To ſupport the preſent indictment againſt the priſoner at the bar, *two* facts muſt be proved to your ſatisfaction:

First. That ſome time *before* the finding of the indictment, there was an inſurrection (or riſing) of a body of people in the *county of Northampton*, in this State, *with intent* to oppoſe and prevent, by means of *intimidation and violence*, the execution of a law of the United States, intituled "An Act to provide for the valuation of lands and dwelling-houſes, the enumeration of ſlaves within the United States;" OR, of another law of the United States, intituled "An Act to lay and collect a direct tax within the United States:" and that *ſome acts of violence* were committed by *ſome* of the people ſo aſſembled, *with intent* to oppoſe and prevent, by means of intimidation, and violence, the execution of both, or of *one* of the ſaid laws of congreſs.

In the conſideration of this *fact*, you are to conſider and determine with what *intent* the people aſſembled at Bethlehem, whether to effect, by force, a *public* or a *private* meaſure.

The intent with which the people aſſembled at Bethlehem, in Northampton, is a *neceſſary* ingredient to the *fact of aſſembling*, and to be proved like any other fact, by the *declarations* of thoſe who aſſembled; or by *acts* done by them. When the queſtion is, "What is a man's intent?"—It may be proved by a number of *connected circumſtances*; or by a *ſingle fact*.

If from a careful examination of the evidence, you ſhall be *convinced*, that the *real* object and intent of the people aſſembled at Bethlehem was of a *public nature*, (which it certainly was, if they aſſembled with intent to prevent the execution of *both* of the above-mentioned laws of congreſs, or either of them) it muſt then be proved to your ſatisfaction, that the priſoner at the bar, incited, encouraged, promoted, *or aſſiſted* in the inſurrection, or riſing of the people, at Bethlehem, and the terror they carried with them, *with intent* to oppoſe and prevent, by means of intimidation *and violence*, the execution of both the above-mentioned laws of congreſs, or either of them; and that *ſome force* was uſed by *ſome* of the people aſſembled at Bethlehem.

In the conſideration of this fact, the court think proper to aſſiſt your inquiry by giving you their opinion.

In treaſon, all the *participes criminis* are principals; there are no acceſſaries to this crime. Every act, which in the caſe of *felony*, would render a man an acceſſary, will, in the caſe of *treaſon*, make him a *principal*. To render any perſon an *accomplice and principal* in *treaſon*, he muſt be aiding and abetting *at the fact*; or ready to afford aſſiſtance, if *neceſſary*. If a perſon be preſent at a *felony*, aiding and aſſiſting, he is a principal. It is always *material* to conſider whether the perſons charged are of the *ſame party*; upon the *ſame* partiality: and under the expectation of *mutual defence* and *ſupport*.—All perſons *present*, aiding, aſſiſting, or abetting any *treaſonable act*, are *principals*. All perſons, who are preſent and countenancing, and are ready to afford aſſiſtance, if neceſſary, to thoſe who actually

commit any *treasonable act*, are alſo *principals*. If a number of perſons aſſemble and ſet out upon a *common design*, as to reſiſt and prevent, by force, the execution of any law, and ſome of them commit acts of force and violence, *with intent* to oppoſe the execution of any law, and others are preſent to aid and aſſiſt, if neceſſary, they are all *principals*. If any man *joins and acts* with an aſſembly of people, his intent is always to be conſidered and adjudged to be the ſame as theirs; and the law, in this caſe, judgeth of the *intent* by the FACT. If a number of perſons combine or conſpire to effect a certain purpoſe, as to oppoſe, by force, the execution of a law, any act of violence done by any one of them, in purſuance of ſuch combination, and with intent to effect *ſuch* object, is, in conſideration of law, the act of all who are preſent when ſuch act of violence is committed. If perſons collect together to act *for one and the ſame common end*, any act done by any one of them, with intent to effectuate ſuch common end, is *a fact* that may be given in evidence againſt all of them; the *act of each* is evidence againſt ALL concerned.

I ſhall not detain you at this late hour to recapitulate the facts;—you have taken notes, and they have been ſtated with accuracy, and great candor, by Mr. Attorney.

I will only remark, that all the evidence relative to tranſactions before the aſſembling of the armed force at Bethlehem, are only to ſatisfy you of the *intent* with which the body of the people aſſembled there. If either of the three overt acts (or open deeds) ſtated in the *indictment*, are proved to your ſatisfaction, the court are of opinion, that it is ſufficient to maintain the indictment; for the court are of opinion that every overt act is treaſonable.

As to accomplices— hey are legal witneſſes, and entitled to credit, unleſs deſtroyed by teſtimony in court.

If, upon conſideration of the *whole* matter (law as well as fact) you are *not* fully ſatisfied, *without any doubt*, that the priſoner is guilty of the *treason* charged in the indictment, you will find him *not guilty*; but if, upon conſideration of the *whole* matter, (law as well as *fact*) you are convinced that the priſoner is guilty of the treaſon charged in the indictment, you will find him guilty.

The jury retired, for the ſpace of two hours, and brought in their verdict, GUILTY.

After the verdict was given, Judge Chaſe, with great feeling and ſenſibility, addreſſed the priſoner, obſerving that as he had no counſel on the trial, if he, or any perſon for him, could point out any flaw in the indictment, or legal ground for arreſt of judgment, ample time would be allowed for that purpoſe.

FRIDAY, *May* 2.

The Court this morning called before them Charles Deſſler, a juror on the above trial of John Fries, who, on the firſt evening of the ſaid trial, on the adjournment of the court, ſeparated from the jury and retired to his lodgings. Mr. Hopkinſon, in behalf of Mr. Deſſler, produced his own affidavit, and that of two others, which proved,

that on the ſaid evening, Charles Deſhler was inadvertently ſeparated from his brethren by the crowd, in going out of the jury box; that he did not know to what place the jury had adjourned; that he then proceeded to his lodgings, where he cautiouſly avoided all converſation reſpecting the trial depending.—The court, ſatisfied by this repreſentation, of the innocence of Mr. Deſhler, ordered that he be diſcharged, and that the before-mentioned affidavit be entered on the record of the court.

JUDGMENT.

Judge Chase's Address.

The priſoner being ſet at the bar, Judge Chaſe, after obſerving to Hainey and Gettman that what he had to ſay to Fries would apply generally to them, the judge proceeded—

JOHN FRIES—You have been already informed, that you ſtood convicted of the *treason*, charged upon you by the indictment on which you have been arraigned, of *levying war* againſt the United States.—You have had a LEGAL, FAIR and IMPARTIAL trial, with every indulgence that the law would permit. Of the whole pannel, you PEREMPTORILY challenged thirty-four, and, with truth I may ſay, that the jury who tried you, were of your *own ſelection and choice*. Not one of them *before* had ever formed and delivered any opinion reſpecting your guilt or innocence. The verdict of the jury againſt you was founded on the teſtimony of many creditable and unexceptionable witneſſes. It was apparent from the conduct of the jury, when they delivered their verdict, that if *innocent* they would have acquitted you with pleaſure; and that they pronounced their verdict againſt you with great concern and reluctance, from a ſenſe of duty to their country, and a *full conviction* of your guilt.

The crime of which you have been found guilty is *treason*; a crime conſidered, in the moſt civilized and the moſt free countries in the world, as the *greatest* that any man can commit. It is a crime of ſo deep a dye, and attended with ſuch a train of fatal conſequences, that it can receive no aggravation; yet the duty of my ſtation requires, that I ſhould explain to you the *nature of the crime* of which you are convicted; to ſhow the *neceſſity of that juſtice*, which is this day to be adminiſtered; and to awaken your mind to proper reflections and a due ſenſe of your own condition, which I imagine you muſt have reflected upon during your long confinement.

You are a *native* of this country—You live under a conſtitution (or form of government) framed by the people themſelves; and under laws made by *your* repreſentatives, faithfully executed by independent and impartial judges. Your government ſecures to every member of the community *equal liberty* and *equal rights*; by which equality of *liberty* and *rights* I mean, that every perſon, without any regard to

wealth, rank or ſtation, may enjoy an *equal* ſhare of *civil liberty*, an *equal* protection of *law*, and an *equal* ſecurity for his *perſon* and *property*.—You enjoyed, in common with your fellow-citizens, *all thoſe rights*.

If experience ſhould prove, that the *conſtitution* is defective, *it* provides a mode to *change or amend* it, without any danger to public order, or any injury to *ſocial* rights.

If Congreſs, from inattention, error in judgment, or want of information, ſhould paſs any law in violation of the conſtitution; or burthenſome, or oppreſſive to the people, a peaceable, ſafe and *ample* remedy is provided by the *conſtitution*. The people themſelves have eſtabliſhed the *mode* by which *ſuch grievances* are to be redreſſed; and no *other mode* can be adopted, without a violation of the conſtitution and of the laws.—If Congreſs ſhould paſs a law contrary to the *conſtitution*, ſuch law would be *void*, and the courts of the United States poſſeſs complete authority, and are the only tribunal to decide, whether any law is contrary to the *conſtitution*.—If Congreſs ſhould paſs *burthenſome* or *oppreſſive* laws, the remedy is with their conſtituents, from whom they derive their exiſtence and authority. If any law is made, repugnant to the voice of a *majority* of their conſtituents, it is in their power to make choice of perſons to repeal it; but until it is repealed, it is the duty of every citizen to ſubmit to it, and to give up his *private* ſentiments to the *public will*. If a law burthenſome, or even oppreſſive in its *nature* or *execution* is to be oppoſed by *force*, and obedience cannot be compelled, there muſt ſoon be an end to all government in this country.—It cannot be credited by *diſpaſſionate* men, of any information, that Congreſs will *intentionally* make laws in violation of the conſtitution, contrary to their ſacred truſt, and ſolemn obligation to ſupport it. None can believe, that Congreſs will *wilfully*, or *intentionally*, impoſe unreaſonable and unjuſt burthens on their conſtituents, in which they *muſt participate*. The moſt ignorant man muſt know, that Congreſs can make *no law* that will not affect them *equally*, *in every reſpect*, with their conſtituents. Every law that is detrimental to their conſtituents, muſt prove hurtful to themſelves. From theſe conſiderations, every one may ſee, that Congreſs can have *no intereſt in oppreſſing their fellow-citizens*.

It is almoſt incredible, that a people living under the beſt and mildeſt government in the whole world, ſhould not only be diſſatisfied and diſcontented, but ſhould break out into open reſiſtance and oppoſition to its laws.

The inſurrection in 1794, in the four weſtern counties of this ſtate (particularly in Waſhington) to oppoſe the execution of the laws of the United States, which laid duties on ſtills, and ſpirits diſtilled, within the United States, is ſtill freſh in memory: it originated from prejudices and miſrepreſentations induſtriouſly diſſeminated and diffuſed againſt thoſe laws. Either perſons diſaffected to our government, or wiſhing to aggrandiſe themſelves, deceived and miſled the ignorant and uninformed claſs of the people. The oppoſition commenced in meetings of the people, with threats againſt the officers, which ripened into acts of outrage againſt *them*, and were extended

to *private* citizens. Committees were formed to ſyſtamatize and inflame the ſpirit of oppoſition. Violence ſucceeded to violence, and the collector of Fayette county was compelled to ſurrender his commiſſion and official books ; the dwelling houſe of the inſpector (in the vicinity of Pittſburgh) was attacked and burnt; and the marſhal was ſeized, and obtained his liberty on a promiſe to ſerve no other proceſs on the *weſt ſide of the Alleghany mountain*. To compel ſubmiſſion to the laws, the government were obliged to march an army againſt the inſurgents, and the expenſe was above one million one hundred thouſand dollars. Of the whole number of inſurgents (many hundreds) only a *few* were brought to trial; and of them only *two* were ſentenced to die (Vigol and Mitchell) and they were pardoned by the late Preſident. Although the inſurgents made no reſiſtanceto the army ſent againſt them; yet not a few of our troops loſt their lives, in conſequence of their great fatigue, and expoſure to the ſeverity of the ſeaſon.

This great and remarkable clemency of the government had no effect upon *you* and the deluded people in your neighborhood. The riſe, progreſs, and termination of the *late* inſurrection, bear a ſtrong and ſtriking analogy to the former: and it may be remembered, that it has coſt the United States 80,000 dollars. It cannot eſcape obſervation, that the ignorant, and uninformed are taught to complain of taxes, which are neceſſary for the ſupport of government, and yet they permit themſelves to be ſeduced into inſurrections which have ſo enormouſly increaſed the public burthens, of which their contribution can ſcarcely be calculated.

When citizens combine and aſſemble with intent to prevent by threats, intimidation, and violence, the execution of the laws, and they actually carry ſuch traitorous deſigns into execution, they reduce the government to the alternative of proſtrating the laws before the inſurgents, or of taking neceſſary meaſures to compel ſubmiſſion. No government can heſitate. The expence, and all the conſequences therefore, are not imputable to the government, but to the inſurgents. —The mildneſs and lenity of our government are as ſtriking on the *late* as on the *former* inſurrection ; Of nearly 130 perſons who might have been put on their trial for *treaſon*, only five have been proſecuted and tried for that crime.

In the late inſurrection, you, John Fries, bore a conſpicuous and leading part. If you had reflected, you would have ſeen, that your attempt was as weak, as it was *wicked*. It was the height of folly in you to ſuppoſe that the great body of our citizens, bleſt in the enjoyment of a free republican government of their own choice, and of all rights civil and religious,—ſecure in their perſons and property, and conſcious that the laws are the only ſecurity for their preſervation from violence, would not riſe up as one man to oppoſe and cruſh ſo ill-founded, ſo unprovoked an attempt to diſturb the public peace and tranquillity. If you could ſee in a proper light your own *folly* and *wickedness*, you ought now to bleſs God, that your inſurrection was ſo happily and ſpeedily quelled by the vigilance and energy of our government, aided by the patriotiſm and activity of your fellow-citizens, who

left their homes and buſineſs and embodied themſelves in the ſupport of its laws.

The annual, neceſſary expenditures for the ſupport of any extenſive government, like ours muſt be great; and the ſum required, can only be obtained by *taxes*, or loans.—In all countries the levying taxes is unpopular, and a ſubject of complaint. It appears to me, that there was not the leaſt pretence of complaint againſt, much leſs of oppoſition and violence to, the law for levying taxes on dwelling-houſes; and it becomes you to reflect that the time you choſe to riſe up in arms to oppoſe the laws of your country, was when it ſtood in a very critical ſituation with regard to France, and on the eve of a rupture with that country.

I cannot omit to remind you of another matter, worthy of your conſideration.—If the marſhal or any of the poſſee, or any of the four friends of government, who were with him, had been killed by you, or any of your deluded followers, the crime of *murder* would have been added to the crime of *treason*.

In your ſerious hours of reflection, you ought to conſider the conſequences that would have flowed from the inſurrection, which you incited, encouraged, and promoted, in the character of a captain of militia, whoſe incumbent duty it is to ſtand ready (whenever required) to aſſiſt and defend the government and its laws, if it had not been immediately quelled. Violence, oppreſſion and rapine; deſtruction, waſte, and murder, always attend the progreſs of inſurrection and rebellion; the arm of the father would have been raiſed againſt the ſon; that of the ſon againſt the father; a brother's hand would have been ſtained with brother's blood; the ſacred bands of friendſhip would have been broken, and all the ties of natural affection would have been diſſolved.

The end of all *puniſhment* is *example*; and the enormity of your crime requires that a ſevere example ſhould be made to deter others from the commiſſion of *like* crimes in future. You have forfeited your life to juſtice—let me therefore earneſtly recommend to you, moſt ſeriouſly to conſider your ſituation—to take a review of your paſt life, and to employ the very little time you are to continue in this world, in endeavors to make your peace with that God, whoſe MERCY is equal to his JUSTICE. I expect that you are a Chriſtian; and as *ſuch* I addreſs you. Be aſſured my guilty and unhappy fellow-citizen, that without ſerious repentance of *all* your ſins, you cannot expect happineſs in the world to come; and to your repentance you muſt add *faith* and *hope* in the merits and mediation of Jeſus Chriſt. Theſe are the *only terms* on which pardon and forgiveneſs are promiſed to thoſe, who profeſs the *Chriſtian* religion. Let me therefore again entreat you to apply every moment you have left, in contrition, ſorrow, and repentance. Your *day* of *life* is almoſt ſpent, and the *night* of *death* faſt approaches. Look up to the Father of Mercies, and God of Comfort. You have a great and an immenſe work to perform, and but little time in which you muſt finiſh it. There is no repentance in the grave; for after death comes judgment; and as you die, ſo you muſt be judged. *By repentance and faith*, you are the object of God's *mercy*; but if you will *not* repent, and have faith and dependance upon the merits

of the death of Chriſt, but die a hardened and impenitent ſinner, you will be the object of God's *juſtice* and vengeance. If you will ſincerely *repent and believe*, God hath pronounced his forgiveneſs; and there is no crime too great for his mercy and pardon.

Although you muſt be ſtrictly confined for the very ſhort remainder of your life, yet the mild government and laws which you have endeavored to deſtroy, permit you (if you pleaſe) to converſe and commune with miniſters of the goſpel; to whoſe pious care and conſolation, in fervent prayers and devotion, I moſt cordially recommend you.

What remains for me is a very painful, but a very neceſſary part of my duty. It is to pronounce that judgment, which the law has appointed for crimes of this magnitude. The judgment of the law is, and this Court doth award "that you be hanged, by the neck, *until dead*:" And I pray GOD ALMIGHTY to be merciful to your ſoul!

The following Charge, by Judge Peters, was delivered to the Jury before the Charge of Judge Iredell, in the firſt Trial, and ought to precede it in Page 164, *but was unavoidably omitted in its proper place.*

GENTLEMEN OF THE JURY,

AS this caſe is important, both in its principles and conſequences, I think it my duty to give my opinion, formed with as much deliberation as the intervals of this lengthy trial would permit, on the moſt prominent points of law which have been made in this cauſe. I have condenſed my ſentiments into as ſhort a compaſs as poſſible. I ſhall leave remarks on the evidence, and more enlarged obſervations on the law, to the preſiding judge, who will deliver to you the charge of the court. At his requeſt I ſtate my individual opinion, though I do not always deem it neceſſary, when there is an unanimity of ſentiment in the court.

1. It is *treaſon* "in levying war againſt the United States" for perſons *who have none but a common interest with their fellow-citizens*, to oppoſe or prevent, by force, numbers or intimidation, a *public* and *general* law of the United States, *with intent* to prevent its operation, or compel its repeal. Force is neceſſary, to complete the crime; but the quantum of force is immaterial. This point was determined by this court on a former occaſion, which was, though not in all circumſtances, yet in principle and object, very analogous to the ſubject of our preſent inquiries. I hold myſelf bound by that deciſion, which on due conſideration, I think legal and ſound. I do not conceive it to be overſhadowed, or rendered null, by any legiſlative conſtruction contained in any ſubſequent act of congreſs. The law, though eſtabliſhed by legiſlative acts, or ſettled by judicial deciſions, may be altered by congreſs, *by express words*, in laws conſiſtent with the con-

ſtitution. But a mere legiſlative conſtruction, drawn from any act by intendment, ought not to repeal poſitive laws, or annul judicial deciſions. The *judiciary* have the duty aſſigned to them of interpreting *declaring* and *explaining*,—the *Legiſlature* that of *making*, *altering*, or *repealing* laws. But the deciſion of a queſtion on the conſtitutionality of a law is veſted in the judiciary department. I conſider the deciſions in the caſes of Vigol and Mitchell, in full force, and founded on true principles of law. The authorities from Britiſh precedents and adjudications are uſed as guides in our deciſions. I will not enter into a diſcuſſion whether we are bound to follow them; becauſe they are precedents,—or becauſe we think them reaſonable and juſt.

If numbers and force can render one law ineffectual, which is tantamount to its repeal, the whole ſyſtem of laws may be deſtroyed in detail. All laws will at laſt yield to the violence of the ſeditious and diſcontented. Although but one law be immediately aſſailed, yet the treaſonable deſign is completed, and the generality of intent deſignated, by *a part* aſſuming the government of *the whole*. And thus, by trampling on the legal powers of the conſtituted authorities, the rights of all are invaded by the force and violence of a few. In this caſe, too, there is a direct outrage on the judiciary act, with intent to defeat, by force and intimidation, the execution of a revenue law, enacted under clear and expreſs conſtitutional authority. A deadly blow is aimed at the government, when its fiſcal arrangements are forcibly deſtroyed, diſtracted and impeded; for on its revenues its very exiſtence depends.

2. Though puniſhments are deſignated, by particular laws, for certain *inferior* crimes, which, if proſecuted as ſubſtantive offences, and the ſole object of the proſecution, are excluſively liable to the penalties directed by thoſe laws, yet, when committed with treaſonable ingredients, theſe crimes become only circumſtances or overt acts. The intent is the giſt of the inquiry in a charge of treaſon; and is the great and leading object in trials for this crime.

The deſcription of crimes, contained in the act, commonly called the *Sedition Act*, loſe their character, and become but component parts of the greater crime, or evidences of treaſon, when the treaſonable intent and overt act are proved. So it is with *reſcue of priſoners*; which, in the preſent caſe, was not an independent offence, but an *overt act of the treaſon*. Theſe were crimes—miſdemeanors—at common law; and might have been puniſhed by fine and impriſonment when ſubſtantive independent offences. But, when committed with treaſonable intent, are merged in the treaſon, of which ſedition, conſpiracy and combination are always the harbingers. I do not think that the acts relating either to *ſedition* or *reſcue* have altered the principle, though they have defined and bounded the puniſhments. The law, as to treaſon, is the ſame now, as if thoſe offences were ſtill puniſhable at common law. The *Sedition Act* cannot conſtitutionally alter the deſcription or the crime of *treaſon*, to which the combination and conſpiracy to perpetrate this offence, with force and numbers, are eſſential attributes. Numbers muſt *combine* and *conſpire*

to levy war. But if theſe indiſpenſible qualities of the crime are, by the Legiſlature, declared only *misdemeanors*, and ſeparated from the treaſonable act, the Legiſlature nullify the deſcription of *treason* contained in the conſtitution; and ſo indirectly alter and deſtroy, or make inefficient, this part of that inſtrument. The congreſs neither poſſeſs, nor did they intend to exerciſe, any ſuch power. They could not (nor did they ſo intend) place the crime declared in the conſtitution to be *treason*, among the inferior claſs of offences, by deſcribing ſome of its eſſential qualities in the Sedition Act, and preſcribing puniſhments, when they ſolely conſtitute ſubſtantive and independent offences. Congreſs can only (as they have done) preſcribe the puniſhment for *treason*, regulate the trial, and direct the mode in which that puniſhment is to be executed.

3. However indiſputably requiſite it may be to prove, by two witneſſes, the overt act for which the priſoner at the bar ſtands indicted, yet evidence may be given of other circumſtances, or even of other overt acts, connected with that on which the indictment is grounded, and occurring or committed in any other part of the diſtrict, than the place mentioned. Although the priſoner be not on his trial, nor is he now puniſhable, for any other than the overt act laid, other overt acts and other circumſtances, parts of the general deſign, may nevertheleſs be proved, to ſhew the *quo animo*—*the intent*—with which the act laid was committed. Indeed the treaſon would be complete, by the conſpiracy, in any part of the diſtrict, to commit the treaſonable act at Bethlehem, if any had, in conſequence of the conſpiracy, marched or committed any overt act for the purpoſe, though the actual reſcue had not taken place. So we thought in the caſes of the weſtern inſurgents, that the treaſon, concocted at Couche's fort, would have been complete, if any had only marched to commit the crime; though the deſign had not arrived to the diſgraceful cataſtrophe it finally attained. Indiſputable authorities might be produced to ſupport this poſition.

4. The confeſſion of the priſoner may be given in evidence as corroboratory proof of the *intent*, or *quo animo*. But, although proved by two witneſſes, being made *out of court*, it is not of itſelf ſufficient to convict. Two witneſſes are neceſſary to prove the overt act. But the intent may be proved by one witneſs, collected from circumſtances, or even by a ſingle fact.

5. The doctrine of *conſtructive treason* has produced much real miſchief in another country; and it has been, for an age, the ſubject of diſcuſſions, among lawyers, other public ſpeakers and political writers. The greater part of the objections to it are totally irrelevant here.—The ſubject of them is unknown, and may it ever remain ſo, in this country. I mean the compaſſing the death of the king. It will be found that the Britiſh judges, ſince the days of political darkneſs and bigotry have paſſed away, are to be found among the moſt able and decided oppoſers of the abuſes of this doctrine. They do not follow deciſions and precedents rooted in bad times, becauſe they find them in their law books. On the contrary, on a fair inveſtigation it will be proved, that thoſe contrary to juſtice, reaſon and law are reject-

ed. It is not fair and ſound reaſoning to argue againſt the neceſſary and indiſpenſable *use* of conſtruction, from the *abuses* it has produced. What is there among the beſt of *human* (and I wiſh I could not add *divine*) ſyſtems which has not been perverted and abuſed? That there muſt be ſome defined ſenſe and interpretative expoſition made of the terms "*levying war*," and when, and in what circumſtances, it is levied "*against the United States*," cannot be denied. The able counſel, in this caſe, who has ſaid the moſt on this ſubject, and travelled the fartheſt into the gloomy, dark and tyrannical periods of the Britiſh hiſtory and juriſprudence, for melancholy and diſguſting proofs of atrocious abuſes, and even crimes, committed under color of law, has, unavoidably, himſelf furniſhed alſo proofs of the neceſſity we are under of ſome conſtructive or interpretative expoſitions. He, at firſt, confined theſe expoſitions to *three* caſes. Now if there is a neceſſity of *one*, it ſhews that without ſupplementary interpretation, the law would be a mere dead letter. Aware of the dangerous lengths to which the abuſes of conſtruction have been carried, courts and juries ſhould be cautious in their deciſions; but not ſo much alarmed about *abuses*, as to refrain from the proper and neceſſary *use* of interpretation. I do not then heſitate to ſay, that the poſition we have found eſtabliſhed, to wit, that oppoſition, by force and numbers, or intimidation with intent to defeat, delay or prevent the execution of a general law of the United States, or to procure, or with a hope of procuring, by force and numbers, or intimidation, its repeal or new execution, is treaſon by levying war againſt the United States. And it does not appear to me to be what is commonly called *conſtructive*, but *open and direct* treaſon, in levying war againſt the United States, within the plain and evident meaning and intent of the conſtitution.

6. As to the objections, founded on want of proof of regular appointments under, and of the proper execution of the law called the houſe tax law, I do not ſee that they apply. If the proſecution was definitely for oppoſing one or more officer or officers of this tax law, the proof might be more rigidly required. But as all the neceſſary uſe made of theſe collateral and ſubordinate circumſtances, relative to the tax law officers, is for the purpoſe of ſhowing the *quo animo* or *intent* with which the treaſon alledged was committed, I conſider them as not relevant in this cauſe. It is even enough in criminal proſecutions, more directly aimed at the ſpecific offence of oppoſing an officer, that he was an officer *de facto*.

7. As to the diſarming and confining the two Videlles, or advance, of the armed inſurgents, by the marſhal at Bethlehem, I think him legally as well as prudentially juſtified in his conduct. Even a conſtable has a right to reſtrain and confine, under ſtrong circumſtances of ſuſpicion, perſons whoſe conduct or appearance evidence an intention to commit illegal and violent acts. Much more ſo was the marſhal (having notice of an intended reſcue of his priſoners) juſtifiable in ſeizing and diſarming two of the armed body, againſt whom exiſting circumſtances raiſed ſtrong and evident ſuſpicion. But I think this has been made more important than it really is. Becauſe the releaſe of these men was not the object of, or even known to the priſoner at the bar

and his party, when they commenced their treaſonable march, for the rrleaſe of the priſoners in the marſhal's cuſtody, at Bethlehem.

8. The Preſident's proclamation ſhould have been *pleaded* as a pardon, if it was intended to be relied on as ſuch. This not having been done, it is not legally before us. But ſince it has been mentioned, I think it neceſſary to declare it as my opinion, that it does not operate as a pardon to precedent offences. It is directed by law as a ſtep, preparatory to applying an armed force, againſt thoſe ſuppoſed to have committed crimes and embodied for unlawful purpoſes. It is a humane warning, calculated to prevent the effuſion of blood? Its allegations of facts, or its injunctions, have no operation in the trial of the priſoner at the bar.

Whether the priſoner is or is not guilty of the treaſon laid in the indictment, in the manner and form therein ſet forth, it is your province to determine. It is the duty of the court to declare the law; though both facts and law, which I fear are too plain to admit a reaſonable doubt, are ſubjects for your conſideration. We muſt all obey our public duty, whatever may be our private feelings. Mercy is not depoſited in our hands. It is entirely within the conſtitutional authority of another department.

The following opinion of Judge Peters on the motion for a new trial was put into our hands after the ſheet was printed were it ſhould have come in, which is page 45 of the appendix.

ALTHOUGH I am not perfectly ſatisfied with the teſtimony, which is contradicted by the juror on his oath; I will allow it to be taken for granted; and meet the queſtion on principle. I am in ſentiment againſt granting the motion for a new trial. Becauſe—1. The juror ſaid no more than all friends to the laws and the government were warranted in thinking and ſaying, as the facts appeared then to the public. Fries being generally alledged to be the moſt preminent character, it was on this account, and *not with ſpecial or particular malice*, that Rhoad's declaration was made.

2. If a juror was rejected on account of ſuch declarations, trials, where the community at large are intimately affected by crimes of ſuch general importance and public notoriety, muſt be had, in all probability, by thoſe who only openly or ſecretly approved of the conduct of criminals. This would be unjuſt and improper, as it affects the government in its public proſecutions. Little ſucceſs could be expected from proceedings againſt the moſt atrocious offenders, if great multitudes were implicated in their deluſions, or guilt.

3. It is natural for all good citizens when atrocious crimes, of a public nature, are known to have been committed, to expreſs their abhorrence and diſapprobation, both of the offences and the perpetrators. It is their duty ſo to expreſs themſelves. This is not like the

caſe of murder, or any offence againſt an individual; or where ſeveral are charged and none remarkably prominent. In this latter caſe ſelecting *one* out of the maſs might evince *particular malice*.

4. I have no doubt that declarations of an oppoſite complexion could be proved; and yet the jurors were unanimous in their verdict. The defendant has had a fair, and I think an impartial trial.

But as a diviſion in the court, might leſſen the weight of the judgment if finally pronounced, and the great end of the law in puniſhments being *example*, I, with ſome reluctance, yield to the opinion of judge Iredell. Although juſtice may be *delayed*, yet it will not *fail*, either as it reſpects the United States, or the priſoner.

SATURDAY, *April* 26, 1800.

CONRAD MARKS

Was arraigned on an indictment for treaſon *. He pleaded, *Not Guilty*.

The following PERSONS *were admitted and ſworn on the* JURY.

Richard Downing,	John Jacobs,
Thomas Morris,	Benjamin Morris,
Jacob Grim,	Anthony Oberly,
Eli Canby,	John Longſtreith,
Richard Roberts,	William Davis,
Francis Gardner,	Llwellin Davis.

The cauſe was opened by the attorney of the diſtrict, (Mr. Rawle) who ſtated the nature of the offence of which the priſoner ſtood indicted, and adduced a number of witneſſes on the part of the proſecution. Several witneſſes were alſo produced on the part of the priſoner. Mr. Roſs and Mr. Hopkinſon, who were the counſel aſſigned by the court for the priſoner, very ably and ingeniouſly defended his cauſe, at ſome length; and were fully anſwered by Mr. Ingerſol on the part of the proſecution. Judge Chaſe, in an elegant, learned and feeling charge, addreſſed the jury, informing them of the law, and reciting the facts as they appeared in evidence. The jury retired about twenty minutes paſt 11 o'clock at night. Judge Chaſe informed the jury, previous to their retiring, that the court would wait till twelve o'clock, to ſee if they could agree on their verdict; and that they muſt return to court and inform whether they could agree or not. At that hour the jury returned and informed the court, that they could not agree. The judges ordered that the jury be kept together in ſome conve-

* *The conduct of Conrad Marks in this transaction, might be ſeen in the courſe of the evidence on the firſt trial of John Fries.*

nicnt place till Monday morning at ten o'clock, to which time the court adjourned.

On Monday morning the jury returned a verdict, NOT GUILTY.

An indictment was afterwards filed againſt the defendant for conſpiracy, obſtruction of proceſs, reſcue and unlawful combination, on which he ſubmitted to the diſcretion of the court.

Without any farther examination, the court being fully appriſed of his conduct, Judge Chaſe paſſed the following ſentence:

That he be impriſoned two years, and fined 800 dollars, at the expiration of which, to give ſecurity for his good behavior, himſelf in 2000 dollars, and two ſureties in 1000 dollars each, and to ſtand committed till the ſentence is complied with.

Before the ſentence, Mr. Roſs addreſſed a few words to the court in his behalf: he obſerved, that though his client had offended againſt the laws of his country, yet he had been deceived into his oppoſition: it had been ſaid, from what he thought undoubted authority, that no ſuch law was in exiſtence. As this was the caſe, and as his circumſtances were low, he hoped the court would conſider his ſituation.

JUDGE CHASE ſaid, he was a moſt *atrocious* offender; he had not the leaſt doubt but he was guilty of treaſon in a high degree, and that the verdict ought ſo to have been found, and *he* have been made an example of. There muſt have been ſome miſtake as to evidence, or the jury could not have returned a verdict of NOT GUILTY.

MONDAY, *April* 28.

GEORGE GETTMAN & FREDERICK HAINEY

Were arraigned on an indictment for treaſon, to which they pleaded, *Not Guilty.*

The Counſel for the Priſoners were Mr. EDWARD TILGHMAN and Mr. MOSES LEVY.

The following PERSONS *were the* JURY:

Francis Gardner,	Samuel Clarkſon,
Samuel Evans,	Peter Shyner,
William Preſton,	Samuel Allen,
Richard Roberts,	John Stroud,
William Lane,	Philip Arndt,
Godfrey Baker,	William Davis.

The trial took up two days; and on Wedneſday morning the jury returned with a verdict of GUILTY.

WEDNESDAY, *April* 30.

ANTHONY STAHLER

Was arraigned on an indictment for treason, to which he pleaded, *Not Guilty*.

The Counsel for the Prisoner were, MR. HOPKINSON and MR. Ross.

The following were sworn on the JURY:

Richard Robinson,	Jacob Grim,
Charles Deshler,	David Jones,
George Illig,	William Preston,
John Starbord,	Thomas Morris,
John Jones,	Peter Eler,
John Edge,	Abraham Heed.

The jury, on Thursday morning, returned with a verdict of NOT GUILTY.

The attorney lodged a detainer on a charge of conspiracy, &c. and on Friday morning the grand jury returned against him *a true Bill*.

Indictments for treason had been found against Philip Desch and Jacob Klein; but Mr. Attorney entered a *nolle proseque* thereupon, and prosecuted for conspiracy, rescue, &c. upon which the grand jury returned *true Bills*.

They submitted to the court; and after examining a few witnesses, and ascertaining their circumstances as near as possible, the court sentenced each of them to be imprisoned eight months, to be fined 150 dollars, and to enter into recognizance for their good behavior for one year, themselves in 400 dollars each, with two sufficient sureties.

A

BRIEF REPORT

OF THE

TRIALS

Of Henry Shiffert, Christian Ruth, Henry Stahler, Daniel, Schwartz, sen. Daniel Schwartz, jun. and George Shaeffer, on an indictment for an unlawful conspiracy in the counties of Northampton and Bucks, to impede the operation of the act laying a tax on houses and land by opposing the assessors in the execution of their duty; for obstructing William Nichols esq. the marshal in the execution of process, and for assisting in the rescue of several persons held in custody by the said marshal.

Friday May 10, 10 *o'clock A. M.*

THE jury being impannelled, Mr. M'Kean appeared as counsel for the prisoners generally, and Mr. Dallas more particularly for George Shaeffer.

COLONEL NICHOLS

The marshal was the first evidence called. He related the circumstances which occurred at Millar's town as it respected the rescue of Shankweiler, (see page 37.) and the absence of Shaeffer, who hearing that a bill of indictment was found against, him came to the city to deliver himself up.

SAMUEL TOON

Was next called. His deposition related to the conduct of the two Schwartz's and Stahler, differing very little from his former relation see (page 53 and 55) He was advised by old Schwartz to go to Bethlehem and take his trumpet, but was unwilling, however, at length he complied.

ANDREW SHIFFERT

Related the ſame facts in ſubſtance as before, (page 56.) He ſaw Chriſtian Ruth going to Bethlehem, and while he was preſent heard ſome perſon ſay they would take the priſoners from the marſhal.

WILLIAM BARNETT

And Chriſtian Roth's teſtimony related to the conduct of the elder Schwartz at Bethlehem page 36.

WILLIAM HENRY, ESQ.

Was next ſworn. He related the affairs generally as before reſpecting the conduct of Stahler page 26. and Shiffert page 82. alſo of old Schwartz, who appeared to pride himſelf in having two fine boys at Bethlehem.

JOHN FOGLE

A lieutenant in Jarrett's troop related ſome of the circumſtances previous to the march to Bethlehem—his evidence had nothing ſtriking in it, as he did not go himſelf, except that Shiffert at Millars town adviſed him to go to Bethlehem; and that if they would not take bail for Shankweiler, they would not let them go to Philadelphia.

JOHN MORETZ

Depoſed that he ſaw Stahler with others who ſaid that they would go to Bethlehem to ſee what they were going to do with the priſoners—they did not ſay they would releaſe the priſoners—he did not know them any way active in breeding diſcontents. At a meeting to read the law, (page 49) one, he believed George Shaeffer ſaid it was no law, and if it was, they would not ſubmit to it. He talked very loud, and appeared much diſſatisfied.

JACOB EYERLY

Went through his former evidence of the meeting at Schymer's page 49. and related the general ſtate of diſcontents through that part, and the proſtrate ſtate of the laws: many he ſaid objected to ſuffer the execution of the houſe law, becauſe it was not ſigned by Mr. Jefferſon as Vice Preſident (he being abſent at its paſſing)—Old Schwartz told the witneſs that two of his ſons were there at Bethlehem, and that he had perſuaded Toon to go, promiſing him a dollar, and lending him an horſe, adviſing him to take his trumpet that they might make a good appearance: that Daniel Schwartz, jun. tore off Mr. Balliott's cockade at Miller's town, and that they were both very abuſive.

CHRISTIAN HICKAVELTER

Depoſed, That he was an aſſeſſor in Upper Milford; he related the great difficulties attending the execution of his duty. Did not know any thing more of the defendants than what was related by Mr. Eyerly of George Shaeffer, page 49. He ſpoke of the elder Schwartz as a very quiet good neighbor,

JUDGE PETERS

Then was ſworn, to prove an examination of Schwartz, ſen. taken before him, which acknowledged that he had perſuaded Toon to go to Bethlehem, and that he was there himſelf, but that he did nothing, nor ſaid any thing about the reſcue; but that he went merely out of curioſity.

JACOB SERNHER

Depoſed, That he was told by George Shaeffer to tell Judge Henry to inform the aſſeſſors not to come into Millar's town to aſſeſs the houſes; for that there was a man in town who was provided with a ſword and piſtols, and that he would not ſuffer the houſes to be aſſeſſed. He did not mention to the witneſs who the man was.

DANIEL REISCH

Depoſed, That George Shaeffer had told him that he would not ſuffer his houſe to be meaſured, and he was a damned ſtampler if he ſuffered them to meaſure his: That if the aſſeſſor came into their town, he ſhould not come out again with his life: that they had bound themſelves together to oppoſe the execution of the law; and if he, the defendant, was to be put to priſon, there would be fifty men unite to take him out.

JOHN SCHYMER, ESQ.

Related the circumſtance of the meeting at his houſe, as depoſed by Mr. Eyerly, and that Shaeffer was very violent*.

The evidence being gone through, Mr. M'Kean roſe in the defence, in the courſe of which he went through a variety of authorities to prove, that no conſpiracy was formed, becauſe no compact whatever was entered into by the parties to ſupport each other, each individual acting and ſpeaking, ſo far as they went, ſeparately. Here he read, 1 Hawk, 346. chap. 72, and the Sedition Act. ſect. 1. As to the reſcue he ſaid, it did not appear that the defendant were engaged, for

* *The evidence applied to the defendants individually, is given more particularly in the charge of Judge Iredell.*

a refcue could not be accompliſhed without force, but no force whatever had been proved upon them, 4 Blackſtone, 131, and 345; 2 Hawk. c. 21. ſect. 1—3; Pierre Williams, 484; 6 Comments, 230, and 2 Hawk, c. 19, ſect. 5, were the authorities he read. As to the oppoſition to the law, it appeared that they had doubts, which, in their uncultivated ſtate, and extreme want of knowledge, were well grounded, that the law was in exiſtence. He then concluded with a review of the part which the defendants were ſeverally ſaid to have taken in the tranſaction.

JUDGE PETERS

Read the legal definition of force in 2 Hawkins, page 37.

Mr. Dallas went into a lengthy defence of George Shaeffer, after which Mr. Rawle, attorney for the diſtrict, went into a definition of the different counts in the indictment of conſpiracy, unlawful combination, reſcue, and obſtruction of proceſs, applying the evidence ſo as to bring the charges home on the ſeveral defendants: that they all had been guilty of conſpiracy he thought incontrovertible; becauſe when a conſpiracy was formed, all who were ever preſent, as well as thoſe more actively engaged in it were guilty, though ſome might be ſuperiors and ſome ſubordinate. All the defendants were aſſembled, and therefore partook of the crime. Five of them were ſeen at Bethlehem: Andrew Shiffert ſaw Ruth going to Bethlehem, and ſoon ſaw him at Bethlehem in company with the diſturbers of the public peace. Old Schwartz was at Bethlehem, and was engaged in counſelling and adviſing an unlawful aſſembling there, which was calculated to defeat the act. Young Schwartz was at Bethlehem, and alſo was engaged in the inſult upon Mr. Balliott to tear off his cockade. George Shaeffer was at Bethlehem; but, though not in arms, though not guilty of the reſcue, was frequently engaged in oppoſition to the law, in conſpiracy againſt it, and in obſtruction of proceſs, on which account he may be ranked among the moſt guilty. On the whole, he conſidered that each of them partook of the crimes charged in the indictment.

Judge Iredell, in his charge to the jury, obſerved, that there were three counts in the indictment: Firſt. Conſpiracy to prevent the execution of the law: to raiſe a conſpiracy, ſeveral muſt be engaged, but it muſt be obſerved that *every one* engaged, or joined therewith, was guilty of the conſpiracy. It was not neceſſary, under this indictment, as under that lately before the court for treaſon, that two witneſſes ſhould ſubſtantiate any one fact, one would do; nor was it neceſſary that any writing or agreement ſhould be drawn between the parties to create it a conſpiracy: a meeting was held, the object of which was but too well authenticated by previous conduct.

The ſecond count concerned the reſcue of the priſoners. It had been ſtated that actual force muſt be uſed to make it a reſcue: the learned judge ſaid, that if the object was obtained by intimidation, and the priſoners were ſurrendered, it did not differ from force in the

leaſt, in a legal view: for it an highway-man was to put a piſtol to the breaſt of another, and demand his money, as had been ſtated by Judge Peters, in the caſe, 2 Hawk 37, and the money was delivered, it was a robbery, though the piſtol had not been fired. The queſtion was, were not the threatenings held out to the marſhal the immediate cauſe of his ſurrendering the priſoners, in order to prevent lives being loſt? With regard to the arreſt, no doubt could be entertained that the Lehi priſoners, as well as Ireman and Fox, were compleatly in the marſhal's cuſtody. There are only two kinds of eſcape, one is voluntary, and the other is negligent: the former is where the officer is agreeable to the eſcape, the latter, as in the caſe before the jury, is, the officer not having power to keep them, ſuffers them to go at large.

The third count reſpects obſtruction of proceſs. The judge ſaid he did not think it right to convict either of the defendants of the whole three counts, becauſe the reſcue neceſſarily implied obſtructions of proceſs, no man could be guilty of a reſcue without obſtruction of proceſs, and therefore the counts reſolved themſelves into two; if it was the opinion of the jury that either of them were guilty of the whole, the verdict need only be given on the two firſt, to wit: conſpiracy and obſtruction of proceſs. As to the conſpiracy, it cannot be poſſibly doubted but there was one.

The judge then took up the individual conduct of the ſeveral defendants, after the following order:—*First*.

DANIEL SCHWARTZ, Sen.

By the evidence of the marſhal and of William Barnet, he was ſeen at Bethlehem, but he behaved civily, and was come there to know what they were doing. Chriſtian Ruth ſaw him there. Judge Henry depoſes, that he appeared to pride himſelf in his two fine boys who were there. Mr. Eyerly did not know that he was active there, but he appeared quite jovial: he ſaid he had two ſons there; that he requeſted Toon to go there, and adviſed him to take his trumpet to look well. It was given in evidence, when told of his ſon pulling Mr. Balliott's cockade from his hat, that if he had ſeen his ſon do it, he would have whipped him, and he appeared to be ſorry ſo much inſult was given to the marſhal at Millar's town. Mr. Schymer ſays he was at the meeting at his houſe, but cannot ſay he miſbehaved.

DANIEL SCHWARTZ, Jun.

The marſhal thinks he ſaw him at Millar's town, where he ſeemed to be a pretty active and buſy young man. Toon ſaw him at Bethlehem, but without uniform, and cannot ſay he miſbehaved, or interfered. Mr. Eyerly ſaw him at Millar's town behaving very abuſive, and threatening to beat them, and he thinks it was him who tore the cockade from Mr. Balliott's hat.

HENRY SHIFFERT,

The marſhal, ſaw at Bethlehem, and he believes he was armed. Toon ſaw him there, and with a ſword, which he drew. Fogle ſaw him at Millar's town, when he taid, ihat if they would not take bail for Shankweiler, they would not let him go to Philadelphia.

HENRY STAHLER,

The marſhal alſo thinks he ſaw at Bethlehem. Andrew Shiffert ſaw him, both there and on the road, in uniform. Moretz ſaw him on the road, and he ſaid he was going to ſee what was become of thoſe priſoners. He was in uniform, with a ſword. Toon ſays that Stahler ſaid he would not interfere in the reſcue.

CHRISTIAN RUTH

Was ſeen at Bethlehem by Toon, in uniform, with a ſword. Andrew Shiffert ſaw him there and on the road. Some perſons in his preſence ſaid, that they would take the priſoners from the marſhal.

GEORGE SHAEFFER

Was ſeen at Bethlehem by Shiffert, but without arms or uniform. William Barnet ſaw him there; he ſaid he was come there only to ſee ſome of his neighbors going to Philadelphia; he ſaid if the marſhal wanted to take him, he would give himſelf up: he did not appear to be one of the rioters. Judge Henry ſaw him at Bethlehem; he did not appear to be violent, or uſe any offenſive language; he ſaw him much out of doors with the company, but not active. John Moretz ſaw him at the meeting at Schymer's, where he talked very loud, as though he wiſhed to prevent Mr. Eyerly reading the law; and on ſome of them doubting whether it was a law or not, he ſaid, even if it was, they would not ſubmit to it. Mr. Eyerly and Mr. Schymer depoſed the ſame, and that, he added "here I am, take me to gaol, but you ſhall ſee how far you will bring me;" on which a number adds, "Yes, let them but take one to gaol, we will ſoon have him out again." Mr. Heckawelter ſays, that he told him he had abuſed his father ſomething about a liberty pole, and that he was come to give him a licking for it, for which he followed him. Mr. Sterner ſays, he told him to tell Judge Henry about the man with ſword and piſtol, who would oppoſe the aſſeſſors. Mr. Reiſch depoſed, that the defendant ſaid he was a damned ſtampler, if he ſuffered his houſe to be meaſured; he would not: that if the aſſeſſor came into his township, he would not come out again alive; and if they were to take him to priſon, there would be fifty men to take him out again. Mr. Schymer ſaid, that the defendant was very much againſt chooſing aſſeſſors, and was pretty violent; that he abuſed Mr. Heckawelter about the liberty pole.

The judge ſaid, he ſhould forbear ſpeaking particularly as to the nature of the combination or conſpiracy; but, if it was not predetermined, after meeting together there, the very act of meeting became a conſpiracy; if the defendants came there after it began, not having a previous knowledge of it, it was their duty to have withdrawn themſelves; but if they did engage themſelves voluntarily and knowingly, though they knew nothing of it before, it was deemed in law equally as much a combination as though they had predetermined it.

The jury withdrew, and next morning returned with the following verdict:

CHRISTIAN RUTH, HENRY STAHLER, and HENRY SHIFFERT, GUILTY, as to the reſcue.

DANIEL SCHWARTZ, ſen. GUILTY of the conſpiracy, in adviſing an unlawful combination.

GEORGE SHAEFFER, GUILTY of the conſpiracy, in adviſing, and GUILTY as to the reſcue.

DANIEL SCHWARTZ, jun. NOT GUILTY.

The priſoners being ſeverally called to the bar, Judge Iredell addreſſed them to the following effect:

"*George Shaeffer, Henry Stahler, Henry Shiffert, Chriſtian Ruth, and Daniel Schwartz,*

"THOUGH the crimes of which you have been convicted, in ſome "reſpects, are different in their nature, yet they all have reference to one common object, that of defeating, by force of arms, the execution of an act of the Congreſs of the United States.—You and your confederates ſucceeded ſo far, as totally to prevent, in one mode or other, the execution of that act, in a very important part of this ſtate. The act thus daringly oppoſed, which was for the collection of a tax on lands and houſes, was framed with particular anxiety for the relief of the poorer part of the community, and the burthen of it muſt fall principally on the rich. The ignorance of it which was affected, was without the leaſt color of excuſe, becauſe information was offered, which was repeatedly rejected, and in ſome inſtances with tumult and diſdain. Neither could you fairly alledge any ground for diſcontent, on account either of the character or conduct of the officers concerned, becauſe the former appears to have been perfectly unexceptionable, and the latter in general meritorious in the higheſt degree, as they united with that firmneſs which their duty required, every endeavor conſiſtent with it, to give all the information in their power, and to execute the law in the manner moſt convenient for the people. By your ill conduct, however, and that of your aſſociates, a conſiderable part of the three counties was inflamed into a ſtate of inſurrection; the

law in queſtion loſt all its efficacy: officers were inſulted—and at length that daring and infamous outrage was perpetrated at Bethlehem where a body of the militia itſelf marched in military array, and by force reſcued a number of priſoners from the cuſtody of the marſhal, whoſe conduct on that occaſion for courage, diſcretion, and propriety in every reſpect, is above all praiſe. In conſequence of ſuch defiances of the conſtitution and laws of your country, and the numbers and ſtrength by which they were ſupported, it became the indiſpenſible duty of the government to exert the powers with which it was inveſted to ſuppreſs this combination, and bring the principal perpetrators of it to a trial for the offences they had committed. The civil magiſtrates having loſt all their authority, (notwithſtanding ſome of them exerted themſelves in an extraordinary manner, which deſerves the laſting eſteem and gratitude of their country) a melancholy neceſſity aroſe for employing a military force, which chiefly conſiſted in volunteer corps, who had nobly embodied themſelves to defend the conſtitution, and laws of the United States, whenever any occaſion ſhould ariſe, though undoubtedly hoping that their ſervices would be required, rather againſt the foreign enemies of their country, than any within the boſom of it. The ſervices of theſe gentlemen have been attended with great benefit to their country, and great honor to themſelves; but there is too much reaſon to fear they muſt have ſuſtained much perſonal inconvenience, for which, as well as for other private injuries, and a great additional expence and inconvenience to the public, the authors of thoſe outrages are alone accountable. You have each of you undergone a fair and impartial trial, and have been convicted of one or more offences charged againſt you, for which it is now the duty of the court to pronounce the ſentence of the law upon you. The diſcretion which the law has confided to us, we have endeavored to execute to the beſt of our judgment, conſidering on the one hand the neceſſity of making proper examples to deter others from the commiſſion of the like offences, which it ſeems to have been ſuppoſed would always paſs with impunity, and on the other hand paying a due regard to the various circumſtances which appear to have diſcriminated the conduct of each of you."

The ſentences were as follow:

That George Schaeffer, convicted upon two counts of the indictment, viz. conſpiracy and obſtruction of proceſs, pay a fine of 400 dollars, and be impriſoned for eight months, for the firſt offence; for the ſecond that he pay a fine of 200 dollars, and be impriſoned four months, after the expiration of the firſt term: and at the concluſion of the twelve months impriſonment, that he give ſecurity for his good behavior for two years, from the expiration of the period of his impriſonment, himſelf in the ſum of 1000 dollars, and two ſureties in the ſum of 500 dollars each.

That Daniel Schwartz, ſenior, convicted of conſpiracy, pay a fine of 400 dollars, be impriſoned for eight months, and give ſecurity at the cloſe of that period for his good behavior for one year, himſelf in 1000 dollars, and two ſureties in 500 dollars each.

That Chriſtian Ruth, convicted of aiding in the reſcue, pay a fine of 200 dollars, be impriſoned for eight months, and give ſecurity for his good behavior for a year, himſelf in 1000 dollars, and two ſureties in 500 dollars each.

That Henry Stahler, convicted of aiding in the reſcue, pay a fine of 200 dollars, be impriſoned for eight months, and give a like ſecurity with Schwartz and Ruth for his good behavior.

That Henry Schiffert, convicted alſo of aiding in the reſcue, pay a fine of 50 dollars, be impriſoned eight months, and give ſecurity for good behavior for twelve months, himſelf in 500 dollars, and two ſureties in 250 dollars each.

The priſoners each to pay the coſts attending the proſecution before they are diſcharged from priſon, and ſtand committed until the ſentences be complied with.

The court, taking into conſideration the circumſtances of the parties, proportioned the penalties accordingly.

An abſtract of the trial of JACOB EYERMAN, on an indictment for breaking priſon, conſpiracy to oppoſe the law for laying a direct tax, and a tax on houſes, and for counſelling and adviſing an unlawful combination and conſpiracy—

Before the honorable BUSHROD WASHINGTON and RICHARD PETERS, eſquires, in the circuit court of the United States, held at Norriſtown, in the county of Montgomery, and ſtate of Pennſylvania.

WEDNESDAY, *October* 16, 1799.

The priſoner being arraigned, pleaded *Not Guilty*.

After the jury were ſworn, Mr. *Rawle*, attorney for the diſtrict, opened the proſecution by ſtating to the jury the ſum of the indictment to be divided into three ſeparate and diſtinct charges, proceeding from the ſame tranſaction, and partaking of the ſame guilt:

Firſt, he ſaid he ſhould prove that there was or warrant iſſued by the judge of the diſtrict to take the perſon of the priſoner into the cuſtody of the marſhal, which was effected, but that he did break priſon and go at large, until by another warrant he was afterwards taken in the ſtate of New-York.

Secondly, He ſhould prove that the priſoner was engaged in a conſpiracy, to oppoſe the operation of two laws of the United States, by intimidating the aſſeſſors while in the diſcharge of their official duty.

Thirdly, That the priſoner did counſel and adviſe an unlawful combination and conſpiracy to prevent thoſe laws being carried into effect.

It was only three years and a half ſince he came into this country, —and though he had aſſumed the reſpectable character of a miniſter of the goſpel; though in that capacity he was bound to preach up ſubmiſſion to the laws of the country, yet, in that ſhort time, he had

recommended, both by his advice and example, an oppoſition to thoſe laws by which the whole community were bound.

Mr. Rawle then related ſome circumſtances that occurred at Bethlehem, to which place the defendant was brought priſoner, and in the cuſtody of the marſhal, but availing himſelf of the opportunity there given to the priſoners to eſcape, inſtead of again delivering himſelf up, he immediately fled, left the country, and ſequeſtrated himſelf in a remote part of the ſtate of New-York, where he was diſcovered, and again taken into cuſtody. This, he ſaid, was puniſhable at common law, independent of the ſedition law lately paſſed, which only went to explain the common law, and in many caſes to *ameliorate its rigor*.

Col. NICHOLS the Marſhal,

Depoſed, that he received a warrant, by virtue of which the priſoner was arreſted, and brought into his cuſtody at Bethlehem, and that he was reſcued, together with the other priſoners, by an armed force on the 7th of March laſt. The witneſs then related the tranſactions attending his journey to, and at Millar's town, and at Bethlehem previous to the reſcue. * After the priſoners were reſcued, John Fries expreſſed a great ſolicitude for the ſafety of Eyerman by returning, not having ſeen him among the others, and aſking me where was the *miniſter?* I told him that he was out of the houſe; he ſaid he was not, however he went out again, and there ſeeing him, appeared perfectly ſatisfied. After this man was liberated, captain Jarret ſaid he could now march off his men. Upon the whole it ſeemed that Eyerman's deliverance was a particular object with thoſe people. He promiſed when in the room that if he was reſcued he would meet me the day following at Philadelphia to deliver himſelf up, but he did not, and I never knew what become of him till he was brought back by the deputy marſhal of New-York.

JACOB EYERLY,

Commiſſioner for the diſtrict, related the appointment of the aſſeſſors in the different townſhips, and depoſed, That the priſoner, at a meeting held in Hamilton townſhip, told the people that Congreſs had no right to paſs ſuch a law, and if the aſſeſſors were to come to his houſe he would tell them ſo, and not let them proceed to take his rates.

Mr. Eyerly and Judge HENRY both, informed the court of the general diſtracted ſtate of that part of the country, notwithſtanding their endeavors to quiet the minds of the people by explanation and advice ſo that the magiſtracy could not execute their duty with ſafety; nor could the evidences called againſt thoſe who had oppoſed the aſſeſſors, be prevailed upon, without great difficulty, to give their teſtimony, through a dread of the rage of the people.

* *See the firſt trial of Fries.*

JOHN SERFASS, ESQ.

Depoſed, That he reſided in Cheſnut hill townſhip, Northampton county: that he was appointed an aſſeſſor under the law for laying a direct tax: ſo ſoon as the people heard that he was appointed, they were much uproared againſt it. The people were to aſſemble to conſider the law, and I reſolved to go to tell the people they were doing wrong: accordingly I went, and there were 40 or 50 people aſſembled; but they were not in a military dreſs. This was ſometime in December. After I was there a ſhort time, Jacob Eyerman, the priſoner, came in, he began to rip out in a violent manner againſt this taxation, ſaying, that Congreſs had made laws which were unjuſt, and the people need not take up with them, if they did all kinds of laws would follow, but if they would not put up with this, they need not with thoſe that would come after, becauſe it was a free country; but in caſe the people admitted of thoſe laws, they certainly would be put under great burdens. He ſaid he knew perfectly well what laws were made, and that the Preſident nor Congreſs had no right to make them. The people in general thought that the *minister* was right, but I told them that he was leading them wrong. I aſked them whether they had heard or ſeen the laws? They ſaid no. I then told them the words, as near as I could recollect, but I found very little heed taken of it. Mr. Eyerman ſaid, that the people ſhould not let the aſſeſſors take down their taxation, and that they might abuſe them ever ſo much, there was no law could hurt them for doing it.

I ſhortly afterwards gave notice to the people to meet at the ſame houſe, in order to explain the law to them. Accordingly they met, and I explained the law to them, and when I left them, they appeared very peaceable.

The ſecond day of Chriſtmas this man preached at a private houſe; as ſoon as ſermon was done, he went to the houſe of Conrad Crazy, but he no ſooner came in, than he began to run out againſt the taxation very much. There were about fifteen or ſixteen people preſent. He repeated then that he knew the laws very well, and that Congreſs and the government only made ſuch laws to rob the people, and that they were nothing but a parcel of damned rogues, and *spitz bube*,* but that they (the people) had no right to ſubmit to it. I told him that I had told him before to quit doing that, that it was not his duty; that his duty was to preach his ſermon, and to quiet the people, or decide between them: if he went on that way I ſhould bring him to ſuch damage as he would not like. With that he did quit.

ATTORNEY. Did he, at that, or any other time, adviſe you not to be an aſſeſſor?

WITNESS. Yes. He told me often that it was better for me not to take up with that commiſſion, perhaps it might injure me, for I might meet with ſome evil.

Were the people of your townſhip much oppoſed to the law?

Yes, they were ſo violent that I knew but one man that was the ſame ſide as myſelf.

* *Highwaymen or thieves.*

Did you think that ſuch proceedings would have taken place, or, if they had, that it would have ariſen to ſuch an height, if it had not been for the parſon.

I am fully convinced it would not. I knew of no other perſon there who went about to adviſe the people to oppoſition. He ſaid he had a book of the laws, and either that there was no ſuch law in it, or elſe that the conſtitution forbade ſuch laws.

COURT. Did Eyerman appear to be a ſimple ſort of a man, eaſily to be led aſtray, or deluded?

WITNESS. No, he was not thought ſo, he was always thought a very good preacher.

PRISONER to the WITNESS. Did I not tell you at Crazy's houſe that I did not think any the worſe of you for being an aſſeſſor, becauſe you were ſworn to ſupport the government, and had a right to ſpeak for it?

WITNESS. At that houſe, when I ſpoke againſt his conduct, he ſaid "aye, Mr. Serfas is right, he is ſworn to ſupport the government."

PRISONER. Did I not pray for the government, Preſident and Vice-Preſident?

WITNESS. Yes, you did when in the pulpit, but when you were out you prayed the other way.

JOHN SNEIDER,

Depoſed that he lived in Hamilton townſhip, and knew the priſoner, who told the deponent that a body ſhould lay out againſt that houſe tax. As much as he underſtood, the priſoner meant, to take arms againſt it.—He ſaid that if we let that go forward, it would go on as in the old country, but that he (the priſoner) would rather lay his black coat on a nail, and fight the whole week, and preach for them Sundays, than it ſhould be ſo.

ATTORNEY. How long has this man been at Hamilton?

WITNESS. About eighteen months.

The townſhip was always peaceable I ſuppoſe before he came amongſt you?

Yes, and I believe if he had not come, nothing would have happened of the kind.

SIMON HALLER,

Depoſed that he reſided in Hamilton townſhip, and knew the priſoner, who was very well liked as a preacher until lately. That the priſoner appeared to be in oppoſition to the houſe tax law, but who was the leader of it he knew not. That the priſoner came to the deponent's houſe, where converſation began about the houſe tax, whereupon he ſaid he did not care whether they put up with it or not, for he had no houſe to tax. A perſon preſent anſwered but you have a great quantity of books to tax. The priſoner anſwered that "if any body would offer to tax his books he would take a French, a Latin,

an Hebrew, and a Greek book down to them, and if they could not read them, he would ſlap them about their ears till they would fall to pieces." The deponent ſaw the priſoner at Hartman's when he talked much againſt the tax, but could not recollect what. The occaſion of the people coming together then, was, that there was preaching that day. The priſoner continued preacher to that congregation till he was taken up.

JUDGE PETERS,

Depoſed that he iſſued a warrant to apprehend the priſoner, but he never ſaw him until brought from New-York. He alſo repreſented the general ſtate of the country to be ſuch that, knowing the county magiſtrates could not execute their duty, he was obliged to iſſue his warrants as judge of the diſtrict.

The evidence here cloſed, but the priſoner, his pecuniary circumſtances not enabling him to employ any counſel, refuſed to make any defence, but juſt obſerved that if he had been guilty of any thing, it was contrary to his knowledge, and he hoped, if the jury ſhould find him guilty, that they, and the court would take his caſe into conſideration, and puniſh him as ſlight as poſſible, and he would endeavor in the future courſe of his life to do better.

MR. RAWLE in a ſhort addreſs to the jury quoted 2 Hawkins page 243. to ſhow that the priſoner was in lawful cuſtody, and page 245. what was the force which in law made breach of priſon. page 249 ſtated that whoever broke from lawful confinement was guilty of miſpriſon, which was puniſhable by fine and impriſonment.

The act commonly called the ſedition act, he ſaid, ſpoke of the ſecond and third counts in the indictment. (Conſpiracy, and counſelling a conſpiracy.) Reſpecting the crime of conſpiracy he quoted 2 Hawkins page 119. which refers to Blackſtone page 392.

He juſt referred the jury to the teſtimony, to prove what part the the priſoner had taken in either, or all the crimes alledged.

JUDGE WASHINGTON delivered a charge to the following effect:

GENTLEMEN OF THE JURY,

IT cannot be neceſſary that the court ſhould detain you long in the charge on the preſent occaſion. The crimes with which the priſoner before you is charged are, firſt, a combination with others, for the purpoſe of oppoſing the government: ſecondly, adviſing and exciting others to this oppoſition; and thirdly, in reſcuing himſelf from the hands of the marſhal, in whoſe lawful cuſtody he was.

Oppoſition to government ſeldom breaks out into overt acts, unleſs ſome previous combinations have been made by perſons who think themſelves ſtrong enough to do it with effect; and this ſeldom happens, until ſome perſon or perſons, more knowing, and more wicked than the general maſs of ſociety, endeavors to adviſe and miſlead the ignorant and unwary, or leſs deſigning. Thus to form a powerful combination, there muſt be a regular chain for that preciſe purpoſe.

The offence or offences with which the priſoner is charged is inferior to overt acts, and the puniſhment is leſs. The only queſtion for you to determine is whether, upon evidence, the priſoner has been guilty of all or either, of the offences laid to his charge. It would be tedious and, I think, unneceſſary for me to go through the teſtimony, becauſe it muſt be freſh in your minds. Reſpecting a combination to oppoſe an act of Congreſs, the general circumſtances for your inquiry are ſuch as will ſatisfy you of the exiſtance of ſuch a combination. This, I think, is proved by the frequent meetings of the people in the different townſhips of the counties of Northampton, Bucks, and Montgomery, the declarations of the people when convened, and the threats ſo frequently thrown out by them againſt the government, and the officers of government. Attempts were frequently made, not only by the priſoner, but by others to diſunite the people, and to deter the public officers from executing the duty repoſed in them, and which they were ſworn to perform, by pointing out to them the dangers to which they were expoſed, ſhould they carry thoſe laws into execution. Unleſs you diſcredit the teſtimony which has been laid before you, and that there is no cauſe for doing, it appears to the court that the proof is as clear againſt him as any thing can poſſibly be.

That he was the prime cauſe and adviſer of this oppoſition appears to be proved by many witneſſes, the reſpectability of whom has not been pretended to be doubted.

Reſpecting the reſcue, the attorney of the diſtrict has preciſely laid down the law to you. It does not follow, becauſe a man eſcapes from priſon, or from the cuſtody of an officer, (which is the ſame in law) that therefore he is an offender within the law for which he was committed: nor does it follow that he did not break priſon, becauſe the act of force was executed by others who were in combination with him, and he in conſequence thereof made his eſcape. He conſented, and ſhowed that conſent, by his eſcape, for whether the force was uſed by himſelf or others, is immaterial.

From all the teſtimony, it appears that the priſoner, in his previous conduct, took pains to ſtir up the diſcontents, and that the armed force came to Bethlehem to reſcue him, by their earneſtneſs to ſet this man, particularly, at liberty. Farther, his ſubſequent conduct proves his offence, for if he had not been liberated by his own conſent, he would have done as the others did, who left the cuſtody of the marſhal at the ſame time: he would have given himſelf up afterwards; but on the contrary, he fled from his country, and ſecreted himſelf, until taken by a new warrant in another diſtrict.

Gentlemen, it is your buſineſs to bring theſe facts into one view, and decide whether the priſoner is guilty of one, two, or all of the counts in the indictment: as you think, ſo you are bound to find.

In about 15 minutes the jury returned with a verdict "GUILTY of all "the three counts."

Several other perſons (upwards of twenty) were arraigned for miſdemeanors, and ſubmitted to the court, reſpecting whoſe conduct ſome evidences were heard.

No ſentences were paſſed at this ſeſſion, becauſe, on account of ſome irregularities in the form of convening the court, it was obliged to adjourn, and the whole of its proceedings were rendered invalid.

Eyerman, at the next term ſubmitted himſelf to the court, when he was ſentenced to be impriſoned one year, to pay a fine of fifty dollars, and then to give ſecurity for his good behavior one year, himſelf in 1,000 dollars, and two ſureties in 500 dollars each.

FRIDAY, *May* 2.

The following perſons, who ſubmitted themſelves to the diſcretion of the court, and reſpecting whoſe crimes and circumſtances ſome examination took place, received the ſentences ſeverally annexed to their names, for conſpiracy, reſcue and unlawful aſſembly.

Henry Jarret 1000 dollars, 2 years impriſonment. Conrad Marks 800 dollars, 2 years impriſonment. Valentine Kuder 200 dollars, 2 years impriſonment. Jacob Eyerman 50 dollars, 1 year impriſonment. Henry Shankweiler 150 dollars, 1 year impriſonment. Michael Smyer 400 dollars, 9 months impriſonment. Henry Smith 200 dolls. 8 months impriſonment. Philip Deſch 150 dollars, 8 months impriſonment. Jacob Kline 150 dollars, 8 months impriſonment. Harman Hartman 150 dollars, 6 months and 1 day impriſonment. Philip Ruth 200 dollars, 6 months impriſonment. John Everhart 100 dolls. 6 months impriſonment. John Huber 150 dollars, 6 months impriſonment. Chriſt. Sox 200 dollars, 6 months impriſonment. John Klein, jun. 100 dollars, 6 months impriſonment. Daniel Klein, Jacob Klein, Adam Briech, G. Memberger, 150 dollars each, 6 months impriſonment. George Gettman, William Gettman, 100 dollars each, 6 months impriſonment. Abraham Shantz, H. Memberger, Peter Hager, 100 dollars each, 4 months impriſonment. Abraham Samſel, P. Huntſberger, 50 dollars each, 3 months impriſonment. Peter Gable, Daniel Gable, Jacob Gable, 40 dollars each, 2 months impriſonment.

Each of the above perſons were required to enter into recognizance for their good behavior.

APPENDIX.

No. I.

TRIAL OF JOHN FRIES FOR TREASON.

Motion of Mr. Lewis for removing the Trial.

APRIL 30.

MR. LEWIS *preferred the following motion to the Court in writing:*

AND now the priſoner, JOHN FRIES, being placed at the bar of this Court, at the city of Philadelphia, being the place appointed by law for holding the ſtated ſeſſions thereof, and it being demanded of him if he is ready for his Trial for the Treaſon in the Indictment mentioned, he moves, *ore tinus*, that his trial for the ſame offence may not be proceeded on here, and that the ſame may be had in the county in which the ſame acts of treaſon in the ſaid indictment mentioned are laid, and where the offence therein mentioned is alleged to have been committed.

He ſtated this motion to be founded on an act of Congreſs entitled the judiciary act, paſſed 24th September, 1789. Sect. 29, "That in caſes puniſhable with death, the trial ſhall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at leaſt ſhall be ſummoned from thence." He ſtated the advantages reſulting from this ſection to the accuſed to be, that a man might be tried by his peers, where he is known, and where there can be no difficulties to procure witneſſes in his behalf. This ineſtimable right, he ſaid, was one of the grounds of complaint to the United States, which promoted their ſeparation from the mother country, and this was one cauſe of her taking up arms. This advantage, Congreſs had held in juſt eſtimation, and upon this, no innovation was to be admitted, on which account the moſt pointed and poſitive terms were uſed, and the diviſions of vicinage reduced to counties. But nevertheleſs, he obſerved, this rule had an exception, which was where "manifeſt inconvenience" occurred, twelve jurymen were to be ſummoned from that county, and therefore before the court could conſider themſelves authorized to proceed to the trial in that place, their honors muſt be well ſatisfied that trial could not take place in the county of Northampton without "manifeſt inconvenience." Theſe words did not refer to the inconvenience the judges might feel in tri-

velling, or the time ſpent, but an inconvenience ariſing from ſome cauſe which Congreſs did not foreſee at the time of the paſſing of the act. The trouble and inconvenience to the judges could be no greater than to the priſoners, whom the government had brought to this city.

Mr. Lewis ſaid he was aware of an objection which would be raiſed to the force of the ſection above quoted, founded on a ſubſequent law paſſed March 2d, 1793. ſect. 3. which directs that a judge of the ſupreme court, with a diſtrict judge, "may direct ſpecial ſeſſions of the circuit courts to be holden for the trial of criminal cauſes, at any convenient place within the diſtrict, nearer to the place where offences may be ſaid to be committed, than the place or places appointed by by law for the ordinary ſeſſions." The places appointed by law for the ſtate of Pennſylvania are, York town and Philadelphia. This he preſumed muſt refer to cauſes of a civil nature, or to criminal acts of a leſs grade than what is peremptorily required in the act firſt quoted from, to govern "caſes puniſhable with death." The ſame act ſays, that trials in capital caſes ſhould be elſewhere, and not at the ſtated places, unleſs manifeſt inconvenience attend it. And what, he aſked, was the great inconvenience in the preſent caſe? Was there any objection of a nature to render it improper or impoſſible to try the priſoner in that county? It was true that a conſiderable number of perſons in that county had been miſguided, but was it to be inferred thence that all were? Or that a fair trial could not be had there? No doubt an able and impartial jury might be obtained in that place, and therefore an impartial trial could be had. In bad times, with corrupt judges, if ever ſuch a time, and ſuch judges ſhould unhappily be in this country, the ſection of 1789 would form a protection to the citizen againſt any innovation of his privilege, and prevent them dragging him from his family and friends to a diſtant part, where he might be unknown, to be tried.

Surely it could not be urged that the ſafety of the United States, or the protection of the court, made it neceſſary to try this cauſe in Philadelphia. The priſoners might have been confined in the gaols of that county; the troops of the United States were even now remaining there, to protect the law.

The vicinity of that ſpot to the witneſſes who beheld the tranſaction was an additional argument for the plea. Some to be ſure had come to the city, others perhaps might come forward, ſickneſs or age might operate to prevent ſome coming. It was alſo inconvenient to the priſoner in preventing his neighbours or relatives affording him that comfort which they might wiſh. But all this, he ſaid, was immaterial, the law was definite, and nothing could ſupercede its mandate. Here was a liſt of ninety-eight witneſſes, furniſhed the priſoner by Mr. Attorney, who were to appear againſt him, and hence the neceſſity of time and opportunity being allowed the priſoner to examine that numerous train of evidence, and to prepare to controvert them.

Mr. Lewis then referred to a ſimilar motion which he made before the court, reſpecting a perſon tried for high treaſon in the Weſtern Inſurrection, in 1795, for which he referred to Dallas's reports, page 18, vol. 3. The motion was then rejected, but upon different grounds

than could poſſibly be now urged. Judge Wilſon ſtated it as the opinion of the court, the plea being made at a previous court, that the circuit court, at which the priſoner was to be tried was ſo near, that there was not time to ſend to the witneſſes and bail, on account of the great diſtance of the county, from the city, as they were ſubpœned to attend at the next ſeſſion. The reaſon was, that the Supreme court could not order a ſpecial ſeſſion to over-rule the ſtated ſeſſion, aad therefore the inconvenience was *great* and *manifeſt* ; but no ſuch excuſe could hold good in the preſent caſe : the mandatory language of the former clauſe muſt be obeyed.

Further, he obſerved, that a man might be charged with the crime of treaſon, and committed for that crime, or bound over, if the caſe would allow it, yet it was impoſſible to know that he would be indicted for treaſon by a grand jury, and no court held previous to the indictment, could ſay whether it was a caſe puniſhable with death, or a miſdemeanor, and therefore the time to move the plea was the preſent time, after the indictment was returned, and when the defendant was arraigned for trial, and till then the motion would be inapplicable. He obſerved that he conſidered this motion of conſiderable importance to the priſoner, and not to him only, but to every citizen of the United States : this was the ſecurity of his rights, and thoſe of every man in the court, and therefore he hoped the juſtice of the court would grant the plea.

Mr. Sitgreaves ſaid he had not been able to diſtinguiſh whether this motion had been preferred to the court as a matter of unqualified right, or whether it was merely an application, as a matter of favour in this particular inſtance, but he would attempt an anſwer to both. With reſpect to the 29th ſect. of the judiciary act, if the firſt part of the paragraph was to ſtand alone, without a qualification, it would be a poſitive direction, and would not bear an objection, yet there would be a difficulty ariſe how it could be executed: But it was not ſo. At the time that law was paſſed, there were ſtated places, as well as ſtated times for holding the federal courts, there was no proviſion whatever for holding them elſewhere than the appointed place, although the judges had ſpecial powers to alter the time of holding them: whether that reaſon, or ſome other, excited the legiſlature to put the diſcretion as to place in the judges alſo, he could not tell, but although the firſt direction is poſitive, an alternative is immediately introduced: twelve Jurors ſummoned from the county where the crime was committed may ſuffice, at the diſcretion of the court, and this ſecond branch of the rule is to avoid what the court may judge a great inconvenience, againſt which no general rule of common law can provide.

In order to prevent any miſ-interpretation, and remove the embarraſſments, which a wrong uſe of the law of 1789 might produce, the proviſion of March 1793 ſtill more defines that diſcretion, without making any material alteration: that ſays "the court might be held at any convenient place within the diſtrict, nearer to the place where the crime was committed than the place for holding the ſtated ſeſſion." Certain it is that this proviſion does not require it to be held in the ſame county; indeed it is extremely queſtionable, whether the court have au-

thority to remove it there ; they may nearer the place, but the word "nearer" excludes the place itſelf; if the place was intended, the phraſeology would be more accurately inſerted. He would now remark that no place nearer the ſcene of inſurrection than this city could have been ſelected, and here the diſcretion of the court had fixed it. The law muſt have been made for one of two reaſons: either for the facility of public juſtice, or to favour the priſoner. Reſpecting the firſt, the crime was committed, not in one county only, but in three adjoining counties, and therefore agreeable to the arguments of the gentleman, the trial muſt be held in three counties, by three juries, and the witneſſes be harraſſed to appear three times ; but even if the court ſhould determine upon one of thoſe counties for the trial, which was to be ſelected?

Mr. Lewis queſtioned the propriety of this argument, ſince it appeared all the caſes of treaſon except one (in Bucks) happened in Northampton county, and no inconvenience could accrue from holding the trials at one place.

Mr. Rawle ſaid that he ſhould produce evidence to prove the crime of treaſon committed in the three counties.

Mr. Sitgreaves proceeded to ſtate that as the act of 1793 as well as 1798 left a diſcretion for the court to determine according to exiſting circumſtances, and not according to any known definite principles of law, it would be impoſitic, if not illegal to hold the court in the county, this city being, agreeable to one argument next to one of the counties, and on the other view, the ſtated place for holding the courts, the arguments muſt fall, and the motion be rejected. Philadelphia, he ſaid was as near to the place where the crime was committed as the court houſe of that county, and here it was probable the purpoſes of public juſtice could be moſt compleatly anſwered.

If then the argument was not ſupported on public convenience, it muſt be the convenience of the priſoner which the gentleman aimed at, but he had failed to ſhow any ſuch thing, and therefore had precluded any anſwer. He had argued for the comfort of the priſoner; having his neighbors about him, &c. but it muſt be obſerved that the reſidence of the priſoner was in Bucks, whereas the crime was committed in Northampton, and there he muſt have been tried, if the deciſion ſhould turn in favor of his arguments. Now, Philadelphia was as much an adjoining county to Bucks, as Northampton, and therefore as much his vicinage, and each place of holding the courts at about equal points of diſtance from his reſidence. Even if it was held in Northampton county, it would neither facilitate the trial, nor be of advantage to the perſon.

Another queſtion he would ſuggeſt was, whether this application was made ſoon enough. It was nearly, or quite a week, ſince the indictment was given to the priſoner, and it was a much longer time ſince he was committed: if it was proper that any application ſhould be made to the court, either as a matter of right or of favour, it ought to have been made in due time, ſo as not to delay or defeat the queſtion of public juſtice. It would be unneceſſary to ſay that the queſtion was fully determined in the year 1795, and if it was a matter of

law, and as ſuch mandatory, every caſe which was then decided on, was a caſe of mis-trial, and the whole court and council muſt have been guilty of a great dereliction. But he believed it was aſked of the court at that time, not as a matter of right, but of favour, and it appeared by the report quoted, that if the favour could have been granted, it would, but the decition was againſt the poſſibility of it, and certainly ſtronger reaſon would have weighed for it then than now, on which account there is now at leaſt, equal grounds for refuſing it.

Mr. Rawle obſerved, that while he profeſſed as much humanity as any gentleman in court, yet as council for the proſecution he felt as much deſire for the juſt execution of public juſtice. He could ſcarcely perſuade himſelf that the gentleman who moved the court could be ſerious at this late period of the buſineſs,—after ſeven days had elapſed ſince the indictment was found, after all the inconveniencies of a preparation for trial had been incurred this new, this additional inconvenience of ſummoning the witneſſes and jurors to another place, could not be either to the advantage of the priſoner, or agreeable to a juſt conſtruction of the law adverted to. The law of March 1793 does not apply to a caſe which the offence firſt charged would make capital ſo as to effect life. The queſtion ſeriouſly was, Mr. Rawle ſaid, whether granting the motion would not deprive the country of proſecuting the trial at all, or even after had full proof of the guilt of the priſoner it would not prevent the court of the power of paſſing ſentence. The act read by Mr. Sitgreaves gave the Judge the power to hold courts throughout his whole diſtrict, 226, Vol. 2, Laws U. S. but the act of 1789, which fixed the place, only gave the court power as to times of holding ſpecial ſeſſions 51, Vol. 1. The 29th ſection of that act was abſolutely very ambiguouſly worded, becauſe the fifth ſection of the ſame act had put it out of the power of the court to remove as to place. Whatever, then, was the intention of the Legiſlature, the courts had not power to effect a change, and when an act failed in explaining the intention, the intention could not be carried into execution, to remedy the inconvenience of the court, being bound in all caſes as to place the clauſe of 1793 p. 226 was paſſed.

Mr. Rawle contended that a ſpecial court was more than an adjourned circuit court: it was a ſubſtantive court of itſelf, held for ſpecial purpoſes, and could not iſſue *certiorari* for any other court; if therefore, a ſpecial court was to be held for this trial, it muſt begin *de novo*: a new grand jury, and a new petit jury muſt be called; the witneſſes muſt be ſummoned anew, which would be a bad precedent, beſides a great delay. The impropriety was evident: after a bill had been found the priſoner had ſeen a liſt of the Jury and witneſſes; after having had time to calculate its chances, at the ſeventh day of the proceeding, he came forward to remove the trial! If the priſoner had not had time to enquire into the character of the jurors or witneſſes, ſome other reaſon would have been given, but as nothing of that kind had been attempted, and as the inconveniences of delay and removal were ſo manifeſt, he truſted the court would not accede to the motion.

Mr. Dallas declared that it was not the deſign of the council for the priſoner to try experiments by the preſent motion; they con-

ceived that he had a *right* to be tried, in the county where the crime was charged: the act of Congreſs was mandatory unleſs "manifeſt inconveniences" ſhould appear. He conceived that diſtance could not be an inconvenience, becauſe the act contemplated the poſſibility of crimes being committed in Allegany as well as in Cheſter county. Nor could time; the importance of a capital trial was not to be ſo played with; Congreſs deſigned that an impartial trial ſhould be had in all caſes, without regard to ſuch trivial objections. He was ſure the honourable court would not conſider their perſonal inconveniences as meant, and therefore ſhould not mention it. Mr. Dallas wiſhed it to be obſerved that the crimes were recently committed, and public juſtice had not been long ſuſpended, and even if the preſent motion was acceded to, the hand of public juſtice might ſhortly give the blow, by appointing an early ſpecial ſeſſion. It was not certain before the court ſat, that a bill would be found for high treaſon, merely becauſe the parties were bound over for high treaſon; and therefore the priſoner might not be able to meet that charge: again, the time ſince the bill was found and the party informed, and ſerved with the enormous liſt of 98 witneſſes, has been very ſhort; it was Wedneſday laſt, ſeven days only, two of which muſt be left out, Thurſday having been the faſt day, and Sunday intervening. Many of theſe witneſſes and jurors he had never ſeen nor heard of, and it was neceſſary he ſhould have time to enquire who they were; there had been no catches on the part of the priſoners. It would be an eaſy thing for the court at this time, ſince all the parties were upon the ſpot, to bind them over to appear again. In the caſe read by Mr. Lewis, judge Wilſon expreſsly declared that there was a deſire in the court to comply, but the difficulties were inſurmountable. With reſpect to the other caſes, the mandatory language of Congreſs impoſed a neceſſity on the officers of juſtice, where it was poſſible. The claſhing of courts, he preſumed, could not be held up for excuſe at this time: he did not know how much time the preſent circuit might conſume, but as the ſupreme court would not meet untill Auguſt, no doubt there could be a period for the buſineſs of a ſpecial court ſpared during the receſs; but if the period ſhould be filled up, in the Auguſt ſeſſion arrangements might be made to hold one. With reſpect to the holding of diſtrict courts, Mr. Dallas obſerved, that the law, Vol. 1, p. 49, 50. allowed a diſcretion as to the place of holding them; page 51, gives diſcretion, as to the circuit court, to the judges of ſupreme court with reſpect to time: theſe proviſions reſpected all caſes alike, within the juriſdiction of thoſe courts, but the ſubſequent act referred to, made an exception with regard to caſes of a nature highly criminal, or capital: certainly then, if ever the Congreſs meant there ſhould be a trial at all in the proper county, one like the preſent muſt come under that intention. The language of the two acts, page 67, Vol. 1, and 226, Vol. 2, Mr. Dallas obſerved was different. He firſt declared, that caſes puniſhable with death ſhould be tried in the county, &c. The ſecond, that ſpecial circuit courts may be holden nearer the place where the offences may be ſaid to be committed than the place of the ordinary ſeſſions; but one thing was worthy of notice: the firſt relates only to offences *puniſhable with death*, while the other is worded as *crimes* only; of

whatever nature. Cases of insurrection and rebellion must have been in the view of the Legislature, and in them it would be very probable part of more than one county would combine, and they could have excepted such cases if it had been meant so to do. It was farther said that part of the crimes were committed in two counties, and therefore the prisoner had deprived himself of the common law vicinage. This was not clear: the vicinage where the offence was committed would at any rate have it in their power to declare what they had seen of the conduct of the prisoner. As to the stage at which the application was made, no loss of time had been made, and if it was, it would be extremely severe, if in the power of the court to order it otherwise, that the prisoner in so important a case should be injured thereby. On the whole, he trusted, without manifest inconveniency should appear, that the court would grant the motion.

Mr. Lewis said it was strange, mischievous and unfounded doctrine that this application had not been made in time: three clear days from the notice of the indictment being allowed by law to the prisoner, he was not bound to answer the indictment until yesterday: the trial did not then proceed, and he appeared this day, but in his sincere opinion, from mature reflection, two three nor four days should have weight with the court, because the act of Congress was binding upon them, whatever the learned gentlemen had advanced to the contrary: he had a right to demand it, and if their honors, the judges, proceeded to hold the trial in any but the right place, they, and not the prisoner, would offend. Mr. Attorney had supposed it this was granted, all which had been done would be null and viod, grant this for a moment, did Mr. Attorney or John Fries direct the proceedings of the grand jury, &c. certainly the attorney. In this Mr. Lewis believed he had done strictly right, here was the proper place for the issue to be joined; but Northampton is the proper place for the trial of that issue. It was objected because it was said the crime was committed in three counties; but suppose it were in three or thirty counties, the overt act in the bill is laid in one county only, and there only does the law support the claim for trial. The two laws referred to are unnecessary in capital cases, if they do extend to them at all, because the first law makes ample provision not only as to time, p. 51, but as to place, p. 67. and is not superceded by the other. With reference, to the law, of 1793, page 227, which says, that criminal causes may be tried nearer to the place where the offences were said to be committed, the argument was taken up by Mr. Sitgreaves to mean *nearer to the county*; hence he says that Philadelphia county is the adjoining one of the insurgent counties. In the Indictment Bethlehem is mentioned as the *place*; now the law directs a special session to be held nearer to Bethlehem than isPhiladelphia, that act does not say whether it shall be held in or out of the county, but near the place. The gentleman appeared to have thought he was in another place, and not at the bar, in his view of the discretionary power of the court, which would leave it to be regulated according to the ebbs and flows of the passions of the judges, or the temper of the times; but he should recollect this discretion was of a legal, and not of a political nature, which the necessity of the case called for. All that

muſt be conſidered to operate on the queſtion is, whether juſtice cannot be done between the United States and the priſoner, if the trial is held in the county of Northampton; if it can, we riſe to claim this as the *right* of John Fries, and nearly allied to the intereſts of every citizen.

JUDGE IREDELL ſaid it was held by judge Hale, that an indictment was part of the trial; if ſo, he ſhould be glad to be told what they were to do with the preſent indictment, if the trial was to be removed? if ſo, the priſoner muſt be indicted as well as tried in the county. Foſter 235, and 236. Another queſtion would be, could the court order the diſmiſſal of the indictment?

JUDGE PETERS could not ſee how part of the proceedings of this court could be transferred to a ſpecial court, and therefore how it could be removed to the county, and while a doubt remained, it would never do to renovate a criminal caſe of ſo much importance, he could not ſee the force of the reaſoning in favour of the removal. He thought that however humanity ought to lean towards a priſoner, ſtill the proceedings of the court ought to enſure juſtice to the United States, and to the proſecution, and therefore that public juſtice ought to be as well guarded as the priſoner's convenience: a fair and impartial trial ought to be had, which he was certain could not be held in the county of Northampton, and if he were now applied to in his official capacity to take the neceſſary ſteps for that event he would refuſe.

MR. RAWLE ſaid there were opportunities enough for a motion like this to be made before a bill was found, after the parties were bound over. The accuſed ought to be preparing for trial from his firſt commitment, to remove all the inconveniences which delay until after the proceedings were going on would occaſion: it appeared to him to amount to a *technical trick*, laid to involve difficulties. It was well known that the priſoner could not wait till it was too late to obtain many privileges to which he was entitled by an earlier attention to his intereſts, of which the preſent inſtance. With reſpect to the difficulties his honor, Judge Iredell, had mentioned on the indictment, they were too ſerious and important to be diſpenſed with.

JUDGE IREDELL delivered his opinion to effect as follows:—With regard to the lateneſs of the application, as it does not relate to the merits of the defence, I think the arguments in favour of the motion preponderate, and that no advantage ſhould be taken from the priſoner without full ground. It is evident that, in this caſe a number of circumſtances might be mentioned which would render a trial inconvenient in the county of Northampton. I am inclined to think with the council for the priſoner, that the court have the power to order a ſpecial court to be held there if they ſhould think proper, and therefore I ſhould not ſcruple to admit it, if all concurrent circumſtances admitted its prudence. The queſtion then is, whether according to the legal diſcretionary power of the court, this court think it their duty to admit the force of the motion. When theſe offences were firſt known to have been committed, and when the gentleman with whom I have the honour to ſit was in that country, it was poſſible for a court to have been ordered there for the trials, but it appeared to thoſe with whom the power reſt-

ed, to be improper. And why?—The president in his proclamation had publicly declared that the lawful authority of that county could not be carried into execution without the aid of a military force. Would it not therefore have been improper for us to order a special court to be held at that place? If a special court could not have been held there, the only thing to be done was to bind the parties over to this court.

There are two very important difficulties in the way of this motion, I say important, because they are such as no gentleman of the law can be perfectly clear upon them. First whether, if we order a special court, we can order, by any process known to the law, this indictment to be transferred to that court. This is a doubt stated by judge Wilson, of the supreme court at the time of a former motion alluded to; and I am inclined to think this was a great reason which guided the decision, otherwise a doubt would not have been intimated. If this cannot be done, what would be the consequences of the removal of the case? If this indictment were to be taken there, with a doubt in point of law on it, a motion might be made after trial, for a new trial, that not being regular, part having been held in another place. Whether this would be moved or not I cannot say, but I know at best it is doubtful. The court therefore ought to proceed in the clearest manner not to run the risk of defeating the prosecution of a cause so important. It is the great desire of this court to do the most impartial justice between the public and the prisoner, and not from private humanity on the one hand, or resentment on the other, to lean either way. As to the common law principles of vicinage, there are advantages and these are disadvantages attending it. The advantages are, that the parties are known by, and know their jurors and witnesses, that their characters may be viewed, and the most impartial justice done. But if nearly one whole county has been in a state of insurrection, can it be said that a fair trial can be had there? We may at least presume it could not, because the president of the United States ordered a military force there, to enforce the execution of the laws. It was by this military force that the prisoners are now convened in this city, and I have reason to believe from the opinion and knowledge of the judge with whom I now act, that it would be exceeding improper to hold the trials there. It was hinted that troops are still there, and they could promote the execution of justice; but what sort of justice is that of the sword? If they would operate at all it would be by intimidation, and this would be to the prejudice of the prisoner, and in no respect in his favour. This consideration alone in my opinion would make it "manifestly inconvenient" for a trial to be held there. With respect to the principles of common law, the gentlemen well know that the *venire* may be changed, that is, that parts of the jury may be summoned from other counties. I do not know whether there is a power in the courts to change the *venire* in England in a criminal case, but I know that in some difficult cases, where partiality was to be apprehended an act of parliament has been passed to remove the trial: this was done respecting the rebellion in Scotland, for the manifest reason of partiality. This proves that we ought not to look to one side only, but to both, and then form our determination.

Upon the whole I am clearly of opinion that if the motion could be granted without running the risk of these uncertainties, but certain inconveniences, it would not be expedient to grant the motion, and therefore the trial must go forward.

APPENDIX

No. II.

MOTION FOR A NEW TRIAL OF JOHN FRIES, FOR TREASON.

MAY 14.

MR. LEWIS informed the court that the other day in coming into court, he received a ſlight information, which he thought it his duty as advocate for the priſoner, to make farther enquire into, but it was not till this morning that he had been able to procure the depoſitions of witneſſes to prove a fact, on which he meant to ground a motion. He read the depoſitions to the court, which imported that John Rhoad, one of the jurymen on the trial of John Fries, had declared a prejudice againſt the priſoner, after he was ſummoned as a juror on the trial. He now found that he could procure other affidavits to the ſame fact, on the ground of which he "moved a rule to ſhow cauſe why there ought not to be a new trial."* He expreſſed himſelf aware of the lateneſs of the period, verdict having been given, but the impoſſibility of proving the fact earlier, was a ſufficient apology. He ſhould forbear to enter into the merits of the motion at preſent.

Rule was granted and made returnable to-morrow morning.

Wedneſday, May 15.

MR. DALLAS ſaid it became his duty as advocate for the priſoner, to lay before their honours the grounds on which they had moved for a new trial in the caſe of their unfortunate client, in which he was ſenſible ſome little violence muſt be offered to *his* feelings in whoſe behalf it was made, and particularly if judgment ſhould at laſt be pronounced upon him; but whatever the event, it became their duty to prefer it, and he was certain that upon examination into the facts, they muſt be juſtified in producing them, as the event muſt alter the deciſion which had taken place. He was ſatisfied that the court, without direct reference to authorities, would be inclined to liſten to any thing that could be offered upon good ground, in favour of life, or the chance

* *The priſoner had been brought into court in order to receive ſentence of* death, *but on Mr. Lewis's motion for a rule to ſhow cauſe, judgment was ſuſpended, and he was remanded back to priſon.*

of life. With this confidence, he relied on the favourable attention which would be paid by the court, and that the intervention of any trifling error in the proceeding, may not expose the defendant to the danger of a favourable decision.

In making the motion, Mr. Lewis had laid before the court some affidavits in order to prove that one of the Jurors, after he had been summoned to attend the trial did declare that the man should be convicted: in addition to that circumstance, the following reasons should have been assigned in favour of the motion:

First, That the marshal has, without any order or direction from the court or judges for that purpose, returned a greater number of jurors than he was by law authorized to do:

Secondly, That he returned them from such parts of the district as he thought proper, and without the direction of the court or judges:

Thirdly, That the trial ought to have been held in the county where the offence was committed, except manifest inconveniency should appear, and it does not appear from any part of the record of the court that any inconveniency did prevent it, for whatever were the acts of the court they ought to have been placed on the record, which not being done, is good ground for a motion.

Judge Iredell did not think that the Court were bound to assign a reason for their judgment on the record of their proceedings, besides it was an high contempt at this time to call for the renewal of an argument whereon a solemn decisive opinion was delivered: he asked what part of the law required it: if it was at that time omitted, it was in the power of the court to order it now; or if they did not order the reasons to be inserted, the mere decision on the face of the record was enough to make it authoritative.

Mr. Dallas said there was no intention of offering a contempt to the court, and if there honors would attend they would be convinced there was not.—The judiciary act 29th section p. 67, vol. 1, Contemplates two things, first, trial shall be had in the proper county without great inconvenience should appear, but if it should so appear to the court, then, secondly, twelve petit jurors at least shall be summoned from the county. From this it appears that before the second branch of this clause can be executed, there must be a determination upon the first; it must be evident that there are too great inconveniencies to admit of the trial being held there, and then the second must take place; and farther that it must be the act of the court to direct that twelve jurors shall be summoned from the county. The court have great latitude in this discretion; they have power to take the whole sixty from the county they please, but not less than twelve; if therefore this discretion is given, and given to the court, it is not in the power of any ministerial officer to exercise it without the direction of the court: they are to be returned as the "court shall direct." "These words more particularly relate to another branch of the section, to wit: from what part of the district from time to time the rest shall be called. The venire in this case was made returnable on the 11th of April, this precept directs that the marshal shall return a list of sixty petit jurors, and twenty four grand jurors, who appear to be all returned from the

county of Philadelphia. Your honors will obſerve that the marſhal has authority to ſummon not more than 60, nor leſs than 48. In this return he has ſummoned 60 from Philadelphia county, whereas twelve at leaſt ought to have been ſummoned from Northampton. The authority of this *venire* then is at an end, for it cannot be pretended upon any authority or precedent, in a civil or criminal caſe that a marſhal or Sheriff has ever attempted to exerciſe ſuch a power without a precept in form, commanding him: and the award appearing upon the record. This *venire* is completely ſatisfied, and all the authority given has been exerciſed in the return of 60, and if he has returned more he muſt ſhow authority for it. With reſpect to the weſtern inſurrection, Judges Patterſon and Peters did not adopt the ſtate regulations with regard to the number of jurors, but any deviation from that muſt be on the ſole authority of the court. 2 Dallas 341, 2. Mr. Patterſon was of opinion that the common law proceedings of the court of King's bench ought to guide their proceedings upon a queſtion of this nature, ſince the act of Congreſs ſays nothing about number, but refers to ſtate proceedings, which is guided by that common law. To ſhow the proceedings of Kings bench, and to prove that the court alone had the direction of the *venire*, Mr. Dallas quoted the following authorities: 4 Blackſtone 344. 3 Blackſtone 352 Cooks Littleton 155, or Keyling 16 2 Hales pleas 263.—beſides he ſaid the ſame ſection gave direction as to the manner of iſſuing writs of *venire facias* when returned by the *court* p. 68, *to iſſue from the office of the Clerks of the Court*. It is therefore incumbent on thoſe who vindicate the legality of the marſhal's proceedings, to ſhow that he acted with authority, viz. from the clerk's office directed by the court. To ſhow what authority he had to ſummon 89 jurors, when not more than 60 was uſual; to ſhow his authority for ſummoning *ſeventeen* from Northampton and *twelve* from Bucks. If you take it as one return it is a return of 89 jurors upon a precept which directs no more than 60, if you take the ſurplus number over 60 as a ſeparate return, there is no authority at all for making it.

Mr. Dallas ſaid he did not mean to controvert, for he reſpected the opinion of the Court, but reſpecting holding the trial in the county, he would refer to the 8th amendment to the conſtitution, p. 456, vol. 3. in theſe words, "In all criminal caſes the accuſed ſhall be entitled to a ſpeedy and public trial, by an impartial jury of the ſtate and diſtrict wherein the crime ſhall have been committed, which diſtrict ſhall have been previouſly aſcertained by law." Then referring to the judiciary act, and ſaying it there declared that the offender ſhould be tried in the proper county, the queſtion then is, whether this is not eſtabliſhing a diſtrict as it reſpects capital crimes, except "manifeſt impediments" prevent. If ſo, the place where the court is now ſitting is to be conſidered a foreign county, now where by *certiorari* an indictment is removed in the King's bench, and where the jurors are to come from a foreign county, then time muſt be allowed for the precept to iſſue, which muſt be on the rule of the record, 2 Hawk. c. 27, ſec. 1. This court is ſitting in the ſtate of Pennſylvania, and the juriſdiction of the court is co-extenſive with it, and ſo is King's bench with the whole nation of England: the proceſs of this court may be ſent into

any county in the ſtate, ſo may that of King's bench to any county in England, 4 Hawk. c. 41, p. 376—2 Hales pleas 260—4 Hawk. b. 2, c. 27, p. 171. Douglas 590. In the preſent precept there does not appear to be a return of 89 jurors authorited, but that 89 have been returned: the ſupplementary return was made by the marſhal without any act of the court, and with any *venire* being duly iſſued, or any award to ſummon this jury to try the priſoner. *Seven* of the perſons who were on the liſt impannelled to try John Fries, and who have given virdict, are not at all on the liſt ſummoned for the trial: how came thoſe ſeven perſons then on this trial, reſpecting whom no *venire* was iſſued? They were not called to attend by any proceſs of the Court! This was not the caſe in the weſtern inſurrection, for then, though a greater number was ſummoned, it was upon the ſolemn deciſion of the Court, and by their order that the venire was iſſued. [he read the venire then iſſued] In that proceeding every thing is regular: the marſhal receives expreſs orders to ſummon 12 jurors from Allegany, &c. but where are ſimilar directions in the preſent caſe? 4 Blackſtone 369—4 Hawk. c. 31, ſect. 4. p. 240. ibid c. 27, ſect. 104, p. 175, are authorities to explain what is miſ-trial, and are a juſtification of the preſent application for a new trial. Hence it appears that a miſ-return of jurors is ſuch an error, if they actually paſs, as to make a miſ-trial, and the verdict is of courſe void. In this caſe 60 is returned upon a ſchedule with the names annexed, and on another ſchedule a return by the marſhal of 17 from Northampton county, and 12 from Bucks, to which the marſhal ſigns his name, but no proceſs was iſſued for theſe ſupplementary 29 names, and it is clear from the inſtrument that 60 compleated the return, only five of whom were on the trial of the priſoner, and the other ſeven had no right to try him, being drawn from a liſt which no proceeding had authorized. Where there has been no proceſs, no trial can proceed. Law of Errors, p. 65. We ſee what is the effect of a perſon intruding himſelf into the jury, who has not been lawfully ſummoned, 4 Hawk. c. 25, p. 16—the verdict is void, ibid. p. 17. This will be granted. Mr. Dallas here recapitulated the objections he had ſtated, and added that merely the appearance of the jurors, nor their having been ſworn, or having given verdict were objections ſufficient to overturn the motion.

He next made a few obſervations on the conduct of the juror, which he ſaid was not merely an expreſſion of opinion, but a previous determination, and an expreſſion of fear if the priſoner ſhould be acquitted, ſo that it was impoſſible to hesitate that, if this was true, the juror did not give verdict upon evidence, but was influenced by a previous bias, and prejudiced determination: his going into the box with this partial mind, deprived the priſoner of that chance which the law determines he ſhall have. It is neceſſary that every jury ſhould enter this box free from malice; but it was not ſo: this juror laboured under particular impreſſions, unfavourable to John Fries, becauſe he conceived he had been the leader of, and brought on this diſturbance, and therefore ought to be hung: this will be proved to have been more than once the language of the juror, and that he indulged himſelf in ſuch expreſſions. After running from place to place, influenced by a

vindictive ſpirit of prejudice, to expreſs his deſires, can it be contended that he was capable of deciding on the guilt or innocence of the priſoner, by the weight of the teſtimony only? There cannot be found a ſtronger caſe in the books. It is not neceſſary or right to go into the teſtimony, or any of the circumſtances of the crime of the priſoner, to ſee whether the verdict was right or wrong; but it is neceſſary to view the determination of this juror, who wiſhed them all hanged, and particularized Fries. Firſt, his words were, "we will hang them all:" then he ſaid, "I myſelf ſhall be in danger, unleſs we do hang them all." This is not merely an opinion generally expreſſed, but the language of deſign to convict at all events. If eleven out of twelve jurors had been of opinion that an acquittal ſhould take place, and this individual ſuppoſing he was in danger had declared this opinion, and pointed out his view of the probable conſequences, would not the voice of the eleven be changed to guard againſt this danger? 4 Hawkins, c. 43, ſec. 28. p. 399, ſupports the doctrine generally, that if a juror has declared his opinion before hand, that the party is guilty, or will be hanged, or the like, it is good cauſe of challenge: but if from his knowledge of the caſe, and not from *ill-will* to the party, he has only declared his opinion, it is no cauſe of challenge. But even reſentment has not the influence upon a man's conduct which ſelf-preſervation has: ill-will is not the only ground of challenge; intereſt is as much so: if a man had laid a wager another would be hung, this is not ill-will, but would viciate the juror. Therefore we muſt conclude that "*ill-will*" in the above authority, is put merely as an inſtance. Whether theſe words were ſpoken in warmth or not, is immaterial; for it would be no alleviation; it is impoſſible that they ſhould have been expreſſed without ill-will; and therefore the man is not impartially qualified to paſs upon the life or death of the priſoner. Salkeld 645 and 11 Modern 118. Upon the general ground of what could be with propriety called miſconduct in the perſon ſummoned to diſcharge the duty of a juror with impartiality, he obſerved there could be no doubt upon the propriety of their aſking a new trial, nor upon the juſtice of one being granted.

Mr. Lewis mentioned 5 Bacon, 251—2 (old edition) and 4 Blackſtone 354—5, in order to ſhow, that in criminal caſes there ſhould be no new trial, unleſs it ſhould appear that the former trial had been attended with fraud, &c. and that a new trial in thoſe caſes might be granted after conviction, 11 Modern, 119. 5 Bacon, 243, and 3 ibid, 258 (old edition.) If he has declared his will, touching the matter, it ſhall be cauſe. 4 Blackſtone, 346, (old edition.) The direction reſpecting the *venire*, he ſaid, was entruſted to the law and not to the marſhal, and by that direction was exerciſed by the judges in 1795, and if that was neglected, it was not legally executed. The court could, as then, order the jury to be called from all parts of the State, and not to be left to the marſhal. 5 Bacon 242. is an inſtance in which a ſon was ſworn into the jury, (being the ſame name of John Pierce) inſtead of the father who was the perſon ſummoned to attend, whereupon a new trial was granted, becauſe the trial was held by only eleven qualified perſons as jurors. If the ſheriff did not follow the

direction of the law in reſpect to the *venire*, it was good cauſe for a new trial.

MR. SITGREAVES ſaid he did not think it neceſſary to controvert the poſition which had been advanced by the gentlemen on the other ſide: that the court have full power to order a new trial after conviction in certain criminal caſes, as well as civil under certain circumſtances; but notwithſtanding the authority of the court to grant new trials was aſcertained in ſome of the books, yet it would appear that this power had never been exerciſed in any capital caſe; no ſuch caſe had been referred to, and he believed could not be found; he imagined the reaſon why it could not, was, although courts had the full power, yet the peculiar ſolemnity of a trial for a capital offence, and the great caution which was uſed to guard the ſecurity of the priſoner againſt improper bias, or wrong proceeding that may reſpect his guilt or innocence, with ſufficient mounds to prevent intruſion, and therefore conviction in ſuch a caſe had not yet been ſet aſide. With reſpect to the qualification of a juror, objections as to the array or to the poll ought to be received by a court with uniform caution, after trial and verdict is paſſed, becauſe there is ſo full and ample opportunities given to the priſoner to deliberately enquire and make a good choice: the whole pannel which are ſummoned, muſt be given to the priſoner; a certain time muſt be allowed before he can be called upon to anſwer the charge, ſufficient for him to enquire the character, intereſt, affection, or partiality of the men: having this time and opportunity, ſo carefully ſecured to him by poſitive inſtitutions of law, it is not to be wondered that objections afterwards ſhould be cautiouſly received by the courts. After having theſe opportunities for examination, the law gives power to the priſoner to challenge 35 jurors arbitrarily, or without aſſigning a reaſon, and after that as many more as he can aſſign juſt cauſe of objection to, and they will alſo be ſet aſide if his objection is well founded. To deviate from this general view, and make the particular application, which is by no means irrelevant in a queſtion of this nature, it is obſervable that the priſoner has actually had more than common power to ſelect a jury to his mind: of this whole liſt 35 did not appear, and of the number that remained the priſoner challenged 35, ſo that he had directly in his power as much as though all had been panels, and he had challenged 68. With reſpect to Mr. Rhoad the juror, there is ſomething worthy of remark: When Mr. Rhoad came to be called, and there was ſome difficulty ſuggeſted as to his knowledge of the Engliſh language, although the court and proſecuting counſel ſaw the force of the objection, he was retained at the inſtance of the counſel for the priſoner, becauſe they had exhauſted all their challenges, and they did not know that the next would be ſo agreeable.

MR. SITGREAVES next ſtated to the court what he thought to be the unqueſtionable principles of law on the point in queſtion.—If a motion for a new trial is received in a court for a criminal cauſe, it is under the ſame rule and circumſtances as for a civil cauſe, and in both depends on the diſcretion of the court, and that diſcretion ought to be governed, not by any preciſe ſet of rules now known in law, but in any

way that will beſt perpetuate juſtice, except there ſhould appear a mandatory, imperative rule. If the law ſays that upon conviction of a certain crime, a certain puniſhment ſhall enſue: this is peremptory, and the court have no power to depart from ordering that puniſhment. Wherever a diſcretion is left, it is meant that the court may uſe that diſcretion, according as the nature of the caſe may require, and this is left in the conſcience and mind of the court alone, agreeable to circumſtances which grow out of the juſtice applying to the particular caſe. In the preſent caſe therefore, the court are not to be governed by any ſet of preciſe rules, but by an opinion of what will beſt perpetuate *public juſtice*. To be ſure it is a rule, that a new trial ſhall be granted where a verdict is given againſt evidence, but even then it has been frequently refuſed, where they ſee the caſe is plain. In civil cauſes it has been refuſed, when not to the intereſt of juſtice to grant it. 2 Burrows, 936.

JUDGE IREDELL ſaid he had not diſcovered any *dictum*, which diſtinguiſhed civil from criminal cauſes, ſo that equal juſtice ought not to be adminiſtered; but if either, ſurely a criminal caſe called moſt ſtrongly for juſtice: it would never do to apply caſes ſo far, as to ſay, that if one man upon a jury was diſcovered not to be fully impartial, a new trial ſhould not be granted, when a man's life was at ſtake.

JUDGE PETERS ſaid he always underſtood, that the power of granting a new trial, was in the diſcretion of the court; and that its opinion ought not to be turned by any vagaries, which ſhould be preſented, but be governed by a reference to legal diſcretion; but at the ſame time, he could not ſay that the court ought to throw entirely out of their view, all the evidence which had been given in the trial, and every thing that had been done. If in the ſcale of juſtice, there ſhould appear to be any error, and the caſe is any way doubtful, then the court will take advantage of a trifle, in order to grant a new trial; but where the court has been fully convinced that the verdict is right, then the evidence ought to have ſome weight, as well as the law.

MR. DALLAS obſerved, that the motion was not in any regard to evidence, if ſo, the weight of evidence muſt be conſidered; but it was alone on the point of law, totally independent of evidence.

MR. SITGREAVES contended, that where a trial was neceſſary for the purpoſes of juſtice, it reſted between the judge and his conſcience, and he was not to be governed by any preciſe ſtate of facts here or there: if, as is unqueſtionably the caſe on the preſent occaſion, a trial has been held, which for the patience of inveſtigation given to it by the court and jury, has ſcarcely had its equal in this, or any other country; where the priſoner has had every indulgence, and every capacity of talents, which this ſtate can afford, to aſſiſt him in his defence; if after all this, a conviction has been the reſult of this minute and laborious examination, it will at leaſt be allowed, that the objection which ſhould have the ultimate effect of ſetting aſide a deciſion and inveſtigation ſo ſolemnly and deliberately taken, ſhould be grounded upon no ſlight matter, but that the reaſon ſhould come compleatly

authenticated, ſo as not to leave a doubt, or the leaſt ambiguity. If the facts related in the affidavits, had been known to the priſoner, and mentioned when the juror came for his array, undoubtedly, the legal inveſtigation would have taken place, and a ſolemn deciſion paſſed thereon, which if true, would have been to diſqualify the juror. Mr. S. explained the different modes of challenge, and proceeded to queſtion the relation of the affidavits—that theſe were words, ſaid to be ſpoken a conſiderable time before the trial, "ſome days:" the trial had been nine days before the court, and it was probable, this declaration muſt have been made fifteen days at leaſt, that this important and often repeated converſation ſhould reſt all this time in the minds of the witneſſes, without a diſcloſure, was very extraordinary, particularly ſo, when it was conſidered that they attended the court every day, and at laſt the affidavits reſted on the memory of the witneſſes, which muſt be very liable to miſ-apprehenſion and error. This is good reaſon for the objection, that the application is too late, and ought, in a matter of ſo much importance, to have been mentioned ſooner, if in the knowledge of ſo many people, at ſuch repeated converſations as the gentlemen conceived.

Mr. Sitgreaves was proceeding here to read a written declaration of Mr. Rhoad (the juror) as to the circumſtances of the converſation, which as it was not ſworn to, was objected by the priſoner's counſel; the juror was at length ſworn, and the depoſition was read to the court. Mr. Sitgreaves ſaid he read this, to ſhow how eaſy it was to miſapprehend not only the meaning of words, but the words themſelves. Another thing to be obſerved was, two of the witneſſes themſelves at that moment, were priſoners out upon bail, under indictment for miſdemeanor, and therefore the affidavit of ſo reſpectable a citizen as the juror, denying the fact, left a ſerious doubt as to the truth of the others' depoſitions, but more as to the probability of miſtake in the relation. Mr. S. then went into a compariſon of the affidavits, which he contended were very diſſimilar, and had much the appearance of wrong ſtatement. Whatever may be the difference of opinions, as to the diſcretion of the court, when they are fully ſatisfied that the crime is well aſcertained, both as to law and evidence, yet it would not be doubted as the unqueſtionable right of the court, to inſtitute the moſt ſevere ſcrutiny in a matter which endangers the whole of the former proceedings; the former proceeding which muſt be valid, unleſs the moſt unequivocal teſtimony ſhall intervene to change it.

Mr. Sitgreaves ſaid the converſation was of a general nature, and not to the priſoner in particular, agreeable to the affidavits generally: it ſpoke of the general effects of the inſurrection in that country: indeed it was not to be expected in a matter of ſuch public concern as that unhappy affair, but every man would expreſs his opinion, and particularly thoſe who reſided on the ſpot; therefore it could not evince any prejudice, and conſequently not be lawful challenge to the juror. He referred to 3 Bacon new edition Letter E ſection 12. One affidavit only particularized Fries; and yet it appeared from Mr. Rhoad's depoſition to relate to one converſation only, therefore it was evi-

dent that the relations differed, and were of courſe of a ſuſpicious nature. If a man draws a deduction from what he has heard, or from his own knowledge of an event, and not from "ill will," it is no proof of prejudice or partiality, he is ſtill "indifferent" and open to impreſſion: there muſt be an expreſſion of malice, of determination, to a particular caſe, and in a particular way.

Juſt cauſe of challenge may be, if one of the grand jury is impannelled on the petit jury, becauſe he may be ſaid to have already "paſſed upon the caſe in iſſue" 2 Hawk. 29. C 43. Where an action is dependant between a juror and defendant, it is then challenge to the favor, Viner 21 title *juries* h. d. Cook Littleton 157 d. Nothing that is merely an expreſſion of opinion is cauſe of challenge: nothing but what flows from a malicious heart againſt the priſoner in particular; all the caſes ſhow the diſtinction, and there is not a ſingle caſe in which the declaration of a juror has been made cauſe of challenge but to the favor, in which caſe triers are appointed by the court to examine whether this prediſpoſition does or does not appear. The preſent caſe therefore is not cauſe of particular challenge, but of challenge to the favor, which was not made in time. Mr. Sitgreaves then referred the court to ſome authorities 2 Rolls abridgment 657—21 Viner title trial 266 and 272—1 Salkel 153 and one which occurred in this ſtate when one Ann Clifton, was convicted for murder, and one of the jurors had made declaration before he was ſworn reſpecting the guilt of the priſoner.

Judge Peters ſaid that he had given the marſhal directions to ſummon jurors from Bucks and Northampton: he was not certain whether it was given in writing or verbally, but leſt it ſhould not have been in writing he now gave it to the prothonotary of the court. At the firſt appearance of it, he did not know whether it amounted to treaſon, and therefore he thought particular directions not neceſſary, but afterwards, finding it more ſerious, he gave the directions which had guided the marſhal.

Mr. Rawle thought it eaſy to prove that the marſhal was fully authorized to ſummon from what part of the ſtate he pleaſed, unleſs the court interfered by a ſpecial direction, and then he was bound to obey the mandate. The marſhal no doubt underſtood that he was to ſummon from the ſtate at large, conformable to the directions of the law. With reſpect to the weſtern inſurrection, the fiat of the court was obtained, but it was not ſo in the preſent caſe. Mr. Rawle, here appealed to the prothonotary to know whether any inſtance of a ſpecial direction of the court reſpecting *venire* had occurred ſince that period in any capital caſe. Mr. Caldwell anſwered there *had not*.

Mr. Rawle went on to mention the progreſs which had been made, and the time and opportunities of which the priſoner might have availed himſelf, but theſe he had neglected, and at this period, he came forward by his counſel to challenge the array! Challenge, he obſerved, was of two kinds, the poll and the array; if challenge was made to the poll, and the trial went on, challenge to the array could not be made, becauſe exception was before made, but he thought it was clear the time was paſſed at which he might have availed himſelf of the chal-

lenge to the array. It was contended that the marſhal had not made a proper return to the *venire*, but authority had not been produced to prove the point, yet authority could be found to prove that after the poll had paſſed, even before the trial, the array could not be challenged, becauſe that was paſſed too, but to what a much greater length had the preſent objection been delayed? After having taken the chance of the verdict, and finding it unfavorable, then to ſay it was irregular, and for a reaſon which might have appeared ſooner, he quoted 12 Mod. 567 and 584. 2 Lord Raymond 84, referring to the time when exception may be made.

Farther, after all the chances which a priſoner could have, and complaints made of irregularity as to the venire, the objection was farther extended to a man who was ſummoned from the very county where the crime was tranſacted! Upon this man the priſoner was willing to put himſelf for trial, rather than one he did not know. See Danver's abridge. 354, 5 and 7. With reſpect to the number returned. Mr. Rawle referred to Crookjames 467. 2 trials per page 599. 21 ſtate trials, 707. There might be more than 60 returned: in regard to the weſtern inſurrection he ſaid there were 108 ſummoned. The words of the venire directing the marſhal are, that he *cause to come to the court*, ſo many a certain day; it is therefore proper that a certain number ſhould attend, and to enſure the number neceſſary to meet the challenge, the marſhal uſually ſummons a greater number than are mentioned, but if a greater number do attend, then the ſuper-numerary are ſtricken off. In the preſent caſe the number in the venire was exceeded by 29, and yet 38 leſs attended at any one time than were ſummoned, the priſoner had been tried by one of theſe 50, ſeven of whom were from his own neighborhood, and men in whom he thought he could place his life with ſafety. In order to confine the number within ſome bounds ſo as not to exceed reaſon in caſe a marſhal or ſheriff could be found to make that improper uſe of his power, and take the citizens from their buſineſs or their homes unneceſſarily, an officer ſo offending can be proſecuted for miſdemeanor, but this was not the caſe. Where there is more than a ſufficient number ſummoned for the purpoſe of trying a civil cauſe, which in Pennſylvania is confined to 48, and more than that number ſhould attend, and one of them ſworn on the trial is taken from thoſe over the 48 that attend, then no doubt it would be miſtrial, becauſe the ſummons was unlawful; ſo in the preſent caſe, if one of the jurors had been of the 28 over the number 60, had more than 60 attended it would have been a miſtrial, becauſe the venire ordered the marſhal to cauſe but 60 to appear, (but that objection even would have been inſufficient at this ſtage of the trial) and more he had no right to bring.

As to the propriety of ſummoning 12 from Bucks and 17 from Northampton, there appears to be no wanton exerciſe of power in the marſhal, becauſe he acted under the authority of the judge of this court. The gentlemen could not ſhow an authority which made it neceſſary for the marſhal to have a certificate to empower him to do this, and if it was neceſſary, the certificate of the judge appearing upon the record would make it valid. But even if he had not receiv-

ed the authority of the judge, the act of Congress would have been a sufficient warrant for his conduct. P. 67 vol 1. twelve at least are to be summoned from that county, and 17 are summoned. The act of summoning is properly the business of the marshal, if he has official notice, *in any shape*, that such a trial for a capital offence is coming forward, which would entitle the prisoner to be tried by twelve jurors from the proper county if he makes the provision which the law requires, he has absolutely and completely acquitted his office, as well technically as formally. The return which has been produced embraces the whole number of 89, sixty of whom are of the county of Philadelphia, and if there is any technical alteration in the form necessary to give it legal precision and effect, it is now in time to alter it, but there is none necessary.

Mr. RAWLE said he considered this proceeding as having received the full sanction of the court, in the certificate given by the judge. First because no opposition had been made to it, and secondly because (the whole number not having appeared) it was not excepted to at that time. The list out of which the seven jurors from the country were taken, he called a supplementary list, which completed the former list, and though not annexed to that pannel was connected with it, filled up and made a part of it, on which an award was entered. The cases referred to had respect to a foreign country, but in a district, one county was not foreign to another, and therefore Bucks, Northampton and Philadelphia, stood in one exact situation. 2 Hawk C. 41. B. 2. Dyer 118.

Mr. RAWLE concluded by saying that he looked upon all the proceedings in the present case as perfectly regular and compleat, to which no exception could justly be taken by the prisoner, and he hoped the effort would miscarry, since every means had been used in the defence during the long and patient investigation which had taken place, and after a verdict had been so solemnly pronounced by men whom the prisoner had such a fair means of chusing to answer his best purpose.

The attorney general, and council agreed, and the court ordered that the deponents should give testimony, and be cross examined in court, on each side. Also that the witnesses should be examined separately, and kept out of the court, so as not to hear the evidence given by each other.

Thursday May 16.

NICHOLAS MAYER's Deposition.*

* *The reporter has introduced the depositions immediately before the oral testimony, in order to give a fair opportunity of examining into the correspondence of the two relations.*