, and the firſt part of his progreſs; alſo the circumſtance that occurred with Shankweiler, and of the commencement and progreſs of the affair at Bethlehem. Reaſoning with the priſoner at the bar, and his ſtill perſiſting in his demand of the priſoners, the witneſs ſaid that it was a cowardly thing to oppoſe an individual thus placed, but that if he had 20 armed men, the priſoners ſhould not be reſcued. The priſoner laughed at that: on telling him that an armed force would be ſent up, he anſwered that they were able to come againſt any force.

COURT. Did he ſhow any particular regard for theſe priſoners, or what was his aſſigned reaſon for demanding them?

WITNESS. No he did not, he ſaid the law was a bad one, and ought not to be executed.

Queſtion by the priſoner.*—When the converſation paſſed between you and I, did I not aſk you if theſe priſoners could not be admitted to bail?—I ſaid I would come forward and riſk my life, that you ſhould not be hurt—Was it ſo or was it not?

WITNESS. Very poſſibly, but I do not recollect it.

Had I any arms when I came up to you.

Not at that time.

The court then adjourned to dinner, firſt having placed the jury under two ſworn bailiffs, and qualified each juror not to ſpeak to any one nor ſuffer any one to ſpeak to them, touching the matter relative to the trial of this iſſue.

* *The court here again begged the prisoner to say nothing, nor ask any question that would tend to his crimination.*

JOHN DILLINGER (see page 57.)

Depoſed his having left a meſſage at Young Marks's houſe for him to meet the next day to go to Bethlehem, and that Stahler who ſent him, ſaid it was very hard to let theſe men (the priſoners) ſuffer by going down to Philadelphia. Being at Bethlehem the next day, the witneſs ſaw the priſoner at the bar there: hearing an uproar, the witneſs went into the houſe, where he heard the priſoner (Fries) ſay; "draw near boys, don't be afraid."—I puſhed the people back, as did ſeveral others there.

JUDGE PETERS. Was it a common muſter day?

WITNESS. No, I believe not.

CHRISTIAN HECKAVELTER qualified.

The witneſs reſided in upper Milford townſhip—Soon after I received my warrant as aſſeſſor of the townſhip and was proceeding on the buſineſs, I was told by my neighbors that the people of the townſhip would not allow me to do it. After I had been to a few houſes, I was told if I went on, it ſhould be at my peril—this was the latter end of November I believe. I then returned home, and informed Mr. Balliot and Mr. Elliot, in order to conſult them, what ſhould be done. They agreed to call a townſhip meeting to collect the minds of the people. After it was held, I received from a deputation of three men appointed for that purpoſe, information that I muſt deſiſt, for there was no ſuch law in exiſtence. After that Mr. Eyerly informed me he had called a meeting of the people at ſquire Schymer's, he took me with him. A number of people aſſembled there, ſome armed and ſome without arms. Mr. Eyerly told them he was come to explain the law to them. There was a queſtion among them whether it was a law or not; ſome ſaid it was not in exiſtence, and that it was a law of his own making, for that he was able enough to make ſuch a law himſelf: I believe it was agreed among them that they would not have their houſes meaſured.

COURT. Was there not frequent threats thrown out?

WITNESS. Yes there was: they alſo gave it as their poſitive declaration that they would not ſubmit to the law; this was their common opinion.

ATTORNEY. Do you know any thing of papers being paſted up with ſwords, piſtols, or threats, being painted or drawn on them?

WITNESS. No.

JOHN ROMICK,

Depoſed that he was an aſſeſſor, in Macungy townſhip—Not long after I received my commiſſion, a women came to me, and ſaid I ſhould not go on with that buſineſs, before I was prepared with an iron cap: another old women ſoon after told me I ſhould not venture to that buſineſs of meaſuring houſes: I would come in bad condition with it. I told her I did not think it, becauſe they were all Chriſtians there

about, and I believed chriſtians would not hurt me. The talk was, that in ſome houſes they kept hot water againſt the aſſeſſor came round to do his duty. After that I heard there, that there had been ſeveral meetings like complots, or conſpiracies to obſtruct the aſſeſſors, on that account I was frightened to make a beginning. I heard that Mr. Heckavelter was ſtopped. Hearing that there was to be a meeting at ſquire Schymer's I went there, where Mr. Eyerly explained the law.

ATTORNEY. After that, did the people let you go on?

WITNESS. No.

Q. Was there any ſedition papers put up near you?

A. Yes, about three miles off—near Millar's town, but I cannot tell what they were; I never read them.

JACOB OSWALD

Depoſed, That he was appointed aſſeſſor for Lynn townſhip: That about December, 1793, he came to about the ninth plantation, when he was ſtopped by the people.—I heard that there was to be a townſhip meeting held, ſo I went, and took two conſtitutions with me, and the proclamation of General Waſhington to the Weſtern inſurgents in 1794. I alſo ſhowed them my orders, and the act of Congreſs. They thought Congreſs had no right to tax them: I ſhowed them that Congreſs had a right. They ſaid, I ſhould ſtop till the lower townſhips began to meaſure, as Philadelphia and Germantown; ſo I was forced to ſtop. The townſhip was not aſſeſſed till after the light horſe went up there, and then the liberty poles were cut down.

ISAAC SCHYMER, ESQ.

Was an aſſeſſor for the townſhip of Williams and Lower Sauchon; he depoſed, That he was proceeding on his buſineſs; and, on account of the talk of oppoſition, wrote to a neighboring aſſeſſor to go about with him, but that he refuſed on that very account: he then went by himſelf; at one place he was ſtopped, when the man ſaid to the witneſs, he would abuſe him if he pretended to meaſure his houſe. The witneſs ſaid, he did not mean to quarrel with him; he muſt make his returns to him in ten days. The man alſo ſaid, there would be danger in his going to take the rates.

In Lower Sauchon the witneſs alſo met with oppoſition: the men had gone from their homes; but a quantity of women were gathered there, and compelled him to deſiſt.

JAMES WILLIAMSON, ESQ.

Depoſed, That he was an aſſeſſor in Northampton county: That ſoon after he had received the appointment, ſeveral of his near neighbors came and warned him not to go about the townſhip: That he attempted many houſes, but they would give him no information; whereupon he told them to bring their rates in ten days, according to

law: they anſwered, they would not bring them, they would make no returns: every one ſaid, he ſhould offend his neighbors if he did. I then thought it beſt to put up advertiſements for them to meet together, on a certain day, to conſult what it was beſt to do: a very large party of them met. After a little time, three or four ſeem to wiſh to diſturb the meeting. One of them aſked for my authority: I ſhowed them my appointment: they ſeemed to be much oppoſed to what was done: I reaſoned with them, but to no purpoſe; many of them ſaid, it was no law. I read the law to them: they were pretty well ſatisfied while I was reading, till I came to where the valuation was mentioned, then one of them cried out, it was a damned law, and they never would ſubmit to any ſuch law. I told them it was a law, and as long as it was a law, we muſt ſupport it; they ſaid they never would, and ſignified they would rather fight againſt it. I told them that fighting was attended with dangerous conſequences, for that men loſt their lives in it; but they ſaid they would rather die than ſubmit to it, or live under it; they had fought againſt ſuch laws, and they would again. They told me, that I ſhould not go about to collect the returns, they never would ſuffer it to be done; I ſhould let the buſineſs alone, and if any damage occurred to me by being fined, the townſhip ſhould reimburſe me. The whole body ſeemed to riſe and give their aſſent to this.

JAMES CHAPMAN, ESQ.

Related nothing in his teſtimony different from his depoſition in the former trial, page 67.

JOHN RODRICK (ſee page 72.)

Did not vary from his former teſtimony, but ſhortened it, in the leſs important parts.

WILLIAM THOMAS (page 58.)

Depoſed, That Fries and Kuder ſent Marks and Gettman to *hunt* (he before ſaid *find*) the aſſeſſors: That upon their entering Quaker town, on the 6th of March, the people fired all their pieces. He related their conduct to Mr. Foulke and Mr. Childs there, and the meeting next morning to go to Millar's town, and thence the circumſtance till the arrival at their bridge: that they had a drum and fife which was played, and that they were commanded by John Fries and Kuder.—He depoſed, That Fries ſaid to his men, "For God's "ſake don't fire *except* we are fired on firſt; after I am killed, then "help yourſelves as well as you can."—That about 30 followed Fries into the houſe, of which he was one; ſome had arms, and ſome had not. Fries had his ſword.

COURT. What did you go in the houſe for?

WITNESS. Why, Henry called me, and ſaid I muſt come along.

Q. Did you know any of the priſoners?

A. No; none of them.

COURT. What did you go up to Bethlehem for?

WITNESS. Why, old Marks ſaid, it was to ſhow ourſelves; but I cannot tell what for.

Q. Was it to take the priſoners?

A. I do not know myſelf. The people of Northampton were going up to take the priſoners, and we went to ſhow ourſelves.

Q. Were you armed?

A. Yes.

Q. How did the people go away after they got the priſoners?

A. Why, they got away as faſt as they could: thoſe that were on horſeback rode away as faſt as they could, and thoſe on foot ran away.

PRISONER TO THE WITNESS.

When I came out to you and told you that the marſhal had ſhowed me his order, had I any arms, or a ſword?

A. No. The laſt time, when you told the men they muſt reſcue the priſoners by force, you had a ſword.

COURT. Did you hear the people cry out, they would have the priſoners?

A. Yes; one Hoover, particularly.

PRISONER. Did you ever ſee me at any of the townſhip meetings, except at Kline's?

A. I never ſaw the priſoner at any meeting at all, as I was not at the meeting at Kline's: I was only at the meeting at Mitchel's.

WITNESS. After we had come from Bethlehem three or four days, I told the priſoner that I heard the light horſe was coming up: the priſoner ſaid no, it was all ſettled and quiet: if they ſent a child of ten years old, he (the priſoner) would help the marſhal to take them.

EVERHARD FOULKE, ESQ. (page 115.)

Depoſed, That he was an aſſeſſor in Lower Milford: That he proceeded on in the aſſeſſment until he met the other aſſeſſors, and the principal aſſeſſor, James Chapman, at Jacob Fries's tavern, where they dined together; and after dinner the priſoner came into the room, and ſaid, he was ſorry to ſee them there upon that buſineſs: he warned them not to proceed any farther; if they did they ſhould be hurt; and then he immediately left the room, without even an anſwer. He then mentioned the circumſtance near Singmaſter's, as related by Mr. Rodrick (p. 71.) the priſoner ſeized the deponent's horſe, but let him go again, ſaying, he would take him the next day: That they had 5 or 700 men in arms, and would come to his houſe and take him. He heard the firing at Quaker's town; the circumſtances which occurred there he related. Having taken the aſſeſſment papers, the priſoner returned them, ſaying it was more than the witneſs deſerved.

Q. Did they ſay any thing about getting the law repealed?

A. I am not certain.—The other people faid they would fubmit; but not till after the other ſtates did: Fries faid, they would never ſubmit.

COURT. You are a magiſtrate, are you not, ſir?

A. Yes.

Q. Did Fries know it?

A. Yes; he had many times known me in that capacity.

PRISONER.—When I took you from the people to the back kitchen, and away out of the houſe backward, and helped you on your horſe, Did I or not deſire you to go out of the way, ſo that the people ſhould not ſee you?

WITNESS. Yes, you did take me out the back way, and ſaid, Captain Kuder was then commanding the people in the front of the houſe: you did deſire me to keep out of their way.

CEPHAS CHILDS (ſee page 73.)

Related ſome of the prominant tranſactions at Quaker town, where he was much abuſed, though not by the priſoner; but his papers, as coroner, were taken away by the priſoner, and returned to him; when, having been warned not to proceed, the witneſs told the priſoner he would not return to it in that capacity, unleſs forced to it by law, as he had left it. One perſon who abuſed the witneſs ſaid, he had fought for liberty, and would fight for it again; but he afterwards returned, ſeemed ſorry for it, and ſeveral times afterwards acknowledged his crime, and hoped forgiveneſs. The general language of the people was abuſe to the "damned laws," as they called them.

ISRAEL ROBERTS (page 113.)

In ſeveral converſations with the priſoner, he heard him expreſs his diſlike of the law. Having procured the law, and heard the priſoner ſay that he had never read it, he deſired him to examine it, which the priſoner ſaid he would do, and aſked leave to take it home.—The witneſs afterwards aſked his (Fries's) ſon, what his father thought of the law? he anſwered, not much, he believed. At a meeting held (perhaps at Mitchel's, p. 65 and 68.) an attempt was made to read the law, but they would not ſuffer it: one man ſaid, he knew the law; another ſaid, they wanted to hear none of our damned laws, nor would hear it, and, ſtamping his muſket on the floor, ſaid, "This is our law; "we have made a law of our own, and we are determined to ſupport it." —On the 5th of March I met John Fries, when he appeared to be very ill humoured: I aſked him what was the matter? he ſaid, the aſſeſſors had been about, and they ſhould not do it. He aſked me, if they had taken the dimenſions of my houſe? I ſaid they had. He aſked me, if I had told any body of it? I ſaid not. He ſeemed very much oppoſed to the law, and ſaid, his townſhip ſhould not be aſſeſſed till other parts were gone through.

Q. Did you ever hear him ſay any thing about war?

A. I have heard him say many times if there was a war he would be in it: if the French, or whoever invaded the country, he would oppose them. I mentioned to him that government would send up an army. He said if they did, they would turn about and join them, he was of opinion.

ATTORNEY. Did you ever recollect hearing him say, that if a beginning was made it would go on well?

A. I do not.

FRIDAY, *April* 25.

DANIEL WIEDNER.

Q. Did you, on the 6th of March, see a party of men marching down the road from Jacob Fries's?

A. Yes; I saw a body of men march to Fries's, and then to Quaker town; some were armed, and some unarmed. I went after them as far as Fries's.

Q. Had they a drum and fife?

A. Yes; they had when they came by my house, and by Jacob Fries's too.

Q. Did you see the prisoners with them?

A. Yes.

Q. Who appeared to have the command?

A. The prisoner and capt. Kuder.—They wanted somebody to go after the assessors: so Gettman, Marks, and two more went.

Q. Who wanted them to go?

A. The prisoner at the bar.

Q. What were they to do with them when they got them?

A. Why they were to bring them to Quaker town.

Q. Were any of these four men who went after the assessors armed?

A. Yes.

Q. How many of them were armed?

A. I think Marks and Gettman were, or all of them; I am not sure. I think one of the four was the prisoner's son: I do not know whether he was armed.

Q. Did you not meet at Marks's the next morning to go to Bethlehem?

A. Yes. When we left Marks's, we went on towards Ritter's tavern, and before we got there, Marks's son was coming back, and held up his sword for us to stop: he said that he thought it was all over before now; they were gone from Ritter's tavern. Some agreed to go back, some said since they were gone so far they would go through.

Q. Of which was the prisoner at the bar?

A. I think he was for going on.

COURT. Was William Thomas among you?

A. Yes.

Q. Was he for going on, or not?

A. I cannot recollect.—We then went on to Bethlehem.

Q. Did the priſoner go into the houſe at Bethlehem, and what happened there?

A. Why, he went into the houſe, and when he came out, he ſaid, the marſhal would not give up the priſoners without we ſhould take them by force, and if they had a mind to take them, he would go foremoſt. Fries and the reſt then went in, but I don't recollect whether he had a ſword at that time: he had one when we were going to Bethlehem.

GEORGE MITCHEL (page 64.)

Related the ground of going to Bethlehem, and their arrival there.

COURT. Did you ſee any of the people before the houſe point their guns?

A. No, not to my knowledge.

Q. Did you hear any threats uſed to Judge Henry or any other?

A. Not that I know.

PRISONER. At Marks's, the time I ſaid I meant to oppoſe the law, the room was pretty full of people; in what part of the room was it?

A. It was on the right hand ſide of the room, on the bench.

Q. Was there any people by?

A. Not that I recollect.

COURT. Be cautious what you ſay, John Fries.

PRISONER. Do you not remember that I ſaid (after the committee was agreed to) I would come forward to the government, if they would ſend the order by a child of ten years old, if I was ſent for?

A. Not that I recollect.

The counſel for the priſoner here reſted their evidence.

The priſoner was aſked if he had any witneſſes to produce: he anſwered, None.

MR. RAWLE

Said he felt himſelf ſo very peculiarly ſituated in this caſe, that he would with the opinion of the Court. The unfortunate priſoner at the bar appeared to anſwer to a charge, the greateſt that could be brought againſt him, without the aſſiſtance of counſel, or any friend to adviſe with.—To me, ſaid Mr. R. the evidence againſt the priſoner is extremely ſtrong. It will be recollected, that in opening the evidence, I informed the jury what points I ſhould prove: I opened my ideas of conſtructive law, and produced a *few* authorities in ſupport of my opinions. I believe it will be found, that in no *material* point have I failed to ſubſtantiate what I firſt gave notice that I could prove. I therefore conceive the charges are fully confirmed.

But although, if this trial was conducted in the uſual way, and counſel were ready to advocate the cauſe of the priſoner, it would now be proper on my part to ſum up the evidence as proper to the jury, and apply it to the law, in order to ſee whether the crime was fixed or not—under the preſent circumſtances, I feel very great reluctance to fulfill, what would in other circumſtances be my bounden duty, leſt it ſhould appear to be going farther than the *rigid* requiſition of my office compels me to. I therefore ſhall reſt the evidence and the law here, except the court think that my office as public proſecutor demands of me to do it, or that I ſhould not fulfil my duty without doing it.

Judge Chase.—It is not unfrequent for a priſoner to appear in a court of juſtice without counſel, but it is uncommon for a priſoner not to accept of legal aſſiſtance. It is the peculiar lenity of our laws that makes it the duty of a court to aſſign counſel to the perſon accuſed. With reſpect to your ſituation, ſir, it is a matter entirely diſcretionary with you whether you will ſtate the evidence and apply it to the law or not. There is great juſtice due to a priſoner arraigned on a charge ſo important as the preſent: there is great juſtice alſo due to the government. On the one hand an innocent perſon ſhall not be made to ſuffer for want of legal aſſiſtance; on the other a guilty perſon ſhall not eſcape through an undue indulgence, or the failure of the accuſer in a duty his office may require of him. If you do not pleaſe to proceed, I ſhall conſider it my duty to apply the law to the facts, the priſoner may therefore offer what he pleaſes to the jury.

Priſoner. I ſubmit to the court to do me that juſtice which is right.

Judge Chase. That I will, by the bleſſing of God, do you every juſtice.

Judge Peters. Mr. Attorney, while you are juſtifiable in conſidering the ſituation of the priſoner, that he might not ſuffer by any partial impreſſions you may make on the jury, there is another conſideration deſerving attention—there is juſtice due to the United States. Though I ſee no difficulty in reſting it here, yet, poſſibly perſons who may have come into court ſince the trial commenced may expect ſomething of a narrative of the tranſactions, and ſuch a narrative may be of great help to the jury. I wiſh it to be done for the due execution of public juſtice, and, God knows, I do it not with a deſire to injure the priſoner, for I wiſh not the conviction of any man. It is a painful taſk, but we muſt do our duty. Still I think you are at liberty to fulfil your own pleaſure.

Mr. Rawle would, then, under a ſolemn impreſſion that it was his duty, take up ſome part of the time of the court and jury in relation to the priſoner at the bar, a taſk rendered far more painful on his part, from the circumſtance of the priſoner's appearing there (unexpectedly) without counſel to plead his cauſe. In as few words as poſſible he would endeavor to collect the moſt prominent features of the teſtimony which had been produced, and to apply it to the law.

As he ſtated before, Mr. Rawle ſaid, levying war in the United States againſt the United States, was a crime defined by the conſtitution; in relation to the republican form of government exiſting among us it could only conſiſt in an oppoſition to the will of the ſociety, of which we all are members, declared and eſtabliſhed by a majority; in ſhort, an oppoſition to the acts of Congreſs, in whole or in part, ſo as to prevent their execution, either by collecting numbers, by a diſplay of force, or by exhibiting that degree of intimidation which ſhould operate, in either way, upon thoſe charged with the execution of the law, either throughout the United States or in any part thereof, to procure a repeal, or a ſuſpenſion of the law by rendering it impracticable to carry ſuch law or laws into effect in the place ſo oppoſing, or in any other part. This offence he conſidered to be ſtrictly *treason* againſt the United States.

The queſtion then is, how far the caſe of the priſoner and his conduct merits this definition? In order to be informed of that it was neceſſary to call to recollection the evidence, ſo collected, as to diſplay the train and progreſs which marked its footſteps from its firſt dawning, till its arrival at the fatal deed denominated treaſon.

It will firſt be obſerved by the teſtimony of ſeveral reſpectable witneſſes (Meſſrs. Heckavelter, Ramich, Schymer, Ormond, and Williamſon) that attempts were made and executed, by a combination, in which, unfortunately for him, the priſoner at the bar was very active, to prevent the aſſeſſors from doing the duty required of them when they accepted their office, and that this combination exiſted both in Northampton and Bucks counties, and to ſuch a degree that it was impoſſible to carry the law into effect. In lower Milford more particularly we have the evidence of four reſpectable gentlemen (Mr. Chapman, a principal aſſeſſor, and Mr. Rodrick, Mr. Foulke, and Mr. Childs, three aſſeſſors) who were employed in the execution of thoſe laws. Theſe gentlemen ſay that they met with ſuch oppoſition at an early period of the inſurrection, as deterred Samuel Clark from undertaking the buſineſs at all, although he had taken upon him the office. From this difficulty, Meſſrs. Foulke, Rodrick and Childs determined that they would proceed to aſſeſs lower Milford townſhip together, which they attempted, and did not deſiſt until compelled by the extreme oppoſition which their reſpective teſtimony relates to have happened on the 5th and 6th of March, in their progreſs to, and at Quaker's town, which ill uſage is all corroborated by other witneſſes. This ſpirit of oppoſition to the laws, as exhibited generally, is alſo related by Mr. Henry and Col. Nichols, the marſhal, wherein it appears that proceſs could not be ſerved, and that witneſſes could not be ſubpœnead, being deterred from the threats made to them by this extenſive combination; and that in the ſerving of proceſs perſonal abuſe was given, as well as to the aſſeſſors who attempted to execute the law. In ſhort the law was *proſtrate* at the feet of a powerful combination.

Mr. Rawle here called to view the occurrences in Bucks county, as depoſed by Meſſrs. Foulke, Rodrick, Chapman, Thomas, Mitchel, and Wiedner, exhibiting a diſpoſition to inſurrection by a great number of perſons, and who engaged in its acts; he referred to the meeting

at Jacob Fries's, where John Fries, the priſoner at the bar, expreſſed himſelf as determining to oppoſe and continue hoſtile to the laws. The circumſtance afterwards near Singmaſter's, where Mr. Rodrick made his eſcape, and where, as well as at other times, the priſoner forbade thoſe officers to proceed, under threats of perſonal danger. It appeared Mr. Rodrick had given offence, not by his conduct, but becauſe he came from a diſtance of ten or twelve miles into that township to proſecute his duty. However the aſſeſſors met the next day, but were ſtopt at Quaker town, where they were extremely abuſed.—To be ſure, while the priſoner at the bar was in the room, and whenever he was preſent, their abuſe was ſuſpended, when he abſented himſelf, it was renewed. The papers were taken from Mr. Childs, and alſo from Mr. Foulke, but returned, becauſe they were not the identical papers. Here it muſt be obſerved in juſtice to the priſoner that one more of his few good actions appeared, which Mr. Rawle wiſhed in his heart had been more numerous.—Fries aſſiſted Mr. Foulke to get out of the houſe the back way, and adviſed him to keep out of the way of the men.

On the evening of that day they went up to Miller's town: here Mr. Rawle called to mind the meſſage delivered by John Dillinger for convening the meeting the next day; this meſſage was the fruits of a conſultation held at the houſe of Jacob Fries, after they left Quaker town, when they determined to proceed to Millar's town the next morning. The next morning they met and went on as far as Ritters, where it appeared they were ſtopped for a ſhort period by young Marks, who had been ſent forward, with information that the priſoners were gone on to Bethlehem: a doubt being ſtarted whether they would not be too late, it was debated, and at laſt determined to go forward: of this latter opinion was the priſoner at the bar. It was in evidence that none of thoſe people knew the priſoners whom they were going to releaſe: this Mitchell and others ſwore.

Here Mr. Rawle thought commenced the overt act in the indictment; hitherto only the general oppoſition to the law, and the intention with which the after conduct was perpetrated, appeared.—They proceeded to Bethlehem, and here the officer of militia, the man who derived his power from the people, the priſoner, *Captain John Fries*, whoſe duty it was to ſupport the law and conſtitution of the United States, made a moſt diſtinguiſhed figure. At Bethlehem it appeared that the priſoner was to ſtep forward to effect the ſurrender of the priſoners, and of courſe to lay proſtrate the legal arm of the United States. Theſe priſoners were in the lawful cuſtody of the marſhal, he had lawful proceſs againſt them from the diſtrict judge; they were in the houſe appointed for their ſafe keeping until they ſhould be removed; he kept guard over them, and in order to execute his office he had provided, by virtue of the powers given to the ſheriff in the ſeveral counties agreeable to law, an armed force called a *poſſe comitatus*, or the power of the county. This force (about 16 or 17) he ſuppoſed ſufficiently great to prevent the priſoners in his charge being liberated, it appeared, however in the ſequel that they were not ſufficient for that purpoſe.—The priſoner with an armed force arrived at Beth-

lehem, and proceeded on his miſſion to the marſhal: he had a ſword when he marched his men into the town; but it appeared that he left it when he entered on his other buſineſs, to wit, demanding the ſurrender of the priſoners; the marſhal anſwered, that he could not deliver them up. John Fries then returned to his men; and from the teſtimony of Mitchel, Barnet, and Schlaugh, (this was an important part of his conduct) he ſaid, "They muſt be taken by force; the "marſhal ſays he cannot deliver them up; if you are willing, we will "take them by force: I will go foremoſt; if I drop, then take your "own command." Words were followed by actions; they went into the houſe, and the priſoners were given up.

This, Mr. Rawle thought, was an unqueſtionable, full and complete proof of the commiſſion of the *overt act*, and that overt act is *high treason*, as laid in the third and fourth counts of the indictment, to wit, that they did, *by force prevent the marshal from executing lawful process, to him directed; and, secondly, that they did deliver, and take from him certain persons, whom he had in lawful custody*; and, further, this was done by *force and arms*, of men arrayed in a warlike manner, and by a number exceeding one hundred perſons. This the indictment juſtly calls levying war, and treaſon.

To him Mr. Rawle ſaid, there was no doubt but the act of levying war was completed in the county of Bucks, independently of all thoſe actions at Bethlehem; for there the priſoner and others were armed, and arrayed with all the appearances of war: with drums and fifes, and at times firing their pieces; and this to oppoſe the laws and prevent their execution, and there, by this force, they executed one, and the main part of their plan; they there did ſet the law at defiance: that was part of their grand object, and was done with a general, and not with a particular view, an eſſential ingredient in treaſon. Whether theſe actions were to be conſidered as a ſeparate act of treaſon, or whether they were to evince the intentions of the party, it certainly muſt be conſidered as teſtimony, and ſuch as muſt have an important weight towards the verdict.

Gentlemen, ſaid Mr. Attorney, you will conſider how far the individual witneſſes are deſerving your credit; if you conſider them worthy of being believed, and if the facts related apply to the law which I ſubmitted to your conſideration, and which, from the ſilence of the court, I think you muſt conſider as accurate, if not I ſhall ſtand corrected by the court,—there can be but little doubt upon your minds, that the priſoner is guilty: if it be not ſo, in your opinion, you muſt find him otherwiſe.

I have endeavoured to do my duty with integrity. I have advanced nothing but what appears to me to be clearly ſubſtantiated; but with you, gentlemen, and with the court, I leave the truth of the opinion.

COURT. John Fries, you are at liberty to ſay any thing you pleaſe to the jury.

PRISONER. It was mentioned, that I collected a parcel of people to follow up the aſſeſſors, but I did not collect them; they came and fetched me out from my houſe to go with them.

I have nothing to ſay, but leave it to the court.

JUDGE CHASE

Then addressed the JURY *as follows:*

GENTLEMEN OF THE JURY,

JOHN FRIES, the prisoner at the bar, stands indicted for the crime of *treason*, of levying war against the United States, contrary to the constitution.

By the Constitution of the United States, art. 3. sect. 3. it is declared, "That treason, against the United States, shall consist *only* in "*levying war* against them; or in adhering to their *enemies*, giving "them *aid* and *comfort*."

By the same section it is further declared, "That no person shall "be *convicted* of treason, unless on the testimony of *two* witnesses to "the *same overt act*; or on confession in open court;" and that "the "Congress shall have power to *declare* the *punishment* of treason."

Too much praise cannot be given to this *constitutional definition* of treason, and the requiring such full proof for conviction; and declaring, that no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

This *constitutional* definition of *treason* is a question of *law*. Every proposition in any statute (whether more or less distinct, whether easy or difficult to comprehend) is always a question of *law*. What is the true meaning and true import of any statute, and whether the case stated comes within it, is a question of *law*, and not of *fact*.—The question in an indictment for *levying war* against (or adhering to the enemies of) the United States, is—"Whether the *facts* stated do, or "do not amount to *levying war*,"—within the contemplation and construction of the constitution?

It is the duty of the court in this case, and in all *criminal* cases, to state to the jury their opinion of the *law* arising on the facts; but the jury are to decide on the *present*, and in *all criminal* cases, *both the law and the facts*, on their consideration of the *whole* case.

It is the opinion of the court, that any insurrection, or rising of any body of people, within the United States, to attain or effect, by *force, or violence*, any object of a *great public nature*, or of *public and general (or national) concern*, is a *levying of war* against the United States, within the contemplation and construction of *the constitution*.

On this *general position* the court are of opinion, that any *such* insurrection, or rising to resist, or to prevent, *by force or violence*, the execution of *any* statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burthensome, oppressive, or unconstitutional, is a levying war against the United States, within the contemplation and construction of *the constitution*.—The reason for this opinion is, that an insurrec-

tion to reſiſt or prevent, *by force*, the execution of any ſtatute of the United States, *has* a *direct* tendency to diſſolve all the bands of ſociety, to deſtroy all order, and all laws; and alſo, all ſecurity for the lives, liberties, and property of the citizens of the United States.

The court are of opinion, that military weapons (as guns and ſwords, mentioned in the indictment) are not neceſſary to make *ſuch insurrection or riſing* amount to *levying war;* becauſe numbers may ſupply the want of *military weapons;* and *other inſtruments* may effect the intended miſchief: The *legal guilt of levying war* may be incurred without the uſe of military weapons, or military array.

The court are of opinion, that the aſſembling bodies of men, armed and arrayed in a warlike manner, for purpoſes *only of a* PRIVATE *nature*, is NOT TREASON; although the judges, or other peace officers ſhould be inſulted, or reſiſted; or even great outrages committed to the perſons, or property of our citizens.

The true criterion to determine whether *acts committed* are *treaſon*, or a *leſs* offence, (as a riot) is the *quo animo* or the intention with which the people did aſſemble. When the intention is *univerſal*, or *general*, as to effect ſome object of a *general public nature*, it will be *treaſon;* and cannot be conſidered, conſtrued, or reduced to a riot. The commiſſion of any number of *felonies*, *riots*, or other miſdemeanors cannot alter *their nature*, ſo as to make them *amount to treaſon;* and, on the other hand, if the *intention and acts combined amount to treaſon*, they cannot *be ſunk down to a felony, or riot.* The *intention* with which any acts (as felonies, the deſtruction of property, or the like) are done, will ſhow to what *claſs of crimes*, the caſe belongs.

The court are of opinion, that if a body of people conſpire and meditate an inſurrection to *reſiſt or oppoſe the execution of any ſtatute of the United States by force*, that they are *only guilty of a high miſdemeanor;* but if they proceed to carry *ſuch intention into execution*, BY FORCE,—that they are guilty of the *treaſon of levying war;* and the quantum of the force employed neither *leſſens*, nor *increaſes* the crime; whether by one hundred, or one thouſand perſons, is wholly immaterial.

The court are of opinion, that a *combination, or conſpiracy* to *levy war* againſt the United States is *not treaſon*, unleſs combined with an attempt to carry ſuch combination, or conſpiracy, into execution; ſome actual force, or violence, muſt be uſed, in purſuance of *ſuch deſign to levy war;* but that it is altogether immaterial, whether the force uſed is ſufficient to effectuate the object; *any force connected with the intention*, will conſtitute the crime of *levying war*.

This opinion of the court is founded on the *ſame principles*, and is, in *ſubſtance*, the *ſame*, as the opinion of the circuit court, for this diſtrict, on the trials (in April 1795) of Vigol and Mitchell, who were both found guilty by the jury, and afterwards pardoned by the *late* Preſident.

At the circuit court for the diſtrict (April term 1799) on the trial of the priſoner at the bar, Judge Iredell *delivered* the ſame opinion, and Fries was convicted by the jury.