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.

---

*United States *v.* Vigol. [*346

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

on a proof of the *overt* acts by two witnesses, *M. Levy* and *Lewis*, for the defendant, and that the attorney of the district agreed, without argument, to submit to the decision of the jury, under the charge of the court; which was delivered to the following effect.

PATERSON, Justice.—The first point for consideration, is the evidence which has been given, to establish the case stated in the indictment; the second point turns upon the criminal intention of the party; and from these points (the evidence and intention) the law arises.

With respect to the evidence, the current runs one way: it harmonizes in all its parts: it proves, that the prisoner was a member of the party who went to Reigan's house, and afterwards, to the house of Wells, in arms, marshalled and arrayed; and who, at each place, committed acts of violence and devastation.

With respect to the *intention*, likewise, there is not, unhappily, the slightest possibility of doubt: to suppress the office of excise, in the fourth *347] survey of this state; and particularly, in *the present instance, to compel the resignation of Wells, the excise officer, so as to render null and void, in effect, an act of congress, constituted the apparent, the avowed object of the insurrection, and of the outrages which the prisoner assisted to commit.

Combining these facts, and this design, the crime of high treason is consummate, in the contemplation of the constitution and law of the United States.

The counsel for the prisoner have endeavored, in the course of a faithful discharge of their duty, to extract from the witnesses some testimony, which might justify a defence, upon the ground of duress and terror. But in this they have failed; for the whole scene exhibits a disgraceful unanimity; and with regard to the prisoner, he can only be distinguished for a guilty pre-eminence in zeal and activity. It may not, however, be useless, on this occasion, to observe, that 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. The apprehension of any loss of property, by waste or fire; or even an apprehension of a slight or remote injury to the person, furnish no excuse. If, indeed, such circumstances could avail, it would be in the power of every crafty leader of tumults and rebellion, to indemnify his followers, by uttering previous menaces; an avenue would be for ever open for the escape of unsuccessful guilt; and the whole fabric of society must inevitably be laid prostrate.

A technical objection has been suggested in favor of the prisoner. It is said, that the offence is not proved to have been committed, on the day, nor the number of the insurgent party to be so great, as the indictment states. But both these exceptions, even if well founded in fact, are immaterial in point of law. The crime is proved, and laid to have been committed before the charge was presented; and whether it was committed by one hundred, or five hundred, cannot alter the guilt of the defendant. If, however, the jury entertain any doubt upon the matter, they may find it specially.

Verdict, guilty. (*a*)

(*a*) The court having waited about an hour for the jury (until half past ten o'clock

*United States v. Mitchell.

Treason.—Evidence.

An insurrection, to prevent by force and intimidation, the execution of an act of congress, is treason, by levying war.

A bare conspiracy is not treason; there must be an *overt* act, proved by two witnesses.

On a trial for treason, a copy of a letter, inciting to insurrection, is admissible in evidence, on proof that it was one of the copies actually circulated.

Evidence is not admissible, that the defendant joined in the commission of a distinct felony, for which he is charged in another indictment: there being no evidence that such felony was committed with a treasonable intent.

Indictment for high treason, by levying war against the United States. It was alleged, that the prisoner was one of the party that assembled at Couche's Fort, armed; that he proceeded thence to Gen. Neville's, and assisted at the burning of the general's house; that he attended with great zeal at the meeting at Braddock's field; and that on the day prescribed for signing a submission to the government, he was intoxicated, refused to sign himself, and was active in dissuading others from signing. The circumstance of the prisoner's being at Couche's, was proved by a number of witnesses; his being at Braddock's field, by one witness and his own confession; but there was only one positive witness to the fact of his having been at the burning of general Neville's house, though a second witness said, "it ran in his head, that he had seen him there," and a third declared, that he had passed him on the march thither. The scope of the testimony, as it respected the general object of the insurrection, and as it particularly applied to the prisoner, will be found sufficiently stated in the course of the arguments and charge.

The Attorney of the District (*Rawle*) having closed the evidence, proceeded to state the law, in support of the prosecution. So frequently and fully has the offence of levying war against the government been defined, that a doubt can hardly be raised upon the subject. Kings, it is true, have endeavored to augment the number, and to perplex the descriptions of treasons, as an instrument to enlarge their powers, and to oppress their subjects; but in republics, and particularly, in the American republic, the crime of treason is naturally reduced to a single head, which divides itself into these constitutional propositions: 1st. Levying war against the government; and 2d. Adhering to its enemies, giving them aid and comfort. In other words, exciting internal, or waging external, war, against the state. The second branch of the crime, thus designated, renders it unlawful and

---

at night), adjourned until eleven o'clock the next morning. Just after the adjournment took place, the jury requested to see Foster's Crown Law, and the Acts of Congress, which, by consent, were accordingly sent to them. I am told, that they remained together until between three and four o'clock in the morning, when they wrote, signed and sealed up their verdict, and adjourned. On the next morning (the 23d of May 1795), they appeared at the bar; and being called over, offered the written verdict, sealed up, to the clerk. But The Court said, that the paper could not be received. The foreman then pronounced the verdict, *vivâ voce*, and again offered the written verdict; but The Court repeated, "We cannot open or receive it." Nothing was said, publicly, of the jury's having adjourned. The defendant was eventually pardoned.