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REPORT

OF THE TRIAL OF

SAMUEL TULLEY AND JOHN DALTON,

ON AN INDICTMENT FOR

PIRACY,

Committed January 21st, 1812.

Before the Circuit Court of the United States, at Boston,
28th October, 1812.

CONTAINING

The EVIDENCE at large, a Sketch of the ARGUMENTS of
Counsel, and the CHARGE of the
HON. JUDGE STORY,

ON PRONOUNCING SENTENCE OF DEATH.

(From minutes taken at the Trial.)

BOSTON,

PRINTED BY J. BELCHER.

1812.

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District of Massachusetts, to wit :

BE it remembered, that on the 30th day of November, in the thirty-sixth year of the Independence of the United States of America, JOSHUA BELCHER, of the said district, has deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following, to wit : "A Report of the trial of Samuel Tulley and John Dalton, on an indictment for Piracy, committed January 21st, 1812. Before the Circuit Court of the United States, at Boston, 28th October, 1812. Containing the Evidence at large, a sketch of the arguments of counsel, and the Charge of the Hon. Judge Story, on pronouncing sentence of death.—From minutes taken at the Trial "

In conformity to the act of the Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned ;" and also to an act, entitled, "An act supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned and extending the benefits thereof to the arts of designing, engraving and etching, historical and other prints."

WILLIAM S. SHAW, Clerk of the District
of Massachusetts.

BOSTON

PRINTED BY J. BELCHER

1812

REPORT, &c.

AT the Circuit Court of the United States, for the First Circuit, holden at Boston, within and for the District of Massachusetts, on the twentieth day of October, A. D. 1812, before

HON. JOSEPH STORY, *Presiding Judge,*

HON. JOHN DAVIS, *District Judge.*

The Grand Jurors returned *three Bills of Indictment* against SAMUEL TULLEY and JOHN DALTON, of Philadelphia, in the State of Pennsylvania, mariners. One for PIRACY, on the Statute of the U. S. passed 30th April, 1790—for piratically and feloniously running away with the schooner *George Washington*, from the care, custody, and possession of Uriah Phillips Levy, her master. Another for the MURDER of George Cummings, on the high seas, on the 20th day of January last. Another for *feloniously scuttling and casting away said vessel* on the high seas, on the 21st day of January last, against the provisions of a law of Congress in such case made and provided. Copies of these several Indictments, and a list of thirty-six Jurors to be called at the trial, were given to the pris-

oners, and in pursuance of a statute provision for the assignment of causes, JAMES T. AUSTIN and PETER O. THACHER Esquires, were assigned them by the court to assist them in their defence. On Tuesday, 28th October, the prisoners were brought into court, and arraigned on the first Indictment.

The Indictment was then read in the following words :

United States of America, }
Massachusetts District, s.s. }

AT a Circuit Court of the United States for the First Circuit, began and held at Boston, within and for the District of Massachusetts, on the twentieth day of October, in the year of our Lord eighteen hundred and twelve.

The Jurors for the United States, within and for the District and Circuit aforesaid, upon their oath, present that Samuel Tulley; late of the city of Philadelphia, in the District of Pennsylvania, mariner, and John Dalton, late also of the same city of Philadelphia, mariner, on the tenth day of January now last past, with force and arms upon the high seas, near a place called the Isle of May, one of the Cape Verd Islands, and out of the jurisdiction of any particular state, they, the said Samuel Tulley and John Dalton, being then and there mariners of a certain vessel of the United States, being a schooner, called the George Washington, then and there belonging, and appertaining to a certain citizen or citizens of the United States, to the Jurors aforesaid as yet unknown; of which said vessel, one Uriah Phillips Levy, a citizen of the said United States, was then and there master and commander, piratically and feloniously did then and there run away with the aforesaid vessel called the George Washington, and with certain goods and merchandize, that is to say, fourteen quarter casks of Teneriffe wine, and

two thousand Spanish milled dollars, being altogether of the value of five thousand dollars, which were then and there on board of the vessel aforesaid; they, the said Samuel Tulley and John Dalton, during all the time aforesaid, being then and there mariners of the said vessel, and in and on board of the same on the high seas as aforesaid, against the peace and dignity of the United States, and the force of the statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said Samuel Tulley and John Dalton, on the said tenth day of January now last past, then being mariners of, in and on board the said schooner or vessel called the George Washington, belonging and appertaining to certain citizens of the United States, (to the Jurors aforesaid as yet unknown,) with force and arms upon the high seas aforesaid, and out of the jurisdiction of any particular state, near a place called the Isle of May, one of the Cape Verd Islands, in and on board the said schooner or vessel called the George Washington, whereof the said Uriah Phillips Levy, a citizen of the said United States, then and there was master as aforesaid; the same schooner or vessel, and the tackle and apparel thereof, of the value of five thousand dollars of lawful money of the United States, and certain goods and merchandize, to wit, fourteen quarter casks of Teneriffe wine, of the value of one thousand dollars of like lawful money, and two thousand Spanish milled dollars, of the value of two thousand dollars of like lawful money, of the goods and chattels of certain citizens of the said United States, (to the Jurors aforesaid as yet unknown,) then and there being in the said schooner or vessel, under the care and custody, and in the possession of the said Uriah Phillips Levy as master of the said schooner or vessel, then and there upon the high seas aforesaid, near the said Isle of May, and out of the jurisdiction of any particular state, with force and arms as aforesaid, from the care, custody, and possession of the said Uriah Phillips Levy, piratically and feloniously did steal, take and run away with. They, (the said Samuel

Tulley and John Dalton,) then and there being mariners of the said vessel, and in and board the said vessel, upon the high seas as aforesaid—against the peace and dignity of the said United States, and the force of the Statute in such case made and provided.

And the Jurors aforesaid, upon their oath aforesaid, do further present, that after the commission of the said offences, to wit, on the fifteenth of July now last past, the said Samuel and John, the offenders aforesaid, were first brought into the said Massachusetts District, and that the said Massachusetts District, is the District into which the said offenders were as aforesaid first brought.

A true Bill,

HUMPHREY DEVEREUX, *Foreman.*

GEORGE BLAKE, { *U. S. Attorney, for*
Massachusetts District.

Whereupon the Clerk of the court asked them, if they were guilty or not guilty? to which they severally answered, not guilty; and it was then demanded of them, how they would be tried? to which they said, by God and their country; and the Clerk rejoined, God send you a good deliverance. The prisoners being ready for trial, a Jury was empannelled, and after several challenges by the prisoners, the following gentlemen were sworn to pass between them and the United States.

WILLIAM STEARNS, of *Salem*, FOREMAN;

SAMUEL HARRINGTON, of *Worcester*;

JOHN CLARK, of *Cambridge*;

JOTHAM LINCOLN, of *Hingham*;

ABRAHAM TUCKERMAN, of *Boston*;

HAWKES FEARING, JUN. of *Hingham* ;
 SAMUEL GATES, of *Worcester* ;
 SOLOMON RICHARDS, of *Roxbury* ;
 BENJAMIN SEAVER, *Do.*
 JOSIAH SEAVERNS, *Do.*
 JAMES LEWIS, of *Dorchester* ;
 ISAAC N. FIELD, *Do.*

The case was then opened by GEORGE BLAKE, Esq. *Attorney for the United States.* He said it was his painful, but necessary duty, to lay before the Court and Jury, the law on which the Indictment was founded, and the evidence which would support the charge against the prisoners at the bar ; and in order to enable them more fully to understand the story which the witnesses would substantiate, he should present them with a general outline of what he expected the government would be able to offer in evidence. The Attorney then read the law as follows :

“If any person or persons shall commit upon the high seas, or in any river, haven, bason or bay out of the jurisdiction of any particular state, murder or robbery, or any other offence, which, if committed within the body of a county, would be punishable with death ; or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate, or if any seaman shall lay violent hands upon his com-

mander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship, every such offender shall be deemed, taken, and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death. And the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or where he may first be brought."

The Attorney then gave a summary and candid statement of the expected evidence, and proceeded to call the witnesses.

JAMES HOLMES called and sworn.

He said he brought the prisoners at the bar, together with John Owen, a black man, from the Island of St. Lucie to the United States; that they were delivered to him as prisoners by the authority of the Island, to be brought to the United States; that the first port he made was Martha's Vineyard; that the three men were delivered to the civil authority, and committed to prison in New-Bedford, and afterwards brought to Boston.

URIAH PHILLIPS LEVY called and sworn.

He said he was the master of the schooner George Washington, and a part-owner jointly with two other American citizens; that she was a new vessel, American registered; was built in the state of Delaware, and had not been to sea till the voyage in question. On

the 17th October, 1811, he sailed from the Delaware, on a voyage to Teneriffe and elsewhere. His crew consisted of Samuel Tulley his mate, John Dalton a foremost hand—the prisoners; a sailor called Neal, Daniel Hopkins, George Cummings, and John Owen, cook. On the 13th day of December the schooner arrived at Teneriffe, landed the cargo and took on board 14 quarter casks of wine, and \$2500 in specie. On 23d December sailed from Teneriffe to the Isle of May, one of the Cape de Verd Islands, where they arrived on the fourth of January. That a proper and convenient place for anchorage was pointed out to him by an American captain who lay there, and the schooner was moored in about ten fathoms of water, by two cables, one $9\frac{1}{2}$ the other $8\frac{1}{2}$ inch, 75 and 60 fathoms. On the ninth of January, at 3 o'clock P. M. went on shore and left all hands on board, directing the mate to send the boat on board the brig Lambert, capt. Levi Joy, then lying there, at sun down. Joseph Neal and Daniel Hopkins came with the boat at that time, and he ordered them to return and come again for him in an hour or two. At eight o'clock Joseph and Daniel came again; they stated to him a conversation between themselves and the mate on board the schooner, which the witness was not permitted to repeat. That he immediately looked out for his vessel, but saw she had gone from the place she was moored in, and he never has seen her from that time to the present. That the next day

he caused the search to be made for the anchors, which he found and weighed. The cables were fastened to them, but both cables had been cut with some sharp instrument, and from an examination of the length, he had not the least doubt they had been cut at the windlass.

On cross-examination he said, the anchorage in the Isle of May was in an open road; that there is a strong current, which is felt immediately on leaving the bay; that the schooner was a good sailer, required some pumping, and on her outward passage with a cargo of corn, they used to pump every half hour; that the last time he saw the vessel, they had been swaying up the foresail; the topsail was in the cabin; the foreyards, gib-boom and foresail were on deck; the fore-rigging had been set up and rattled down; that the vessel might have been got ready for sea in five minutes; that at the time there was only a moderate breeze, and all sail could have been set; that when he first knew the schooner had gone, it was rather dark, yet light enough to have discovered her if she had been in the bay; that no vessel was there capable of pursuing with any hope of overtaking her; that there was generally a heavy sea and swell running into the bay, and that the windlass had been whelped with four pieces of board over each end. He often left the schooner in the care of the mate before this time. Dalton complained of being sick on the voyage, but always did his duty.

Joseph and Daniel left the Isle of May with his consent, in a vessel bound to the United States ; he has made very careful inquiry for them, but has not been able to gain any intelligence of them, nor can he say where they are. He sent circular letters respecting his loss into every part of the United States and the West Indies, but has never obtained any information respecting his schooner. The American consul gave him such intelligence respecting men detained at St. Lucie as induced him to go there, where he received from the commanding officer 1350 dollars and his clothes, the balance being detained for expenses. The prisoners had left the Island before his arrival.

JOHN OWEN called and sworn.

He said that he lately belonged to the American schooner George Washington, commanded by captain Levy, and a few months since, sailed from Philadelphia in the said vessel to the Island of Teneriffe, and from thence to the Isle of May. Whilst lying at the Isle of May, one day after dinner, the Captain went aboard an American vessel likewise lying there, and desired the mate to send the boat for him at sunset, which was done accordingly ; but the Captain did not return, and desired the boat again to be sent for him, at eight o'clock. The witness, being cook of the vessel, prepared supper at about eight o'clock in the evening, of which the mate, Samuel Tulley, partook ; but the

Captain not being arrived, the provisions were left waiting for him on the table, and this witness went to sleep ; sometime afterwards, when it was dark, he was called upon by Samuel Tulley, to hold a lantern to the pigeon-hole, through the cabin, on deck, in order for him to see by the compass how the vessel was lying, it being then still at anchor ; some considerable time afterwards, he was called up again by the Mate, as were all hands, and ordered to make sail on the vessel, the Mate declaring that she was drifted. Sail was accordingly made, until one of the sailors, named Neal, being forward in the vessel, exclaimed that he would not hoist the sail, *for that both the cables were cut.* The Mate then insisted upon their continuing to hoist the sail, which Neal and a man named Dan refused, unless he would give them some satisfaction as to what he was going to do with the vessel, which the Mate refused, saying it did not signify, and still insisting on the sails being hoisted ; adding, after the sails are up, I will give you the boat. The sails were accordingly hoisted by all hands, after which the Mate gave the two men (Neal and Dan) the boat, in which, having put their clothes, these two men departed. Owen declared that he also requested permission to go in the boat, which the Mate positively refused, and declared that no other person should quit the vessel. After this, the Mate himself continued at the helm the greatest part of the night. The men remaining on board the vessel, were the mate, Samuel

Tulley ; Jack, who is now here and calls himself John Dalton ; George, and this deponent.

About two weeks were spent at sea, during the last part of which time he observed that George became uneasy in his mind and fell from his appetite, and used to go two or three times a day and kiss the Mate's hands or feet and those of Jack.

One evening when it was expected aboard the vessel soon to see land, George went to Jack and asked him when the land would be seen. *Jack replied to-morrow*, whereupon George replied good bye, you will not see me any more. Jack, who was steering, treated what George said lightly, asked him what was the matter and told him he was foolish ; but George persisted in saying the same things. The witness then went down below to sleep, leaving George sitting on one side of the deck and the Mate sitting opposite to him on the other side, on the hen-coops. During the night, he thinks about eleven or twelve o'clock, he heard a noise upon deck and himself called for ; he came upon deck, when Jack said to him, that George was killing the Mate, and the Mate and Jack together had *George upon the gunwale of the vessel, throwing him overboard*. This witness was much confused and did not know what to do ; he replied to what was said to him by Jack, that it could be no such thing, ran to the helm which had been abandoned, then, in his confusion, left it again. In the mean time, the Mate and Jack continued throwing

George overboard ; the Mate saying, " overboard he shall go at the risque of my life ;" and George was in this manner by them thrown overboard, and left in the sea.

The next day after George had been thus thrown overboard, land was seen from the vessel ; it was time of evening and the Mate made the vessel lie too till morning. The Mate then caused the long boat to be hoisted out ; put into it the Captain's large chest and several other things according to his wish, together with the trunks of Jack and this witness. Then made this witness get into the boat, fastened it to a line, and let the line run out (he, Owen, remaining in the boat) to a great length, then the line being made fast the boat was towed by the vessel ; afterwards the boat was hauled up along side the vessel and the Mate and Jack came into it ; and he knows, by what was said by the Mate and Jack, afterwards, whilst in the boat, that during the time he was towed in the boat, those two men bored holes in the bottom of the vessel in order to occasion her to sink ; but so long as she remained in sight from the boat, the vessel did not sink.

When the boat had thus quitted the vessel, the Mate distributed to Jack and this witness money, consisting of dollars, which he knew to have belonged to the Captain ; the Mate saying they must all keep secret every thing that had happened, and keep the money for themselves. The same evening, the boat came near to land, but being afraid of the

reefs, it was made to stand out to sea again ; and the next day again approached, and coming ashore, they found the land which he did not know before, to be the Island of St. Lucie in the West Indies. After they got on shore, they went to the first house on the Island, which was inhabited by persons who spoke only French, and they could not make themselves understood. The Mate and Dalton repeatedly enjoined upon the witness not to tell what had happened, but to keep it secret and to say they had run foul of a wreck and were cast away, and that the Captain had taken one boat and they another. The Mate went to town. Witness and Dalton staid till he returned, which he did after a short time, in company with the harbour master, who took them all in a boat and rowed round to the town. Dalton then went to one place to live, and the witness and the Mate lived together at another. He continued to repeat the story in which he had been instructed. He however grew uneasy in mind at being obliged to tell a lie to every body who questioned him, and resolved to disclose the whole affair ; for which purpose he went one evening to captain Taylor's, an American captain, and told the truth as he has now related it. Thereupon they were all arrested, and after sometime being confined were brought here as prisoners.

On his cross-examination he said that when the vessel was said to be adrift, it was candle light, but that he could see the land from the

deck. That Dalton assisted in lowering down the boat but cannot say whether he asked for leave to go ashore or not; the night was dark, cannot tell what course they steered; they set the mainsail, foresail and gib. During most of the night the Mate kept the helm; when he left it, Dalton stood at helm. He does not know if any attempts were made to put back, but the next morning there was no land in sight. From the remains of the cables, he knows both must have been cut with an axe or knife. George, the deceased, was a foreigner; the morning before he died he gave the witness his earrings and breast-pin and said he should not live to see land. When the witness came upon deck and saw George struggling, he had in one hand a knife and in the other a hammer; the Mate was wounded badly in the cheek and back of his ear with the knife, and on the back of his head with the hammer; he also received a wound across his hand, which has left a scar. To a question of one of the Jurors, witness said he never heard either the Mate or Dalton express any regret for the loss of the man or seem to lay it to heart. The money which he received of the Mate, the witness said he never expended, nor did he go into any company or place of amusement in St. Lucie; and when he was arrested there, the money was taken by the officers of government.

The Attorney for the United States rested the case on this testimony.

The Counsel for the prisoners then called CAPT. BENJAMIN HARRIS, *who was accordingly sworn.* He stated that he was an experienced seaman, having been for many years conversant with the sea; that he had been at the Isle of May and the other Cape de Verd Islands. That there is a pretty regular trade wind prevailing there, which blows off the coast; that sometimes there are what is called heavy rollers, which he explained, by saying they were great billows or waves, driven in by the force of the winds or other causes, and that these were frequent in the hurricane months, but not usual in the month of January. That the anchorage at the Isle of May is very bad, by means of many anchors being lost there, which are apt to cut off the cables of vessels riding there. Vessels are apt to part their cables and drift out. His own vessel was driven out in that manner at Bona Vesta. That when a vessel was found to be adrift, an experienced seaman would in the first place make sail and endeavour to beat to windward. That in moderate weather, although there is a strong current off the Isle of May, he should not think it difficult to get back or to make the Isle of Jago, where vessels usually touch.

CAPT. MICHAEL HOPKINS called and sworn.

He corroborated the testimony of Captain Harris. He said that the anchorage ground was bad, that there were many foul anchors in the bay, vessels frequently part their cables and drift out; that in the months of August,

September and November it is very rough, with heavy swells and rollers; that it is not incredible that a vessel, situated as the George Washington was and short manned, might be driven off and find it very difficult to return; though he should think there would be no great difficulty, in moderate weather, in returning. That when the vessel was found to have parted her cables, it was judicious and seamanlike to make sail.

At this stage of the cause, the Court adjourned for one hour. The Jury were directed to continue together and not to converse on the case before them, but to keep their minds perfectly unbiassed until the whole cause was finished, and with the consent of the prisoners, they were permitted to take moderate refreshment.

AFTERNOON.

Court opened.—Present as before.

J. T. AUSTIN and PETER O. THACHER Esquires, severally addressed the Jury at great length, on behalf of the prisoners; and the Reporter regrets, that he has not been permitted to make an extract from their briefs. Three points, however, were relied upon in the defence.

1st. That the whole evidence, if the witnesses for the government were credited, was not inconsistent with the accidental departure of the schooner, or at least without any criminal agency on the part of the Mate or Dalton; and that whatever events might have occur-

red at sea, rendering a concealment necessary when they arrived at St. Lucie, that the fact of feloniously and piratically *running away* was not made out in evidence.

2dly. That the principal witness in the case, and the witness from whom alone the facts came, by which the defendants could be charged, was John Owen, the cook, who was a single witness, suspicious in his character, and from his own testimony, although he does not *confess* himself guilty, must be deemed to be an accomplice in whatever crimes were committed. The Jury, therefore, were not only warranted in laying his evidence out of the case, but it would be their duty so to do. That to convict one man of a capital offence, on the credibility of a single witness, even of honest character, was risking too much, and incurring a greater responsibility and hazard than a Jury were warranted in assuming; but to condemn two men on the testimony of a single witness of very suspicious character, a perfect stranger, of a class of society not usually well instructed in moral principles and the obligation of an oath, swearing for his own liberty and deeply interested in the event of the prosecution, was an event which no Jury would venture to produce; and that although it might by possibility be true, that this dark coloured accomplice had told a correct story, yet that on evidence so suspicious and so liable to mistake, it was the safest and most rational judgment to pronounce, not indeed that the

defendants were innocent men, but that they were not proved, by satisfactory and unimpeachable evidence, to be guilty.

3dly. That the facts, if credited, do not amount to the crime of PIRACY. The defendants, it was said, were indicted on the statute for *piratically*, as well as feloniously, running away with the schooner George Washington, from the care, custody and possession of Uriah P. Levy, the master. The word feloniously referred to the disposition and temper of mind, what in law is called *animus furandi*; and the word *piratically*, to the manner in which this disposition was exercised; and that nothing could amount to the crime of *piratically* running away with the vessel, but a larceny of the property, TOGETHER WITH such personal violence or putting in fear, as would change the crime of larceny into the more aggravated crime of robbery, if it had been committed on shore. The distinction was illustrated by the following case. If a gentleman left his horse in the care of his servant while he alighted, and the servant went off with the horse and sold him, or converted him to his own use in any other way, it would be larceny in the servant, but not robbery; but if the servant or any other person, while the master was riding his horse, had with force and violence, or by threats compelled the master to dismount, and the servant had then rode off with the horse, this would be robbery. This addition of force changes the nature of the crime and increases

the punishment—and by the laws of the U. S. the robber is punished with death, while the thief is subjected to a limited imprisonment. The Counsel contended, that the same distinction existed between the crimes of larceny and piracy; and they quoted from a variety of law writers, and from analagous reasoning to prove their position, and finally said, that if the mate or seamen, who were the servants of capt. Levy, had exercised any personal violence upon him and threatened him, and then run away with the schooner, it would be *piratical*; but if they had watched an opportunity in the absense of the captain, when they could get possession without such force or threats, and had run away with her, it was not piracy, but larceny; and the prisoners, although amenable to justice on another Indictment, for an offence less heinous and not capital, could not be found guilty of the crime charged upon them in this Indictment.

A distinction was also attempted to be made in the operation of the evidence on the defendants separately, with a view to shew that in whatever light the conduct of Tulley might be viewed, Dalton was not a principal, but only accessory.

In concluding his remarks, MR. AUSTIN, of Counsel for the prisoners, addressed the Jury in words of the following import, as nearly as we can repeat them from our minutes.

The defendants, gentlemen, are in your hands. If there exists a reasonable doubt as to the law or the evidence, that doubt will save

them. Fortunately for our country, a scene like the present rarely presents itself in our Courts of Justice. I persuade myself, the times in which we live have not destroyed the sensibility which such a scene should excite. We hear, indeed, almost on every gale, the dreadful deeds of war and battle, and grow more and more familiar with death. Among the many who are falling around us, two lives like those of the unhappy men at the bar, may not be thought much addition to the melancholy catalogue. Yet, gentlemen, when the law, which is made for the protection of human life, deems it necessary to put that life in jeopardy, not for any injury to the lives of other members of the community, but for a mere injury to personal property; there is much, very much for a Jury to consider.

If by your verdict, the defendants should be called to pass through the dark valley of the shadow of death, they will at least have the consolation of knowing, that their fate has been sealed by an impartial and honourable Jury. But if the reverse of this should be the case; if your verdict opens their prison doors, and restores them to a new existence, chastened by the dangers they have incurred, and bound to honesty by the perils they have passed, the reflection of having returned to them their lives, which the law this day puts into your hands, will be to you a source of the sweetest consolation, at that awful hour when your lives shall be required by the great

Judge of Nature. Gentlemen, the defendants are in your power: I can only repeat for them the humane wish of the law—"God send them a good deliverance."

After the defence had been concluded by the Counsel for the prisoners, GEORGE BLAKE, Esq. addressed the Jury on the part of the prosecution, and applied the evidence to the several points on which it was necessary for the Jury to be satisfied. He contended that it was utterly impossible, under the circumstances which had been stated, that the schooner could have drifted by accident from her moorings, and equally so, that any other persons than the prisoners could have been instrumental in the perpetration of the crime. He enforced to the Jury the strong and violent presumptions of guilt, which the testimony of capt. Levy alone furnished against the prisoners. From his testimony it was beyond contradiction, that the vessel had been at the Isle of May, and that suddenly she departed, and had never since been heard of; that the Mate and Dalton were on board, and the Mate having her in charge. That the Captain's chest of clothes, and some of his money had been carried by the prisoners to St. Lucie, where they were found by capt. Levy, who received them from the hands of the legal authority. That the vessel was feloniously taken, is also apparent from his testimony, because the fact to which he swears positively, that on examination the cables were found to have been cut, is irreconcilable with any other supposition. The

testimony of Owen, the cook, is therefore not *necessary*, although in a case of this kind it is satisfactory to obtain all the information which the nature of the case admits. His statement is in affirmance of capt. Levy's, and is corroborated by it so far as both witnesses were capable of knowing the same facts. It is only an enlarged and more circumstantial story to which he testifies. The Captain had given the outlines of the horrible picture, Owen had filled up the dark particulars of the scene. In law, even an accomplice was admissable as a witness, and by every principle of common sense, his evidence would be credited if it was probable, consistent, and corroborated by facts independent of it, and known to exist. His statement of the departure from the Isle of May and arrival at St. Lucie, are not only probably, but certainly true; his story is consistent, clear, and uncontradicted in any of its parts; after an able and most ingenious cross-examination, nothing appears to make his statement in the least degree ambiguous or uncertain. He tells a plain, unvarnished tale of his whole course of life. The great advantage of a trial by Jury is, that Jurors have an opportunity of seeing the witnesses, and judging of the credit due them by the manner in which they testify. In this instance he left it to the Jury to determine whether they ever saw a more unembarrassed, and intelligent, and cautious witness; and whether he was an accomplice or not, it was impossible to resist

the force of his testimony. But was he an accomplice? His own statement, and the circumstances he has related, shew that he was not. He had, probably, no will of his own. In the most menial capacity, a mere drudge, necessary to the new masters of the vessel, but too insignificant to be for a moment consulted, he had no choice but to obey their commands. He was a man more sinned against, than sinning; and as soon as he had an opportunity, evinced his regard for the laws of God and man, which he had seen so flagrantly violated, by voluntarily giving evidence to the first American captain whom he was able to meet, by means of which, the defendants were arrested and brought to the bar of their country.

The Attorney considered at large, and replied to the various arguments which had been urged by the Counsel for the prisoners, and contended that every felonious running away with a vessel on the high seas, was a piratical act within the statute; and if the Jury believed the testimony which had been adduced, the crime contemplated by law and charged in the Indictment had been perpetrated, and the Jury would not hesitate in a verdict of Guilty.

After the arguments had closed, the learned Judges severally addressed the Jury. Each of them recapitulated the testimony, and stated in a very fair, perspicuous, and impartial manner, the operation and effect of it, as well in favour as against the prisoners at the bar. On the question of law, which they said had

been very properly raised by the Counsel for the defendants, they had bestowed as much attention as was possible during the course of the trial; and both their Honours stated explicitly their opinion, that a felonious running away with the vessel, was a piratical act within the meaning of the act of Congress, and subjected the perpetrators to capital punishment. The prisoners had had a fair and patient hearing; the Jury had paid close attention to the evidence, and the arguments which had been addressed to them. It was a question of evidence, and they were the sole and exclusive arbitrators. It was also a question to be settled by the judgment, and not by the feelings. The powerful appeal, that had been made to their sensibility, might cause them to regret the obligations imposed upon them; but as Jurors, the oath of God was upon them. They had a duty to do, which it would be criminal in them to omit. They were bound as well by their allegiance to their country, as by their tenderness for the prisoners. This duty might be painful, but it was, nevertheless, imperious. If in their consciences they believed the defendants were guilty, they were bound to say so, and leave the consequences to Providence. Theirs was a duty prescribed by justice; the more delightful attribute of mercy, was, by the law, placed in other hands; in hands which never failed to exercise it, where the circumstances of the case warranted the interposition of executive favour. A reasonable doubt would

operate in favour of life ; but the doubt must be reasonable ; not the mere suggestions of fancy, and the airy creations of mere possibility, but a reasonable and conscientious doubt. To such, a Juror was bound to listen ; with such a doubt he never ought to condemn. If such a doubt remained, the prisoners were entitled to an acquittal.

The trial commenced at ten o'clock in the morning, and it was eleven at night when the case was given in charge to the Jury. Officers were sworn to keep them in some convenient place until they had agreed upon a verdict, and not to suffer any person to speak to them unless by order of Court, and the Court adjourned until the next day, (Wednesday,) at nine o'clock, A.M.

Wednesday. The Court opened. Present Judges Story and Davis. The prisoners were brought into Court and the Jury came in; being called, they severally answered to their names. It was then asked of them whether they had agreed on a verdict, to which the foreman answered they had not. The Court thereupon inquired if any further explanation of the law was necessary, to which the foreman replied that the Jury could not agree, that the facts in the case amounted to *Piracy*. The Court then repeated the substance of their former charge on this point, and ordered the Jury to withdraw for further consideration. The Jury accordingly retired. In about three hours they came again into Court. The pris-

oners were also brought in, and answered to their names.

Clerk. Gentlemen of the Jury, have you agreed upon a verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. The Foreman.

Clerk. Mr. Foreman, rise and look upon the prisoners. Prisoners, look upon the Foreman. Mr. Foreman, what say you? Is SAMUEL TULLEY, *one of the prisoners at the Bar*, GUILTY or not GUILTY?

Foreman. GUILTY!

Clerk. Mr. Foreman, what say you? Is JOHN DALTON, *one of the prisoners at the Bar*, GUILTY, or not GUILTY?

Foreman. GUILTY!

The next day the following motion was filed by the Prisoner's counsel.

*United States of America, }
District of Massachusetts. }*

Circuit Court of U. S. October Term, 1812.

THE UNITED STATES BY INDICTMENT *vs.*

SAMUEL TULLY AND JOHN DALTON.

And now after verdict and before judgment the said Samuel and John, by their counsel assigned them by the Court, now move the Court here for a new trial of the issue joined on the said indictment for the following causes, viz.

1. Because the honorable Court in committing the cause to the jury who tried the same misdirected them

in a material point of law ; in this, that they directed the jury if they believed from the evidence in the case that the defendants feloniously run away with the vessel and merchandize mentioned in the indictment, it constituted the crime of piracy within the meaning of the statute on which the indictment is founded.

2. Because the verdict of the jury was rendered against the weight of evidence, they having found the defendants guilty of *piratically* and feloniously running away with the vessel and merchandize mentioned in the indictment from the care, custody and possession of Uriah Phillips Levy, the master thereof, although no evidence was offered them to show that any force or violence were exercised on the said Levy, or that he or any other person were thereby put in fear, but the evidence on the part of the government proved the contrary.

PETER O. THACHER.
JAMES T. AUSTIN.

J. T. AUSTIN addressed the Court. He said that having had a very fair and full opportunity of addressing the Court through the Jury at the trial on the subject matter of the present motion, the Counsel for the prisoners did not propose to occupy the further time of their Honors with a recapitulation of former arguments. In justice, however, to the defence which the Court had entrusted to their care, they deemed it proper to present these objections in the present shape, that they might command the deliberate reflection and judgment, which their immense importance to the prisoners entitled them to receive. They were the only planks in the shipwreck of their hopes, on which they had any prospect of floating to a shore of safety. It would be

for their Honors to decide, whether this too should fail them.

On the subject of a new trial, he would merely remark, that, although in capital cases it had not been very usual, yet the case of *United States vs. Fries*, in the Circuit Court of the United States, for the District of Pennsylvania, and the case of *Commonwealth vs. Hardy*, in the Supreme Judicial Court of this State, in both of which cases, after verdict of Guilty, new trials had been awarded, were, in point to shew the power and practice of the Court, where circumstances authorised the interference of their discretion.

The motion was received by the Court and held under consideration until Monday, 9th November. The prisoners were then again brought into Court and opinion of their Honors were severally delivered.

HIS HONOR JUDGE DAVIS. A pirate is one, says Hawkins, who, to enrich himself, either by surprise or force, sets upon merchants or other traders by sea to spoil them of their goods; this description, as is observed by a respectable writer of our own country, is applicable merely to piracy by the law of nations. Piracy by the common law consists in committing those acts of robbery and depredation upon the high seas, which if committed on shore would amount to felony there.

The description of the offence in the first part of the 8th Section of our statutes is analogous to the common law description, but the

statute proceeds in correspondence with the statute of 11 and 12 of William 3, to make certain other acts piracy, which would not be so at common law, and among the rest an atrocious breach of trust, by any Captain or mariner of any ship or vessel, in running away with such ship or vessel, or any goods or merchandize, to the value of fifty dollars. To constitute this offence, the act must be done as the statute expresses it, piratically and feloniously. Unlawful depredation, says a respectable writer of the civil law, is of the essence of piracy, and this, I apprehend is true relative to the piracy thus created by statute as to piracies by common law. The *animus depredandi*, as it is expressed by Molloy, is to be determined by the Jury, from facts and circumstances given in evidence, and is comprehended in the term *feloniously*, which refers to the mind, will or intention. If the Jury find the act of running away with the ship or vessel and goods, to be done feloniously, they find it to be done without any justification or excuse; they find it to be done wilfully and fraudulently, *animo furandi, lucricausa*; and having been committed with the other qualities and accidents mentioned in the statutes, i. e. at sea, by persons bearing the relation to the ship, of Captain or mariners, and the property plundered, amounting to fifty dollars—such felonious act is in contemplation of the Statute piratical.

Thus the Jury were instructed, and after the serious deliberation which the nature and

magnitude of the case necessarily impose, I do not think the direction erroneous.

In regard to the second objection, if force were necessary to be proved in order to constitute piracy, there was sufficient evidence in the case of a forcible taking of the property in question ; nor can it be contended, I think, from the evidence, that no person was put in fear. But it is said that no evidence was offered to shew, that any force or violence were exercised on Levy, the master, in whose care, custody, and possession, the vessel and goods were alleged to be ; or that he was put in fear. This objection is grounded on an analogy to robbery on land ; an analogy too strictly pursued in the argument on this head. Even at common law, piracy might be committed without the characteristics, which this objection considers as essential. If a ship shall ride at anchor, says MOLLAY, and the mariners shall be part in their ship's boat, and the rest on shore, and none shall be in the ship, yet if a pirate shall attack and rob her, the same is piracy. And on this Statute there can be no question, as appears to me, that actual force on the master or other person in possession, is not necessary to constitute the offence. The Statute had in view the prevention of atrocious violation of trust by persons standing in particular relations to the ship. Officers and mariners may combine feloniously to run away with the ship and cargo, without any person being put in fear in the sense considered in the objection,

and yet it would be clearly a piratical act within the true intent and meaning of the Statute.

It is not necessary now to consider whether a new trial could properly be directed by the Court, if the objections, or either of them were well founded. Being persuaded that the Jury were not misdirected in matter of law, and that the Indictment is legally maintainable without proof of actual force or violence on the master or others, or that they were put in fear, I am of opinion that the motion be over-ruled.

The honourable JUDGE STORY stated at full length his reasons on this point, which concurring with those of Hon. Judge Davis, it is not necessary to recapitulate. The motion was accordingly over-ruled.

GEORGE BLAKE, Esq. then rose and addressed the Court in a solemn and impressive speech, in which he recapitulated the proceedings on the indictment, the verdict of the Jury, and the law which denounced capital punishment on such conviction; and concluded, by stating it to be his duty to move, and he accordingly did now move the Court to proceed to pronounce the sentence of the law.

His Honor JUDGE STORY then addressed the prisoners as follows:

SAMUEL TULLEY—JOHN DALTON,

You have been charged by the Grand Inquest of the United States, for the District of Massachusetts, with the crime of piratically

and feloniously running away with the schooner George Washington, commanded by Uriah Phillips Levy, against the Statute of the United States in such cases made and provided. You have been duly furnished with copies of the Indictment, and also with lists of the Jury, who, upon your trial, were to pass between you and the United States. You have had counsel assigned you by the Court, according to the benign provision of the law in capital cases. You have been arraigned on the Indictment, and have severally pleaded not guilty. You have been tried by an impartial Jury of your country, and at the trial had assistance and arguments of able, and learned, and eloquent counsel in your defence. You have been severally found guilty by the verdict of your peers. You have excepted to the opinions of the Court in matters of law at your trial. These exceptions have been fully considered by the Court, and upon mature deliberation have been over-ruled. You have now been brought into Court to receive the judgment of the law, and the District Attorney has now, in your presence, moved the Court to proceed to judgment.

What reasons have you now to shew to the Court, why they should not pronounce sentence against you?

No reasons being shewn, the learned Judge proceeded as follows :

Before I proceed to the painful duty imposed upon me by the law, a cup of bitterness

which I would most willingly put aside, I shall make a few remarks, which I hope will impress your minds with the most solemn conviction of the turpitude of your offence, and with the mercy of God, incline your hearts to contrition and repentance.

The crime of which you have been convicted is of a most odious nature; it is wilful, malicious, deliberate piracy. Among all civilized nations it is esteemed as an offence, which places you in enmity with the whole world, which banishes you from the hospitality and the protection of society, and consigns you to an ignominious death. In the present case, it has been attended with still more aggravated circumstances than usually attend the depredations of unauthorized plunderers of the property of their fellow-men. You were a part of a crew of a vessel navigated under the flag of the United States, entrusted by the owners, with their confidence and property, and urged by every honorable motive to an honest discharge of your respective duties.

The security of the commerce of the country, the maintenance of the good order of society, and the lives of thousand of your fellow-citizens are intimately connected with the good faith and honesty of seamen. How have you repaid the confidence reposed in you by the esteem of your commander? You have been treacherous and deceitful. You have had no adequate temptations, and no apology for your deliberate violations of the law.

You sought the darkness of night to cover deeds which would not bear the light. You had time to consider and reflect. The midnight stars shone with disastrous light on your wickedness; the deep silence of the hour, when nature pauses as upon the brink of dissolution, gravely warned you of your fate. The morning rose in its splendour to call you back to repentance; yet you returned not; yet you sought not the forgiveness of the world, by returning to the bosom of society, and repenting of your sin. Shall I stop or shall I proceed? One crime leads on the way to another, and every step in guilt is but a new incitement to urge another. One of your companions bowed down in spirit, overwhelmed with self-humiliation, approached you in the fulness of his sorrow, and repented and implored your mercy. Did your bowels yearn with mercy towards him? Did you endeavour to soften his woe or to seek with him the path of future peace by a return to virtue? I dread even to remember the hateful tale! His tears and entreaties were of no effect.

I would not willingly accuse, much less would I unheard condemn you. The hour of his fate drew nigh; in the deep gloom of the night there was a most foul and unnatural murder. You heard his dying groans; you saw his last struggle; you took his lifeless corpse and plunged it amid the sullen waves. The ocean received him to its bosom, and returned back its short, but awful murmurs. Were you guilty of this atrocious crime?

I will not say ; let your own hearts and consciences declare. The morrow saw no tears and no contrition. The deeds of night were but the precursors of a new destruction. The vessel was herself the next object of ruin ; and she was wantonly scuttled and left to sink to the bottom of the sea. Foul and deliberate falsehoods closed the horrible history of your crime.

Yet though these transactions were veiled from human eyes, think not that they escaped the all-seeing eyes of that being who createth and governeth the universe. At the solemn hour when deep sleep falls upon the sons of men, his ever-watchful mind is awake. When darkness surrounds the plunder of the public pirate, he is ever present and marks the wanderings of wickedness. When MURDER riots in supposed security, he hears the voice of dying innocence, and HIS OWN RIGHT ARM SHALL AVENGE THE DEEP DAMNATION OF THE DEED.

I would not willingly afflict you in your fallen condition, but I must awaken your consciences to an awful sense of your impending fate. You are now soon to be cut off from life, and these cheering beams which now surround you will soon be shut forever from your sight. The grave will become your cold and solitary residence, and the places that now know you shall know you no more. You are in the bloom and vigour of your days, yet society has found it necessary to arrest them, and to send you, *with all your imper-*

sections on your heads, to another world. Think, oh think, after what has happened, how you can appear before that dread tribunal, and that OMNIPOTENT JUDGE who searcheth the hearts and trieth the reins of all men. From his sentence there is no appeal, and before him you must soon appear to render an account of all the deeds done in the body. There can be no concealment or shelter there; the accusing spirit of conscience will rise in judgment against you, and the voice of your poor unfortunate brother will be heard from the very depths of the ocean.

Let me entreat you, tenderly and earnestly entreat you, as dying sinners, to turn from your wicked thoughts; to ponder on the errors of your ways, and with penitence and humiliation to seek the altars of our holy religion. Let me entreat you to pray for mercy and forgiveness from that righteous God, whom you have so justly offended. The time, perhaps, may not be too late. The glory of CHRISTIANITY may yet brighten your declining days, and THE SPIRIT OF REDEEMING GRACE may drop a tear on your sins and blot them out forever.

I now proceed to pronounce the awful sentence of the law upon your crime :

WHEREUPON all and singular the premises being seen, and by the said Judges of the said Court here fully understood—it is considered by the Court here, that the said Samuel Tulley and John Dalton be, and they hereby are severally deemed, taken, and adjudged to be pirates and felons ;—and that they, the said Samuel Tulley and John Dalton, and each of them, be hanged by the neck until they, and each of them, be dead. And it is further ordered and considered by the Court here, that the Marshal of this District do, on peril of what may fall thereon, cause execution to be done in the premises aforesaid, upon them, the said Samuel Tulley and John Dalton, on the tenth day of December next ensuing, between the hours of ten o'clock in the forenoon, and three in the afternoon of the same day ; and that they, the said Samuel Tulley and John Dalton, be now taken from hence to the gaol in Boston, in the District of Massachusetts, from whence they came, there, or in some other safe and convenient prison within the District aforesaid, to be closely kept until the day of execution, and from thence, on the day appointed for execution as aforesaid, to be taken to the place of execution in Boston aforesaid, there to be hanged as aforesaid.

I recommend you to the mercy of ALMIGHTY GOD, before whom we shall all one day appear ; and I pray that he may succour and support you in the hour of trial, and I now bid you AN ETERNAL FAREWELL.