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THE
TWO TRIALS
OF
JOHN FRIES,

on an Indictment for

TREASON;

TOGETHER WITH A BRIEF REPORT OF THE TRIALS OF SEVERAL OTHER
PERSONS, FOR

Treason and Insurrection,

In the Counties of Bucks, Northampton and Montgomery,

IN THE CIRCUIT COURT OF THE UNITED STATES,

Begun at the City of Philadelphia, April 11, 1799; continued at
Norristown, October 11, 1799;—and concluded at Philadelphia,
April 11, 1800; before the Hon. Judges, IREDELL, PETERS,
WASHINGTON and CHASE.

TO WHICH IS ADDED,

*A copious Appendix, containing the evidences and arguments of the counsel on both
sides, on the motion for a new trial; the arguments on the motion for removing the
case to the county where the crime was committed, and the arguments against holding
the jurisdiction at Norristown.*

TAKEN IN SHORT HAND BY THOMAS CARPENTER.

[COPY-RIGHT SECURED.]

PHILADELPHIA:

Printed and sold by WILLIAM W. WOODWARD, No. 17 Chestnut,
near Front street.

1800.

A D V E R T I S E M E N T.

THE following very important and interesting trial, and the law arguments on the different motions made to the court, has been long kept from the public eye; but no longer than inevitably necessary—It would have been imprudent, (if not unlawful) to have published a first trial, when a second was pending. The reporter has curtailed the second trial as much as possible—not repeating, but referring to the testimony given on the first trial; but he has given at length all new evidence that occurred. The testimony is accurately reported—he believes the arguments and opinions to be so, and, to make it so, wherever opportunity offered, he has submitted it to the inspection of the gentlemen themselves: when he could not, he trusts unimportant inaccuracies, if any, will be pardoned.

It is probable, several of the names are wrong spelled, but, without more trouble than necessity demanded, it could not well be otherwise.

E R R A T A.

Page 157, note, dele "no."

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A C H A R G E

Delivered to the GRAND JURY of the UNITED STATES, for the District of Pennsylvania, in the Circuit court of the United States for said district, held in the city of Philadelphia, April 11th, 1799, by JAMES IREDELL, one of the Associate Justices of the Supreme Court of the UNITED STATES.

GENTLEMEN OF THE GRAND JURY,

THE important duties you are now called upon to fulfil, naturally increase with the increasing difficulties of our country. But however great those difficulties may be, I am persuaded you will meet them with a firm and intrepid step, resolved, so far as you are concerned, that no dishonour or calamity (if any should await us) shall be ascribable to a weak or impartial administration of justice.

If ever any people had reason to be thankful for a long and happy enjoyment of peace, liberty and safety, the people of these states surely have. While every other country almost has been convulsed with foreign or domestic war, and some of the finest countries on the globe have been the scene of every species of vice and disorder, where no life was safe, no property was secure, no innocence had protection, and nothing but the basest crimes gave any chance for momentary preservation; no citizen of the United States could truly say that in his own country any oppression had been permitted with impunity, or that he had any grievance to complain of, but that he was required to obey those laws which his own representatives had made, and under a government which the people themselves had chosen. But in the midst of this envied situation, we have heard the government as grossly abused as if it had been guilty of the vilest tyranny, as if common sense or common virtue had fled from our country, and those pure principles of republicanism, which have so strongly characterized its councils, could only be found in the happy soil of France, where the sacred fire is preserved by five Directors on ordinary occasions, and three on extraordinary ones— who, with the aid of a republican army, secure its purity from violation by the Legislative representatives of the people.—The external conduct of that government is upon a par with its internal.—Liberty, like the religion of Mahomet, is propagated by the sword. Nations are not only compelled to be free, but to be free on the French model, and placed under French guardianship. French arsenals are the repository of their arms, French treasuries of their money, the city of Paris of their curiosities; and they are honoured with the constant support of French enterprizes in any other part of the world. Such is the progress of a power which began by declarations that it abhorred all conquests for itself, and sought no other felicity but to emancipate the world from tyrants, and leave each nation free to chuse a government of its own. Those who take no warning by such an awful example, may have deeply to lament the consequences of neglecting it.

The situation in which we now stand with that country is peculiarly critical. Conscious of giving no real cause of offence, but irritated with injuries, and full of resentment for insults; desirous of peace, if it can be preserved with honour and safety, but disdaining a security equally fallacious and ignominious at the expence of either; still holding the rejected

Olive Branch in one hand, but a sword in the other—we now remain in a sort of middle path between peace and war, where one false step may lead to the most ruinous consequences, and nothing can be safely relied on but unceasing vigilance, and persevering firmness in what we think right, leaving the event to Heaven, which seldom suffers the destruction of nations, without some capital fault of their own.

Among other measures of defence and precaution which the exigency of the crisis, and the magnitude of the danger, suggested to those to whom the people have entrusted all authority in such cases, were certain acts of the legislature of the United States, not only highly important in themselves but deserving of the most particular attention, on account of the great discontent which has been excited against them, and especially as some of the state legislatures have publicly pronounced them to be in violation of the constitution of the United States. I deem it my duty, therefore, on this occasion to state to you the nature of those laws which have been grossly misrepresented, and to deliver my deliberate opinion as a Judge; in regard to the objections arising from the constitution.

The acts to which I refer you will readily suppose to be what are commonly called the Alien and Sedition acts. I shall speak of each separately, so far as no common circumstances belonging to them may make a joint discussion proper.

I. *The Alien Laws*, there being two.

To these laws, in particular, it has been objected.

1. That an Alien ought not to be removed on suspicion, but on proof of some crime.

2. That an Alien coming into the country, on the faith of an act stipulating that in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith.

3. That it is inconsistent with the following clause in the constitution, (Art. I. sect. 9.)

“The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight? but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.” With regard to the first objection, viz. “That an alien ought not to be removed on suspicion, but on proof of some crime.” It is believed that it never was suggested in any other country, that *aliens* had a right to go into a foreign country, and stay at their will and pleasure without any leave from the government. The law of nations, undoubtedly is, that when an alien goes into a foreign country, he goes under either an express or implied safe conduct. In most countries in Europe, I believe, an express passport is necessary for strangers. Where greater liberality is observed, yet it is always understood that the government may order away any alien whose stay is deemed incompatible with the safety of the country. Nothing is more common than to order away, on the eve of a war, all aliens or subjects of the nation with whom the war is to take place. Why is that done, but that it is deemed unsafe to retain in the country, men whose prepossessions are naturally so strong in favour of the enemy, that it may be apprehended they will either join in arms, or do mischief by intrigue, in his favour? How many such instances

took place at the beginning of the war with Great Britain, no body then objecting to the authority of the measure, and the expediency of it being alone in contemplation! In cases like this, it is ridiculous to talk of a crime, because perhaps the only crime, that a man can then be charged with, is his being born in another country, and having a strong attachment to it. He is not punished for a crime that he has committed, but deprived of the power of committing one hereafter to which even a sense of patriotism may tempt a warm and misguided mind. Nobody who has ever heard of Major Andre, that possesses any liberality of mind, but must believe that he did what he thought right at the time, though in my opinion it was a conduct in no manner justifiable. Yet how fatal might his success have proved! If men, therefore, of good characters, and held in universal estimation for integrity, can be tempted when a great object is in view, to violate the strict duties of morality, what may be expected from others who have neither character nor virtue, but stand ready to yield to temptations of any kind? The opportunities during a war of making use of men of such a description are so numerous and so dangerous, that no prudent nation would ever trust to the possible good behaviour of many of them. Indeed most of those who oppose this law seem to admit that as to *alien enemies* the interposition may be proper but they contend it is improper before a war actually takes place to exercise such an authority, and that as to *neutral aliens* it is totally inadmissible. To be sure the two latter instances are not quite so plain, the objection I am considering belongs equally to them all; for if an alien cannot be removed but on conviction of a crime, then an alien enemy ought not to be removed but on conviction of treason, or some other crime shewing the necessity of it. If, however, we are not blind to what is evident to all the rest of the world, equal danger may be apprehended from the citizens of a hostile power, before war is actually declared as after, perhaps more, because less suspicion is entertained; and some citizens of a neutral power are equally dangerous with the others. What has given France possession of the Netherlands, Geneva, Switzerland and almost all Italy, and enables her to domineer over so many other countries, lately powerful and completely independent, but that her arts have preceded her arms, the smooth words of amity, peace, and universal love, by seducing weak minds, have led to an unbounded confidence, which has ended in their destruction, and they have now to deplore the infatuation which led them to court a fraternal embrace from a bosom in which a dagger was concealed.

In how many countries, alien friends as to us, dependent upon them, are there warm partisans not nominally French citizens but completely illuminated with French principles, electrified with French enthusiasm, and ready for any sort of revolutionary mischief! Are we to be guarded against the former and exposed to the latter? No, gentlemen, If with such examples before their eyes, congress had either confined their precaution to a war in form, or to citizens of France only, losing all sense of danger to their country in a regard to nominal distinctions, they would probably justly have deserved the charge of neglecting their country's safety in one of its most essential points, and hereafter the very men who are now clamorous against them for exercising a judicious foresight, might too late have had reason to charge them, (as many former infatuated governments in Europe may now fairly be charged by their miserable deluded fellow citizens) as the authors of their country's

ruin. But those who object to this law seem to pay little regard to considerations of this kind, and to entertain no other fear but that the President may exercise this authority for the mere purpose of abusing it. There is no end to arguments or suspicions of this kind. If this power is proper it must be exercised by somebody. If from the nature of it it could be exercised by so numerous a body as Congress, yet as Congress are not constantly sitting, it ought not to be exercised by them alone. If they are not to exercise it, who so fit as the President? What interest can he have in abusing such an authority? But on this occasion, as on others of the like kind, gentlemen think it sufficient to shew, not that a power is likely to be abused (which is all that can be prudently guarded against), but that it possibly may, and therefore to guard against the possibility of an abuse of power, the power is not at all to be exercised.

The argument would be just as good against his acknowledged powers, as any others, that the legislature may occasionally confide to him. Suppose he should refuse to nominate to any office? or to command the army or navy? or should assign frivolous reasons against every law, so that no law could be passed but with the concurrence of two thirds of both houses! Suppose Congress should raise an army without necessity, lay taxes where there was no occasion for money, declare war from mere caprice, lay wanton and oppressive restraints on commerce, or in a time of imminent danger trifle with the safety of their country, to gain a momentary breath of popularity at the hazard of their country's ruin! All this they may do. Does any man of candour, who does not believe every thing they do wrong, apprehend that any of these things will be done? They have the power to do them because the authority to pass very important and necessary acts of legislation on all those subjects, and in regard to which discretion must be left, unavoidably implies that as it may be exercised in a right manner, it may, if no principle prevent it, be exercised in a wrong one. If the state legislatures should combine to choose no more senators, they may abolish the constitution without the danger of committing treason. If to prevent a House of Representatives being in existence, they should keep no law in being for a similar branch of their own, deeming the abolition of the government of the United States cheaply purchased by such a sacrifice, they may do this. They have the same power over the election of a President and vice President. What is the security against abuse in any of these cases? None, but the precautions taken to procure a proper choice, which, if well exercised, will at least secure the public against a wanton abuse of power, though nothing can secure them absolutely against the common frailty of man, or the possibility of bad men, if accidentally invested with power, carrying it into a dangerous extreme. We must trust some persons, and as well as we can submit to any collateral evil which may arise from a provision for a great and indispensable good that can only be obtained through the medium of human imperfection. At the same time it may be observed, that in the case of the President or any executive or judicial officer wantonly abusing his trust, he is liable to impeachment, and there are frequent opportunities of engaging the members of the legislature, if their conduct is not acceptable to their constituents.

The clause in the constitution, declaring that the trial of all crimes, except by impeachment, shall be by jury, can never in reason be extended to amount to a prohibition of perpetual residence of all sorts of foreigners,

unless convicted of some crime, but is evidently calculated for the security of any citizen, a party to the instrument or even of a foreigner if resident in the country, who when charged with the commission of a crime against the municipal laws for which he is liable to punishment, can be tried for it in no other manner.

The second objection is, "That an alien coming into the country, on the faith of an act stipulating that in a certain time and on certain conditions he may become a citizen, to remove him in an arbitrary manner before that time would be a breach of public faith."

With regard to this, it may be observed, that undoubtedly the faith of government ought under all circumstances, and in all possible situations, to be preserved sacred. If therefore, in virtue of this law, all aliens from any part of the world had a right to come here, stay the probationary time, and become citizens, the act in question could not be justified, unless it could be shewn that a real (not a pretended) over-ruling public necessity to which all inchoate acts of legislation must forever be subject, occasioned a partial repeal of it. But there are certain conditions, without which no alien can ever be admitted, if he stay ever so long; and one is, that during a limited time (two years in the case of aliens then resident; five in the case of aliens arriving after) he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. If his conduct be different, he is no object of the naturalization law at all, and consequently no implied compact was made with him. If his conduct be conformable to that description, he is no object of the alien law to which the objection is applied, because he is not a person whom the President is empowered to remove, for such a person could not be deemed dangerous to the peace and safety of the United States, nor could there be reasonable grounds to suspect such a man of being concerned in any treasonable or secret machinations against the government, in which cases alone the removal of any alien friend is authorized. Besides any alien coming to this country must, or ought to know, that this being an Independent nation, it has all the rights concerning the removal of aliens which belong by the law of nations to any other; that while he remains in the country in the character of an alien, he can claim no other privilege than such as an alien is entitled to; and consequently, whatever risque he may incur in that capacity, is incurred voluntarily, with the hope that in due time by his unexceptionable conduct, he may become a citizen of the United States. As there is no end to the ingenuity of man, it has been suggested that such a person, if not a citizen, is a denizen, and therefore cannot be removed as an alien. A denizen in those laws from which we derive our own, means a person who has received letters of denization from the king, and under the royal government such a power might undoubtedly have been exercised. This power of denization is a kind of partial naturalization, giving some, but not all the privileges of a natural born subject. He may take lands by purchase or devise, but cannot inherit.

The issue of a denizen born *before* denization cannot inherit; but if born *after* may, the ancestor having been able to communicate to him inheritable blood. But this power of the crown was thought so formidable that it is expressly provided by act of parliament, that no denizen can be

a member of the Privy Council, or of either House of Parliament, or have any office of trust civil or military; or be capable of any grant of lands from the crown. Upon the dissolution of the royal government, the whole authority of naturalization, either whole or partial, belonged to the several states, and this power the people of the states have since devolved on the Congress of the United States. Denization therefore (in the sense here used) is a term unknown in our law, since the right was not derived from any general legislative authority, but from a special prerogative of the crown, to which parliamentary restrictions afterwards were applied. So much so, that if an act of Parliament had passed, giving certain rights to an alien with restrictions exactly similar to those of a denizen. I imagine he would not have been called a denizen; because the royal authority was not the source from which his rights were derived. As to acts of naturalization themselves; they are liable in England, by an express law to certain limitations, one of which is, that the person naturalized is incapable of being a member of the privy council; or either house of parliament, or of holding offices or grants from the crown: Yet I never heard, nor do I believe that such a person was ever called a denizen; for which, as there is no foundation in precedent, or in the constitution of the United States, I presume it is a distinction without solidity: Fixed principles of law cannot be grounded on the airy imagination of man.

The third objection is, "That it is inconsistent with the following clause in the constitution, viz.

"The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on said importation not exceeding ten dollars for each person."

I am not satisfied, as to this objection, that it is sufficient to over-rule it, to say the words do not express the real meaning, either of those who formed the constitution, or those who established it, although I do verily believe in my own mind, that the article was intended only for slaves, and the clause was expressed in its present manner to accommodate different gentlemen, some of whom could not bare the name *slaves*, and others had objections to it. But though this probably is the real truth, yet, if in attempting to compromise, they have unguardedly used expressions that go beyond their meaning, and there is nothing but private history to elucidate it, I shall deem it absolutely necessary to confine myself to the written instrument. Other reasons may make the point doubtful, but at present I am inclined to think it must be admitted; that congress prior to the year 1808, cannot prohibit the migration of free persons to a particular state, existing at the time of the constitution, which such state shall, by law, agree to receive. The states then existing, therefore, till 1808 may (we will say) admit the migration of persons to their own states, without any prohibitory act of congress.—This they may do upon principles of general policy, and in consistence with all their other duties. The states are expressly prohibited from entering into an engagement or contract with another state, or engaging in war, unless actually invaded, or in such imminent danger, as will not admit of delay. The avenues to foreign connection being thus carefully closed, it will scarcely be contended, that in case of war, a state could, either directly or indirectly,

permit the migration of enemies. If they did, the United States could certainly without any impeachment of the general right of allowing migration, in virtue of their authority to repel invasion, prevent the arrival of such. And as such invasion may be attempted without a formal war, and Congress have an express right to protect against invasion, as well as to repel it, I presume Congress would also have authority to prevent the arrival of any enemies, coming in the disguise of friends, to invade their country. But, admitting the right to permit migration in its full force, the persons migrating on their authority must be subject to the laws of the country, which consist not only of those of the particular state, but of the United States. While aliens, therefore, they must remain in the character of aliens; and, of course, upon the principles I have mentioned, be subject to a power of removal, in certain cases recognized in the law of nations; nor can they cease to be in this situation, until they become citizens of the United States; in which case they must obey the laws of the union as well as of the particular state they reside in. But, gentlemen argue as if because the states had a right to permit migration the migrants were under a sort of special protection of the state admitting it, lest the United States, merely to disappoint the purpose of migration, should exercise an arbitrary authority of removal without any cause at all. It would be just as consistent to say, that if such migrant was charged with a murder on the high seas, or in any fort or arsenal of the United States, he should not be tried for it in a court of the United States, lest the court and juries, out of ill will to the state, should combine to procure his conviction and punishment, in all events, to defeat the state law. The two powers may undoubtedly be made compatible, if the legislatures of the particular states, and the government of the United States do their duty, without which presumption, not an authority given by the constitution can exist. They surely are more compatible than the collateral powers of taxation, which, under each government, go to an unlimited extent, but the very nature of which forbids any other limitation than a sense of moral right and justice. If we scepticize in the manner of some gentlemen on this subject, suppose each legislature should tax to the amount of 100 in the pound; each has the power; but is such an exercise of it more apprehended than we apprehend an earthquake to swallow us all up at this very moment? All systems of government, suppose they are to be administered by men of common sense and common honesty. In our country, as all ultimately depends on the voice of the people, they have it in their power, and it is to be presumed they generally will chuse men of this description; but if they will not, the case to be sure is without remedy. If they chuse fools, they will have foolish laws. If they chuse knaves they will have knavish ones. But this can never be the case until they are generally fools or knaves themselves, which, thank God, is not likely ever to become the character of the American people.

Having said what I thought material as to the alien laws, upon the particular objections to them, I now proceed to discuss the objections which have been made to what is called the sedition act, one of which equally applies to the alien laws as well as to this. But I think it proper previously to read the law itself.

The objections (so far as I have heard them) to this act are as follow :

1. (And this applies to the alien law also) That there is no specific power given to pass an act of this description, though in the particular specific powers given there is authority conveyed as to other offences specially named.

2. That this law is not warranted by a clause in the constitution, conveying legislative authority, which after designating particular objects, adds :

“ And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other power vested by this constitution in the government of the United States, or in any department or officer thereof.”—Because it is not necessary and proper to pass any such law in order to carry into execution any of those powers.

3. That admitting the former positions are not maintainable, yet the exercise of this authority is compatible with the following amendment to the constitution, viz.

“ Congress shall make no law respecting an establishment of religion, or prohibiting the full exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

With regard to the first objection, I readily acknowledge, that soon after the constitution was proposed, and when I had taken a much more superficial view of it than I was sensible of at the time, I did think Congress could not provide for the punishment of any crimes but such as are specifically designated in the particular powers enumerated. I delivered that opinion in the convention at North-Carolina, in the year 1788, with a perfect conviction, at the time, that it was well founded. But I have since been convinced it was an erroneous opinion, and my reasons for changing it I shall state to you as clearly as I am able.

It is in vain to make any law unless some sanction be annexed to it, to prevent or punish its violation. A law without it might be equivalent to a good moral sermon, but bad members of society would be as little influenced by one as the other. It is, therefore, necessary and proper, for instance, under the constitution of the United States, to secure the effect of all laws which impose a duty on some particular persons, by providing some penalty or punishment if they disobey. The authority to provide such is conveyed by the following general words in the constitution, at the end of the objects of legislation particularly specified: “ To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.” A penalty alone would not in every case be sufficient, for the offender might be rich and disregard it, or poor, though a wilful offender, and unable to pay it. A fine, therefore, will not always answer the purpose, but imprisonment must be in many cases added, though a wise and humane legislature will always dispense with this, where the importance of the case does not require it. But if it does, from the very nature of the punishment, it becomes a *criminal*, and not a *civil* offence; the grand jury must indict, before the offender can be convicted.

This general position may be illustrated by a variety of instances under the penal code of the United States, which have, I believe, never been objected to as unconstitutional, though there have never been wanting

penetrating and discerning members who were ready enough to take exceptions where they found any plausible ground for them. I shall enumerate a few.

In the act entitled, an act for the punishment of certain crimes against the United States (vol. 1. Swift's edition, p. 100) among other crimes specified, are the following.

Murder or larceny in a fort belonging to the United States. Misprision of felony committed in any place under the sole and exclusive jurisdiction of the United States. Stealing or falsifying a record of any court of the United States. Perjury in any court of the United States. Bribing a judge of the United States. Obstructing the execution of any kind of process issuing from a court of the United States.

In the collection act, 1 vol. p. 237, it is provided, that in all cases where an oath is by that act required from a master or other person having command of a ship or vessel, or from an owner or assignee of goods, wares, and merchandize, his or her factor or agent, if the person so swearing shall swear falsely, such person shall, on indictment and conviction thereof, be punished by fine or imprisonment, or both, in the discretion of the court, before whom such conviction shall be had, so as the fine shall not exceed one thousand dollars, and the term of imprisonment shall not exceed twelve months.

In the act laying duties on distilled spirits, (vol. i. p. 324) in the 39th section it is provided as follows :

“ If any supervisor, or other officer of inspection, in any criminal prosecution against them, shall be convicted of oppression or extortion in the execution of his office, he shall be fined not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court; and shall also forfeit his office.”

These instances deserve great consideration; because I believe no candid man will deny that these provisions were constitutional exercises of authority, within the scope of the general authority conveyed, though not specially named as objects which it should be competent for Congress to provide for. And they certainly derive weight from the consideration, that the principle of them (which I believe was the case) was never objected to, though the expediency of some of the provisions may have been.

In further illustration of this subject, I shall state a case which was determined in this court—The United States against Worrell, published in Mr. Dallas's reports, p. 38. Where there was an indictment against the defendant for attempting to bribe Mr. Coxe, the Commissioner of the Revenue. The defendant was found guilty, and afterwards a motion was made in arresting judgment, assigning, together with some technical objections, this general one, that the Court had no cognizance of the offence, because no act of Congress had passed creating the offence and prescribing the punishment, but it was solely on the foot of the common law. The very able and ingenious gentleman who is the reporter of that case, and was the defendant's Council in it, in the course of his argument, makes the following observations, part of which are remarkably striking and pertinent to my present subject: “ In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States; and

" may define and punish piracies and felonies committed on the high seas,
 " and offences against the law of nations. Art. i. 8. And so, likewise,
 " Congress may make all laws which shall be necessary and proper for car-
 " rying into execution, the powers of the General Government. But here
 " is no reference to a common law authority : Every power is matter of
 " definite and positive grant ; and the very powers that are granted cannot
 " take effect until they are exercised through the medium of a law.
 " Congress had undoubtedly a power to make a law, which should render
 " it criminal to offer a bribe to the commissioner of the Revenue ; but
 " not having made the law, the crime is not recognized by the Federal
 " code, Constitutional or Legislative ; and consequently, it is not a sub-
 " ject on which the Judicial authority of the Union can operate." So far
 the observations of the defendant's Counsel. Judge Chase, who on that
 occasion differed from Judge Peters, as to the common law jurisdiction
 of the Court, held, that under the 8th section of the first article, which
 I am now considering, although bribery is not among the crimes and of-
 fences specially mentioned, it is certainly included in that general provi-
 sion ; and Congress might have passed a law on the subject which would
 have given the Court cognizance of the offence. Judge Peters was of
 opinion, that the defendant was punishable at common law ; but that it
 was competent for Congress to pass a Legislative act on the subject.

I conclude, therefore, that the first objection is not maintainable.

With regard to the second objection, which is, that this law is not war-
 ranted by that clause in the constitution authorising Congress to pass all
 laws which shall be necessary and proper, for carrying into execution, the
 powers specially enumerated, and all other powers vested, by the constitu-
 tion, in the government of the United States, or in any department or
 officer thereof : because, it is not necessary and proper to pass any such
 law, in order to carry into execution any of those powers—it is to be ob-
 served, that, from the very nature of the power, it is, and must be, discre-
 tionary.—What is necessary and proper, in regard to any particular sub-
 ject, cannot, before an occasion arises, be logically defined ; but must de-
 pend upon various extensive views of a case, which no human foresight
 can reach. What is necessary and proper in a time of confusion and ge-
 neral disorder, would not, perhaps, be necessary and proper in a time of
 tranquillity and order. There are considerations of policy, not questions
 of law, and upon which the legislature is bound to decide according to its
 real opinion of the necessity and propriety of any act particularly in con-
 templation. It is, however, alledged, that the necessity and propriety of
 passing collateral laws for the support of others, is confined to cases
 where the powers are delegated, and does not extend to cases which have
 a reference to general danger only. The words are general, " for carry-
 " ing into execution the special powers previously enumerated, and all
 " other powers vested by the constitution in the government of the Uni-
 " ted States, or any department or officer thereof." If, therefore, there be
 any thing necessary and proper for carrying into execution any or all of
 those powers, I presume, that may be constitutionally enacted. Two ob-
 jects are aimed at by every rational government, more especially by free
 ones ; 1. That the people may understand the laws, and voluntarily obey
 them. 2. That if this be not done by any individual, he shall be com-
 pelled to obey them, or punished for disobedience. The first object is,

undoubtedly the most momentous ; for, as the legitimate object of every government is the happiness of the people committed to its care, nothing can tend more to promote this than that, by a voluntary obedience to the laws of the country, they should render punishments unnecessary. This can never be the case in any country but a country of slaves, where gross misrepresentation prevails, and any large body of the people can be induced to believe that laws are made either without authority, or for the purpose of oppression. Ask the great body of the people who were deluded into an insurrection in the western parts of Pennsylvania, what gave rise to it? They will not hesitate to say, that the government had been vilely misrepresented, and made to appear to them in a character directly the reverse of what they deserved. In consequence of such misrepresentations, a civil war had nearly desolated our country, and a certain expence of near two millions of dollars was actually incurred, which might be deemed the price of libels, and among other causes made necessary a judicious and moderate land tax, which no man denies to be constitutional, but is now made the pretext of another insurrection. The liberty of the press is, indeed, valuable—long may it preserve its lustre ! It has converted barbarous nations into civilized ones—taught science to rear its head—enlarged the capacity—increased the comforts of private life—and, leading the banners of freedom, has extended her sway where her very name was unknown. But, as every human blessing is attended with imperfection, as what produces, by a right use, the greatest good, is productive of the greatest evil in its abuse, so this, one of the greatest blessings ever bestowed by Providence on his creatures, is capable of producing the greatest good or the greatest mischief. A pen, in the hands of an able and virtuous man, may enlighten a whole nation, and, by observations of real wisdom, grounded on pure morality, may lead it to the path of honour and happiness.—The same pen in the hands of a man equally able, but with vices as great as the other's virtues, may, by arts of sophistry easily attainable, and inflaming the passions of weak minds, delude many into opinions the most dangerous, and conduct them to actions the most criminal. Men who are at a distance from the source of information must rely almost altogether on the accounts they receive from others. If their accounts are founded in truth, their heads or hearts must be to blame, if they think or act wrongly. But, if their accounts are false, the best head and the best heart cannot be proof against their influence ; nor is it possible to calculate the combined effect of innumerable artifices, either by direct falsehood, or invidious insinuations, told day by day, upon minds both able and virtuous. Such being unquestionably the case, can it be tolerated in any civilized society that any should be permitted with impunity to tell falsehoods to the people, with an express intention to deceive them, and lead them into discontent, if not into insurrection, which is so apt to follow ? It is believed no government in the world ever was without such a power. It is, unquestionably possessed by all the state governments, and probably has been exercised in all of them : Sure I am, it has in some. If necessary and proper for them, why not equally so, at least, for the government of the United States, naturally an object of more jealousy and alarm, because it has greater concerns to provide for ? Combinations to defeat a particular law are admitted to be punishable. Falsehoods, in order to produce such combinations, I should presume, would come within

the same principle, as being the first step to the mischief intended to be prevented ; and if such falsehoods, with regard to one particular law, are dangerous, and therefore ought not to be permitted without punishment— Why should such which are intended to destroy confidence in government altogether, and, thus, induce disobedience to every act of it ? It is said, libels may be rightly punishable in monarchies, but there is not the same necessity in a republic. The necessity in the latter case, I conceive greater, because in a republic more is dependent on the good opinion of the people for its support, as they are directly or indirectly the origin of all authority, which of course must receive its bias from them. Take away from a republic the confidence of the people, and the whole fabric crumbles into dust.

I have only to add, under this head, that in order to obviate any probable ill use of this large and discretionary power, the constitution and certain amendments to it, have prohibited in express words the exercise of some particular authorities which otherwise might be supposed to be comprehended within them. Of this nature is the prohibitory clause relating to the present object which I am to consider under the next objection.

4. That objection is, That the act is in violation of this amendment of the constitution. (3d vol. Swift's Edition, p, 455. Article 3d.)

“ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The question then is,

Whether this law has abridged the freedom of the press ?

Here is a remarkable difference in expressions as to the different objects in the same clause. They are to make no law *respecting* an establishment of religion, or prohibiting the free exercise thereof : or *abridging* the freedom of speech, or of the press. When as to one object they entirely prohibit any act whatever, and as to another object only limit the exercise of the power, they must in reason be supposed to mean different things. I presume, therefore, that Congress may make a law *respecting* the press, provided the law be such as not to *abridge its freedom*. What might be deemed the freedom of the press, if it had been a new subject, and never before in discussion, might indeed admit of some controversy.—But so far as precedent habit, laws and practices are concerned, there can scarcely be a more definite meaning than that which all these have affixed to the term in question.

We derive our principles of law originally from England. There the press, I believe, is as free as in any country of the world, and so it has been for near a century. The definition of it is, in my opinion, no where more happily or justly expressed than by the great Author of the Commentaries on the Laws of England, which book deserves more particular regard on this occasion, because for near 30 years it has been the manual of almost every student of law in the United States, and its uncommon excellence has also introduced it into the libraries, and often to the favourite reading of private gentlemen ; so that his views of the subject could scarcely be unknown to those who framed the Amendments to the constitution, and if they were not, unless his explanation had been satisfactory, I presume the Amendment would have been more particularly worded, to guard against any possible mistake. His explanation is as follows :

“ The Liberty of the Press is indeed essential to the nature of a free
 “ state. And this consists in laying no *previous* restraints upon publicati-
 “ ons, and not in freedom from censure for criminal matter when publish-
 “ ed. Every freeman has an undoubted right to lay what sentiments he
 “ pleases before the public ; to forbid this, is to destroy the freedom of the
 “ press : but if he publishes what is improper, mischievous, or illegal, he
 “ must take the consequence of his own temerity. To subject the press
 “ to the restrictive power of a Licensor, as was formerly done, both before
 “ and since the revolution, is to subject all freedom of sentiment to the
 “ prejudices of one man, and make him the arbitrary and infallible judge
 “ of all controversial points in learning, religion, and government. But
 “ to punish (as the law does at present) any dangerous or offensive writ-
 “ ings, which, when published, shall on a fair and impartial trial be ad-
 “ judged of a pernicious tendency, is necessary for the preservation of
 “ peace and good order, of government and religion, the only solid found-
 “ dations of civil liberty. Thus the will of individuals is still left free ;
 “ the abuse only of that free will is the object of legal punishment. Nei-
 “ ther is any restraint hereby laid upon freedom of thought or enquiry :
 “ liberty of private sentiment is still left ; the disseminating or making
 “ public, of bad sentiments, destructive of the ends of society, is the crime
 “ which society corrects. A man (says a fine writer on this subject) may
 “ be allowed to keep poisons in his closet, but not publicly to vend them
 “ as cordials. And to this we may add, that the only plausible argument
 “ heretofore used for the restraining the just freedom of the press, “ that
 “ it was necessary to prevent the daily abuse of it,” will entirely lose its
 “ force when it is shewn (by a reasonable exercise of the laws) that the
 “ press cannot be abused to any bad purpose, without incurring a suitable
 “ punishment : whereas it never can be used to any good one, when under
 “ the controul of an Inspector. So true will it be found, that to censure
 “ the licentiousness, is to maintain the liberty of the press.” 4 Black.
 Com. 151.

It is believed, that in every state in the union the common law princi-
 ples concerning libels apply ; and in some of the states words similar to the
 words of the amendment are used in the constitution itself, or a contem-
 porary bill of rights of equal authority, without ever being supposed to
 exclude any law being passed on the subject. So that there is the streng-
 est proof that can be of a universal concurrence in America on this point,
 that the freedom of the press does not require that libellers shall be pro-
 tected from punishment.

But in some respects the act of congress is much more restrictive than
 the principles of the common law, or than perhaps the principles of any
 state in the union. For under the law of the United States the truth of
 the matter may be given in evidence, which at common law in criminal
 prosecutions was held not to be admissible ; and the punishment of fine
 and imprisonment, which at common law was discretionary, is limited in
 point of severity, though not of lenity. It is to be observed too, that by
 the express words of the act both malice and falsehood must combine in the
 publication, with the seditious intent particularly described. So that if
 the writing be false, yet not malicious, or malicious, and not false, no
 conviction can take place. This therefore fully provides for any pub-
 lication arising from inadvertency, mistake, false confidence, or any thing

short of a wilful and atrocious falshood. And none surely will contend that the publication of such a falshood is among the indefeasible rights of men, for that would be to make the freedom of liars greater than that of men of truth and integrity.

I have now said all I thought material on these important subjects. There is another upon which it is painful to speak, but the notoriety as well as the official certainty of the fact, and the importance of the danger make it indispensable. Such incessant calumnies have been poured against the government for supposed breaches of the constitution, that an insurrection has lately began for a cause where no breach of the constitution is or can be pretended. The grievance is the land tax act, an act which the public exigencies rendered unavoidable, and is framed with particular anxiety to avoid its falling oppressively on the poor, and in effect the greatest part of it must fall on rich people only. Yet arms have been taken to oppose its execution: officers have been insulted: the authority of the law resisted: and the government of the United States treated with the utmost defiance and contempt. Not being thoroughly informed of all particulars, I cannot now say within what class of offences these crimes are comprehended. But as some of the offenders are committed for treason, and many certainly have been guilty of combinations to resist the law of the United States, I think it proper to point your attention particularly to those subjects. The provisions in regard to the former, so far as they may at present be deemed material or instructive, are as follow :

(*Here the passages referred to were read.*)

The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions, and different determinations on the import of those words. But I think I am warranted in saying, that if in the case of the insurgents who may come under your consideration the intention was to prevent by force of arms the execution of any act, of the Congress of the United States altogether (as for instance the land tax act, the object of their opposition) any forcible opposition calculated to carry that intention into effect was a levying of war against the United States, and of course an act of treason. But if the intention was, merely to defeat its operation in a particular instance, or through the agency of a particular officer, from some private or personal motive, though a higher offence may have been committed, it did not amount to the crime of treason. The particular motive must however be the sole ingredient in the case, for if combined with a general view to obstruct the execution of the act, the offence must be deemed treason.

With regard to the number of witnesses in treason, I am of opinion that two are necessary on the indictment as well as upon the trial in court.

The provision in the constitution, that the two witnesses must be to the same overt-act, (or actual deed constituting the treasonable offence) was in consequence of a construction which had prevailed in England, that though two witnesses were required to prove an act of treason, yet if one witness proved one act, and another witness another act of the same species of treason, (as for instance that of levying war) it was sufficient; a decision which has always appeared to me contrary to the true intention of the law which made two witnesses necessary—this provision being, as I conceived, intended to guard against fictitious charges of treason, which an un-

principled government might be tempted to support and encourage, even at the expence of perjury, a thing much more difficult to be effected by two witnesses than one.

An act of Congress which I have already read to you (that commonly called the sedition act) has specially provided in the manner you have heard, against combinations to defeat the execution of the laws. The combinations punishable under this act must be distinguished from such as in themselves amount to treason, which is unalterably fixed by the constitution itself. Any combinations, therefore, which before the passing of this act, would have amounted to treason, still constitute the same crime. To give the act in question a different construction, would do away altogether the crime of treason as committed by levying war, because no war can be levied without a combination for some of the purposes stated in the act, which must necessarily constitute a part though not the whole of the offence.

Long, gentlemen, as I have detained you, for which the great importance of the occasion, I trust, is a just apology, it will be useful to recollect, that ever since the first formation of the present government, every act which any extraordinary difficulty has occasioned, has been uniformly opposed before its adoption, and every art practised to make the people discontented after it: without any allowance for the necessity which dictated them some seem to have taken it for granted that credit could be obtained without justice, money without taxes, and the honour and safety of the United States only preserved by a disgraceful foreign dependence. But, notwithstanding all the efforts made to vilify and undermine the government, it has uniformly rose in the esteem and confidence of the people. Time has disproved arrogant predictions; a true knowledge of the principles and conduct of the government has rectified many gross misrepresentations; credit has risen from its ashes; the country has been found full of resources, which have been drawn without oppression, and faithfully applied to the purposes to which they were appropriated; justice is impartially administered; and the only crime which is fairly imputable is, that the minority have not been suffered to govern the majority, to which they had as little pretension upon the ground of superiority of talents, patriotism, or general probity, as upon the principles of republicanism, the perpetual theme of their declamation. If you suffer this government to be destroyed, what chance have you for any other? A scene of the most dreadful confusion must ensue. Anarchy will ride triumphant, and all lovers of order, decency, truth and justice be trampled under foot. May that God whose peculiar providence seems often to have interposed to save these United States from destruction, preserve us from this worst of all evils! And may the inhabitants of this happy country deserve his care and protection by a conduct best calculated to obtain them.

Philadelphia, May 15, 1799.

SIR,

THE Grand Jury of the Circuit court of the District of Pennsylvania, have heard with great satisfaction, the Charge delivered to them, on the opening of the Court.

At a time like the present, when false philosophy and the most danger-

Such and wicked principles are spreading with rapidity, under the imposing garb of Liberty, over the fairest countries of the Old World—they are convinced, that the publication of a Charge, fraught with such clear and just observations on the nature and operation of the constitution and laws of the United States will be highly beneficial to the citizens thereof.

With these sentiments strongly impressed on their minds, they unanimously request, that a copy of the said charge may be delivered to them, for publication; especially for the information of those, who are too easily led by the misrepresentations of evil disposed persons, into the commission of crimes, ruinous to themselves, and against the peace and dignity of the United States.

Isaac Wharton, Foreman, J. Ross, Edward Pennington, Philip Nicklin, Joseph Parker Norris, Benjamin W. Morris, Thomas M. Willing, Robert Ralston, John Craig, Samuel Coates, David H. Conyngham, John Perot, James C. Fisher, Daniel Smith, Gideon Hill Wells, William Montgomery, W. Bulkley.

Honorable Judge IREDELL.

To the Gentlemen of the Grand Jury of the United States, for the district of Pennsylvania.

Gentlemen,

I receive with great sensibility the honor of this address, from gentlemen whom I personally respect so much. Believing, as I have long done, that the constitution and laws of the United States afford the highest degree of rational liberty which the world ever saw, or of which perhaps mankind are capable, I have seen with astonishment and regret, attempts made in the pursuit of visionary chimeras, to subvert or undermine so glorious a fabric, equally constructed for public and private security. It cannot but be extremely pleasing to me, that the sentiments on this subject I delivered in my charge, should meet with your entire approbation; and as you are pleased to suppose the publication of them may be of some service in correcting erroneous opinions, I readily consent to it, considering your sanction of them as giving them an additional value, which will increase the hope of their producing a good effect.

JAMES IREDELL.

Philadelphia, May 15, 1799.

WEDNESDAY, MAY 1, *Ten o'clock A. M.*

I N D I C T M E N T.

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA, IN
AND FOR THE PENNSYLVANIA DISTRICT OF THE MIDDLE CIRCUIT!

THE GRAND INQUEST of the United States of America, for the Pennsylvania District, upon their respective oaths and affirmations, do present, That John Fries, late of the county of Bucks, in the District of Pennsylvania, he being an inhabitant of, and residing within, the said United States, to wit, in the district aforesaid, and under the protection of the laws of the said United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance and fidelity, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquility of the said United States to disturb, on the Seventh day of March, in the year of our Lord one thousand seven hundred and ninety nine at Bethlehem, in the county of Northampton, in the district aforesaid, unlawfully, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him the said John Fries, he, the said John Fries afterwards, that is to say, on the said Seventh day of March in the said year of our Lord one thousand seven hundred and ninety nine, at the said county of Northampton in the district aforesaid, with a great multitude of persons, whose names at present are unknown to the Grand Inquest aforesaid, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, clubs, staves and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did lawfully and traitorously assemble and join themselves together against the said United States, and then and there, with force and arms, did lawfully and traitorously, and in a warlike and hostile manner, array and equip themselves against the said United States, and then and there, with force and arms, in pursuance of such their traitorous intentions and purposes aforesaid, he the said John Fries with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy public war against the said United States, contrary to the duty of his said allegiance and fidelity, against the constitution, peace and dignity of the said United States, and also against the form of the act of the Congress of the said United States, in such case made and provided.

WILLIAM RAWLE,

Attorney of the United States

for the Pennsylvania District.

The prisoner having been set to the bar, pleaded NOT GUILTY.

The petit jury impannelled, consisted of the following gentlemen :

WILLIAM JOLLY, City
 SAMUEL MITCHELL, Bucks
 RICHARD LEED, ditto
 ANTHONY CO. HERBERT, City
 ALEXANDER FULLERTON, City
 JOHN SINGER, City
 WILLIAM RAMSAY, Bucks
 SAMUEL RICHARDS, City
 GERARDUS WYNKOPF, Bucks
 JOSEPH HURNICN, City
 PHILIP WALTER, Northampton
 JOHN RHOAD, Northampton.

Some difficulties arose as to the two latter gentlemen being qualified, they being Germans, and not sufficiently understanding the English language : however it was agreed that any difficulties of that nature might be explained to them, and it was ordered that they would understand many of the witnesses better than others, several of whose being Germans also, and could not speak English, on which account Mr. Erdman was sworn for interpreter.

MR. SITGREAVES opened the trial as follows :

GENTLEMEN OF THE JURY,

BY the indictment which has been just read to you, you perceive that John Fries, the prisoner at the bar, has put himself on trial before you, on an accusation of having committed the greatest offence which can be perpetrated in this, or any other country, and it will devolve on you to determine, according to the evidence which will be produced to you, on the important question of life or death. It is the duty of those that prosecute, to open to you, as clear as they are able, those principles of law which apply to the offender, and then to state to you the testimony with which the accusation is supported. This duty has devolved upon me, and I hope, while I regard my duty as accuser, I shall do it in such a way as shall do no injustice to the prisoner. However, if I should be incorrect, there are sufficient opportunities for me to be corrected by the vigilance which the council engaged on behalf of the prisoner will use, and the order which the court will observe. There are sufficient to correct any mis-statements, but I will use my utmost endeavours to be guilty of none.

The prisoner is indicted of the crime of treason. Treason is defined in the constitution of the United States, Section 3. Art. 3. in the words following :

“Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.”

This crime appears to be limited to two descriptions : the one, levying war against the United States, and the other adhering to its enemies. With respect to the latter branch of the description, there will be no oc-

reason for any explanation, or to call your attention in the least to it, because it is not charged upon the prisoner; he is charged with having committed treason in levying war.

This expression, phrased, by, or description as adopted by our constitution, is borrowed from a statute of Great Britain, passed in the reign of Edward III. which has, ever since it passed, commanded the veneration and respect of that nation, almost equal with their great charter: it is considered as a great security to their liberties. Indeed the uniform and unanimous consent given to this statute, through a great lapse of time, by the most able writers on law; its never having undergone the least alteration amidst the most severe revolutions, and its adoption into the constitution of the United States, without the least amendment, are sufficient arguments to prove its worth. I shall state to you, as far as is necessary to the present application of that statute, the most able and judicious explications, but without recurring to a variety of authorities which might be quoted.

The crime of treason, as it has been laid down by those writers, generally allowed to be the most able on law, whose accuracy is unquestionable, is the highest crime that can possibly be committed against the good government of a nation, and a considerable inroad into the liberties of a subject. In discussing this crime I shall only recur to the notes which I have taken, and my own knowledge of the law; if that statement should be inaccurate, there are sufficient opportunities for amendment in the course of this trial. Treason consists in levying war against the government of the United States: it may confidently be said not only to consist in joining or aiding the hostile intentions of a foreign enemy; nor is it confined to rebellion in the broad sense in which that word is generally understood; or in the utter subversion of the government and its fundamental institutions; but it also consists in the raising a military force from among the people for the purpose of attaining any object with a design of opposing the lawful authority of the government by dint of arms, in any matter of public concern in which the insurgents have no particular interest distinct from the rest of the community. This is the best description of the crime of treason as it relates to the matter before you, which I am able to give. A tumultuously raising the people with force, for the purpose of subverting, or opposing the lawful authority of the government in which those insurgents have no particular interest distinct from the people at large.

Agreeable to the division made in the definition of treason by Lord Hale, it must consist both in levying war, and in levying war against the government of the United States. Respecting levying of war, it is to be understood, agreeable to the most approved authorities, that there must be an actual military array. I remark this because I think it proper to be particular in so essential and important an enquiry, and because I think we shall prove to you that this was actually done by the prisoner. Another thing I wish you to bear in mind is, that war may be sufficiently levied against the United States, although no violence be used, and although no battle be fought. It is not necessary that actual violence should take place, to prove the actual waging of war. If the arrangements are made, and the numbers of armed men actually appear, so as to procure the object which they have in view by intimidation, as well as by actual force, that will constitute the offence.

It must be war waged against the United States. This is an important distinction. A large assemblage of people may come together; in whatever numbers; however they may be armed or arrayed, or whatever degree of violence they may commit, yet that alone would not constitute treason: the treason must be known; it must be for a public and not a private revenge; it must be avowedly levying war against the United States; if people assemble in this hostile manner only to gratify revenge, or any other purpose independent of war against the United States, it will only amount to a riot; but if it is an object in which the person has no particular interest, this constitutes the offence of treason. There are a variety of instances which might be produced in order to illustrate this definition of the law, but it is not necessary to turn to them. Suffice it to say that it is the intention or end for which an insurrection is raised, which constitutes the crime. This of course you will have in mind when the testimony is gone into. I will just observe, as applicable to this case, that one instance which is defined, of the crime of treason is, to defeat the operation of the laws of the government; any insurrection, I will be bold to say, to defeat the execution of the public laws, amounts to treason. Having given you this explanation of treason, so far as I suppose is connected with the present awful occasion, I shall now proceed to state the amount of evidence we mean to produce, in order to prove that the unhappy prisoner was guilty of that high crime.

It will appear, gentlemen, from the testimony which will be presented to you, that during the latter months of the year 1793 disorders prevailed to an enormous extent throughout a large portion of the counties of Bucks, Northampton, and Montgomery, and that considerable difficulties attended the assessors for the direct tax in the execution of the duties of their office. It is not in the nature of this enquiry to explain for what purpose, or by what means the opposition was made: it is not necessary to say whether the complaints urged were well or ill founded, because it is a settled point that any insurrection for removing public grievances, whether the complaints be real or pretended, amounts to treason, because it is not the mode pointed out by law for obtaining redress. It will then be sufficient to show you that discontents did exist, and that in various townships of those counties; that in several townships, associations of the people were actually formed, in order to prevent the persons charged with the execution of those laws of the United States from performing their duty upon them, and more particularly to prevent the assessors from measuring their houses: this opposition was made at many public township meetings called for the purpose, in many instances resolutions were enacted into, and reduced to writing, solemnly forewarning the officers whose duty it was to execute the laws, and these, many times accompanied with threats if they should perform that duty. Not only so, but discontents prevailed to such an height, that even the friends of the government in that part were completely suppressed, by menaces against any who should assist those officers in their duty: repeated declarations were made, both at public, as well as at private meetings, that if any person should be arrested by the civil authority, such arrest would be followed by the rising of the people, in opposition to that authority, for the purpose of rescuing such arrested prisoners: it will appear to you farther, gentlemen, in the course of evidence, that during those discontents, indefatigable pains were taken by those who were charged with

the execution of the laws, to calm the fears, and to remove the misapprehensions of the infatuated people; for this purpose they read and explained the law to them, and informed them that they were misled into the idea that the law was not in force, for that it actually was; at the same time warning them of the consequences which would flow from opposition, and this was accompanied with promises that even their most capricious wishes would be gratified on their obedience. The favour was in many instances granted, that where any opposition was made to any certain person executing the office of assessor, in some townships proposals were made for the people to choose for themselves, but notwithstanding this accommodating offer, the opposition continued.

After having showed to you the general extent of this combination and dangerous conspiracy, which existed in all the latitude I have opened to your view, we shall next give in evidence full proof, that the consequences were, actual opposition and resistance: in some parts violence was actually used, and the assessors were taken and imprisoned by armed parties, and in other mobs assembled to compel them, either to deliver up their papers, or to resign their commissions; that in some instances they were threatened with bodily harm, so that in those parts, the obnoxious law did remain unexecuted in consequence of this alarm. Seeing the state of insurrection and rebellion had arisen to such a height, it became necessary, in order to support the dignity, and indeed the very existence of the government, that some means should be adopted to compel the execution of those laws, and warrants were in consequence issued against certain persons who had so opposed the laws: these processes being put into the hands of the marshal of the district, were served upon some of them: in some instances during the execution of that duty the marshal met with insult, and almost with violence: having however, got nearly the whole of the warrants served, he appointed head quarters for these prisoners to rendezvous at Bethlehem, where some of them were to enter bail for their appearance in the city, and others were to come to the city in custody, for trial. It will appear to you, that on the day thus appointed for the prisoners to meet, and when a number of them had actually assembled agreeable to appointment, that a number,—parties in arms, both horse and foot, more than an hundred men, accoutred with all their military apparatus, commanded in some instances by their proper officers, marched to Bethlehem, collected before the house in which were the marshal and prisoners, whom they demanded to be delivered up to them, and in consequence of refusal, they proceeded to act very little short of actual hostility, so that the marshal deemed it prudent to accede to their demands, and the prisoners were liberated.

This, gentlemen, is the general history of the insurrection, I shall now state to you the part which the unfortunate prisoner at the bar took in these hostile transactions. It will appear that the prisoner is an inhabitant of the township of lower Milford in the county of Bucks, that sometime in February last a public meeting was held at the house of one John Kline in that township, to consider in relation to this house tax, what was to be done: that at that meeting certain resolutions were entered into, and a paper signed; (we have endeavoured to trace this paper, so as to produce it to the court and jury, but have failed) this paper was signed by fifty two persons and committed to the hands of one of their num-

ber : John Fries was present at this meeting, and assisted in drawing up the paper, at which time his expressions against this law were extremely violent, and he threatened to shoot one of the assessors, Mr. Foulke, through the legs if he did proceed to assess the houses. Again, the prisoner, at a vendue, threatened another of the assessors, Mr. S. Clarke, that if he attempted to go on with the assessments he should be committed to an old stable, and there fed on rotten corn : We shall further prove that upon its being intimated by some of them to Mr. Chapman, principal assessor, that if they might choose their own assessors things would go on quietly, he directed that they should do so, but still they continued in opposition to the law, and would not choose an officer at all. A general meeting was called to read and explain the law to the people, and thus remove any wrong impressions and mis-apprehensions : the principal assessor was at that meeting, but the radicals, opposition and violence, and by the people, prevented him from doing so, which was an evident proof that they did not want to hear the law, and that they understood enough of it to oppose it : thus the benevolent intentions of that meeting was frustrated. We shall farther show you that the assessor of Lower Milford was intimidated so as to decline making the assessments, and that the principal assessor together with three other assessors, were obliged to go into that township to execute the law ; that they proceeded to the execution of their duty during a part of the day of the 5th of March last, without any impediment ; that at eleven o'clock in the morning, Mr. Chapman met, at the house of Jacob Fries in Lower Milford, with the prisoner, when he, the prisoner, declared his determination not to submit, but to oppose the law, and that by the next morning he could raise 700 men in opposition to it : that upon Mr. Chapman telling him, that many houses were assessed, the prisoner flew into a violent passion, absolutely declaring that it should soon be in this county as it was in France. We shall farther shew you, that at another time during the same day the prisoner met with two of the assessors Mr. Rodrick and Mr. Foulke, whom he warned not to proceed in the execution of their duty, accompanied with threats that if they did, they would be hurt, and left them in a great rage. Farther, he proceeded to collect parties, with whom he went in search of those men, and attacked them in executing their duty, one of them escaped, but the other he took, but not having got Mr. Rodrick, who appeared to be a particular object of resentment, he let Mr. Foulke go, telling him he would have them again the next day. He told Mr. Clarke that if he had met with Rodrick he would not have let him go so easy, and declared to him solemnly and repeatedly, that it was his determination to oppose the laws. We shall farther show you that, after having discharged Foulke, he proceeded to collect a large party in the township, in order to take the assessors the next day. Accordingly on the day following a numerous party, to wit, about 50 or 60, the greatest part of whom were in arms, collected together and pursued the assessors, and not finding them in that township, pursued them into another, in order, not only to chase them out of the township, but generally to prevent them executing their duty. This party collected, not only many of them in arms, but in military array, with drum and fife, and commanded by this Captain Fries and one Kuyder : Fries himself was armed with a large horse pistol. Thus equipped, they went to Quaker town, in order to accomplish

their purpose, where they found the assessors, two of whom they took, but Rick died. Fries ordered his men to fire at the man who fled, and the piece was snapped, but did not go off. Fries did then compel Foulke to deliver up to them his papers, but not finding in them what they expected, they were returned, but at the same time exacting a promise that he, the assessor, should not proceed in the valuation of the houses in lower Milford. Fries was in many instances extremely violent against this law, and pre-emptory in his determination not to submit to it, as will appear by the evidence.

When they left Quaker town they met with a travelling man who expressed some good will towards the government, and for that expression they mistreated him very much, and expressed their general dislike to all who favoured the same principles. During the time they were at Quaker town, information was received that the marshal had taken a number of persons prisoners in consequence of opposing the execution of this law, whereupon a determination was formed amongst these people to go and effect their rescue, and the people of Milford were generally invited to assist in this business. When they were going, they parted halted at the house of John Fries, and then a paper was signed, by which they bound themselves volunteers to go upon the execution of this design, this paper was written by the prisoner at the bar, and signed by him and the rest: therein they engaged to go and rescue the prisoners who had been arrested by the marshal. On the morning of the next day 20 or more of them met at the house of Conrad Marks, in arms, to go on with their design. John Fries was armed with a sword, and had a feather in his hat. On the road, as they went forward they were met by young Marks, who told them that they might as well turn about, for that the Northampton people were strong enough to do the business without those from Bucks county: some were so inclined to do, but at the instance of Fries and some others, they did go forward, and actually proceeded to Bethlehem. Before the arrival of these troops, a party, going on the same business, had stopped at the bridge, a small distance from Bethlehem, when they had been met by a detachment from the marshal, whom he had prevailed on to go and meet them, in order to advise them to return home: they agreed to halt there, and had three of their number to declare to the marshal what was their demand: it was during this period that Fries and his party came up, but it appears that when they came, Fries took the party actually over the bridge and that he arranged the toll with the marshal, and advised them to proceed. With respect to proof of the proceedings at Bethlehem, it can be mistaken: he was there the leading man, and he appears to be in the command. With the consent of his people he demanded the prisoners of the marshal, and when that officer told him that he could not surrender them, except they were taken from him by force, and proposed his servant for taking them, the prisoner then led on with his party out of the town, and explained to them the necessity of such a step; and that you shall also remember, he said, we will prove to you that he did cheat, so that you shall see the money which he had been out on this expedition, that he has not a penny of it yet, but he said if the prisoners were not released he would have done that day. Now you observe," returned he, "I will take no reward, but you must obey my orders, we will not go about taking the prisoners; but take my orders, you must

hot fire first: must be first fired upon, and when I am gone, then you must do as well as you can, as I expect to be the first man that falls." He farther declared to the marshal; that they "would fire till a cloud of smook prevented them seeing one another; and executing the office of commander of the troops which at that time over awed the marshal and his attendants, harangued the troops to obey his orders, which they accordingly did, and the marshal was really intimidated to liberate the prisoners; and then the object was accomplished, and the party dispersed, amidst the huzzas of the insurgents. After this affair at Bethlehem, it will be given you in evidence that the prisoner frequently avowed his opposition to the laws, and justified that outrage; and when a meeting was afterwards held at lower Milford to choose assessors, the prisoner refused his assent to the accommodating object of the meeting, and appeared as violent as ever.

These are some of the points we mean to prove before you. I shall therefore at present proceed to introduce our testimony.

WILLIAM HENRY, Esquire, sworn.

COUNCIL. Were you at Bethlehem on the 7th of March last?

WITNESS. I arrived there on the evening of the 6th—we had heard that there was a party of men would collect, for the purpose of rescuing the prisoners who were there in custody of the marshal, in consequence of that I went to assist the marshal, and, if possible, prevail on the people to desist.—The witness said he was one of the judges of the court of common please for the county of Northampton.—About ten o'clock on the morning of the 7th two men with arms arrived at the tavern where we were, the name of one was Keiser, and the other Parks: they were called into the house, and enquired of by the marshal as to their intention in coming armed, they appeared to be dissident about an answer; after first saying they came upon a shooting frolic, Keiser said they were come in order to see what was best to be done for the country: after that came in several others three of them were David Chief, Jacob Kline, and Philip Fish, a well known horse back, two of them in uniform, with swords and pistols: the two first men were placed with the marshal in a separate room, in order to await the issue: at this time a considerable number of people had assembled. Messrs. Keiser and Parks in company with the three men: the witness I shall here endeavour to inform men as to their intention, I did not enquire in the former part of the evening them to visit me, and I was not in order to collect the proceeds of the execution: I was not in order to collect that they were freemen, and I was not in order to collect that they were freemen: I told them that they were not to be paid for such a purpose as I feared they were not.

COUNCIL. Where did the men who were with you at present?

The witness in answer said that he did not know any particularly, as they mixed among the crowd.

The witness said that he did not know any particularly, as they mixed among the crowd. I also, at the same time told the witness that he would be held for him to surrender the arms, and not to oppose the marshal, but he gave me notice that they had come to accompany him to the house, and to see that no injury was done to him. After this I returned into the back room of the house, by this time there were a number more collected round the house, but mostly armed. I don't recollect whether it was before these

three men arrived or not, that the marshal had sent off four men of his posse, in order to meet the men with arms who were coming forward, and after we were up stairs there were three men arrived as a deputation from the armed body, making enquiry as to the intention of the marshal in taking these prisoners: with these 3 men the 4 deputed by the marshal had returned from the armed body that was the other side of the bridge, in order to learn the marshal's object. The marshal assured them of the legality of the process, and reasoned with them as to the consequences of opposition, or threats to him, or preventing him from executing his duty, but I believe he liberated the two men that were first put in confinement, and returned them their guns again. During the time that these two men were in confinement we examined their guns, and found that they were both loaded. I was pretty much in the lower part of the house backwards, and there was much of the proceedings of these people I did not see, in the front of the house, but I endeavoured to converse with as many as I knew, informing them of the badness of their conduct, and the consequence of it, but it appeared to be to no effect, as I knew. About one o'clock I think I first saw what was called the main body of this armed force, marching up the street: there was a party of horse preceded the foot came riding up two a breast, I am not certain whether they had their swords drawn, but I believe they had, and then followed the foot, marching up in Indian (single) file, when they came up the foot marched twice round the tavern, and placed themselves in front of the house, where they stood some time drawn up in single rank, I believe they were rifle-men they continued there till the rescue was effected. During this time I frequently heard that the prisoners were demanded by them, and they insisted on their release.

Cross examination. Did you hear the demand made?

No, I did not, but I heard in the house that it had been made; I also heard that they intended to force their passage up stairs. I observed a party coming up stairs, particularly one, whom I did not know, pointing a rifle up the stairs, as though levelling it at some particular person. The people appeared very noisy in the lower part of the house, all this time, I frequently heard the cry of "deliver up the prisoners," and it appeared to come from the party at the foot of the stairs. During the affair, I am not certain whether it was previous to this or not, I looked out and saw six or eight men at the foot of the stairs and the prisoner on the stairs conversing with the marshal: while I was standing there, there was an old man, whom I understood afterwards to be John Kline, came running in from the front door, and called for captain Fries in German, telling him there was his sword; (offering it) I think he called three different times, on which I observed the prisoner wave his hand and tell him to wait, it was not quite time yet; shortly after the prisoners were given up. I was not by to be able to hear the conversation between the marshal and the prisoner.

ATTORNEY. Did Fries appear to take the command of the men?

I saw Fries going backward and forward among them as though he had; and I saw him marching into the town in front of the foot men.

COURT. Did you see him acting, or busying himself?

Yes, I saw him at different times passing to and fro.

Did any officer stay with the men that were drawn up in array before the house?

I noticed captain Staeler particularly, giving orders to his troop, and with his sword drawn.

Did you see any communication between Fries and Staeler?

Not that I recollect.

After the prisoners were delivered up, the principal part of the men marched off: I particularly heard captain Jarrett call to his men: I do not recollect hearing Fries.

Did they take the prisoners with them?

No. I heard two or three men in the back room say that they must see the prisoners, and insisted they should be let go before they would leave, and particularly they enquired for the minister, one Jacob Ireman, he was a prisoner, and at that time actually in custody.

COURT. What were these prisoners in custody for?

They were arrested for combinations and misdemeanours.

There was, among the company in the lower room, a man who declared himself very violently; he said if the damned stampers* had only fired a shot, we would have shewed what we could do. He was one of Staeler's company. He really expressed a wish that it had been done. The words were spoken in German.

ATTORNEY. Were many, or any of these people in a military dress as well as arms?

There was twelve or fourteen of the horse: I believe there were none of the foot, except that about ten or twelve had cockades of blue and white, blue and red, &c.

COURT. Had they cartouch boxes, or any other means of carrying ammunition?

They had shot pouches, particularly the rifle company, and I believe all who had guns. Keefer, who was first disarmed had a powder horn in his pocket: his piece was a common fowling piece, the others were mostly rifles, as far as I could perceive from the window.

How many armed men were there?

I did not count them, but there appeared about an hundred, or rather above that number. The whole croud assembled I think could not have been less than 400.

What number of persons had the marshal with him for his posse comitatus to arrest these people?

I think fourteen or fifteen.

How many prisoners do you think there were?

I believe eighteen or nineteen.

Cross examination. Did you ever gather more than you have now stated, of the intention of these people in assembling there?

I have frequently heard that they meant to oppose the laws.

What was the object declared by the people themselves at that time?

* A STAMPLER was explained to be a nick-name given in that country to the friends of government, originating from their support of the stamp act.

I understood that releasing the prisoners was the object they had in view, both from themselves and from several persons with whom they had conversed on the subject.

Was there a process against these persons who arrived, and were detained by the marshal?

No.

COURT. Did you suppose, from the conversation you heard, that it was these two prisoners who were intended to be released, or the prisoners held in custody by the marshal against whom process was issued?

I supposed those prisoners who were taken by warrant by the marshal. I suspected that the two persons who first came, came with improper views, and as such ought to be confined, and wished them to be kept till we saw those persons who were coming with arms.

What did the deputation from those armed men demand?

They demanded the release of those two men, and they were released previous to the coming up of the armed men.

Cross examination. At the time that Fries was conversing with the marshal, although you had not an opportunity of hearing what passed, was there any violence in his manner, or any appearance of rage in him?

As to his own particular conduct, I cannot say, for it was but a few moments that I had time to notice him: I saw no particular violence in his manner.

Did you hear Fries communicate to the crowd the question he proposed to the marshal, and the marshal's answer respecting these prisoners?

No I did not; this I heard in the general conversation.

You never saw Mr. Fries but at the time he was conversing with the marshal, and at that time not with any violent appearance?

I saw him both before and after, passing to and fro, but did not know the man's name, but seeing a feather in his hat, I supposed him to be a man of consequence.

At the time this sword was offered to Fries, he did not take, nor did appear to have any arms about him?

No.

Was there any thing said, during this transaction about bailing these prisoners?

There was a demand made by Shankwyler, in the room of the lower part of the house, a short time previous to the actual release, but the marshal told Shankwyler that his command was to take him before the judge, and he could not admit him to bail.

Was there, or not, a general overture made to bail these prisoners?

Not that I recollect: there was much conversation on this subject in different parts of the house, but not as coming from the party; but I believe it was observed that if they could be bailed, it was probable the party might be influenced to withdraw, but this did not come from the party themselves.

You mention that there were upwards of an hundred men in arms, and that the aggregate present was about 400, do you consider every individual who was there as partaking of this riot?

No. Though there were many of them that appeared there unarmed, were very violent in their expressions, and generally they were in opposition to the government.

During this period, were there any commissioners, or assessors there?

There was Mr. Eyerly, commissioner for that district, Mr. Balliott, and the principal assessor, and I believe two other assessors, if not more.

Were any acts of violence offered to these officers during that time?

Not that I saw.

Did these officers remain in the house, or go down among the people?

They remained in the house I believe: they arrived there on Wednesday, the evening preceding.

Did they hear that there was a probability of the prisoners being rescued?

Yes.

Did those people declare that they would not leave the place till they had seen the prisoners at liberty?

Yes.

What became of the prisoners?

I believe the most part of them left the house in a short time after. I understood they were, generally, not desirous of being rescued. They expressed themselves so in my presence, and when they were delivered up, they entered into some kind of obligation to deliver themselves up in Philadelphia.

COURT. Did these prisoners or the greatest part of them appear any way desirous of being released?

No, they did not: on the reverse, they were very apprehensive of the consequences of getting into the mob.

These prisoners were many of them from your county, and you were pretty generally acquainted with them, did it appear that the prisoners were acquainted with those who came to rescue them?

The greater part of them were not, especially those who came from Lehi township. Twelve or thirteen of them I knew.

ATTORNEY. How far did the parson live from Bucks county?

Forty miles, I suppose.

COURT. Did those persons who came armed, profess to be particular friends to any of them?

Not that I heard or knew of.

WILLIAM BARNETT, sworn.

Were you at Bethlehem on the 7th of March, and if you were, relate the circumstance that transpired.

I was summoned to attend the marshal on the seventh of March at Bethlehem, as one of his posse. I came there about 11 o'clock in the forenoon: I was there but a very little time, when I understood there were some men coming with arms: the marshal then appointed four of us to go out to meet them, in order to prevail upon them not to come into the town. We went on about a mile from Bethlehem, and crossed the Lehi, and there we met a party of horsemen first: they were armed. I did not know any of them, but understood they were from Northampton county, near about Millar's town. When we came up to them, we asked

them for their commanding officer. They made answer that they had no officers; they were all commanders. We then told them what our errand was—to try to prevail upon them not to go on any farther, but they did not seem to mind it much. We were with them but a very little time, before there was a company of rifle men came up, they were armed as well as the others. We told them our errand, but they did not seem to mind us. We then returned, and came on with them to the bridge of the Leli, where we halted. There we talked with them a great while, but still they wanted to go on. We told them we came from the marshal, and asked them what they wanted by going into Bethlehem with their arms. They said the marshal had two of their men that had come to Bethlehem under arms, and had put them under guard, and they wanted them, and they would have them two men set at liberty, and one of the name of Shankwyler. As I found that they were determined to go, I asked if they would not allow that if any one had done wrong, they ought to suffer for it: They agreed that they ought, but they should not be taken to Philadelphia, but have been tried in Northampton county. When we found that they were determined to go on, we agreed that they had better send two or three men over to the marshal, and not to go bodily. Which they agreed to, and appointed three men to go, and they sent them over.

ATTORNEY. Was there not some stipulation that you should return the men safe.

Yes there was; they were afraid these three men would be confined also; but we promised them that we would see them safely returned. We then all went over together to the tavern at Bethlehem, where the marshal was. They spoke to him, told him what their business was, and he gave the two men up to them. When they were given up, we went back with them, in order to go to where we had left the remainder of the men. Going down through Bethlehem, we met a party of horsemen, and we stopped them: they were armed; part of them were light horsemen; and part were other horsemen: they all had swords or some arms or other. The light horse had their swords drawn. We told them that they had better go back, and not go up into the town, but they seemed very anxious to go up. One of them made answer something like this: "This is the third day that I was out, I had a fight yesterday, and I mean to have another to-day if they do not let the prisoners clear.

JURY. What prisoners did you understand him to mean, the two men? He did not say any more than the prisoners.

ATTORNEY. Who was the man that said so?

To the best of my knowledge the prisoner was the man: I never saw the man before, but I took notice of him then.

Had he any arms?

He had a sword. This was a distinct body from those we had left at the bridge; there were others who had come up during the time we were gone.

COURT. John Fries had not come up when you left them, had he?

I do not know that he was there at that time; the first time I saw him, was as I came back.

ATTORNEY. Had the two men whom the marshal gave up proceeded down the street, towards the party, and met with them at that time ?

I did not take notice where they went to after they were released ; they went on up town.—When I saw the ritemen coming forward, I stopped till they came up, and then spoke to them : they seemed that they would go on, but they promised that they would do nothing.

Did you let them know that the two persons whom they had demanded were liberated ?

Yes, I did, and the three men who went with us told them also.—The horsemen did not wait one moment, but hurried on : they all then marched up town, and formed right in front of the tavern : I returned with them. After they were formed there, I was among them, and talked with them a great deal, but could not do any thing with them : if there was ten or twelve that agreed to be moderate, the others would all insist upon it, that they would have the prisoners, all of them. We were there for nearly or quite two hours. This man, whom they called captain Fries, came out and mentioned to his men that he would now have the prisoners, if any of them would go into the house with him : he had been in backward and forward several times. He said he should go foremost. He told them that he would ask the favour of them, that they were, none of them to fire first, if they went in. He mentioned to them likewise, that there were some armed men on the stairs belonging to the marshal. I did not expect he would go in : I was talking to some men there, when I looked round and saw some of the men at the door : he said he would go foremost : he signified, talking in German, that he should get a blow or a stroke : the nearest translation was, “ I shall get it.”—I looking round, saw the men going in at the door, and I followed them in : they were armed men. I did not see the prisoner after he had mentioned them words. I got in, between the men and the stairs at the foot of the stairs : they halted there, I got in there, in order to keep them back from going up stairs ; I was there but a few minutes, when I saw the prisoners coming down stairs.

ATTORNEY. Did you notice any particular circumstances that took place at this time ?

WITNESS. They were determined to go on ; a little fellow among them, I do not know who he was, seemed to be very angry.

Were they at that moment asking for the prisoners ?

Yes, they said they would have the prisoners.

What was the conduct or expressions of the marshal at that time ?

I do not know, I was not so near as to hear any thing : after the prisoners were set at liberty, they were all gone in a few minutes ; they seemed to be much pleased that they had them.

Repeat particularly what captain Fries said, when he told the men to come forward.

He said if he did get it, they should not be scared, they then must do as well as they could : he said he expected to get some stroke ; he told them they must take care of themselves : I do not recollect that he said they should shoot, yet I recollect something he said ; I think it was “ flay strike or do as well as you can.” The prisoner at the bar went before, and he rather wished the men to follow him.

On being questioned again as to the words used by the prisoner : the witness repeated it in German, which was translated in the court to mean that he expected to get it, and if he did, they must strike, and stab, and do as well as they could. *Schlaget, stechet und macht so gut als ihr konnet.*

Cross examination. I understand you to state, that when you went out at the request of the marshal, it was to speak to these people, and that they told you their object was to obtain the liberation of the two men belonging to their party.

WITNESS. Yes.

Do you not recollect any thing said about giving bail for the appearance of these prisoners ?

No, I do not.

As soon as these prisoners were released did the croud begin or disperse ?

Yes, immediately.

Then they did not attempt to attack, or use with violence any person with a view to liberate these prisoners ?

No, not that I saw.

They did not seem to have any other object in view than to get the prisoners at liberty ?

No, getting the prisoners at liberty was all.

COURT. Did none of them say any thing about the tax law ?

WITNESS. I did not hear them say any thing.

What became of the prisoners after they were liberated ?

I believe they all went to their homes.

Did you observe no violence whatever ?

No, I did not either by violence or by words hear the prisoner, nor any other person attempt at any thing, more than what I have said.

JOHN BARNETT, sworn.

ATTORNEY. Relate to the court what occurred on the 7th of March at Bethlehem.

WITNESS. On the 7th of March in the morning early, just as I got up, the deputy marshal handed me a summons, at which I was a little fluttered till I read it over. The summons was, that I should be at Bethlehem at 10 o'clock, to aid and assist the marshal in executing the laws of the United States. He also sent me some blank summons, desiring me to summon as many more as I pleased. I put Christian Winters, and John Mohollan's names down ; we could not find any more good persons for that business. About 10 o'clock I arrived at Bethlehem. I was there but a very short time, when somebody came in, and said he had met 20 men at one place, 10 at another, &c. walking towards a tavern, on the road, about 3 or 4 miles from Bethlehem ; I cannot recollect its name. The marshal, Mr. Irely, Mr. Henry, Mr. Balliott and others agreed that they thought it would be best to send three or four men to meet them, and to stop them on the road : it was then to be decided who should go. I mentioned that I thought John Mohollan and William Barnett could do more with them, than any body else. They were agreed upon as was Christian Roth (or Rote) and another, but Isaac Hatfel went in his place. This was, conformable to agreement, two federalists and two anti-federalists. They went and met them, I remained at the house. They were

not gone very long, indeed I think it was just as they were getting upon their horses, there was two men, arrayed, and with arms; one had a rifle, and the other a smooth bore piece. When they were come into the yard, the marshal went down into the yard to them, and talked to them; what he talked to them, I did not hear. However he took their arms away from them, and carried them up stairs, and put them by themselves. Directly after that, there was five or six horsemen came, I was informed that there was one man of them named Shankwyler. The marshal and judge Henry went down to meet them, they asked them what they come there for: they said, they only came there to be Shankwyler's bail: and judge Henry then asked them what they did with their arms? They said they did not mean any harm with them. They then got off their horses, and went into a room with the judge and the marshal: what they said there, I do not know, for I did not hear them. Presently after there came up a troop of horse, and behind them there was two companies of riflemen. They marched up right into the yard and formed before the door of the tavern.

How many riflemen do you suppose there was?

About 50.

Had the light horse their swords drawn?

Yes.

How many do you suppose there were in the whole?

On a rough calculation I suppose 130 or 140 armed men.

How many was there of the marshal's posse?

About 16 or 17.

After they had formed a line in the yard, about 15 or 20 minutes Captain Jarret arrived, when they gave three huzzas. He then went into the house and talked with the Marshal: the Marshal requested him to get the men to withdraw. He professed he would. He had arrived from Philadelphia, whither he had been to give bail. After this, Jarrett staid at the tavern about two hours. The men kept regular order, and never separated. The Marshal appointed four of us, me and three others to keep the guard of the stairs, armed with pistols, two at the bottom, and two at the head. I served my time, and the second time I was ordered on guard by Capt. Henry Snyder, I staid on the platform at the turn of the stairs, when Fries, the prisoner, came up to me, and wanted to go up stairs. I told him that he could not be permitted to go up stairs without the Marshal's leave. I then asked him what he wanted? He answered that he wanted to see the Marshal. I told him that I expected he could see him, and told some men at the head of the stairs to call the Marshal out of the room. He came out, and I then told him these two gentlemen wanted to talk to him. He said I should let them pass. As Fries was the first man, I let him pass on between me and the other guard. The other man wanted to go up, but I told him that one at a time was enough, and that when the other had done, he would be permitted to talk to him too. Fries then went up and told the Marshal what he came for: he replied that he was come for the release of the prisoners. I stood close by them when they were talking. The Marshal made answer that he could not give them up to him; he then told the Marshal that he would

have them. Well then, said the Marshal, you must get them as well as you can; for he said it was out of his power to deliver them up; he dared not to do it. Fries then told the Marshal that he had a skirmish yesterday, and he expected to have another one to day; he then said to the Marshal, "As for you Marshal, I will vouch that none of my men will hurt you, but as for the other company I will not vouch for."

Do you know what he meant by the other company?

No.

Where was Mr. Balliott and Mr. Irely at this time?

They were in the room where they commonly were, up stairs.

What answer did the Marshal make to that?

I do not know.

With that both of them marched off. I remained on guard. A little while after this, I saw the men coming in at the door, and they got into the entry, with arms. I did not know one of those who came in except Fries; he returned with those armed men. He had a sword in his hand, but I think it was in its scabbard. When they got into the entry, they were pressed upon by the posse, who soon got them clean out of the door. I then got off guard. The language of the men was, that they would have the prisoners. I could not hear many of their expressions, because I was chiefly up stairs, but I heard them say they would not leave the ground till they had the prisoners. The marshal at this time had gone back into the room. Before the prisoners were released I was relieved. When they made the second attempt, I was up stairs, looking out of the window. I believe Christian Winters took my post. These prisoners were at this time up stairs in a room by themselves.

How many prisoners were there?

About sixteen or eighteen.

Where was Shankwyler at this time?

He was down stairs in the back room, he was not taken up stairs at all.

Do you know any of the other prisoners?

No.

COURT. Did there appear to be any kind of acquaintance, or friendship between Fries and any of the prisoners?

No, I believe there was not.

Did they appear to wish to be rescued?

No, the prisoners said they did not wish to be rescued by those people, they said that they knew none of those people that were before the door. If they had done any thing wrong, they said they were willing to go any where to take their trials. The minister, and the Lehi people were all there.

Cross examination. Was there any violence offered?

WITNESS. I saw them point their guns toward the window often enough.

Was any violence offered to any person, besides what was offered to the marshal?

No.

Did you hear these men say that they came there for any other purpose than to rescue the prisoners?

No, I did not, and I believe that was all.

COUNSEL. No violence of manner or expression was used while Fries was talking to the marshal, was there?

WITNESS. No, he had his sword in his hand, and in its scabbard at that time, and the other man had his sword, and a regimental coat on.

During the time that you were there, did any person offer Fries his sword?

Not that I know, I did not hear any person.

You did not hear any one cry out, here Mr. Fries, here is your sword?

No, I do not recollect it.

CHRISTIAN WINTERS, sworn.

I was summoned on the 7th of March to go up to Bethlehem, and I went accordingly: when I came there, which was about 11 or 12 o'clock—about the middle of the day, the first man that I saw come there armed was one Keifer: another, I think his name was Paul, came with him to the tavern: the marshal went out, and brought them into the house, and took them up stairs: I was on guard at that time, and with another, I was set to stand guard by them. As we were in the room together, I asked them one thing or another, and amongst the rest, what they came there for. Keifer told me that he heard they had to meet there to-day, and that they had to decide about the laws; or to see how it was made out about the laws; I then asked him what made him carry a gun with him; why, he told me, ever since he had been a little boy, he was fond of shooting, and therefore, whenever he went out on a frolic, he liked to take his gun along, for he liked to hear it crack once in a while. I told him that he really put himself in a great deal of trouble, he told me that he meant no harm by it; that he thought he could carry his gun when he pleased. After I was relieved from my post, I went to the back door, and saw several people who said that they would not wish to be taken to Philadelphia, they would be tried in their own county: they were not in arms. I then went up stairs where the prisoners were; I went into the front room where Mr. Eyerly, Mr. Henry and more were; I was then put to the top of the stairs, and got orders that I should not let any body up or down without their orders. I had a pistol with me. Nothing happened while I staid there, but after I was relieved, I saw Mr. Fries standing on the platform of the stairs, talking to the marshal. I could not then hear all that passed, but what I heard him say was “I have been out, either two or three days on this business, and I had a skirmish yesterday, and I expect I will have another to-day.” He said that if the marshal did not give up the prisoners he would have one to-day. This was something like his words, though I stood at a little distance. I heard the marshal say he could not give them up. This was his meaning, but there were so many words I could not make out.

COUNCIL. Had Fries a sword with him?

Q. I did not take notice. There was nobody that I could see with the marshal but Fries. Afterwards he went down the stairs, and I then went down stairs, and went out of the front door. After that I saw a company come in with arms; I did not see Fries come in with them. I asked what they were after; I could not make out who it was, but somebody said, we will obey our captain's orders. I then went back, and went to the platform of the stairs, one of the guard asked what was the matter? I told him there was danger coming on. He then handed me his pistol, and another man handed me another pistol, and I staid on the platform in the front. At this time there was judge Mellan, and I

think major Barnett, and some others. At the same time there were several under the stairs. I told them to stand back, they were doing wrong if they did not I must do a thing I should be sorry for. I kept my thumb to the pistol all the time: they then stepped back, and had some talk, but I could not make out their expressions. They then went out of the door again, and the prisoners came down. The marshal came on to the platform, and I left my place. The marshal sent me down to learn the name of a person.

COURT. Had you any conversation with the people out of doors?

WITNESS. I had a good deal, and told the consequences of their conduct. They said that they were all against the prisoners coming down to this place, they should be tried in their own county. I did not hear any thing about the laws, they merely complained about the prisoners being taken down to Philadelphia, and nothing about the laws at all.

ATTORNEY. Had you not a dispute with one of them?

WITNESS. Yes, I was sent down by the marshal to enquire a man's name; he wanted to know what I asked him for; he seemed to be scared: he said he did not mean to do any harm to any one. I do not know his name. When I spoke to this young man, one came up and said don't tell this damned Stampler. The meaning of this word I think is about this stamp act; they called these people Stampers that told them the consequences of this conduct. It is thought a term of reproach. The man who called me stampler struck at me, but did not hit me; they told me his name was Henney.

Cross examination. The people departed as soon as the prisoners were released, did they not?

WITNESS. Yes.

Did you use no ill language to the man who struck at you?

I called him a rascal, or something that way.

CHRISTIAN ROHRS, sworn.

On the 7th of March, I was summoned to go to Bethlehem, but did not know what it was for. About 11 o'clock I got to Bethlehem, when I came, Mr. Eyerly came to me, and told me some men were coming there to rescue the prisoners, I thought it not possible, but he told me it was certain. When we had been there about three hours, there came two men on horseback, and had their arms, whereupon Mr. Marshal, myself and Mr. Philip Sheitz went down and asked them what they were about. They told us they were informed that there were a number of men met there to-day, so they said they came there to see how they came on: they did not say what they heard they were to meet for. We took them and put them into the house under guard, and took their arms from them. I then thought there was something in what Mr. Eyerly had mentioned to me. I then made an observation to Mr. Eyerly if he did not think it proper that one or two men should go and prevent these people coming. Mr. Eyerly told the marshal of it, and he thought it would be proper, there should be some man go. I agreed that if no one else would go, I would go by myself. I do not know who spoke to the others; but I, judge Mohollan, major Barnett, and ———, went out. We met them within a mile of Bethlehem. I did not know a single man of them, but judge Mohollan and major Barnett spoke to them first, but I did not understand what they said. I went farther back, to the rear: I said to

them what in the world are you about men; you will bring yourselves in to great trouble. One of them mentioned, we don't know you: I mentioned if you know me or not, you will thank me for it. I said, if you do not do as I advise you, you will be sorry for twenty years after this; so there was one of them that levelled his gun at me: said I, little man, consider what you are about, don't be too much in a hurry: then some of his comrades pushed him back. Then that man hallowed out, march on, don't mind this people: I do not know his name. They then marched on to the bridge, and there we stopped them again. They then agreed amongst themselves that they would send three men with us to the marshal, to see if they could get the two prisoners we took at first, liberated, and gave their honour that none of them should come over the bridge with arms. We then went with these three men to the tavern, at Bethlehem. They then went to the marshal and agreed with him, and the two prisoners were discharged, but he set down their names. I do not recollect their names. When these two men were discharged, we went to go back with them again, but when we came to the lower end of Bethlehem, there was that company and another coming on, and there was no stopping them again.

ATTORNEY. Did they know these men were discharged before they passed the bridge?

WITNESS. I do not know.

How far is the bridge from Bethlehem?

About half a mile.

Do you know which way these two men went?

They went with us I think, but I am not sure. I endeavoured to stop them to reason with them, but they would not, and I then told them if they were determined not to hear, they might do as they pleased.

Did you see the prisoners, in this company?

No, I did not see this man at all to my knowledge.

As I came back to Bethlehem, I went up stairs to Mr. Eyerly and the marshal. The men paraded before the tavern, and there I think they were for two hours.

How many do you suppose there were in arms.

I suppose 120 men or upwards, were drawn up.

Did you see those two men that were first kept prisoners?

Yes, I saw them mix along with these people.

Were the light horse armed?

Yes, some of them, and with their uniforms.

Had they their swords drawn?

No, not till they came near to the tavern, then they drew their swords, a great number of them. Before we started from the bridge, we asked them again what they were about? they told us that they were informed that they had taken a number of prisoners, and that they would take them to Philadelphia, and put them in gaol there, and no bail would be taken for them: we asked them what prisoners it was they meant? they mentioned one name only that I recollect, which was one Shankwyler. They mentioned that they would not suffer Shankwyler to be put to gaol in Philadelphia: they mentioned that they would give bail ten double for him, or that they might put him in gaol in our own county, and try him in our own county. I saw one Schwartz come up into the room where the marshal was.

COURT. Was not you among them after they came to Bethlehem ?

No, I was not. Old Schwartz said he had two sons in the company, and they were two of the prettiest boys in the company.

Did you see any of the people in the yard levelling their guns at the window ?

No.

Cross examination. Was there any other of this company besides Schwartz that came up into the room ?

No.

Did any one abuse, threaten or insult Mr. Eyerly.

Not that I know of. I heard no threats against any one.

COLONEL NICHOLS, the Marshal, sworn.

ATTORNEY. Mr. Nichols, please to relate the transactions which led to the subject of the indictment against the prisoner, and the affair at Bethlehem.

WITNESS. Some time between the 20th and 26th of February the warrants I now hold in my hand were given to me by the attorney of the district, with orders for me to go to Northampton county to execute them. I sat out on the 26th and after serving some subpoenas on the road, in order to get some evidence about some matters that were wanted to be in possession, I got to Nazareth on the first of March, next morning, Mr. Eyerly and myself went into Lehi township to serve some warrants upon some persons who had given their opposition to the house tax law. I think we got twelve of them that day, the others were not to be found. I think there were five of them, however they came in afterwards. We then returned to Bethlehem, and there met with Col. Balliott. We went then to Macungy township, and there we met with no difficulty till we went to the house of George Syder; I had a subpoena on him: he and his wife insulted us very much; his wife began abusing us first, and he came out with a club, and would by no means be persuaded to receive it I suppose not understanding it: I gave it to a Mr. Schwartz, a neighbour, who undertook to deliver it to him. We then proceeded to Millar's town, a few miles farther: on the way we stopped at the house of the Rev. Mr. Buskirk, where we left our horses, and walked into the town, to the house of George Shaeffer, to serve a warrant on him; but were informed that he was not in town. We returned to the tavern, about the centre of the town, and there we saw a considerable number of people assembled. Mr. Eyerly and myself walked over to Shankwyler. As we walked out, many people ran after us, and many ran past us, and getting into the house, filled the long room. There appeared to be about fifty men. Near the house in which Shankwyler lived, we concluded it was bad policy to ask for him, for by that means it was not likely we should find him. And therefore as colonel Balliott knew him, I got him to point him out to me; but upon observing me, he withdrew into the crowd, I followed him, and laid hold on him, and told him he was my prisoner in the name of the United States. I told him I was the marshal of the United States for the Pennsylvania district. He retreated towards his barn. He afterwards called out that he would not hurt the marshal, but Eyerly and Balliott were damned rascals: after this the people called out to each other *Schlaget, Schlaget*: (strike, strike) This seemed to be the general voice of the people. There was one of the Shaeffer's seemed to be a prominent character; it was David.

I told them the consequence of their attempting to strike: I had a pair of pistols, and finding the danger we were in, I pulled open the buttons of my great coat, that I might, if necessary, get a ready gripe at them: whether they saw them or not, I cannot say, but when they found that I was determined not to suffer these people to be abused, they were then a little quiet: they, however, pulled the cockade out of Mr. Balliott's hat, and I believe would have done more violence to him, had they dared. I called on Shankwyler to go with me to Bethlehem, and thence to Philadelphia, but he swore he would not: I told him the consequence of resisting the authority of the United States, that it would be ruin to him; he declared and swore he would resist; he would not submit, be the consequence what it might. I told him it would ruin his interest and family; he said he would do it, if it was to the destruction of his property, and children. However, he finally agreed to meet me at Bethlehem, but never promised to submit, or surrender himself as prisoner. He spoke a good deal about the stamp act, and the house tax; that seemed to be the bone of contention, and he said he had fought against it, and would not submit to it now; I told him he appeared to be too young to have fought on either side during the war: he then said, his father had, he then added that there were none in favour of those laws but tories, and officers of government. I told him that, as to tory, that could not apply to me, that I had had a share in the revolution, and that I was as fond of liberty as any of them. We came away, and as we came out, Mr. Eyerly and Mr. Balliott came out of the door, they huzzaed for liberty: I told them that I should join them in that, if they would huzza for liberty of the right kind; but this was licentious liberty. We then went with a constable to arrest Adam Stepham, Herman Hartman, and Daniel Eyerly. When I returned, I was informed that the rescue of the prisoners at Bethlehem was intended. This was on the sixth of March. I could scarcely conceive it possible; I thought it was somebody for their own diversion had raised it merely to alarm us, until we got to Bethlehem, where we got that night. There we were informed that the report was serious, and that it would be attempted by a body of armed men. On which I consulted with judge Henry, Mr. Balliott, Mr. Eyerly, Mr. Horsefield, and general Brown. I had taken a bond of the Leli people, with sureties for their appearance. I sent Mr. Weed over the mountain to arrest Iremman, the minister, and John Fox, which he did. Seeing this matter very serious and important, I requested general Brown to remain at Bethlehem, as he had very great influence in that county: he said he was so near home, that he should go home, as he had been so long from his family. I then asked him to return in the morning, but he seemed to think there was no necessity for it, and did not. I then consulted what steps it would be necessary to take; I had then an attorney, and told him I was ordered to call a *posse comitatus* in case of necessity, and also that I was ordered that they should not be an armed force; I then spoke to judge Henry, expecting that he could call out armed men, but he told me he could not, for he had received similar instructions. We then concluded to call about 20 men. He called this posse from the neighbourhood of Bethlehem and Easton, about 18 of them came in. About 10 or 11 o'clock two men riding into the yard, dismounted, and placed themselves opposite the door, by the side of each other; one of them had a long smooth bore gun, and

the other a rifle. Some people in the house went out to speak to them, and asked them what brought them there: they seemed to be at a loss for an answer; I think one of them said they came out on a shooting frolic: I then asked them what they meant to shoot: they did not know, nor could they explain the object of their coming. I asked them what they meant to do: one of them said they meant to do what was best for the country. I then supposed that they would all come in by straggling parties, and therefore thought it was the best way of making the business easy, was to lead them into the house, which I did, and put their arms into the garrett. Shortly after, three horsemen, armed, and, I think, in uniform came into the yard with Shankwyler: I went and spoke to them, and some went with me. I asked Shankwyler if he was come to deliver himself up; he answered no. I asked him what he came for, if he did not come to surrender himself, he answered that he came to see his partner: on farther enquiry I found he meant his accuser. By this time the people were collecting very fast, and some persons mentioned that there was an armed force down by the bridge. On consulting with the gentlemen who were with me, it was agreed that a few men should be sent to speak to them, and warn them of the danger they were in if they persisted in the measure which we supposed they intended. It was accordingly agreed that four gentlemen should go, which they did, and in a little time returned with three of their force, as a deputation from them to speak to me. I asked them what was meant by this armed force, and what they intended by it: they answered me that they wanted to prevent my taking the prisoners to Philadelphia. I told them that could not be, nor must be; nor must it be attempted, they had much better go back, and tell the people to go to their respective homes. I think they asked me, particularly for the two men who had first been made prisoners; I forget whether I gave them up then, or some short time after; however, they were given up, and their guns were given up to them: they were both loaded, and one of them was putting a new flint into his gun, in the yard, before I went out to speak to them. The same gentlemen who went down to speak to them at the bridge, went down to them again, and, a short time afterward, we observed that they were coming up in force, up the street, Mr. Muhollan riding with the foremost of them, and speaking to them: the horsemen, such as had swords, had them drawn: the infantry marched with trailed arms. The prisoner at the bar was at the head of the infantry, with his sword drawn: the horse marched into the yard, and formed in front of the house, the infantry marched round the house, and the captain, with the leading file, came in at the upper gate. I had a great deal of conversation with different persons among them, who seemed to take a lead. They were all strangers to me, I told them the consequences of their attempting to rescue the prisoners; I told them they might rest assured that things of this kind would be severely punished by the government; that it would be considered an high offence, and that every insult offered to me, would be an insult to the United States. I had a good deal of conversation with the prisoner at the bar, without knowing that he was captain Fries, till he made himself known to me. I remonstrated strongly against the measures, and told them the consequence, but they seemed regardless of it, and seemed determined that I should give them up.

ATTORNEY. Did they speak of any prisoners in particular?

WITNESS. No, they spoke generally of the prisoners.

Did the prisoners speak of them as particular friends neighbours, or acquaintances?

No, the measure was his object. During this conversation, he was without his sword. The substance of the conversation was, he demanded of me the prisoners; I refused to give them up, and told him the consequences of his demands. On his still insisting, I told him that he and those about him would be severely punished for this conduct, that he would surely be hanged. He said they could not be punished: he said something to the effect that the government were not strong enough to hang him, for that if the troops were brought out, they would join him.

ATTORNEY. Did he give any reason for wishing to rescue those prisoners?

His reason was, that he was opposed to those laws: the Alien law, the stamp act, and the house tax law, and said they were unconstitutional. He also spoke of bringing people charged with crimes to Philadelphia to be tried as an oppressive thing: they had no objection, he said, to be tried in their own courts, and by their own people. We parted, and met in the crowd two or three times, for the house was much crowded: he still demanded of me the prisoners, I told him I could not give them up: I told him I was commanded to bring them to Philadelphia: he insisted upon having them, and I that he should not. He then went and talked to his people, and came to me again. He told me that if I did not give them up, he would not answer for the consequences: he told me that he would not hurt me: he was the oldest captain in the rank, but he would not answer for them that were with me: that he took command of the whole by rank. By this time captain Jarrett came in, and by this time there was much noise and huzzaing. I was told that this noise was on account of the arrival of captain Jarrett: I wished him pointed out to me in confidence, that, as he had come to submit to the laws, he would be able to persuade others to do the same. He was to me; he had a pair of pistols in his hand. He shewed me that he had entered into recognizance for his appearance. I then begged him to use his influence in persuading the people to disperse, and go to their respective homes, and told him what would be the consequence if they did not. His answer was, that he had no influence; that he could do nothing. After this, I consulted with judge Henry and others, what was best to be done; it seemed to be their opinion that I had better submit, and give up the prisoners: I told them I would not do it, I would immediately march the prisoners to Philadelphia, and if the armed mob thought proper to take them from me, they might, it would then be their act, and not mine: I went to them, and told them to prepare for march immediately, for that we would set off to Philadelphia. The Lehi prisoners said they would not do so, they would not expose themselves to so much danger, but if I would suffer them to go to their homes, they would meet me in Philadelphia on the Monday or Tuesday following. I met Mr. Fries about the foot of the stairs, and he still persisted in his demand of the prisoners, that I must give them up.

Cross examination. Had he a sword with him?

WITNESS. I do not think he had a sword at that moment. I refused; and went into the back room, and a person whom I did not know, told me, that if I did not give them up I should not be hurt, but the life of Balliott, Eyerly and Henry were in danger. This was not an armed man. I did not like to expose the lives of those men, so I rescued them. Fries came in directly, and said I had not given up Ireman, the minister. I told him I had; he then went out, and came in again, and said he was without. He then mounted and went off.

ATTORNEY. Did you really apprehend any danger to the gentlemen who were with you?

WITNESS. I did apprehend that the lives of those gentlemen would be in danger if I refused the prisoners.

Who had you then in possession as prisoners?

We had Fox, Ireman and some others who had not surrendered themselves, besides the Lehi people.

PHILIP SCHLAUGH,

When I was at Bethlehem, which I expect was the 7th of March, the first I saw was that the company was ordered in rank, and when that was done, this Fries was in the entry of the house, where he was speaking loud. I enquired who that was, they said it was captain Fries: He said them who was the greatest tories in the last war, them was the head leaders now; then I went out of the house, and he went up to the marshal, and when he came out again, he went up to his company, and told them "Well brothers, I went up to the marshal, and asked him about the prisoners, and told him I would have the prisoners, but the marshal told me he dare not give them up willingly; I tell you, brothers, we have to pass four or five centries, but I beg you not to fire first on them, till they first fire upon us: I shall be the foremost man; I shall go on before you, and I expect I shall get the first blow." Then he turned himself round. Mr. Malthollan, and others begged him that he would not go on in this matter, they would rather go and speak to the marshal that he should deliver up the prisoners willingly, if they would absolutely have them.

Did the men rush on when he told them this?

Yes, they followed him. He then said to them, you must not fire first; but if they do fire upon you, then I will order you to fire too, and help yourselves as well as you can. I did not wait till the prisoners were released, for when I heard this, I thought there was going to be warm work, so I got upon my horse, and rode off to Easton as fast as I could.

Thursday May 2.

JOSEPH HORSEFIELD, esquire, qualified.

ATTORNEY. Please to relate the particulars of the affair at Bethlehem as far as came to your knowledge.

WITNESS. I live in Bethlehem; am a justice of the peace there, and was there on the 7th of March.—Shortly before the last general election, the spirit of discontent and opposition was sensibly felt in the county of Northampton; there were different meetings called in different parts of the county, among others, I was informed there was one at which the militia officers were particularly to attend, which I understood was intended to prepare a ticket for the election. At that meeting, sundry resolutions were passed, which appeared in public prints, among others; one was that petitions should be formed to obtain a repeal of the alien

and sedition laws, and the land tax act. I was informed that the captains of the militia companies were to be served with a copy of each of these petitions : I was likewise informed that this was done, and a five penny bit each paid freely for a copy, though the Germans love their money so well. I think the people were told that the petitions merely contained a request for the repeal of the house and land tax law. I have seen none of them. On the election day, the people pretty generally collected and, at least in the district where I had a right to vote, the spirit of opposition against the measures of government were so universal, that a friend of government, by saying one word in favour of it, was ready to be abused, and I understood it was so in every election district in the county, and the county in general gloried that they had gained the day. Nothing material occurred, to my knowledge, from that time till the marshal arrived there.

ATTORNEY. Did the assessments go on regularly before that time ?

WITNESS. No.

What do you know of that fact ?

I never was present at any opposition myself, for I mostly stay at home.

Did not the spirit of opposition which had begun before the election, increase before the marshal arrived ?

It daily increased.

In the beginning of March, the marshal of the United States arrived at Bethlehem, I think about the 3d. I having some personal acquaintance with that gentleman, waited on him, when he to'd me he was sent to the county on business for the United States, and desired me to inform him where several certain persons resided, against whom he had precepts from the district judge. I acquainted him with the courses and distances. He then went to Nazareth, and returned again about the fifth, telling me he had summoned a number of persons in Lehi township, and that they were to be at Bethlehem on the 7th. On the 6th in the evening, I was informed he had returned from Millar's town, and on the 7th in the morning I went up to town, when he told me that he expected there would be some disturbance that day, and also told me that he had issued summons's for the *posse c. mutatus*. Between 10 and 11 o'clock the posse came, I think they were about 14 in number. A considerable number of people from the neighbourhood of Bethlehem, had collected, unarmed. Mr. Dixon arrived from Emaus about 11 o'clock, and informed the marshal that on his way he met with a number of people collected at a tavern called Reiter's, in arms, both horsemen and footmen, about 6 miles from Bethlehem, and that he met a number on the road, partly armed, partly unarmed. About half past eleven, two men arrived at Bethlehem armed, from that quarter : they were disarmed and sent up stairs into a room : about the same time a number of persons arrived from Lehi township, who were also sent up stairs by the marshal in a room by themselves : they were about eleven in number. I was present when Mr. Eyerly spoke to these prisoners, telling them that an armed force was formed with intention to rescue them ; the prisoners answered that they by no means wished it : that they would submit to go with the marshal rather than be rescued. In about an hour, I was looking out of the window up stairs, and saw riding into the yard a number of horsemen, besides some footmen : I said to the marshal, I thought it was best for us now to go down and

see these people. I went down and asked one of them what was his name, he answered Daniel Shaeffer. He had a sword at his side, and two pistols : next to him, on horseback, was Henry Shankwyler, next to him was another horseman accoutred in the same manner ; his name was Philip Daefch ; there were also John Dillinger and Jacob Kline, not in uniform but with swords in the scabbard. I asked them what they wanted : we are all civil people and have no arms, was my observation to them. Dillinger who seemed to speak for them, said that yesterday the marshal had taken Shankwyler and some other of their neighbours prisoners, that they were come to see Shankwyler's partner (accuser.) The marshal told them that the United States was the accuser of Mr. Shankwyler. Dillinger said he thought it was not right that he should be taken to Philadelphia. The marshal said that the judge had ordered it so. I told him that I thought they were unacquainted with the government of the United States, and I thought they were in a very critical and dangerous situation ; that the United States in less than 20 days could muster 10,000 men, which power I thought they could not withstand, and that it was best for them to surrender the prisoners to the marshal, and go home. They said that Shankwyler and the others were their neighbours, and that they would wait and see what should become of them. They did not mention the others names. I asked whether any more armed men would be there ; Jacob Kline answered, 50 more. With that we went into the house. After dinner the people collected very fast, and Dillinger began again to speak in behalf of Shankwyler. The marshal told him it could not be otherwise, so he must : Shankwyler answered that he had a family to take care of, and that he would not go. With this, the marshal and myself walked up stairs, and there saw a great number of armed people round the house, I think 120 or 130, and about 250 unarmed. I suggested to the marshal that my suspicions were very gloomy ; that I doubted whether he would succeed in taking off the prisoners, for I had quietly heard among the people that were in the house, and out of doors, that nothing should satisfy them but the delivery of the prisoners : in front of the house was drawn up a number of men armed. I went up stairs and there I perceived several times, guns pointed up to the window of the second story at which I began to feel very disagreeable. Mr. Eyerly, Mr. Ballott, Mr. Henry, and the others were occasionally at the windows, though I do not recollect Eyerly being at the window, but the others were : I walked down stairs, and there saw men armed close before the door, pressing in : I pressed through them, and heard two men say if Henry, and that damned Eyerly, and that damned pot gutted Ballott were there, they would tear them to pieces : this man did not attempt to come into the house. I thought this was bad news, and I walked back again, and proceeded my way up stairs, and desired Mr. Levering (the tavern keeper to close the bar) thinking there was madness enough without stimulating it, which was immediately done. I desired the marshal not to protract the delivery of the prisoners to the law. Mr. Mohollan and several others there pushed them back, but just then I heard some of the officers say, "boys, in the ranks, in the ranks."

COURT. Were those two men whom you heard use the words just now related, passing in at the door.

WITNESS. No, they staid in the yard.—I looked out of the window again up stairs, and there I saw a second pressure, to come in at the door some of the men who were in the ranks thumped their guns upon the ground, and jumped, pronouncing some unintelligible shrieks, savage like shrieks. I begged the marshal, for God's sake to deliver up those men up stairs, for the rescue was perfect in my opinion: the closing of the men would be only butchering, and I had no doubt the government of the United States would not let its dignity be trampled upon in this way. The marshal still continued to hesitate. By this time a number of persons had got into the house, adorned with large three coloured French cockades. The posse staid up stairs at this time: I then worked my way down stairs again, in order to be ready for a jump. By this time I understood that the prisoners were delivered. After the prisoners were gone about ten minutes, there was not a single armed man in, or about the house: some of the neighbours who had collected were still there, some of whom were approving, and others disapproving of the conduct of the insurgents, but in my opinion, the majority were approving.

Have you any knowledge of the conduct of the prisoner at the bar, at Bethlehem?

No, I never saw him till I came down to this place, but I frequently heard the name of captain Fries called.

Cross examination. Did you see Mr. Henry or Mr. Balliott in the room looking out of the window?

WITNESS. Mr. Balliott looked out of the window but stepped back again pretty quick, afraid of the muzzles of the guns.

COURT. At the time that judge Peters issued warrants for the apprehension of those people, do you think any magistrate in the county could have issued them, and made them returnable to himself?

WITNESS. I look upon it that the state justices were a nullity. Many people came to me, asked me if the law was dead: I told them No, they should first hear of me being dead.

Cross examination. Was there any applications made to any of the justices of the peace?

Not to my knowledge, but I think the justices of the peace could do nothing with it.

JOHN MOHOLLAN, Esq. sworn.

ATTORNEY. Was you at Bethlehem on the 7th of March?

WITNESS. Yes.

Please to inform the court and jury what took place there.

WITNESS. The reason that I was there was from a summons I had received to attend the marshal that morning. Agreeable to that summons I went there about 11 o'clock, and we went at the direction of the marshal to meet the force over the bridge. Christian Roths, William Barnett, and J. Hartsell went with me.

He then related the occurrence of the meeting the companies, and the delegation of three men from them, which was much similar to the testimony of William Barnett, and Christian Roths.

COURT. At what time did you first hear that the marshal had these two men in custody?

WITNESS. The first time I heard of it was by the men over the bridge.

What became of those two men?

I cannot tell; the marshal told me they were discharged, but I do not recollect seeing them.

Did you see the prisoner among this party?

No, not to my knowledge, if I had I should not have known him, for I never heard of him before. Having met with those horse men before we came back to the bridge, we returned with them, and all made an halt in the yard. I spoke all I could to dissuade them from the purpose about which they came, but all to no purpose. I had no answer that I could understand, for they generally spoke in German or broken English, which I could not understand. I always understood, generally, that they wanted the prisoners, and that they wished to give in security, and let them be tried in the county: that if they had done any thing that was wrong, it was right they should suffer, but that it was not right to take them to Philadelphia. I heard major Barnett say this who interpreted what they said in German. After being a considerable time engaged with people as actively as I could, but it appeared to be but to little purpose, I then went up stairs with a view to take something; as I was returning the stairs were so crowded I could not easily get down. Coming down I saw a person whom I understood to be captain Fries, and the marshal standing talking to him. I believe it was the prisoner at the bar. I heard them talk a few words: the marshal said that they were not doing right, and they must suffer: but I cannot recollect any thing particularly that was said, but I observed that he often made a demand of the prisoners, but that he should not be hurt; that he would be answerable for himself and the company, that none of his men should hurt him that day, but that he would not be answerable for any others that did not belong to his company. I think he repeated this twice. I was there but a few minutes. I made some observations to the men advising them to consider what they were about, for I considered it dangerous, and very wrong to proceed in this way. At this time there was a noise in the entry: I was afraid something had happened, so I went down, but I do not recollect seeing Fries, the whole day afterwards. There was a great deal said, but none of them spoke to me in English.

JACOB EYERLY, qualified.

ATTORNEY. We wish you to relate what you took notice of at Bethlehem.

WITNESS. As to what happened on the seventh of March, I am not able to say much. I was out with the marshal the day before, when he served the process. As we heard that the rescue was intended. It was agreed by the marshal to send express to Easton, in order to obtain the posse to aid him in the execution of his duty: they accordingly arrived between 10 and 11 o'clock, to the number of 15 or 16. Mr. Dixon of Emaus told us that he had seen about 20 armed men at Reiter's tavern, and some at another tavern, besides some on the road, and that he understood from them that they were coming to rescue the prisoners. It was then agreed to take these prisoners, who had surrendered, up stairs. There were a number of people now collected now from the neighbourhood, and then it was agreed to send the deputation to meet the armed men. About that time I went down stairs into the back room, and there I saw those two men whose arms had been taken from them: I did not see them come in.

I then went up stairs again, this was the last time I went down stairs, till after the prisoners were released. I then saw those three men come with Shankwyler. I did not hear what passed, but saw Mr. Horsfield and judge Henry go to them. Sometime afterwards, I saw an armed force coming in, a great many on horseback, and many footmen with muskets on their shoulders: the horsemen had their swords drawn. The greatest part of those on horseback came from Bucks county. Afterwards, the marshal came up stairs and said that they were determined to have the prisoners, and he believed that Mr. Balliott and myself would be in danger of our lives if we went out of the house, and then desired me to undertake to guard the stairs, and told me to give orders that if any body would come up with force, they should shoot them. I placed the guard on the stairs, at first there was but two. Some of the posse were at this time below talking to the people. After some time the guard told me that they got so violent, and threatened to come up stairs with violence, and requested of me that I might double the guard, which I did. As I was in the room, I looked out of the window and saw a company of rifle men, all with three coloured cockades, marching Indian file round the house: I counted them, there were 42 in that company: another person besides myself was counting them, but I do not recollect who it was, though I rather think it was Mr. Balliott: they marched twice round the house. Another time when I was walking about the room a person who was along with me, I do not recollect who, told me that they were pointing their guns up to the window, and that he was sure it was dangerous for me to show myself at the window.

Objection was here made by the council for the prisoner, against any hearsay evidence.

ATTORNEY. Had you not reason to believe that your life was in danger?

WITNESS. There is not the least doubt upon my mind, from what I heard, and from what I say, and from the marshal's testimony, but if I had gone to any place where they could have done it, but they would shoot me, because the people in general appeared to be in such a rage that there was no reason in them.

Some farther objections was made by the council as to his ideas of the state of things, but the court declared it right to shew the general impressions he felt.

ATTORNEY. Did you, or not, abstain from shewing yourself at the window, or amongst the people.

WITNESS. Yes, as much as possible. There was nothing particular that I saw, except at one time when I was in the room, I heard a terrible huzza: this was in the afternoon. On this I went to the window to see what produced this noise, and I saw that captain Jarrett had arrived: he had just dismounted his horse, and had his pistols in his hand, and was walking up toward the stairs. I did not remain long at the window, but just looked out, and saw him come in, and shortly after he came up into the room where I was; he had not his pistols with him then: I had that moment received a letter from Mr. Rawle, attorney of the district, that Mr. Jarrett had surrendered himself and given bail, and that he declared he was a strong friend to government. I then said to him, if you are a friend to government, as you profess to be, you ought to go down and talk