

UNITED STATES *v.* PORTER.*Jury.—Withdrawal of challenge.*

The panel being exhausted, the court will permit the prisoner to retract his challenge to a juror, who may, thereupon, be sworn on the jury.

INDICTMENT for high treason, committed in the county of Allegheny, in the state of Pennsylvania, by levying war against the United States. After a long examination of witnesses, it was discovered, that the defendant, though he was at Couche's Fort, had taken no part in the insurrection, that, in fact, he was not the person liable to the charge, but another person of the same name; and thereupon, the jury, by direction of the court, found a verdict of not guilty.

The only occurrence, therefore, which it is material to notice on this trial, was the following. There were two of the petit jury (Thomas Coates and William Callady), who being called and not challenged, alleged sickness in excuse for not serving, and they were, for the present, set apart: but the whole panel having been eventually drawn out of the balloting box, without furnishing twelve names unchallenged, and those jurors persevering in their excuse, the counsel for the prisoner retracted his challenge of another juror, who was, thereupon, qualified, by order of the court.

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Indictment for treason.—Duress.—Verdict.

The fear which the law recognises as an excuse for the perpetration of an offence, must proceed from an immediate and actual danger, threatening the very life of the party.

If an *overt* act of treason be proved, and it be laid to have been committed before the charge was presented, it is sufficient: whether committed by the number of insurgents specified in the indictment, is immaterial.

In a capital case, a sealed verdict cannot be received.

INDICTMENT for high treason, in levying war against the United States. The prisoner was one of the most active of the insurgents in the Western counties of Pennsylvania, and had accompanied the armed party, who attacked the house of the excise officer (Reigan's), in Westmoreland, with guns, drums, &c., insisted upon his surrendering his official papers, and extorted an oath from him, that he would never act again in the execution of the excise law. The same party then proceeded to the house of Wells, the excise officer in Fayette county, swearing that the excise law should never be carried into effect, and that they would destroy Wells and his house. On their arrival, Wells had fled and concealed himself; whereupon, they ransacked the house; burned it, with all its contents, including the public books and papers; and afterwards discovering Wells, seized, imprisoned and compelled him to swear, that he would no longer act as excise officer. Witnesses were likewise examined, to establish that the general combination and scope of the insurrection, were to prevent the execution of the excise law by force; and in the course of the evidence, the duress of the marshal of the district, the assembling at Couche's, the burning of general Neville's house, &c., were prominent features.

As no question of law arose upon the trial, but the case rested entirely